

No. of 2024

**VIRGIN ISLANDS
HUMAN RIGHTS COMMISSION BILL, 2024**

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No. of 2024

Human Rights Commission Bill, 2024

Virgin
Islands

I ASSENT

Governor
, 2024

VIRGIN ISLANDS

No. of 2024

A BILL FOR

AN ACT TO ESTABLISH A HUMAN RIGHTS COMMISSION, TO PROVIDE FOR ITS FUNCTIONS AND POWERS AND FOR CONNECTED MATTERS.

[Gazetted , 2024]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Human Rights Commission Act, 2024.

(2) This Act shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

Interpretation

2. (1) In this Act, unless the context otherwise requires,

“Attorney General” means the holder of the office of Attorney General established under section 58 of the Virgin Islands Constitution Order, 2007, U.K.S.I. 2007 No. 1678;

“Chairperson” means the Chairperson of the Commission and, where the Chairperson is absent from a meeting of the Commission or unable for any reason to perform the functions of Chairperson, includes the Deputy Chairperson or the person appointed under section 9(2) where applicable;

“Chief Executive Officer” means the person appointed as such under section 10 or a person acting in that position;

“Commission” means the Human Rights Commission established under section 4;

“Commissioner” means a member of the Commission;

“Constitution” means the Virgin Islands Constitution Order, 2007, U.K.S.I. 2007 No. 1678; and

“human rights” includes the rights and freedoms referred to in Chapter 2 of the Constitution, U.K.S.I. 2007 No. 1678, and any other rights in international human rights instruments which may be applicable to the Virgin Islands.

(2) For the purposes of this Act, conciliation of a complaint involves the Commission acting as an impartial third party to help the parties to the conciliation to endeavour to resolve the matters raised by the complaint.

Act binds the Crown

3. This Act binds the Crown.

PART I

HUMAN RIGHTS COMMISSION

Establishment of the Commission

4. (1) There is established by this Act a Commission to be known as the “Human Rights Commission”.

(2) The Commission shall have a common seal and all courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

Constitution of the Commission

5. (1) Subject to subsection (6), the Commission shall comprise of five Human Rights Commissioners as follows:

- (a) two persons nominated by the Governor of whom one shall be a person who is ordinarily resident in an island of the Virgin Islands other than Tortola;
- (b) one person nominated by the Premier;
- (c) one person nominated by the Leader of the Opposition;
- (d) one person who is a legal practitioner of not less 5 years standing, nominated by the Chief Justice.

(2) The appointment of the Commissioners shall be made by the Governor and the Governor shall, before making the appointments, cause the qualifications and other criteria required for eligibility to be appointed to the office of Commissioner to be advertised in the *Gazette* and in one newspaper of general circulation in the Territory.

(3) The Governor shall appoint one member of the Commission as Chairperson of the Commission and the members may appoint one of their number as the Deputy Chairperson to act as Chairperson where the Chairperson is absent from a meeting of the Commission or unable for any reason to perform the functions of Chairperson.

(4) For the purposes of subsection (1)(c), the Leader of the Opposition shall submit the name of his or her nominee within twenty-one days after receipt of the request from the Governor.

(5) Where the Leader of the Opposition fails to provide the name of the nominee pursuant to subsection (4), the Governor shall send a reminder to the Leader of the Opposition and the Leader of the Opposition shall submit the name of his or her nominee within seven days after receipt of the reminder from the Governor and, if the Leader of the Opposition fails to supply the name, the Governor shall thereafter, appoint a person he or she considers suitable.

(6) The Governor shall ensure that the persons to be appointed to the Commission are fit and proper and have the relevant knowledge, experience or expertise required for their respective offices.

(7) For the purposes of subsection (6), a person is fit and proper to be appointed as a Commissioner if he or she

- (a) is a person of integrity, moral courage and competence and is able to exercise sound judgment and fairness;
- (b) possesses public credibility; and
- (c) is sensitive to issues relating to gender, ethnicity, the rights of children, the rights of people with disabilities and other vulnerable groups.

(8) A person is disqualified from appointment as a Commissioner if he or she

- (a) is, or has been within the preceding 1 year, an elected member of the House of Assembly or the holder of any office in a political party;
- (b) is an undischarged bankrupt or has compounded with his or her creditors;
- (c) has been convicted of an indictable offence or any offence involving dishonesty;
- (d) has, after being previously appointed as a Commissioner, been removed in accordance with this Act;
- (e) is a public officer;
- (f) has been certified by a medical practitioner to be of unsound mind;
- (g) is absent from three or more consecutive meetings of the Commission of which he or she has had notice without the consent of the Chairperson;
- (h) is a person who a complaint has been made against to the Commission and an investigation has been initiated as a result of such complaint; or
- (i) is a person who after a complaint is made and an investigation is initiated, is found to be culpable for his or her actions.

(9) The appointment of the Commissioners shall be subject to a negative resolution of the House of Assembly.

Functions and powers of the Commission

6. (1) Subject to section 34 of the Constitution, U.K. S.I. 2007 No. 1678, the functions of the Commission are

- (a) to promote better public awareness, understanding, acceptance, appreciation and discussion with respect to human rights and international instruments or activities relating to human rights;
- (b) to advocate and promote, by education or publicity, respect for, and the observance of, human rights;
- (c) to make public statements in relation to any matter affecting human rights, including statements promoting an understanding of, and compliance with, this Act and Chapter 2 of the Constitution, U.K. S.I. 2007 No. 1678;
- (d) to try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce acts or practices that are inconsistent with or contrary to human rights;
- (e) to receive complaints of any act or practice that may be inconsistent with or contrary to any human right;
- (f) to investigate, with the agreement or concurrence of the persons concerned, complaints of any act or practice that may be inconsistent with or contrary to a human right; and
 - (i) where the Commission considers it appropriate to do so, to endeavour by conciliation, to effect a settlement of the matters that gave rise to the investigation; or
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to a human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the investigation, or has endeavoured without success to effect that settlement, to report to the Attorney General in relation to the investigation;
- (g) to inquire generally into any matter, whether governmental or non-governmental, including any enactment, practice or procedure, if it appears to the Commission that the matter involves, or may involve, an infringement of human rights;
- (h) to provide a forum for dealing with, and to participate in promoting conciliation with respect to, complaints and disputes concerning any matter relating to human rights;
- (i) notwithstanding any provision of the Anti-Discrimination Act, 2001, No. 2 of 2001, to make arrangements for the provision of conciliation services for disputes in respect of which proceedings have been or could be brought under section 41 of that Act;
- (j) to issue guidance on procedures relating to complaints of acts or practices that may be inconsistent with or contrary to any human right;
- (k) to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, human rights;
- (l) on its own initiative may, advise the Attorney General on

- (i) any matter affecting human rights, including the desirability of legislative, administrative or other action to give better protection to human rights and to ensure better compliance with standards laid down in international instruments on human rights;
 - (ii) whether any enactment or proposed enactment, or policy or proposed policy of Government or a statutory body, is inconsistent with or contrary to any human right;
 - (iii) the desirability of the Virgin Islands becoming bound by any international instrument on human rights; or
 - (iv) whether any provision of an international instrument relating to human rights is inconsistent with, or contrary to, any other international instrument relating to human rights;
- (m) to develop and conduct educational and information programmes to foster public understanding of the role and activities of the Commission;
 - (n) to invite representations from members of the public on any matter affecting human rights;
 - (o) to consult and co-operate with other persons and bodies concerned with the protection of human rights, including similar institutions in other countries, the United Nations and other relevant international organisations;
 - (p) to administer or promote capacity building for personnel, particularly personnel involved in the administration of justice with respect to human rights matters;
 - (q) to advise the Government in developing a national plan of action in consultation with interested parties, and to develop an annual strategic plan, for the promotion and protection of human rights in the Virgin Islands;
 - (r) to assess and comment generally on Government's progress in relation to its obligation to respect, protect and fulfil human rights;
 - (s) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, request to be joined as a party in proceedings that involve human rights issues;
 - (t) to inspect custodial facilities and places of detention on a regular basis and to examine the treatment of persons detained in those facilities and places, with a view to ensuring that torture and other cruel, inhuman or degrading treatment or punishment is not used;
 - (u) to make recommendations to, and to enter into dialogue with, the relevant authorities with the aim of improving the treatment and the conditions of persons detained in custodial facilities and places of detention, taking into consideration the relevant norms of the United Nations;

(v) to perform any other function or exercise any other powers conferred and discharge any other duties imposed, on it under this Act or any other enactment; and

(w) to do anything necessary or convenient to be done in connection with, or incidental or conducive to, the performance of any of its functions, powers and duties.

(2) For the purpose of subsection (1)(r) the following terms shall have the following meanings:

(a) “fulfil” means taking positive action to facilitate the enjoyment of human rights such as ensuring the relevant policies and mechanisms are in place to enable human rights;

(b) “protect” means

(i) protecting persons from the removal of their rights; and

(ii) refraining from doing anything that undermines the realisation of human rights,

while actively doing what is required to support person’s human rights;

(c) “respect” means refraining from interfering with or curtailing a person’s enjoyment of their human rights and taking appropriate account of the human rights consequences of any proposed measures.

(3) Subject to section 34 of the Constitution, U.K. S.I. 2007 No. 1678, the powers of the Commission shall include the following:

(a) to issue subpoenas requiring the attendance of any person before the Commission and the production of any document, record or thing required for an investigation by the Commission;

(b) to fine any person for contempt of any subpoena or order, or cause that person to be brought before a competent court for the enforcement of the subpoena or order of the Commission;

(c) to question any person in respect of any subject matter under investigation before the Commission;

(d) to require any person to disclose truthfully and frankly any information within the knowledge of that person relevant to any investigation by the Commission.

(4) Before publishing guidelines or voluntary codes of practice under subsection (1), the Commission may consult any person or organisation it considers to have an interest in the matter.

(5) Guidelines and voluntary codes of practice published by the Commission do not have the force of law but may be received as evidence of the matters set out in them.

(6) The Commission may, in the public interest or in the interest of a person, department or organisation, publish reports relating generally to the performance of its functions or to a particular inquiry made under this Act,

whether or not the matters to be dealt with in a report of that kind have been the subject of a report to the Attorney General.

(7) The Commission may during the course of its proceedings or as a consequence of its findings, make such orders and give such directions as are necessary and appropriate in the circumstances.

(8) The Commission may establish advisory committees as it thinks fit to advise it in relation to the performance of its functions.

(9) For the purposes of its functions under subsection (1)(t) and (u), the Commission is entitled to

- (a) without notice access all custodial facilities and places of detention and their installations and facilities provided that the personal privacy, protection and dignity of the persons detained are considered;
- (b) access all information concerning the number of persons detained in custodial facilities and places of detention and the number of facilities and places and their location;
- (c) access all information referring to the treatment of persons detained in custodial facilities and places of detention and the conditions under which they are detained;
- (d) have private interviews with the expressed consent of persons detained in custodial facilities and places of detention without witnesses, either personally or with a translator or any other person who, in the opinion of the Commission, may give out relevant information;
- (e) the liberty to choose the custodial facility or place of detention it wants to visit and the persons it wants to interview; and
- (f) have contact and meet with, and to send information to, the Subcommittee on Prevention established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18th December, 2002 by the General Assembly of the United Nations.

(10) For the purposes of subsection (3)(b), the fines that the Commission can impose shall not exceed the amount of \$2,000 thousand dollars.

Tenure of office

7. (1) Subject to this section, the appointment of a Commissioner shall be on terms and conditions as may be determined by the Governor.

(2) Subject to subsections (3) and (4), the appointment of a Commissioner shall be for a term not exceeding 5 years and no Commissioner may serve more than 10 years consecutively.

(3) The term of office of the Commissioners shall be so specified in their respective instruments of appointment as to ensure that the term of office of all the Commissioners do not expire at the same time.

(4) Where the term of office of a Commissioner expires and it is not immediately possible to appoint a new Commissioner in his or her place, the term

of the Commissioner may, with his or her consent, continue for a period or periods not exceeding 12 months in aggregate, until a new appointment is made.

(5) Subject to subsection (6), the Commissioners shall be paid such remuneration as may be determined by the Cabinet and the payments shall be made out of the Consolidated Fund.

(6) A Commissioner shall not act as a delegate of any Government, commercial, financial or other interest with whom he or she may be connected and shall not accept directions from any person or authority in respect of his or her duties as a Commissioner or in relation to, or on behalf or in the name of, the Commission.

(7) Where a Commissioner acts contrary to subsection (6), he or she shall be personally responsible for his or her actions.

Resignation and removal of Commissioners

8. (1) A Commissioner may at any time resign his or her office by writing under his or her hand addressed to the Governor.

(2) The Governor may, by written notice, remove a Commissioner from office

- (a) on the grounds of inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour;
- (b) if he or she is or has become disqualified from being appointed as a Commissioner under section 5;
- (c) if he or she has an interest that is likely to prejudicially affect the exercise and performance by him of his or her functions as a Commissioner or is liable to be removed from office under section 31(3).

(3) If a Commissioner dies, resigns, is removed from or otherwise vacates his or her office prior to the expiry of the term for which he or she has been appointed, a new Commissioner shall be appointed to replace him or her as soon as reasonably practicable.

(4) An appointment of a Commissioner under subsection (3) may be for the unexpired period of the term of office of the person in whose place he or she is appointed or for a new term not exceeding 5 years.

Meetings of the Commission

9. (1) The Commission shall meet at least once every month at a place and time as may be designated by the Chairperson.

(2) At every meeting of the Commission, the Chairperson shall preside and in his or her absence the Deputy Chairperson shall preside and where both are absent, a Commissioner selected by the Commissioners present and voting shall preside.

(3) The quorum of the Commission shall be three.

(4) At any meeting for the conduct of its business, the Commission shall take its decision by a majority vote of the Commissioners present and in the event of a tie the presiding Commissioner shall have a casting vote.

(5) The Chairperson shall at any time convene a special meeting of the Commission upon receipt of a requisition signed by at least two Commissioners calling upon him or her to do so, and the meeting shall be held not later than 14 days after receipt of the requisition.

(6) An act or proceeding of the Commission shall not be invalid by reason only of the existence of a vacancy among its members or of any defect in the appointment of a Commissioner.

(7) Notwithstanding anything contained in this section, the Chairperson may, in a matter he or she considers exceptional, make arrangements for a decision of the Commission to be taken on the matter through a process of consultation without the need for an actual meeting.

(8) The Commission shall at least once a year at a place and time as may be designated by the Chairperson, meet with the residents of the Virgin Islands.

(9) Subject to this section, the Commission may establish its own rules of procedure for the purposes of the conduct of its meetings.

Appointment and responsibilities of the Chief Executive Officer

10. (1) The Governor may, in accordance with section 95 of the Constitution, U.K. S.I. 2007 No. 1678, appoint a legal practitioner who has been admitted to practise law for at least 7 years and who has relevant knowledge and experience in human rights matters to be the Chief Executive Officer of the Commission on such terms and conditions as the Governor considers.

(2) The Chief Executive Officer shall

- (a) be responsible for the day-to-day administration and operation of the Commission and the supervision of its staff;
- (b) subject to any general or special direction of the Commission, be responsible for the execution of the functions of the Commission;
- (c) be responsible for keeping proper books of accounts pursuant to section 23;
- (d) act as the Secretary to the Commission; and
- (e) perform such other duties as may be assigned or delegated to him or her by the Commission.

(3) In discharging his or her duties and functions, the Chief Executive Officer shall use his or her best endeavours to ensure that

- (a) the resources of the Commission are utilised economically and efficiently;
- (b) the internal financial and management controls of the Commission are adequate;
- (c) the Commission is operated in accordance with principles of good governance; and

- (d) the Commission fulfils its statutory obligations and properly discharges its functions.

PART II
INVESTIGATION AND SETTLEMENT
OF COMPLAINTS

Filing of complaints

11. (1) Subject to subsection (3), an individual or group of individuals (“the complainant”), having reasonable grounds for believing that a public officer, a Government department, a statutory body, an individual, a body corporate or an unincorporated entity (“the respondent”) is engaging or has engaged in an act or practice that is inconsistent with, or contrary to, human rights, may, whether through a representative or not, file with the Commission, through the Chief Executive Officer, a complaint in a form acceptable to the Commission.

(2) Without prejudice to the generality of subsection (1), the subject matter of a complaint may

- (a) include an allegation that any civil, political, economic, social and cultural right, or any right of women, children, minorities, indigenous persons, the disabled, the aged or any other particularly vulnerable group, protected under Chapter 2 of the Constitution, U.K. S.I. 2007 No. 1678, or any applicable international human rights instrument, has been breached or infringed; or
- (b) notwithstanding any provision of the Anti-Discrimination Act, 2001, No. 2 of 2001, include an allegation that a person has committed, or is to be treated as having committed, an act of unlawful discrimination in respect of which civil proceedings have been or could be brought under section 41 of that Act.

(3) A complaint made pursuant to subsection (1) need not be in writing, but when made otherwise than in writing, shall be reduced to writing by the officer of the Commission to whom it is made, and

- (a) signed by him or her after reading it over to the complainant;
- (b) countersigned by the complainant.

Initiation of investigation or conciliation

12. (1) Subject to this section and section 13, where the Commission has, on the basis of a complaint, reasonable grounds for believing that a respondent may be engaging or may have engaged in an act or practice that is inconsistent with, or contrary to, human rights, it shall be the duty of the Commission to endeavour

- (a) to settle the causes of the complaint; and
- (b) to cause the act or practice complained of, if it is continuing, to cease,

as soon as possible.

(2) For the purposes of fulfilling its duty under subsection (1), the Commission may

- (a) through an investigator appointed under section 26, initiate an investigation into the complaint and the investigator shall submit to the Commission a report of his or her findings; or
- (b) seek, through conciliation, to resolve the complaint for the purpose of attempting to bring about a settlement of the complaint and the cessation of any act or practice that is inconsistent with, or contrary to, human rights.

(3) If complaints are filed jointly or separately by more than one complainant alleging that the respondent is engaging or has engaged in an act or practice that is inconsistent with, or contrary to, human rights or a series of similar acts or practices and the Commission is satisfied that the complaints involve substantially the same issues of fact and law, it may deal with the complaints together under this Part and may initiate a single investigation into the complaints or attempt to bring about a settlement of the complaints through conciliation, as the case may be.

(4) Before initiating an investigation commencing conciliation proceedings, the Commission shall give notice in writing of the complaint to the respondent.

Conditions for dealing with complaints

13. (1) The power of the Commission to deal with a complaint shall be exercised only with the consent of the complainant and the Commission shall cease to deal with a complaint if a complainant indicates, orally or in writing, to the Commission or an investigator that he or she no longer agrees to the involvement of the Commission in his or her matter.

(2) A complaint in relation to a practice that is inconsistent with, or contrary to, human rights shall not be dealt with by the Commission under this Part unless the act or omission that constitutes the practice

- (a) occurred in the Virgin Islands and the victim of the practice was at the time of the act or omission either present in the Virgin Islands or, if temporarily absent from the Virgin Islands, entitled to return to the Virgin Islands; or
- (b) occurred outside the Virgin Islands and the victim of the practice was at the time of the act or omission deemed to belong to the Virgin Islands or was an individual lawfully residing in the Virgin Islands.

(3) Where a question arises under subsection (2) as to the status of an individual in relation to a complaint, the Commission shall refer the question of status to the appropriate Minister and shall not proceed with the complaint unless the question of status is resolved thereby in favour of the complainant.

(4) A complaint may not be dealt with by the Commission pursuant to this Part where

- (a) the complaint is made against an employer; and

- (b) the complaint is based solely on statistical information that purports to show that members of one or more groups of individuals are underrepresented in the employer's workforce.

(5) The Commission may decline to deal with any complaint filed with it if, in respect of that complaint, it appears to the Commission that

- (a) the alleged victim of the act or practice to which the complaint relates ought to exhaust, or at least try to exhaust, grievance or review procedures otherwise reasonably available;
- (b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an enactment other than this Act;
- (c) the complaint is beyond the jurisdiction of the Commission;
- (d) the complaint is trivial, frivolous, vexatious or made in bad faith;
- (e) the complaint is based on acts or omissions the last of which occurred more than one year before the filing of the complaint; or
- (f) the complaint is also under active investigation by some other department or agency of Government.

(6) If in the opinion of the Commission, a complaint is without merit or should otherwise be dismissed, the Commission may dismiss the complaint at any stage of the proceedings after it has given the complainant an opportunity to be heard, and where the Commission decides to dismiss the complaint, the Commission shall send a written notice of its decision to the complainant setting out the reason for its decision.

Co-operation of parties

14. A complainant shall, unless he or she no longer agrees to the involvement of the Commission in the matter,

- (a) co-operate with the investigator;
- (b) allow the investigator, at any reasonable time, to enter and search any premises owned or occupied by him or her in order to carry out inquiries as are reasonably necessary for the investigation of the complaint;
- (c) produce for inspection by the investigator, or for the purpose of allowing the investigator to obtain copies of and extracts from, any books or other documents in his or her possession or control which may contain any matter relevant to the investigation being conducted;
- (d) agree to be bound by the conciliation agreement following the resolution of the complaint through conciliation.

Representation of parties

15. A party to an investigation or a conciliation, or a person appearing before an investigator pursuant to section 16, may be represented by counsel or any other person of their choice.

Powers of investigators

16. For the purposes of an investigation, an investigator may, by notice in writing, require a person other than a party to a complaint,

- (a) to appear before the investigator at a place and time specified in the notice;
- (b) to answer to the best of his or her knowledge, questions as the investigator may ask in relation to the investigation; and
- (c) to produce for inspection, or for the purpose of allowing the investigator to obtain copies of or extracts from, any books or other documents containing any matter relevant to the investigation being conducted by the investigator.

Investigator's report

17. An investigator shall, as soon as possible after the conclusion of an investigation, submit to the Commission a report of the findings of the investigation.

Action on receipt of investigator's report

18. (1) On receipt of a report of the findings of an investigation, the Commission shall, if it is satisfied that the complaint has not been settled in the course of the investigation and

- (a) if it is satisfied that
 - (i) the complainant ought to exhaust grievance or review procedures otherwise reasonably available; or
 - (ii) the complaint could more appropriately be dealt with, initially or completely, by means of a procedure provided for under another enactment,
refer the complainant to the appropriate authority;
- (b) if it is satisfied that
 - (i) having regard to all the circumstances of the case, an attempt to bring about a settlement of the complaint through conciliation should be made, but all the parties to the complaint do not agree to the conciliation;
 - (iii) the complaint is based on acts or omissions the last of which occurred more than 1 year before the filing of the complaint;
or
 - (iv) the complaint is also under active investigation by some other department or agency of Government,
dismiss the complaint; or
- (c) if it is satisfied that, having regard to all the circumstances of the case, an attempt to bring about a settlement of the complaint through conciliation should be made and the parties agree, attempt to bring about a settlement of the complaint through conciliation.

- (2) After receipt of a report referred to in subsection (1), the Commission
 - (a) shall notify in writing the complainant and the person against whom the complaint was made of its action under subsection (1); and
 - (b) may, in a manner it sees fit, notify any other person whom it considers necessary to notify of its action under subsection (1).

Conciliation

19. (1) The Commission may delegate the function of conciliation of a complaint to

- (a) a single Commissioner; or
 - (b) a member of staff of the Commission who, in the opinion of the Commission has the competencies to conduct the conciliation proceedings.
- (2) A conciliation shall be conducted in the way the Commission decides.
- (3) If a complaint is resolved by conciliation, the Commission shall help the parties make a written record (the conciliation agreement) of the agreement they have reached.
- (4) Each party shall sign the agreement.
- (5) The Commission shall
- (a) give each party a copy of the conciliation agreement; and
 - (b) file the agreement with the Court so that the agreement is made an order of the High Court so that it may be enforceable as if it were an order of the Court.
- (6) A conciliation of a complaint ends if
- (a) agreement is reached on the matters raised by the complaint and the parties end the conciliation;
 - (b) the parties agree to end the conciliation;
 - (c) a party withdraws from the conciliation; or
 - (d) the Commission is satisfied that the conciliation is unlikely to be successful.
- (7) If the conciliation ends, the Commission shall, as soon as practicable, notify the complainant and the respondent that the conciliation has ended and why it has ended.

Settlement

20. (1) The parties to a complaint may agree on a settlement of the complaint at any stage after the filing of the complaint.

(2) Where a settlement is agreed on by the parties to a complaint, the terms of the settlement shall be referred to the Commission for approval or rejection.

(3) If the Commission approves or rejects the terms of the settlement referred to in subsection (2), it shall so certify and notify the parties.

(4) A settlement approved by the Commission under subsection (3) may, for the purposes of enforcement, be made an order of the High Court on application to that Court by the Commission.

Closure of complaints

21. (1) The Commission may close a complaint at any time if
- (a) more than 3 years have elapsed since the circumstances that gave rise to the complaint happened;
 - (b) the complainant has failed to comply with a requirement to provide information, documents and other things to the Commission or failed to attend any proceedings of an investigator or the Commission;
 - (c) the complainant tells the Commission in writing that the complainant wishes to withdraw the complaint, whether or not because it has been conciliated to the complainant's satisfaction;
 - (d) the matters raised by the complaint have been successfully conciliated.
- (2) The Commission shall close a complaint made to it if
- (a) the complaint is not a complaint that may be made under this Act;
 - (b) the complaint is not made by a person who may make a complaint under this Act;
 - (c) satisfied that
 - (i) the complainant has been given a reasonable explanation and the complaint needs no further action by the Commission;
 - (ii) a complainant that was not declined to be dealt with in the initial stages of the investigation pursuant to section 13(5)(d) and such complaint is thereafter found to be frivolous, vexatious or made in bad faith;
 - (iii) the matters raised by the complaint have been, or are being, dealt with by a court or tribunal or have been dealt with by the Commission; or
 - (iv) the complaint lacks substance;
 - (d) the complaint has been dealt with to the Commission's satisfaction; or
 - (e) the complaint has otherwise been resolved.

PART III

FINANCIAL AND ADMINISTRATIVE PROVISIONS

Funds of the Commission

22. (1) The funds of the Commission shall consist of

- (a) monies that are appropriated to it by the House of Assembly for the purposes of this Act;
- (b) monies received by the Commission from agencies, other than the Government, approved by the Minister for Finance for the performance of its functions; and
- (c) donations, endowments and other gifts received by the Commission.

(2) The funds of the Commission shall be kept in a bank approved by the Minister for Finance.

(3) The Commission shall cause to be prepared proper estimates of receipts and expenditure in respect of the performance of its functions for each financial year and the estimates shall be submitted to the Minister for Finance not later than the date the Minister for Finance may direct.

Accounts and audit

23. (1) The Commission shall cause proper accounts of all financial transactions to be kept in a form directed by the Auditor General.

(2) The Commission shall, as soon as practicable after the end of the financial year, prepare a statement of its accounts.

(3) The accounts required to be kept under subsection (1) and the statement of accounts required under subsection (2) shall be audited by the Auditor General or an auditor appointed for the purpose by the Auditor General.

(4) The Commission shall actively evaluate the effectiveness of its programmes and activities and incorporate the results of the evaluations in its annual report.

(5) The Commission may, for purposes of the evaluations under subsection (4), engage independent consultants on terms and conditions as it considers appropriate.

(6) The evaluations under subsection (4) shall include both qualitative and quantitative analyses and shall examine the quality of the Commission's programmes and activities and the extent to which its programmes and activities sufficiently address the human rights issues of the Virgin Islands.

Fees prohibited

24. A person shall not be required to pay any fee in respect of a complaint or for any investigation or conciliation under this Act.

Other staff of the Commission

25. (1) The Governor may appoint in accordance with section 92 of the Constitution, U.K. S.I. 2007 No. 1678, such staff of the Commission as the Governor considers necessary for the efficient administration of this Act.

(2) The salaries, allowances and other benefits payable to the staff of the Commission shall be determined by the Governor and shall be paid out of the Consolidated Fund.

Appointment of investigators, conciliators and advisers

26. (1) The Commission may, from time to time, appoint

- (a) fit and proper persons as investigators for the purposes of this Act; or
- (b) professional or technical advisers to assist it in the performance of its functions.

(2) Persons appointed under subsection (1) may be paid remuneration as the Commission may approve.

(3) Any remuneration payable pursuant to subsection (2) shall be paid out of the funds of the Commission.

Acting Commissioner

27. (1) Subject to subsection (3), where a Commissioner is absent from the Territory or is for any other reason unable to perform the functions of his or her office, those functions may, until a time as he or she resumes the functions of his or her office or another person is appointed as Commissioner under this Act, be assumed and performed by a person as may be appointed in writing by the Governor to act as Commissioner.

(2) The provisions of this Act, except section 5(3), shall apply to a person appointed under subsection (1) as they apply to a Commissioner.

(3) The Governor shall make the appointment pursuant to subsection (1) in consultation with

- (a) the Premier, if that person had been appointed in accordance with section 5(1)(b);
- (b) the Leader of the Opposition, if that person had been appointed in accordance with section 5(1)(c);
- (c) the Chief Justice, if that person had been appointed in accordance with section 5(1)(d).

Premises and supplies

28. The Commission may lease premises and acquire equipment as are necessary for the efficient operation of its office.

PART IV

MISCELLANEOUS

Laying and publication of annual reports

29. The Commission shall, within 6 months after the end of each financial year, furnish

- (a) a full report on the performance of its functions during that financial year, which shall include

- (i) a general survey and statistics in relation to complaints received by it;
 - (ii) the results of investigations and conciliations conducted under this Act;
 - (iii) an evaluation of its programmes and activities,
 - (iv) its recommendations for better compliance with human rights;
 - (v) steps taken to implement its recommendations;
 - (vi) its annual strategic plan; and
 - (vii) other matters or developments as it thinks fit; and
- (b) a copy of the statement of accounts required under section 23(2) and the auditor's report on that statement of accounts,

which shall be laid before the House of Assembly within a period of 3 months after their receipt, and the Commission may thereafter cause a copy of the report referred to in paragraph (a) to be published on its website.

Oath of office and secrecy

30. Before commencing the duties of his or her office, a Commissioner shall take an oath, to be administered by the Governor, that he or she will faithfully and impartially exercise the functions of his or her office and that he or she will not, except in accordance with section 31(3), disclose any information received by him or her as Commissioner.

Commissioners and staff to maintain secrecy

31. (1) The Chief Executive Officer, a Commissioner and every person appointed under section 25, 26 or 27 shall, subject to subsections (2), (3) and (4), maintain secrecy in respect of all matters that

- (a) arise from any investigation or complaint made to the Commission; and
- (b) come to their actual knowledge in the exercise of their functions.

(2) Subsection (1) shall not apply so as to prevent the Chief Executive Officer, a Commissioner or any person appointed under section 25, 26 or 27 from

- (a) disclosing in the course of proceedings for an offence under this Act, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to an authority as he or she considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the Commissioner or the person so appointed
 - (i) may be grounds for a complaint by that person; or
 - (ii) is necessary to be disclosed to that person for the purposes of investigating a complaint or deciding whether an investigation should be undertaken, continued or discontinued.

(3) Subject to subsection (4), the Commission may disclose in any report made by it under this Act matters as in its opinion ought to be disclosed in order to establish grounds for its conclusions and recommendations.

(4) The Commission shall not disclose

- (a) in any report made by it under this Act any matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations (including relations with an international organisation) in respect of the Territory or would otherwise be contrary to the public interest;
- (b) any personal data without the express consent of the person concerned.

(5) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding 6 months, or both.

Duty of Commissioners to disclose interest

32. (1) A Commissioner who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Commission shall, as soon as reasonably practicable, declare the interest in writing and submit it to the Secretary of the Commission who shall, before the commencement of the meeting at which the subject matter of the declaration is to be considered, bring the interest to the attention of all Commissioners.

(2) A Commissioner who has declared an interest under subsection (1) shall withdraw from any meeting whilst the matter in respect of which he or she has declared an interest is being considered by the Commission and shall not express any view or take part in any vote concerning the matter.

(3) A Commissioner who fails to disclose an interest as required under subsection (1) shall be liable to be removed from office as a Commissioner.

Protection of witnesses

33. (1) Except on the trial of any person in respect of his or her own testimony, statement made or answer given by a person in the course of an investigation or conciliation by, or any proceedings before, the Commission is not admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and evidence in respect of an investigation or conciliation by, or proceedings before, the Commission shall not be given against any person.

(2) An authority, official, employer or other person shall not order, apply, permit or tolerate any sanction against any person or organisation for having communicated to the Commission any information, whether true or false, and any person or organisation shall not be prejudiced in any way.

Immunity

34. Proceedings shall not lie against the Chief Executive Officer, a Commissioner, or against any person appointed under section 25, 26 or 27, for any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Act, unless it is shown that he or she acted in bad faith.

Rules of evidence

35. In proceedings under this Act, a Commissioner or an investigator shall not be bound by any legal or technical rules of evidence and may receive, and base a decision on, evidence presented in the proceedings that he or she considers credible or trustworthy in the circumstances of the case.

Offences

- 36.** A person who
- (a) without lawful excuse, willfully obstructs, hinders or resists a Commissioner or any other person appointed under section 25, 26 or 27 in the performance of his or her functions under this Act;
 - (b) without lawful excuse, refuses or willfully fails to comply with any lawful requirement of the Commission or any other person under this Act; or
 - (c) willfully makes any false statement to or misleads or attempts to mislead the Commission or any other person in the exercise of his or her functions under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding 6 months, or both.

Regulations

37. (1) The Cabinet in consultation with the Commission may make Regulations for the effective implementation of this Act.

(2) Regulations made under subsection (1) are subject to negative resolution of the House of Assembly.

Passed by the House of Assembly this day of , 2024.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to provide for the establishment of the Virgin Islands Human Rights Commission (hereinafter referred to as “the Commission”) in accordance with section 34 of the Virgin Islands Constitution Order 2007, U.K.S.I. 2007 No. 1678 (hereinafter referred to as “the Constitution”).

By clause 1, the proposed Act would come into force on a date appointed by the Governor by Proclamation.

In clause 2, “human rights” is broadly defined to include both the rights and freedoms referred to in Chapter 2 of the Constitution, U.K. S.I. 2007 No. 1678, and any right and freedom protected under any international human rights instrument, whether or not the instrument has been extended to the Virgin Islands. This broad definition of “human rights” is in accordance with the Commonwealth’s best practice guidelines and would enable the Commission to make use of the latest international developments in human rights in carrying out its functions.

By clause 3, the proposed Act would bind the Crown.

Part I of the Bill would provide for the establishment, constitution, function and powers of the Commission among other things.

Clause 4 would establish the Commission. The Commission would have a common seal which would be judicially noticed.

By clause 5, the Commission would consist of not more than five Human Rights Commissioners. The Commissioners would be fit and proper persons with relevant knowledge, experience and expertise, they would collectively reflect gender equality and at least one Commissioner would be a person who is ordinarily resident in an island of the Virgin Islands other than Tortola;

Clause 6 would provide for the functions of the Commission. Some of the functions of the Commission would include the following:

- (a) to promote better public awareness, understanding, acceptance, appreciation and discussion with respect to human rights and international instruments or activities relating to human rights;
- (b) to advocate and promote, by education or publicity, respect for, and the observance of, human rights;
- (c) to make public statements in relation to any matter affecting human rights, including statements promoting an understanding of, and compliance with, this Act and Chapter 2 of the Constitution, U.K. S.I. 2007 No. 1678;
- (d) to try by persuasion, publicity or any other means that it considers appropriate to discourage and reduce acts or practices that are inconsistent with or contrary to human rights;

- (e) to receive complaints of any act or practice that may be inconsistent with or contrary to any human right;
- (f) to investigate, with the agreement or concurrence of the persons concerned, complaints of any act or practice that may be inconsistent with or contrary to a human right.

By clause 7, the appointment of a Commissioner shall be on terms and conditions as may be determined by the Governor and a Commissioner would be appointed to serve for a term not exceeding in the aggregate 10 years.

Clause 8 provides for the resignation and removal of Commissioners, while clause 9 provides for the meetings of the Commission.

By clause 10, the Governor, in accordance with section 95 of the Constitution, U.K. S.I. 2007 No. 1678, would appoint a chief executive officer of the Commission and who would be responsible for the day-to-day administration of the Commission and the supervision of its staff.

Part II of the Bill would provide for the investigation and settlement of complaints by the Commission.

Clause 11 would provide for the filing of complaints by individuals and groups against public officers, Government Departments, statutory bodies, individuals, companies and unincorporated entities where the complainant has reasonable grounds to believe that the respondent is engaging, or has engaged, in an act or practice that is inconsistent with, or contrary to, human rights. The complainant or his or her representative would be able to file the complaint and the complaint would be in form as the Commission finds acceptable. A complaint would not need to be in writing and an officer of the Commission would be required to reduce an oral complaint to writing and to sign the complaint.

By clause 12, the Commission would, upon being satisfied that there are reasonable grounds for a complaint, appoint an investigator to investigate the complaint and report his or her findings to the Commission or appoint a conciliator to attempt to bring about a settlement of the complaint.

By clause 13, the power of the Commission to deal with a complaint would, in accordance with section 34(3) of the Constitution, U.K. S.I. 2007 No. 1678, be exercised only with the agreement or concurrence of the parties to the complaint. Belongers and lawful residents of the Virgin Islands would be able to make complaints in respect of infringements of human rights occurring outside of the Virgin Islands and within the jurisdiction of the Commission, such as infringements occurring on ships registered in the Virgin Islands. The Commission would not deal with complaints made against an employer that is based solely on statistical information that purports to show that members of one or more groups of individuals are underrepresented in the employer's workforce.

Clause 14 would require a party to a complaint to co-operate with an investigator or conciliator, as the case may be, unless he or she no longer agrees to the involvement of the Commission in the matter.

Clause 15 would allow parties to a complaint, or a person appearing before an investigator pursuant to clause 16, to be represented by counsel or any other person of their choice.

By clause 16, an investigator would have the power to require a person, other than a party to a complaint, to appear before him or her and to provide oral or written information for the purposes of an investigation.

After the submission of an investigator's report to the Commission under clause 17, the Commission would, by clause 18, be able to refer the complaint to another appropriate authority, to dismiss the complaint or to appoint a conciliator to attempt to bring about a settlement of the complaint.

By clause 19, a conciliator would be required to keep all information received during a conciliation confidential and would be prohibited from disclosing information without the consent of the person who gave the information.

Clause 20 would enable the parties to a complaint to agree on a settlement at any stage after the filing of the complaint. The terms of each settlement would be referred to the Commission for approval or rejection. If the Commission approves the terms of a settlement, the settlement may, for the purposes of its enforcement, be made into an order of the High Court on the application of the Commission or any party to the settlement to that Court.

Clause 21 would enable the Commission to close complaints.

Part III of the Bill makes certain financial and administrative provisions in respect of the Commission.

Clause 22 would provide for the funds and bank account of the Commission and for the submission of estimates of receipts and expenditure for each financial year to the Minister for Finance.

Clause 23 would provide for the keeping of proper accounts, for the annual auditing of the Commission's finances and for the annual evaluation of the effectiveness of its programmes and activities.

By clause 24, fees would not be charged in respect of complaints, investigations or conciliations under the proposed Act.

Clause 25 would provide the salaries, allowances and other benefits payable to the staff of the Commission which shall be determined by the Governor and shall be paid out of the Consolidated Fund.

Clause 26 would provide for the appointment of investigators, conciliators and professional and technical advisers. Clause 27 would provide for the appointment of an Acting Commissioner to act for a Commissioner.

Clause 28 would enable the Commission to lease premises and acquire equipment.

Part IV of the Bill would make certain miscellaneous provisions relating to

- (a) the submission to the House of Assembly, and the publication, of the annual reports of the Commission;
- (b) the confidentiality of information received by the Commissioners and the staff of the Commission;
- (c) the duty of Commissioners to disclose certain interests in matters before the Commission and to withdraw from discussions in which they have any interest;
- (d) the protection of persons who give information to the Commission in the course of an investigation, a conciliation or other proceedings before the Commission;
- (e) the immunity of the Commissioners and the officers and staff of the Commission from being sued for acts or omissions done in the good faith in the exercise or purported exercise of a power under the proposed Act;
- (f) the non-application of legal and technical rules of evidence in proceeding before a Commissioner, an investigator or a conciliator;
- (g) criminal offences for obstructing the Commission without lawful excuse or misleading the Commission; and
- (h) the making of Regulations for the carrying out of the provisions of the proposed Act.

Attorney General