



Chair  
Senate Legal and Constitutional Affairs Committee  
c/o Committee Secretary  
PO Box 6100  
Parliament House  
Canberra ACT 2600

COM25/2501

Dear Chair,

### **Whistleblower Protection Authority Bill 2025 (No. 2)**

Thank you for the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee on a Bill for an Act to establish the Whistleblower Protection Authority, and for related purposes.

This bill provides an exciting opportunity to establish a new statutory authority alongside several statutory officeholders that give Australia a framework that supports transparency and, as Senator Jacquie Lambie likes to do, call things out for how they are.

However, we would like additional consideration to be given to the statutory structure of the Whistleblower Protection Authority (WPA), the former Federal Circuit Court of Australia, and potentially the name of the WPA. Before that, we will touch lightly on which government bodies are covered by this bill.

### **Government Agency**

We are interested to see that this legislation extends to state and territory government agencies. We recognise that dodgy doings also happen within local councils as many state-level anti-corruption commissions have found. Whether local councils fall within the definition of *government agency* will be one up for interpretation. The definition of *government agency* outlined in subclause 8(1) states:

***government agency*** means:

- (a) a Commonwealth agency; or
- (b) a Department of a State or Territory; or
- (c) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

At best, a local council might be included as a body established for a public purpose. We cannot confirm if this has been tested in court.

Among existing legislation, s 3 of the *Australian Institute of Health and Welfare Act 1987* (Cth) has the following analogous definition:

***State or Territory agency*** means:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

We do not propose changing the definition of *government agency*, but we hope to see local councils fall within the WPA's remit.

## Clause 11 – The Deputy Commissioners

We question the need for the legislation to specify that there can be up to two Whistleblower Protection Deputy Commissioners. We recognise that under subclause 40(4), the two Deputy Commissioners would have different backgrounds.

The issue goes more to whether there is a need for two deputies to the Commissioner, who themselves would be well-versed in accountability and/or private sector law. The primary purpose of the Deputy Commissioner should be to step in for the Commissioner when needed. Having two deputies complicates this rather than making this simpler.

Instead, we propose that there is only one Deputy Commissioner as provided for by the bill. If the Commissioner requires assistance, then they can get assistance from Assistant Commissioners who can be appointed from the Australian Public Service (akin to the Office of the Australian Information Commissioner).

This will require an amendment to the bill.

## Part 4 – Administrative provisions for the Whistleblower Protection Authority

As per the bill, there will be a Chief Executive Officer (CEO) of the WPA. We take it that the CEO will be responsible for the day-to-day running of the WPA, letting the Commissioner and Deputy Commissioners focus on the investigations, the whistleblowers, and all the compliance.

We believe that more authority and respect would be given to the administrative head if they were titled “Director-General”. This will also help the WPA stand out from other government agencies who are led by CEOs. If anything, this body has no exact analogue in the private sector.

Additionally, the title of “Director-General” offers less awkward titles for deputies in the event the WPA requires them. For example, the chain can be “Deputy Director-General”, “First Assistant Director-General”, and “Assistant Director-General” if we are following the Australian Public Service Senior Executive Service bands. This prevents us from delving into the world of “Deputy CEOs” – who usually lack a private sector counterpart – as well as the vague “General Manager”.

This will require replacing all instances of “Chief Executive Officer” and “CEO” with “Director-General” with an amendment to the bill.

## Federal Circuit Court of Australia

We draw the Committee’s attention to the definition of *Federal Circuit Court* within subclause 8(1) of the bill, which is:

***Federal Circuit Court*** means the Federal Circuit Court of Australia.

Without any doubt, this definition is referring to the court created under Chapter III of the Constitution as a continuation of the Federal Magistrates Court, the now defunct Federal Circuit Court of Australia established under the repealed *Federal Circuit Court of Australia Act 1999* (Cth). In more simpler words, the Federal Circuit Court of Australia no longer exists and should not be referred to in new legislation.

Instead, the definition should refer to the relevant division of the court created under Chapter III of the Constitution as a continuation of the Federal Circuit Court of Australia,

the Federal Circuit and Family Court of Australia (Division 2) established under the *Federal Circuit and Family Court of Australia Act 2021* (Cth).

While we disagree with the Morrison Government's decision to amalgamate the Family Court of Australia and the Federal Circuit Court of Australia — and we will continue to advocate for a *divorce* between the two divisions — we still recognise that the Federal Circuit Court of Australia is no more.

The bill should be amended to correctly mention which division of the Federal Circuit and Family Court of Australia applicable for enforcement of undertakings under subclause 38(5).

## **Alternative Names for the Whistleblower Protection Authority**

We believe that the current name for the body is appropriate and conveys enforcement and independence by calling it an “Authority”.

Nevertheless, we present several alternative names which can be used in lieu of the current name:

- Whistleblower Protection Australia (WPA)
- Australian Whistleblower Commission (AWC)<sup>1</sup>
- Australian Whistleblower Protection Authority (AWPA)
- Office of the Australian Whistleblower Protection Commissioner (OAWPC)
- Whistleblower Ombudsman
- Office of the Australian Whistleblower (OAW)



If you would like to contact us to discuss this submission, you can email us at

Be assured you will be most welcome.

Yours sincerely,

William Luu

Warwick Senjak

23 May 2025

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<sup>1</sup> Hence why it is led by a commissioner.