Public Interest Disclosure Bill 2013 (Cth)

Key Features
(major amendments in *italics*)

Coverage
- Very broad categories of ‘disclosable conduct’ (reportable wrongdoing) – cl. 29
- Very broad coverage of all public servants and Commonwealth employees, Australian Defence Force, Commonwealth contractors and employees of Commonwealth contractors – cl. 30
- *Except* intelligence agency personnel *not* protected if they go public – cl. 26, 41
- And staff of Members of Parliament *not* protected – cl. 30
- And *wrongdoing* by members of Parliament *not* included – cl. 29, 30

Internal protection obligations
- Agencies must assess reprisal risk against whistleblowers – cl. 59(1)
- Agency heads must protect and support whistleblowers – cl. 59(3)
- Disclosures to any supervisor or manager attract protection – cl. 26, 34, 60A
- Discloser’s consent required for name and contact details to be given when disclosure ‘allocated’ (assessed and referred for investigation) – cl. 44(1)
- Discretions not to investigate have been tightened, and must now be notified to Ombudsman or IGIS – cl. 48(1), 50A
- *Other key agency decisions must also be notified* – e.g. cl. 44(1A)
- Discloser must be kept informed of progress of investigation – cl. 52(5)
- Whistleblower may complain to Ombudsman or IGIS about any breakdown in the process or failure to support and protect – cl. 42, 46, 58 (Notes)

Legal protections
- Whistleblower can access *Fair Work Act* protections and remedies – cl. 22
- Direct Federal Court compensation for reprisals (uncapped) also available – cl. 14
- *New public interest costs rule* (whistleblower indemnified from paying legal costs even if they can’t show reprisal, but can recover legal costs if reprisal proven) *in Federal Court compensation actions* – new cl. 18
- Criminal penalties for reprisal increased from 6 months’ jail to 2 years – cl. 19
- Protections broadened to apply to disclosures that ‘tend to show’ wrongdoing (objective test) irrespective of what discloser believes they are revealing – cl. 26

Ability to go public
- *Suppression orders* (designated publication restrictions) now only affect protection if breached knowingly and without reasonable excuse – deleted from cl. 26; cl. 11A
- Whistleblower may now go public if s/he ‘believes on reasonable grounds’ the internal response is inadequate (no longer ‘no reasonable person’ would accept that it is inadequate) – cl. 26; deletion of cl. 37, 38, 39
- *Emergency disclosures* extended to imminent threats to the environment – cl. 26
- Public interest test no longer quite as biased against external disclosure as in original Bill – cl. 26(3).

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