

Submission Regarding the Public Interest Disclosure Act 2013 (Cth)

I. Introduction

The Rule of Law Institute of Australia thanks Mr Philip Moss and the Department of Prime Minister and Cabinet for the opportunity to make a submission regarding the *Public Interest Disclosure Act 2013 (Cth)*.

The Institute is an independent, non-partisan, not-for-profit body formed to promote and uphold the rule of law in Australia.

The Patron of the Institute is the Honourable James Spigelman AC QC, and the Governing Committee includes Richard McHugh SC, Professor Geoffrey de Q. Walker, David Lowy AM, Nicholas Cowdery AM QC, Professor Martin Krygier, and Hugh Morgan AC.

The objectives of the Institute include promoting good governance in Australia by the rule of law, and encouraging transparency and accountability in State and Federal government.

II. Reprisals for public interest disclosures

The *Public Interest Disclosure Act 2013 (Cth)* (PIDA) provides, *inter alia*, that a person must not cause detriment to another person in reprisal for making a public interest disclosure. Two provisions are relevant.

Section 19 of PIDA provides:

- (1) *A person commits an offence if the person takes a reprisal against another person.*

Section 13 of PIDA sets out what constitutes a reprisal:

- (1) *A person (the **first person**) takes a reprisal against another person (the **second person**) if:*
 - (a) *The first person causes (by act or omission) any detriment to the second person; and*
 - (b) *When the act or omission occurs, the first person believes or suspects that the second person or any other person made, may have made or proposes to make a public interest disclosure; and*
 - (c) *That belief or suspicion is the reason, or part of the reason, for the act or omission.*



The Institute draws the Department's attention to the wording in s13(1)(c) "the reason, **or part of the reason**".

The Institute notes, by comparison, that the equivalent provision in the *Public Interest Disclosures Act 1994* (NSW), section 20, provides as follows:

- (1) *A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of an offence.*

The Institute draws the Department's attention to the wording in s20(1) "**substantially** in reprisal".

The Institute considers that the current test in s13(1)(c) of PIDA – "the reason, **or part of the reason**" – is too broad, and encompasses a range of possible fact scenarios beyond those that legitimately ought to be deterred.

The Institute considers that the current test in the NSW legislation – "**substantially** in reprisal" – is more suitable, directing attention to those fact scenarios where a person's public interest disclosure is an important or significant part of the decision to take detrimental action against them.

Recommendation

The Institute recommends amending section 13(1)(c) of PIDA as follows:

*(c) That belief or suspicion is **substantially** the reason, ~~or part of the reason,~~ for the act or omission.*

