

**PUBLIC INTEREST DISCLOSURE BILL 2012 (Cth) – ANDREW WILKIE MP**

**KEY PRINCIPLES**

**A J BROWN**

**Professor of Public Law, Griffith University**

**29 October 2012**

1. Act must promote an **'if in doubt, can report'** attitude on the part of all public officials, i.e. confidence that if public interest-related wrongdoing (defined broadly) is reported, the report will be appropriately actioned and officials supported and managed appropriately.
2. Alleged public interest-related wrongdoing in **all areas of Commonwealth government** should be covered – including by Ministers, their offices, and other members of parliament – via protections under this Act, or if not, via matching protections under other legislation.
3. Any carve-outs or special procedures (e.g. in relation to **political, judicial, or intelligence agencies or matters**) should be fully justified with reference to the nature of the information requiring special treatment (e.g. actual sensitivity) – not blanket exclusions or exemptions.
4. Obligations on agencies to protect and support must be **direct, proactive and preventative** (i.e. embedded in effective systems, procedures and senior management responsibilities) rather than just assumed or reactive.
5. Implementation must be supported by a **single oversight agency (Ombudsman)** with clear responsibilities, including through a 'real time' **mandatory reporting system** to ensure that protective action is taken before matters are mishandled / damage caused.
6. Oversight agency must be **properly resourced** to do the job, including handling cases directly rather than always referring back to agencies (i.e., not just another paper-go-round agency)
7. Reporting and protection systems should not be **complainant-dependent** (i.e. should not rely on discloser to trigger / complaint / litigate, unless system breaks down)
8. Clear and workable rules on when officials may/should disclose to **the media**. Following ACT approach, this is simply where there is:
  - total failure to act internally or by regulatory agency; or
  - investigative action taken but no evidence of progress or outcome; or
  - investigation produces no action but there remains 'clear evidence' of wrongdoing; or
  - no safe way of reporting internally or to regulator, and no way could reasonably be expected;
  - BUT protection only extends to information it is reasonably necessary to disclose, to get action.
9. **Compensation remedies** need to be clear, simple and accessible – in line with UK regime:
  - Through Fair Work Australia for all employees and workers, with a civil action back-up to the Federal Court for anyone not covered by the Fair Work Act;
  - Key responsibilities of agencies (for which can be held liable) need to include providing a safe and healthy workplace for those who report wrongdoing, i.e. agency is responsible for failures to support and properly manage disclosure situations, and for preventable collateral damage (not just liability for direct, identifiable reprisals taken by individuals);
  - Damages need to be realistic, i.e. impacts on career, reputation, employability, future earnings etc – not just equivalent to wrongful dismissal.
10. **Basic safeguards** against abuse/misuse of system:
  - Clear definitions of what types of wrongdoing covered;
  - Honest belief on reasonable grounds (or objective fact) re: concern;
  - Discretions not to investigate (oversighted) include triviality, etc;
  - Penalties for false or misleading disclosure/information;
  - Protections do not extend to vexatious disclosures (i.e. abuse of process) (this assessment oversighted, and reviewable by relevant tribunal or court).