

Senate Economics Committee

Inquiry into the Performance of the Inspector-General of Taxation

ANSWERS TO QUESTIONS ON NOTICE

Office of the Commonwealth Ombudsman

DECEMBER 2019

Department/Agency: Office of the Commonwealth Ombudsman

Question: 1

Topic: Section 9 notices issued

Question:

Mr MANTHORPE: You asked us on notice at estimates last time about this question of how many notices. I will quickly go through it. Over the last three calendar years two notices have been issued under section 9 of the Ombudsman Act. Notices under this section can be issued to any person who the Ombudsman has reason to believe has information or documents relevant to an investigation under the act. The two notices were both issued to officers of Commonwealth agencies and both were issued at the request of the recipient. Persons issued with a section 9 notice are not liable for any penalty under any other enactment by reason of furnishing information, producing a document or record or answering a question as required by the notice. Persons issued with a section 9 notice are also protected from civil liability in relation to any damage or injury suffered by someone else as a result of the first person making a statement to or furnishing a document or information to an officer of the Ombudsman's office. It's noted that the same protections apply to persons who voluntarily provide information, documents or records to the Ombudsman in relation to an investigation by the Ombudsman. The Ombudsman Act does not contain a provision equivalent to section 39 of the Inspector-General of Taxation Act. However, if in the course of an investigation evidence of retribution against a public official emerged in the nature of a breach of duty or misconduct, the Ombudsman could decide to refer that evidence as appropriate to the relevant minister, the Australian Public Service Commissioner, the Merit Protection Commissioner or the head of a department or prescribed authority. If the evidence indicated commission of an offence, we could also refer the evidence to the AFP. Similarly, and depending on the facts, it would be open to the individual concerned to take such matters to relevant authorities such as the Merit Protection Commission, the Fair Work Commission, the Federal Court or the AFP.

Senator PATRICK: In relation to those two matters, were any of those matters SES people? Is there a difference between the way in which a—

Mr MANTHORPE: I can think of one that was not. I'm not sure about the other.

Ms HINCHCLIFFE: I'd have to take that on notice to go back and have a look at who exactly it went to.

Answer: Section 9 of the *Ombudsman Act 1976* has been used in relation to two investigations, with three notices issued.

In the first matter, a notice was issued to the head of an agency to obtain documents, and another notice was issued to an officer (not SES level) to answer questions at interview.

In the second matter, a notice was issued to the head of an agency to obtain documents.