

No. of 2024

VIRGIN ISLANDS
VIRGIN ISLANDS INQUIRIES BILL, 2024
ARRANGEMENT OF SECTIONS

PART I

ESTABLISHMENT OF AN INQUIRY

SECTION

1. Short title and commencement
2. Interpretation

PART II

ESTABLISHMENT OF AN INQUIRY

3. Establishment of an inquiry
4. Matters to be considered in appointing commissioners
5. Removal of commissioners
6. Filling Vacancies and alterations
7. Protection of commissioners
8. Immunity from suit
9. Inquiry not affected by change of Governor
10. Oath of commissioner
11. Employment of staff and counsel
12. Remuneration of commissioners and Staff

PART III

DUTIES AND POWERS

13. Duty of commissioners
14. No power to determine liability
15. Powers of an inquiry
16. Public Access to inquiry proceedings and information
17. Restrictions on public access etc
18. Right of legal representation
19. Reports of an inquiry
20. Report to be sent to Premier
21. Matter not to be published

PART IV

EVIDENTIAL MATTERS AND IMMUNITIES

22. Power to summon witnesses and to obtain information
23. Production of documents
24. Power to examine under oath
25. Admissibility of evidence

26. Privilege and confidentiality
27. Disclosure of evidence
28. Immunities
29. Other immunities and privileges of participants
30. Referral of questions of law

PART V

MISCELLANEOUS PROVISIONS

31. Non-application to other investigative bodies
32. Award of costs
33. Cost and expenses of an inquiry
34. Offences and penalties
35. Regulations
36. Repeal

I ASSENT

Governor.
, 2024

VIRGIN ISLANDS

No. of 2024

A BILL FOR

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 , 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 Virgin Islands 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) if there is only one commissioner, that commissioner; or
 - (b) if there is more than one commissioner, the commissioner specified in the Order appointing the Inquiry as the member who is to chair the inquiry;“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 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 to inquire into and report on, any matter of public interest.

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

- (a) appoint one or more 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) Where the inquiry consists of two or more commissioners, the Governor shall appoint one of the commissioners to be the Chairperson and shall specify the quorum for the meetings.

Matters to be considered in appointing commissioners

4. 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.

Removal of commissioners

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

- (a) is guilty of 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

6. (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

7. 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

8. 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

9. 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

10. (1) A person appointed to be a commissioner under this Act shall, before assuming office, make and subscribe an oath that he or she will, faithfully, fully, impartially, and to the best of his or her ability, discharge the trust, and perform the duties, devolving upon him or her by virtue of the inquiry.

(2) The oath may be taken before a Justice of the Peace or Magistrate, and shall be deposited by the commissioner with the Governor.

Employment of staff and counsel

11. (1) A commissioner or 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) Notwithstanding the provisions of the Legal Profession Act, Revised Edition 2020, a person appointed as legal counsel pursuant to subsection (1) shall not for the purposes of the inquiry require a practicing certificate.

Remuneration of commissioners and staff

12. The Governor may determine what remuneration, if any, shall be paid to any commissioner appointed under this Act, and to their secretary, and to any other persons employed for the purposes of the inquiry.

PART III

DUTIES AND POWERS

Duty of commissioners

13. (1) In the exercise of their duties under 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

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

Powers of an inquiry

15. (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 allow or restrict cross examination of witnesses;
- (d) whether to call witnesses, and if so, who to call;
- (e) whether to receive oral or written evidence or submissions and the manner and form of the evidence or submissions;
- (f) whether to receive evidence or submissions from or on behalf of any person participating in the inquiry; and

- (g) all other decisions necessary for the successful completion of the inquiry.

Public Access to inquiry proceedings and information

16. (1) Subject to any restrictions imposed by an order under section 17, the Chairperson shall take such steps, as he or she considers reasonable, 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) No recording or broadcast of proceedings of an inquiry may be made except

- (a) at the request of the Chairperson; or
- (b) with the permission of the Chairperson and in accordance with any terms and conditions on which the permission is given.

(3) Any such request or 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

17. (1) Subject to subsection (2), the Chairperson may make an order restricting

- (a) attendance at an inquiry or, at any particular part of an inquiry;
- (b) 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 Chairperson shall specify in the order only such restrictions as

- (a) are required by any enactment or rule of law; or
- (b) the Chairperson 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) 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

18. (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, and any other person who may consider it desirable that he or she should be so represented may, by leave of the Chairperson, be represented by a legal practitioner.

(2) Notwithstanding subsection (1), a person referred to in subsection (3) is entitled to be represented by the Attorney General or any other legal practitioner who may address the inquiry on any matter on which he or she is so instructed by the Attorney General.

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

- (a) the current or former Governors;
- (b) current or former Ministers; and
- (c) current or former public officers

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

(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.

Reports of an inquiry

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

(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) Notwithstanding subsection (1), before delivering the final report, the Chairperson may deliver to the Governor an interim report containing information the inquiry deems fit, which may include anything that a final report may contain.

Report to be sent to Premier

20. (1) Subject to subsection (2), the Governor shall forward a copy of the final report the Premier within a reasonable time after receipt.

(2) The report sent to the Premier pursuant to subsection (1) shall be redacted before being forwarded where

- (a) the Premier, in his or her official capacity, is the subject of the inquiry; or
- (b) the Premier, in his or her personal capacity, is the subject of the inquiry, or the inquiry involves his or her immediate family members.

(3) Within three months of receiving the report referred to in section 19(1), the Governor shall submit the report to Cabinet and shall cause the report to be laid before the House of Assembly.

Matter not to be published

21. (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) the extent to which withholding material might inhibit the allaying of public concern;
- (b) any risk of harm or damage that could be avoided or reduced by withholding any material;
- (c) any conditions as to confidentiality subject to which a person acquired information that he or she has given or shared with the inquiry;
- (d) National Security.

(4) The final report shall be laid in the House of Assembly, by the Premier, either at the time of publication or as soon afterwards as may be reasonably practicable.

PART IV

EVIDENTIAL MATTERS AND IMMUNITIES

Power to summon witnesses and to obtain information

22. (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) to produce any other thing in his or her custody or under his or her 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 (24) 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 Chairperson 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)(d), 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

23. All officers and agents of a public body, or other body of persons, shall produce any document in his or her custody or under his or her control relating to the affairs of that body or any other body of persons 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.

Power to examine under oath

24. (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) A commissioner may, as he or she 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

25. (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

26. A person may claim privilege or confidentiality with respect to things required or produced and an inquiry may, as it thinks fit, examine any document or thing for which privilege or confidentiality is claimed.

Disclosure of evidence

27. (1) An inquiry shall not make orders for general discovery but may, on its own initiative or on the application of another person, order any person to disclose to any other person participating in the inquiry any specified document, information or thing that the person has produced before the inquiry.

(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

28. 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

29. (1) Witnesses and other persons participating in an inquiry, except for legal practitioners and any legal counsel to an inquiry, shall have the same immunities and privileges as if they were appearing in civil proceedings and the Evidence Act (Revised Edition 2013) 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 and any legal counsel to an inquiry, shall have the same immunities and privileges as they would have if appearing before a court.

Referral of questions of law

30. (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 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

31. (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.

Award of costs

32. (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

33. (1) Within a reasonable time after the completion of an inquiry, the Governor shall publish the total cost of conducting the inquiry.

(2) The cost and expenses incurred in, or in connection with, the conduct of an inquiry under this Act shall ordinarily be charged to the Consolidated Fund.

Offences and penalties

34. (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 two years or both.

- (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.

Regulations

35. The Governor may make Regulations for the giving effect to the provisions of this Act.

Repeal

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

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

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill seeks to repeal and replace the Commissions of Inquiry Act, Cap. 237, and to provide for the establishment and conduct inquiries into matters of public interest.

The Virgin Islands Inquiries Act, 2024 would have five Parts.

Part I- (clauses 1 - 2) would provide for preliminary matters.

The preliminary provisions would provide for the short title and commencement of the Bill, as well as define various terms used throughout the Bill.

Part II - (clauses 3 - 12) would provide for matters related to the Establishment of an inquiry.

This Part would deal with the establishment of an inquiry, the matters for consideration when appointing commissioners, the removal of commissioners and filling vacancies. By clause 9, it would also provide for the continuity of an inquiry if there is a change in Governor. Clauses 11 and 12 would provide for the employment of staff and remuneration of commissioners and staff.

Part III - (clauses 13 - 21) would provide for the duties and powers of a commissioners.

Clause 13 would require commissioners act independently, impartially and fairly when conducting the inquiry. Clause 14 would provide that an inquiry has no power to determine civil, criminal or disciplinary liability of any person.

This Part would also set out the powers of an inquiry and would require the Chairperson to take such steps to ensure that members of the public have access to the proceedings subject to certain conditions.

Clauses 19 to 21 would provide for the final report of the inquiry and in so doing would require the Governor to share the report with the Premier and to publish the report after it is shared with the Premier.

Part IV - (clauses 22 - 30) would provide for Evidential Matters and Immunities.

By clauses 22 and 23 the Chairperson would have the power to summon witnesses and to require the production of documents and information. The commissioners would also have the power to take evidence on oath or affirmation.

Clause 26 would provide for persons to claim privilege or confidentiality with respect to certain things. Clause 28 would provide for a person to have immunity from giving evidence in court or in any proceedings of a judicial nature in relation to an inquiry, unless leave of the court is granted.

Clause 30 would provide for an inquiry to refer any question of law to the High Court regarding any matter before it.

Part V - (clauses 31 - 36) would provide for the Miscellaneous provisions

This Part would provide for certain investigative bodies, for example the Office of Complaints Commissioner, to be excluded from being inquired into under this Act. It would also provide for the award of cost to participants in an inquiry, as well as for the publication of the total cost of conducting the inquiry.

Clause 34 would provide for the offences and penalties under the Act.

Governor