



## 2011 CHAPTER 1

### *Formal investigations*

#### **Formal investigations**

**13.—**(1) Subject to section 14, the Commissioner may determine to conduct an investigation under this section (“a formal investigation”)—

- (a) for the purposes of the Commissioner’s functions under section 5;
- (b) for the purposes of the Commissioner’s functions under section 6; or
- (c) into a complaint under section 8(1).

(2) In determining whether to conduct or discontinue a formal investigation, the Commissioner may act in accordance with the Commissioner’s own discretion.

(3) Where the Commissioner determines to conduct a formal investigation for the purposes of the Commissioner’s functions under section 5 or 6 the Commissioner must—

- (a) produce terms of reference for the investigation;
- (b) send notice of the proposed investigation and a copy of the terms of reference to—
  - (i) the relevant authority concerned; and
  - (ii) in the case of an investigation for the purposes of the Commissioner’s functions under section 6, the particular older person mentioned in that section;
- (c) afford to the relevant authority concerned an opportunity to comment on the matters being investigated and to give oral or other evidence respecting those matters.

(4) Where the Commissioner determines to conduct a formal investigation into a complaint under section 8(1) the Commissioner must—

(a) give to—

(i) the relevant authority concerned; and

(ii) any other person who is alleged in the complaint to have taken or authorised the action complained of or who is otherwise involved in allegations made in the complaint,

information as to the substance of the allegations made in the complaint so far as they relate to that authority or (as the case may be) to that person; and

(b) afford to every such authority or person an opportunity to comment on any allegations made in the complaint and to give oral or other evidence respecting those matters.

(5) Every formal investigation must be conducted in private.

(6) Except as otherwise provided by this Act, the procedure for conducting a formal investigation must be such as the Commissioner considers appropriate in the circumstances of the case; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.

(7) The Commissioner may for the purposes of a formal investigation obtain information from such persons and in such manner, and make such enquiries, as the Commissioner thinks fit.

(8) Subject to subsections (9) and (10), in conducting a formal investigation the Commissioner is not obliged to hold any hearing, and no person is entitled as of right to be heard by the Commissioner.

(9) If at any time during the course of a formal investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any relevant authority or other person, the Commissioner must afford to that authority or person—

(a) an opportunity to give oral or other evidence; and

(b) an opportunity of testing by cross-examination any evidence which may affect that authority or person.

(10) Where the opportunities mentioned in subsection (9) are given to a relevant authority or other person, then—

(a) in any formal investigation for the purposes of the Commissioner's functions under section 6, the same opportunities must be given to the older person mentioned in that section; and

(b) in any formal investigation into a complaint under section 8(1), the same opportunities must be given to the complainant.

(11) The Commissioner may, if the Commissioner thinks fit, pay to any person (including a complainant) who attends or supplies information for the purposes of a formal investigation—

(a) sums in respect of expenses properly incurred by that person;

(b) allowances by way of compensation for the loss of that person's time, in accordance with such scales and subject to such conditions as the Office may determine.

(12) A formal investigation does not affect—

(a) any action taken by a relevant authority or by any department or Minister with respect to that authority; or

(b) any power or duty of that authority, department or Minister to take further action with respect to any matters subject to the investigation.