

CHAPTER 553

COMMISSIONER FOR OLDER PERSONS ACT

To provide for the appointment of a Commissioner for Older Persons with power to promote and safeguard the interests of older persons, and investigate any alleged breaches or potential infringements of the human rights of the older persons.

15th October, 2016*

ACT X of 2016.

1. The short title of this Act is the Commissioner for Older Persons Act. Short title.
2. In this Act, unless the context otherwise requires: Interpretation.
- "Commissioner" means the Commissioner for Older Persons appointed under article 3 and includes any officer assigned to assist the Commissioner and authorised by him in that behalf;
- "Committee" means the Social Affairs Committee of the House of Representatives or any other committee substituting the same;
- "complainant" means any person who reports, in writing or verbally, an alleged breach or potential infringement of the human rights of any older person, provided that a verbal complaint should always be subsequently put in writing;
- "older person" means a person aged over sixty years;
- "Minister" means the Minister responsible for Older Persons;
- "Human Rights of Older Persons" refers to the international principles for older persons enunciated in the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991 (resolution 46/91).
3. (1) There shall be a Commissioner for Older Persons who shall be appointed by the Prime Minister after consultation with the Leader of the Opposition. Appointment of Commissioner.
- (2) A person shall not be qualified to hold office as Commissioner if such person:
- (a) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives; or
 - (b) is serving as a judge or magistrate; or
 - (c) is legally incapacitated; or
 - (d) has been declared bankrupt or has made a composition or arrangement with his creditors; or
 - (e) has been convicted of a crime affecting public trust or theft or fraud, or of knowingly receiving property obtained by theft or fraud, a crime affecting the good

* see article 1(2) of this Act as originally enacted, and Legal Notice 339 of 2016.

order of families, of an offence against this Act or an offence committed against or to the detriment of an older person.

(3) Where the person appointed Commissioner is, prior to such appointment, already a public officer, such person shall continue to retain such office but shall not hold any position which is incompatible with the proper performance of his or her official duties as Commissioner for Older Persons or with the impartiality and independence expected from this office or with public confidence therein.

Independence of functions.

4. In the exercise of the functions established under this Act, the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

Representation of the Commissioner.

5. Any document purporting to be an instrument made or issued and signed by the Commissioner shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

Tenure of office.

6. (1) Subject to the provisions of sub-article (2), the Commissioner shall hold office for a term of three years and shall be eligible for reappointment on the expiration of such term of office.

(2) Unless the office becomes vacant sooner, a person appointed as Commissioner shall hold office until a successor is appointed.

(3) The Commissioner may at any time resign from office by letter in writing addressed to the Minister.

Removal or suspension from office.

7. A Commissioner may at any time be removed or suspended from office by the Prime Minister after consultation with the Committee on the grounds of proved inability to perform the functions of the office of Commissioner or misbehaviour:

Provided that if the Committee is not constituted or if Parliament is not in session, the Commissioner may be suspended from office by the Prime Minister, acting in accordance with his own discretion:

Provided also that, if the Commissioner is unable to perform the functions of the office or in case of misbehaviour proved to the satisfaction of the Prime Minister, such suspension shall only remain effective for a maximum period of two months after the Committee is constituted and Parliament is in session, after which term the Committee is to confirm or revoke such suspension.

Temporary appointment of Commissioner.

8. (1) The Prime Minister may, at any time during the illness or absence of the Commissioner or for any other temporary cause, appoint a substitute until the resumption of office of the Commissioner.

(2) A person shall not be qualified to be appointed under this article if such person is disqualified to be appointed to the office of

Commissioner under article 3(2).

- 9.** (1) The Commissioner shall have the following functions: Functions of the Commissioner.
- (a) to promote and advocate human rights and interests of older persons, and the need to safeguard those rights and interests;
 - (b) to promote opportunities for, and the elimination of discrimination against, older persons;
 - (c) to encourage best practices in the treatment of older persons;
 - (d) to keep under review the adequacy and effectiveness of any legislation relating and affecting the interests of older persons;
 - (e) to advocate for adequate support and services to carers of the older persons;
 - (f) to monitor and examine the impact of any decision taken by any body, entity or authority on the human rights and interests of older persons;
 - (g) to promote the protection of older persons from any kind of abuse, harm, ill-treatment, neglect and exploitation of any form;
 - (h) to promote the highest standards of health, education, leisure, recreational facilities and social services for older persons in line with the relative approved standards in place from time to time;
 - (i) to ensure that all possible measures are taken by the relevant authorities to prevent and address poverty and social exclusion and related issues among older persons; and
 - (j) to promote compliance with the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991, the Madrid International Plan of Action on Ageing adopted by the United Nations during the Second World Assembly on Ageing (8-12 April 2002), and with such other international treaties, conventions or agreements relating to older persons as are or may be ratified or otherwise acceded to by Malta.

(2) The Commissioner may issue guidelines on best practices in connection with any matter relating to the interests of older persons and in doing so the Commissioner may carry out any consultation which may be required or necessary.

10. The Commissioner shall be guided by the following general principles: Guiding principles.

- (a) the best interests of older persons are paramount;
- (b) all older persons are to be treated with dignity, respect and fairness;
- (c) older persons with disability and, or disadvantaged

social circumstances should enjoy the same quality of life as all other older persons;

- (d) older persons and their families are to be provided with opportunities to participate in decisions that affect them and in defining, planning and evaluating services to older persons; and
- (e) government, families and communities share the responsibility for the promotion of the development and well-being of older persons.

Promoting the best interests of older persons.

11. In order to promote the welfare of older persons and to monitor the conditions under which older persons progress, the Commissioner shall:

- (a) provide public education and information designed to promote an understanding of human rights of older persons;
- (b) initiate measures for asserting human rights of older persons and promoting their interests;
- (c) collect information and investigate any alleged breaches and potential infringements of the human rights of older persons;
- (d) set standards to be applied by ministries, departments or agencies of the Government to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to older persons;
- (e) monitor whether ministries, government departments and agencies referred to in paragraph (d) are meeting the standards set under that paragraph;
- (f) collect data about, conduct or encourage research into, matters relevant to services for older persons;
- (g) ensure that such services in relation to older persons are -
 - (i) accessible,
 - (ii) community-based,
 - (iii) co-ordinated and integrated,
 - (iv) inclusive of gender, disability, culture, language, and sexual orientation, and
 - (v) responsive to individual needs;
- (h) provide public education and information designed to promote an understanding of, and to invite public comment on, the work of the Commissioner;
- (i) monitor and assess the policies and practices of social welfare services affecting older persons;
- (j) ensure that legislation relating to the protection of older persons' interests is observed;
- (k) act as a spokesperson for human rights, needs and interests of older persons and put forward proposals

for measures which can solve or prevent conflicts between older persons and society; and

- (l) advise and submit proposals to Government on such measures as may be required to foster, promote and safeguard human rights and interests of older persons.

12. (1) There shall be a Council for Older Persons appointed by the Minister to assist the Commissioner. This Council shall be composed of the Commissioner, who shall be the chairperson, and six other members appointed as follows:

Council for Older Persons.

- (a) one person appointed by the Minister;
- (b) one person appointed by the Minister responsible for health;
- (c) one person appointed by the Minister responsible for education;
- (d) one person appointed by the National Commission for Active Ageing; and
- (e) two persons appointed by the National Council for the Elderly.

(2) The Council shall have the right to co-opt up to five other persons who, in the opinion of the Council, best represent older persons and the human rights of older persons. These persons shall, as far as possible, be older persons and persons involved in the promotion of active ageing measures and initiatives.

(3) The quorum of the Council shall be established by the presence of the chairperson and any other two members present.

(4) The Council shall meet at least once every three months and shall be convened by the chairperson. The chairperson shall also convene a meeting of the Council when requested to do so by at least two members of the Council.

(5) The Council shall, subject to the foregoing provisions regulate its own procedures.

(6) The functions of the Council shall be:

- (a) to monitor compliance with the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991, the Madrid International Plan of Action on Ageing adopted by the United Nations during the Second World Assembly on Ageing (8-12 April 2002), and with all such other international treaties, conventions or agreements relating to older persons as are or may be ratified or otherwise acceded to by Malta;
- (b) to advise and assist the Commissioner in the performance of the functions of the Commissioner as listed in this Act, and in the promotion of the welfare of older persons as specified in article 11.

13. The Commissioner, the Council members and every

Confidentiality.

member of the staff of the Commissioner's office shall be bound by confidentiality in respect of all personal matters that come to their knowledge in the exercise of their powers and the carrying out of their duties and functions under this Act; they shall not divulge any matter coming to their knowledge as aforesaid except for the purpose of an official investigation, or prosecutions for an offence against this Act or any other offence against an older person when carried out by the competent official authority.

Investigations.

14. (1) Saving the provisions of sub-article (2), the Commissioner may carry out an investigation for any purpose connected with the execution of the Commissioner's duties either on a written complaint made to the Commissioner by any person or on the Commissioner's own motion.

(2) The Commissioner shall not carry out investigations concerning specific, individual conflicts between older persons and their guardians or carers and any other matter that falls within the competence of any court or tribunal established by law and in any such case the Commissioner shall submit to the complainant the reasons for the refusal.

(3) Every investigation by the Commissioner under this Act shall be conducted *in camera*.

(4) The Commissioner may hear or obtain information from such persons as he thinks fit, and may make such enquiries as he thinks fit.

(5) The Commissioner shall not make any finding or recommendation that may adversely affect the reputation of any person being investigated without granting such person a right to be heard.

(6) If, during or after any investigation, the Commissioner is of the opinion that there is substantial evidence of any significant breach on the part of any person being investigated, he shall refer the matter to the appropriate authority including the Police:

Provided that the Commissioner may continue further with his investigation after having referred the matter as aforesaid.

(7) Any person to whom this Act applies has a duty to cooperate, at all stages, with an investigation under this Act.

(8) Subject to the provisions of this Act and of any rules made thereunder, the Commissioner may regulate his procedure in such manner as he thinks fit.

(9) A rejection by the Commissioner to carry out an investigation shall be final.

(10) Upon acceding to a request to investigate a complaint, the Commissioner shall notify the complainant of the decision to investigate and shall notify any department, agency or entity involved of the intention to investigate.

(11) The Commissioner may advise a complainant to pursue all applicable and relevant administrative or judicial remedies or channels of complaint open to the complainant before or in lieu of

pursuing a complaint with the Commissioner.

(12) The Commissioner shall prepare and publish a report of the findings in any formal investigation and shall include in it such recommendations as appear to be necessary or expedient.

(13) The Commissioner may delegate any of his functions to a senior official to the extent authorised by the Commissioner.

15. (1) For the purpose of an investigation the Commissioner may require any person who possesses documents or information relevant to the investigation, which the Commissioner thinks it necessary or expedient to have, to: Evidence.

- (a) produce such documents; and, or
- (b) furnish the information in writing; and, or
- (c) attend at a specified time and place and give oral information on oath.

(2) Summons for attendance of witnesses may be in the form set out in the Schedule or in such other form as may be appropriate to the case, and shall be signed by the Commissioner.

(3) Notwithstanding the provisions of sub-articles (1) and (2), no person shall be compelled to give information or produce documents which such person could not be compelled to give or produce in civil or criminal proceedings before a court.

(4) The Commissioner shall have power to -

- (a) summon witnesses;
- (b) administer an oath to any witness and to any person concerned in the investigation.

(5) A summons may be served either by hand or by post. Where it is served by hand it shall be sufficient to prove service by evidence that the summons was left with a person over the age of sixteen years at the place of residence or of business of the person summoned; and if served by post it shall be sufficient to prove service by evidence that the summons was properly addressed and posted.

(6) The following shall *mutatis mutandis* apply to the person to be heard by the Commissioner:

- (a) the provisions of article 522 of the [Criminal Code](#), where the person to be heard refuses to testify when required to do so by the Commissioner; for this purpose, the proceedings before the Commissioner shall be deemed to be proceedings taking place before a court; Cap. 9.
- (b) the provisions of articles 104, 105, 107, 108 and 109 of the [Criminal Code](#), as the case may be, where the person to be heard does not testify to the truth; for this purpose the proceedings before the Commissioner shall be deemed to be proceedings taking place before a court and the person to be heard shall be deemed to be a person testifying in those proceedings: Cap. 9.

Cap. 9.

Provided that nothing in this sub-article shall be interpreted as conferring upon the Commissioner the power to convict or sentence any person for any criminal offence. In any proceedings before a Court of criminal jurisdiction upon a charge raised against any person for a breach of the provisions of articles 104, 105, 107, 108, 109 or 522 of the [Criminal Code](#) in relation to evidence given or to refusal to give evidence before the Commissioner such offence shall, for all intents and purposes of law, be deemed to have been committed before a court of criminal jurisdiction and shall be treated in the same manner as though it had been committed in such a court.

(7) For the purpose of determining the applicable punishment as may be necessary in proceedings for refusal to testify or for perjury or false oath under this sub-article, the allegation being inquired into or adjudicated by the Commissioner shall be deemed to be liable to the punishment to which it would have been liable had the same fact taken place before any court.

Recommendations.

16. (1) The Commissioner may make recommendations for action to be taken by other persons or any body as may be necessary or expedient and may publish such recommendations, if the Commissioner deems fit, without revealing the identity of the person to whom the report refers.

(2) In those cases where the Commissioner decides to make recommendations, a report shall be drawn up by the Commissioner explaining the reasons for the recommendations and the Commissioner shall send a copy of such report.

Compliance with
the United Nations
Principles for
Older Persons.

17. (1) If it appears to the Commissioner that a particular person or body is not complying with the provisions of the United Nations Principles for Older Persons adopted by the General Assembly of the United Nations on 16 December 1991, then the Commissioner may make recommendations in the form of a compliance notice, which shall state the Commissioner's opinion as to the way in which the provisions of the Principles are not being complied with and what action should be taken to comply.

(2) Any person or body receiving a recommendation in accordance with sub-article (1) shall provide the Commissioner with a reply within fifteen days from the date of notification of such recommendation.

(3) Where any person or body to whom a recommendation is directed intends to consider the recommendation, they shall furnish the Commissioner with information regarding the action which has been taken or it is intended to take in response to the recommendation.

(4) Where any person or body to whom a recommendation is directed intends not to comply with it, they shall furnish the Commissioner with reasons for not doing so and the Commissioner may, if deemed fit, publish these reasons.

(5) Failure to reply shall be deemed to be an intention not to comply with the recommendation.

(6) Any person or body to whom a recommendation has been directed shall provide the Commissioner with all the necessary information to verify whether the recommendation has been complied with or not.

(7) The Commissioner shall establish and maintain a Register of Compliance Notices and the register may be inspected by any person after obtaining the necessary authorisation from the Commissioner.

18. (1) Whenever it appears necessary or expedient, the Commissioner may carry out or cause to be carried out an Older Person Impact Statement relating to any decision or proposal on policy which affects older persons.

Older Person
Impact Statement.

(2) Any Older Person Impact Statement shall set out the probable impact on older persons of the decision or proposal on policy.

(3) The Commissioner may publish the Older Person Impact Statement.

19. (1) The Commissioner shall, not later than six weeks after the end of each calendar year, compile and transmit to the Minister an annual report which shall include:

Annual report.

- (a) a report of the Commissioner's activities during the year;
- (b) a general description of the circumstances of older persons in Malta and a survey of the developments which have affected them;
- (c) any recommendations regarding the need for legislation or change in rules or policies; and
- (d) any responses made to the Commissioner in accordance with this Act.

(2) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report, or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session, cause a copy of every such report to be laid on the Table of the House of Representatives.

(3) The report mentioned in sub-article (1) shall be discussed by the Committee.

20. Any person who knowingly impedes or obstructs the Commissioner or a member of his staff in performing or exercising powers or functions given under this Act; or who refuses, or without sufficient cause, fails to attend at the time and place mentioned in the summons; or who refuses, without sufficient cause, to answer fully and satisfactorily, to the best of his knowledge and belief all questions put to him by the Commissioner, or refuses or fails, without sufficient cause, to give any information required by the Commissioner or knowingly provides false or misleading information as required under this Act, shall be guilty of an offence and shall on conviction be liable to a

Offences and
penalties.

fine (*multa*) not exceeding one thousand five hundred euro (€1,500);

Provided that when the act committed by an offender constitutes a more serious offence under any other law, the provisions of that other law shall apply in respect of that act.

Provisions of this Act not to derogate from provisions of the Constitution of Malta.

21. The provisions of articles 3, 6, 7 and 9 shall be in addition to, and shall not derogate from, the provisions of the Constitution of Malta with regard to the appointment, discipline and removal of public officers.
