

No. 11 of 2024

VIRGIN ISLANDS
INQUIRIES ACT, 2024
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I ASSENT

Daniel Pruce,
Governor.
12th November, 2024

VIRGIN ISLANDS

No. 11 of 2024

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND CONDUCT OF INQUIRIES INTO MATTERS OF PUBLIC INTEREST; TO REPEAL THE COMMISSIONS OF INQUIRY ACT, CAP. 237, AND TO PROVIDE FOR CONNECTED MATTERS.

[Gazetted 14th November, 2024]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Inquiries Act, 2024.
- (2) This Act shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires,
“Chairperson” means a person appointed under section 3(3);
“commissioner” means a person appointed as a commissioner pursuant to section 3(2);
“department” means an administrative unit within the government with responsibility for implementing specific functions or areas of the public service;

“evidence” includes information or items offered as proof of an alleged fact or proposition;

“information” in relation to the power of an inquiry to obtain or disclose information, includes matters of expert opinion as well as of fact;

“inquiry” means an inquiry established pursuant to section 3(1);

“misconduct” means conduct by a person that could reasonably be considered likely to bring discredit upon that person;

“public body” includes

- (a) the House of Assembly or any committee of the House of Assembly;
- (b) the Cabinet of the Virgin Islands;
- (c) a Ministry, department, or division of the Ministry;
- (d) a local authority; and
- (e) a statutory body established for a public purpose, whether incorporated or not, and which is owned or controlled by the Government;

“public officer” means a person who is appointed to an office in the public service and includes a person appointed to act in such office.

(2) For the purposes of section 34(1)(o) and (p), “publish” means disseminate or provide access to the public or a section of the public by any means, including by

- (a) publication in a book, newspaper, magazine or other written publication;
- (b) broadcast by radio or television;
- (c) public exhibition; or
- (d) broadcast or electronic communication

PART II

ESTABLISHMENT OF AN INQUIRY

Establishment of an inquiry

3. (1) The Governor may, by order, cause an inquiry to be held under this Act in relation to a matter where the Governor has reasonable cause to believe that:

- (a) particular events have caused, or are capable of causing, public concern; or
- (b) there is public concern that particular events may have occurred.

(2) The Governor shall, in the order made under subsection (1),

- (a) appoint three persons as commissioners;
- (b) set out the terms of reference for the inquiry, which shall include the following:

- (i) when and where the inquiry may be held;
- (ii) whether the inquiry shall be held in public or private;
- (iii) the date of commencement of the inquiry.

(3) The Governor shall appoint one of the commissioners to be the Chairperson.

(4) An inquiry shall not be held in the absence of any of the commissioners.

Premier may appoint an inquiry

4. (1) Notwithstanding section (3), the Premier shall in addition to the Governor have the authority to cause an inquiry under this Act into the areas of administration for which the Ministers are responsible.

(2) When the Premier act under subsection (1), the references to “the Governor” shall be read as “the Premier” in the place of “Governor”, except under sections 21(5), 37 and 38, the rest of those provisions should be construed accordingly.

Matters to be considered in appointing commissioners

5. (1) In appointing the commissioners, the Governor shall have regard to the following:

- (a) the need to ensure that the commissioners have the necessary expertise to undertake the inquiry; and
- (b) the need for balance in the composition of the commissioners.

(2) The Governor shall not appoint a person as a commissioner if it appears to the Governor that the person has

- (a) a direct interest in the matters to which the inquiry relates; or
- (b) a close association with an interested party,

unless, despite the person’s interest or association, his or her appointment could not reasonably be regarded as affecting the impartiality of the inquiry panel.

(3) Before a person is appointed as a commissioner he or she shall notify the Governor of any matters that, having regard to subsection (2), could affect his or her for eligibility for appointment.

(4) If at any time (whether before the setting-up date or during the course of the inquiry) a commissioner becomes aware that he or she has an interest or association falling within subsection (2)(a) or (b), he or she must notify the Governor.

(5) A commissioner, shall not, during the course of the inquiry, undertake any activity that could reasonably be regarded as affecting his or her suitability to serve as commissioner.

Duty to inform House of Assembly

6. (1) Where the Governor proposes to cause an inquiry to be held, he or she shall as soon as is reasonably practicable notify the Speaker of the House of

Assembly and the Premier or such other Minister as may be designated by the Governor shall make a statement to that effect.

(2) A notice or a statement made under subsection (1) shall state

- (a) who is to be appointed as Chairperson of the inquiry;
- (b) who are the other commissioners; and
- (c) what are the terms and reference of the inquiry.

(3) Where the terms of reference of an inquiry are amended, the Governor shall, as soon as is reasonably practicable, notify the Speaker of the House of Assembly setting out the amended terms of reference and the Premier, or such other Minister as may be designated by the Governor shall make a statement to that effect.

Removal of commissioners

7. (1) Subject to subsection (2), the Governor may, by notice in writing, revoke the appointment of a commissioner if satisfied that the commissioner

- (a) has engaged in misconduct;
- (b) is unable, for any reason, to perform the functions of the office; or
- (c) has neglected his or her duty.

(2) Before exercising the power in subsection (1), the Governor shall inform the commissioner that he or she has a right to be heard.

Filling Vacancies and alterations

8. (1) The Governor may appoint a person to fill a vacancy that has arisen where a commissioner dies or, is unable or unwilling to act.

(2) An inquiry appointed under this Act may be altered, as the Governor may deem fit, by any subsequent inquiry appointed by the Governor, or may be revoked by a notice to that effect published in the *Gazette*.

Protection of commissioners

9. A commissioner acting under this Act shall have in the exercise of his or her duty as a commissioner the same protection and immunity as a Judge of the High Court.

Immunity from suit

10. No action shall be brought against an inquiry, the commissioners or a person acting under the direction of the commissioners for an act done in good faith or omission made, anything reported or stated in the execution or intended execution of their duty under this Act.

Inquiry not affected by change of Governor

11. An inquiry appointed under this Act shall not lapse by reason of, or be otherwise affected by, the death, absence or removal of the Governor who appointed the inquiry.

Oath of commissioner

12. (1) A person appointed to be a commissioner under this Act shall, before assuming office, make and subscribe an oath in the Form set out in Schedule 1.

(2) The oath may be taken before a Judge of the High Court, and shall be deposited by the commissioner with the Governor.

Employment of staff and counsel

13. (1) The commissioners appointed under this Act may appoint for the purposes of an inquiry such staff, including legal counsel as may be necessary to assist in the performance of their functions.

(2) A person appointed as legal counsel pursuant to subsection (1) shall comply with the Legal Profession Act, Revised Edition 2020, and any other law regulating legal practitioners.

Remuneration of commissioners and staff

14. The remuneration of commissioners and staff, shall be determined by

- (a) the Governor, after the Consultation with the Minister of Finance, where the Governor issues an inquiry under this Act; or
- (b) the Premier, after consultation with the Financial Secretary, where the Premier issues an inquiry under this Act.

PART III

DUTIES AND POWERS

Duty of commissioners

15. (1) In the exercise of their duties under the this Act, the commissioners and any persons associated with conducting the inquiry shall act independently, impartially and fairly.

(2) In making a decision as to procedure or conduct of an inquiry, or in making a finding that is adverse to any person, the commissioners shall comply with the principles of natural justice.

No power to determine liability

16. An inquiry appointed under this Act has no power to determine civil, criminal or disciplinary liability of any person.

Powers of an inquiry

17. (1) Subject to this Act, the inquiry may regulate its own procedure and may make rules for that purpose.

(2) Without limiting the generality of subsection (1), an inquiry has the power to determine

- (a) who may address the inquiry, on what matters and in what order;
- (b) whether to conduct interviews, and if so, who to interview;

- (c) whether to call witnesses, and if so, who to call;
- (d) the value to be attributed to any oral or written evidence or submission received from or on behalf of any person participating in the inquiry;
- (e) whether to receive oral or written evidence or submissions from or on behalf of any person participating in the inquiry; and
- (f) all other decisions necessary for the successful completion of the inquiry.

(3) An inquiry under this Act shall not restrict cross examination of witnesses.

Public Access to inquiry proceedings and information

18. (1) Subject to any restrictions imposed by an order under section 19, the commissioners shall take such steps, to grant, permission as they consider reasonable, subject to such terms and conditions as may be imposed, to ensure that members of the public are able.

- (a) to attend the inquiry or to see and hear a simultaneous transmission of the proceedings; and
- (b) to obtain or to view a record of evidence and documents given, produced or provided to the inquiry.

(2) Any such permission shall be framed so as not to enable a person to see or hear by means of a recording or broadcast anything that he or she is prohibited from seeing or hearing.

Restrictions on public access etc

19. (1) Subject to subsection (2), the commissioners may make an order restricting

- (a) attendance at an inquiry or, at any particular part of an inquiry;
- (b) the simultaneous transmission of the proceedings;
- (c) disclosure or publication of any evidence or document given, produced or provided to the inquiry.

(2) The order may be issued during the course of the inquiry and the commissioners shall specify in the order only such restrictions as

- (a) are required by any enactment or rule of law; or
- (b) are required to protect matters of National Security and confidential Government documents subject to restricted access.
- (c) the commissioners considers to be
 - (i) conducive to the inquiry fulfilling the terms of reference; or
 - (ii) necessary in the public interest having regard to the matters provided for in subsection (3).

(3) The matters referred to in subsection (2)(c)(ii) are

- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by any such restriction;
- (c) any conditions as to confidentiality subject to which a person acquired information that he or she is to give or has given to the inquiry; and
- (d) the extent to which not imposing any particular restriction would be likely to either cause a delay or impair the efficiency or effectiveness of the inquiry or otherwise result in additional cost.

Right of legal representation

20. (1) A person whose conduct is the subject of inquiry under this Act, or who is in any way implicated or concerned in any matter under inquiry, is entitled to be represented by a legal practitioner at the whole of the inquiry.

(2) Notwithstanding subsection (1), a person referred to in subsection (3) is entitled to be represented by

- (a) the Attorney General;
- (b) any other legal practitioner who may address the inquiry on any matter on which he or she is so instructed by the Attorney General; and
- (c) an independent legal practitioner.

(3) The persons referred to in subsection (2) are

- (a) the current or former Governors;
- (b) current or former Ministers and Junior Ministers;
- (c) current or former Members of the House of Assembly; and
- (d) current or former public officers,

who are involved in any matter under inquiry due to their current or former positions.

(4) In exceptional circumstances, where legal representation cannot be provided as referred to in subsection (2), funding shall be provided for legal representation taking into consideration the following matters

- (a) the significance of the evidence the person is giving or likely to give;
- (b) the prospect of hardship to the person in the absence of assistance or if assistance is declined; and
- (c) any other matter relating to the public interest.

(5) The Minister of Finance shall assess and determine legal cost upon consultation in writing the President of the Bar Association.

(6) Where subject to an assessment under subsection (4), it is determined that the cost for an independent legal practitioner exceeds the approved cost for legal proceedings, the person electing to engaged his or her own legal

representative shall be required to pay the difference in the approved cost and the exceeding amount.

Reports of an inquiry

21. (1) The Chairperson of an inquiry shall deliver a final report of its inquiry to the Governor.

- (a) within the time specified in the Terms of Reference; or
- (b) if no time is specified, as soon as practicable after the inquiry is completed.

(2) The final report shall include

- (a) the facts determined by the inquiry;
- (b) the findings of the inquiry;
- (c) any recommendations; and
- (d) any other matter that the Chairperson and commissioners considers to be relevant.

(3) Every commissioner shall sign the final report and if they are unable to produce a unanimous report, the final report shall reflect the areas or points of disagreement.

(4) Where the Governor causes an inquiry under this Act, the Governor shall forward a copy of the final report to the Premier within fourteen days of receiving the report.

(5) Where the Premier causes an inquiry under this Act, the Premier shall forward a copy of the final report to the Governor within fourteen days of receiving the report.

(6) Within three months of receiving the report referred to in subsection (1), the Governor shall submit the report to the Cabinet and shall cause the report to be laid before the House of Assembly.

(7) For the purposes of subsection (6) the Premier shall lay before the House of Assembly the report relating to an inquiry issued by the Premier.

Matter not to be published

22. (1) Subject to subsections (2) and (3), the Governor shall cause the final report to be published.

(2) The final report shall be sent to the Premier prior to publication.

(3) The Governor may withhold material in the final report from publication to such extent as is required by any statutory provision, rule of law or as may be considered necessary in the public interest having regard to the following:

- (a) whether withholding material might interfere with the alleviation of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by withholding any material;

- (c) any information shared or held by a person with the inquiry in order to avoid risk of damage to economy;
- (d) any conditions as to confidentiality subject to which a person acquired information that he or she has given or shared with the inquiry;
- (e) National Security.

(4) The inquiry shall not permit or require the information to be revealed, or cause it to be revealed, unless satisfied that the public interest in the information being revealed outweighs the public interest in avoiding a risk of damage to the economy.

(5) For the purposes of this section, “damage to the economy” means damage to the economic interest of the Virgin Islands.

PART IV

EVIDENTIAL MATTERS AND IMMUNITIES

Power to summon witnesses and to obtain information

- 23.** (1) The Chairperson may, by notice in writing, require any person
- (a) to appear before the inquiry to give evidence;
 - (b) to provide evidence to the inquiry in the form of a written statement, within reasonable time;
 - (c) to produce any document or thing in his or her possession, or under his or her control, or copies of those documents or things, that relates to a matter in question at the inquiry;
 - (d) to provide information to the inquiry, in a form approved by the Chairperson;
 - (e) to verify by statutory declaration any written information, copies of documents or representations of things provided to the inquiry; and
 - (f) control for inspection, examination or testing by or on behalf of the inquiry.
- (2) A notice under this section shall
- (a) explain the possible consequences of failing to comply with the notice;
 - (b) indicate what the recipient of the notice should do if he or she wishes to make a claim pursuant to subsection (4).
- (3) A notice under subsection (1)(a) shall also
- (a) state the time and place the person is required to give evidence and shall include
 - (i) any entitlement to costs and travelling expenses;
 - (ii) the penalty for failing to comply with the notice; and

(b) be served personally by delivering a sealed copy to the person no later than seventy-two hours before he or she is required to attend the inquiry.

(4) A claim by a person that

(a) he or she is unable to comply with a notice under this section; or

(b) it is not reasonable in all the circumstances to require him or her to comply with such a notice,

shall be determined by the inquiry, and the notice may be revoked or varied on that ground.

(5) Where a person fails to comply with, or acts in breach of a notice made under this Part, or threatens to do so, the Commissioners may refer the matter to the High Court, and the Court may, after hearing any evidence or representations on the matter, make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the Court.

(6) For the purposes of subsection (1)(c), a thing is under a person's control if it is in that person's possession or if he or she has a right to possession of it.

Production of documents

24. All officers and agents of a public body, shall produce any document in his or her custody or under his or her control relating to the affairs of that body in his or her possession or under his or her control which the inquiry requires and to otherwise give to the inquiry all assistance that are reasonably able to give.

Security principle

25. Where any document acquired for the purposes of an inquiry under this Act, the commissioners shall take practical steps to protect the document from loss, modification or destruction.

Power to examine under oath

26. (1) The inquiry may take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by a commissioner.

(2) The commissioners may, as they think fit, examine any document or thing that is produced by a witness and may permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by oath or affirmation.

Admissibility of evidence

27. (1) A person shall not be required to give, produce or provide any evidence or document under this Act that he or she could not be required to give, produce or provide if the proceedings of the inquiry were proceedings in a court.

(2) The rules governing public interest immunity, under which evidence or documents may be permitted or required to be withheld on grounds of public interest, shall apply to an inquiry in the same manner as they apply to civil proceedings in a court.

(3) An inquiry may, for the purposes of the inquiry, receive any evidence that, in its opinion, may assist in effectively addressing the subject of the inquiry, whether or not the evidence would be admissible in a court of law.

Privilege and confidentiality

28. A person may claim privilege or confidentiality with respect to things required or produced.

Disclosure of evidence

29. (1) An inquiry shall not make orders for general discovery but may order a person to disclose specific documents, information or items, produced before the inquiry, with another person involved in the inquiry, either on its own or at the request of the other person.

(2) Any order under subsection (1) may impose appropriate terms and conditions in relation to

- (a) any disclosure required under subsection (1); and
- (b) the use that may be made of the information, documents or things required to be disclosed.

Immunities

30. No person shall be compelled to give evidence in court or in any proceedings of a judicial nature in relation to an inquiry, unless leave of the court is granted with respect to an allegation of bad faith against a commissioner or other person.

Other immunities and privileges of participants

31. (1) Witnesses and other persons participating in an inquiry, except for legal practitioners, shall have the same immunities and privileges as if they were appearing in civil proceedings and the Evidence Act, Revised Edition 2013, shall apply to an inquiry, to the extent that they are relevant, as if the inquiry were civil proceedings.

(2) Legal practitioners appearing before an inquiry, shall have the same immunities and privileges as they would have if appearing before a court.

Referral of questions of law

32. (1) An inquiry may, at any time, refer a case to the High Court on any question of law arising in any matter before it.

- (2) Where a question of law is referred pursuant to subsection (1),
 - (a) the inquiry may be continued pending the decision of the High Court; or
 - (b) the inquiry may be adjourned until the High Court has given its decision.

(3) A question referred shall be referred to the High Court in the form of a case stated in accordance with Part 61 of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition 2023).

(4) The decision of the High Court on a question of law referred under this section is final and binding.

(5) Nothing under this section shall be considered to limit the power of the High Court to make an order of mandamus, certiorari or prohibition in relation to proceedings before an inquiry.

PART V

MISCELLANEOUS PROVISIONS

Non-application to other investigative bodies

33. (1) Where an enactment establishes an investigative body, that body shall not be subject to an inquiry under this Act.

(2) In this section, “established investigative body” means an entity that has been created and authorised by an enactment to conduct investigations independently and which is specified in Schedule 2.

Award of costs

34. (1) The commissioners may, on their own initiative or on the application of any person, by Order, make an award of costs against any person participating in, or summoned to appear before the inquiry if they are satisfied that the conduct of that person has obstructed the inquiry in any way or added undue cost to the inquiry.

(2) The inquiry may set the award of costs at any level it considers reasonable, having regard to all the circumstances.

(3) The inquiry may require that the costs be paid, either in whole or in part, to one or more persons who participated in the inquiry or to two persons specified prior in any portions as provided in the Order.

(4) An Order made under this section is enforceable as a judgement of the Court.

(5) A person who is dissatisfied with an Order made by the inquiry may appeal the Order to the High Court.

Cost and expenses of an inquiry

35. Within three months after the completion of an inquiry, the Governor shall publish the total cost of conducting the inquiry.

Offences and penalties

36. (1) A person who

- (a) fails, without reasonable cause, to attend an inquiry when summoned;
- (b) refuses to be sworn, take an oath or affirm and give evidence upon being required to do so;

- (c) fails to produce any document or thing in his or her possession or under his or her control on being required to do so by order of the inquiry;
- (d) destroys evidence or obstructs or hinders any person authorised to examine, copy or make a representation of a document or thing required by order of an inquiry;
- (e) suppresses, defaces or takes away any book or document that it would be his or her duty to produce;
- (f) fails to comply with a procedural order or direction of an inquiry;
- (g) wilfully interrupts or disrupts the proceedings of an inquiry or otherwise misbehaves during any hearing of the inquiry;
- (h) prevents or threatens a witness from giving evidence at an inquiry or seeks to influence a witness before an inquiry;
- (i) provides false or misleading information at an inquiry;
- (j) threatens or intimidates a commissioner, any person involved in an inquiry or an officer of an inquiry;
- (k) refuses to answer any questions put to him or her by, or with the consent of, the inquiry;
- (l) wilfully hinders or deters any person from producing any article or document;
- (m) threatens, insults or causes any loss to be suffered by any person who has attended before an inquiry, on account of such attendance;
- (n) threatens, insults or causes any loss to be suffered by any commissioner at any time on account of the performance of his or her duties as a commissioner;
- (o) publishes or otherwise discloses any material which an inquiry prohibited him or her from disclosing or publishing;
- (p) publishes or otherwise discloses any material received by an inquiry in camera;
- (q) distorts or otherwise alters any evidence, document or other thing that is given, produced or provided to the inquiry;
- (r) prevents any evidence, document or other thing from being given, produced or provided to the inquiry;
- (s) intentionally suppresses or conceals a document that is and that he or she knows or believes to be a relevant document and intentionally alters or destroys any such document,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months.

- (2) Notwithstanding subsection (1), a person does not commit an offence
 - (a) by doing anything that he or she is authorised or required to do by the inquiry;

- (b) if compliance would be prevented by a privilege or immunity that that person would have as a witness or legal practitioner were that person giving evidence or acting as a legal practitioner in civil proceedings before a court;
- (c) if compliance is prevented by an enactment, rule of law or order of a court prohibiting or restricting disclosure or the manner of disclosure of any document, information or thing; or
- (d) if compliance would be likely to prejudice the administration of justice, including the prevention, detection, investigation, prosecution, or punishment of offences, including the right to a fair trial.

Amendment of Schedules

37. The Governor may by order amend the Schedules to this Act subject to the approval of Cabinet.

Regulations

38. The Governor may, subject to the approval of Cabinet, make Regulations for the giving effect to the provisions of this Act.

Repeal

39. The Commissions of Inquiry Act, Cap. 237, is repealed.

SCHEDULE 1

[Section 12(1)]

FORM OF OATH TO BE TAKEN BY A COMMISSIONER

I having been appointed under an inquiry, dated the day of 20 issued by the Governor/Premier to be a commissioner to inquire into the matter specified in the said inquiry, do swear (or do solemnly and sincerely affirm) that I will faithfully, fully and impartially, and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said inquiry.

.....
Commissioner.

SCHEDULE 2

[Section 33(2)]

INVESTIGATIVE BODIES

1. The Complaints Commissioner
2. The Integrity Commission

Passed by the House of Assembly this 23rd day of July, 2024.

(Sgd.) Corine N. George-Massicote,
Speaker.

(Sgd.) Bethsaida Smith-Hanley,
Clerk of the House of Assembly.