

No. of 2010

VIRGIN ISLANDS
HUMAN RIGHTS COMMISSION ACT, 2010
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No. of 2010 Human Rights Commission Act, 2010 Virgin Islands

I Assent

Governor
, 2010

VIRGIN ISLANDS

No. of 2010

A Bill for

An Act to establish a Human Rights Commission in the Virgin Islands and for connected matters.

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

1. This Act may be cited as the Human Rights Commission Act, 2010 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.

2. In this Act, unless the context otherwise requires, Interpretation.

“Chief Commissioner” means the person holding or acting in the office of Chief Human Rights Commissioner established by section 6(1)(a);

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

“Commissioner” means a member of the Commission;

“human rights” means the rights and freedoms referred to in Chapter 2 of the Constitution and any other rights in international human rights instruments which may be applicable to the Virgin Islands;;

“Attorney General” means the Attorney General appointed under section 58 of the Virgin Islands Constitution Order, 2007 or a person a person acting in that post; and

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No. 1678

Act binds the
Crown.

“the Constitution” means the Constitution of the Virgin Islands established by the Virgin Islands Constitution Order 2007;

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.

Functions
of the
Commission.

5. (1) 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;
- (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, including any enactment or law, practice or procedure, whether governmental or non-governmental, 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, 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; No. 2 of 2001
- (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) to prepare and submit periodically to the Attorney General for laying in the House of Assembly, reports concerning its activities;
- (m) on its own initiative or when requested by the Attorney General, to report to 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;
- (n) to encourage, sponsor, develop, undertake or co-ordinate research or educational programmes and activities designed to promote human rights or to eliminate acts and practices that are inconsistent with or contrary to human rights or otherwise relating to its functions or the field of human rights;
 - (o) to develop and conduct information programmes to foster public understanding of the role and activities of the Commission;
 - (p) to receive and invite representations from members of the public on any matter affecting human rights;
 - (q) 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;
 - (r) 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;
 - (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, to intervene 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 strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (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 and of preventing torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (v) to exercise or perform any other function, powers and duties conferred or imposed on it by or 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) 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.

(3) 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.

(4) The Commission may, in the public interest or in the interest of a person, department or organisation, publish reports relating generally to the exercise of its functions or to a particular inquiry by it 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.

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

(6) For the purposes of its functions under subsection (1)(s) and (t), the Commission shall be entitled to

- (a) access to all custodial facilities and places of detention and their installations and facilities;
- (b) access to 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 to 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) the opportunity to have private interviews with 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) to 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.

Constitution
of the
Commission.

6. (1) The Commission shall consist of not less than three or more than five Human Rights Commissioners as follows:

- (a) a Chief Human Rights Commissioner; and
- (c) not less than two or more than four other Human Rights Commissioners.

(2) Subject to the approval of the House of Assembly, the appointment of the Commissioners shall be made by the Cabinet after

- (a) the public advertisement of the qualifications and other criteria required for eligibility to be appointed to the office of Chief Commissioner or Commissioner;
- (b) affording the public the opportunity to nominate candidates for the offices of Chief Commissioner and Commissioner; and

- (c) consultation with the Leader of the Opposition.
- (3) The Cabinet shall ensure that
- (a) the persons to be appointed to the Commission
 - (i) are fit and proper and have the relevant knowledge, experience or expertise required for their respective offices; and
 - (ii) collectively reflect gender balance; and
 - (b) at least one person to be appointed to the Commission resides in the Sister Islands.
- (4) For the purposes of subsection (3), 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 indigenous peoples, people with disabilities and other vulnerable groups.
- (5) A person is disqualified from appointment as a Commissioner if he or she
- (a) is, or has been within the preceding three years, 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; or

- (f) has been certified by a medical practitioner to be of unsound mind.

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 Cabinet.

(2) Subject to subsection (3) and (4), the appointment of a Commissioner shall be for a term not exceeding five years, and a Commissioner shall only be eligible to be re-appointed for one additional term of the same length.

(3) The term of office of the first 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 period or periods not exceeding twelve months in aggregate, until a new appointment is made.

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

(6) The Chief Commissioner

- (a) shall be employed on a full-time basis with the Commission and shall not, without the prior written authorisation of the Governor acting in his or her discretion, hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his or her office; and
- (b) shall be accorded a rank and remuneration comparable to that of a senior judicial officer.

(7) 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.

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

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

Resignation and removal of Commissioners.

(2) The Cabinet 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, or for contravention of section 7(6)(a);
- (b) if he or she is or has become disqualified from being appointed as a Commissioner under section 6;
- (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 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 five years.

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

Meetings of the Commission.

(2) At every meeting of the Commission, the Chief Commissioner shall preside and in his or her absence 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 Chief Commissioner 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 to do so, and meeting shall be held not later than fourteen 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 Chief Commissioner 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) Subject to the provisions of this section, the Commission may establish its own rules of procedure for the purposes of the conduct of its meetings.

Responsibilities of the Chief Commissioner.

10. (1) The Chief Commissioner is the chief executive officer of the Commission and 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) perform other duties as may be assigned or delegated to him or her by the Commission.

(2) In discharging his or her duties and functions, the Chief Commissioner 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

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 a complaint in a form acceptable to the Commission.

Filing of complaints.

(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 or any international human rights instrument, whether or not extended to the Virgin Islands, has been breached or infringed; or
- (b) notwithstanding any provision of the Anti-Discrimination Act, 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 or by virtue of section 41 of that Act.

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(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 signed by him.

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

Initiation of investigation or conciliation.

- (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) initiate an investigation into the complaint by appointing a fit and proper person (in this Part referred to as “the investigator”) to investigate the complaint and to submit to it a report of his or her findings; or
- (b) appoint a fit and proper person (in this Part referred to as “the conciliator”) 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 appoint one conciliator to attempt to bring about a settlement of the complaints, as the case may be.

(4) Before initiating an investigation or appointing a conciliator for the purposes of a complaint, 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 agreement or concurrence of the parties to the complaint and the Commission shall cease to deal with a complaint if a party to the complaint indicates, orally or in writing, to the Commission, an investigator or a conciliator 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 lawfully 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 party to a complaint shall, unless he or she no longer agrees to the involvement of the Commission in the matter,

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

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 such place and time specified in the notice;
- (b) to answer to the best of his or her knowledge such 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 therefrom, 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, a conciliator should not be appointed to attempt to bring about a settlement of the complaint,
 - (ii) having regard to all the circumstances of the case, a conciliator should be appointed to attempt to bring about a settlement of the complaint, but all the parties to the complaint do not agree to the appointment of a conciliator,
 - (iii) the complaint is beyond the jurisdiction of the Commission,
 - (iv) the complaint is trivial, frivolous, vexatious or made in bad faith,
 - (v) the complaint is based on acts or omissions the last of which occurred more than one year before the filing of the complaint, or
 - (vi) 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, a conciliator should be appointed to attempt to bring about a settlement of the complaint and the parties agree, appoint a conciliator to attempt to bring about a settlement of the complaint.

(2) A person is not eligible to be appointed as a conciliator under subsection (1)(c) if he or she has already acted as an investigator in respect of that complaint.

(3) 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).

Conciliator not to disclose information.

19. Any information received by a conciliator in the course of attempting to reach a settlement of a complaint is confidential and shall not be disclosed except with the consent of the person who gave the information.

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 or a party to the settlement.

PART III FINANCIAL AND ADMINISTRATIVE PROVISIONS

Funds of the Commission.

21. (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.

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

Accounts and audit.

(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, as soon as practicable and in any case within four months after the end of each financial year, 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 the purposes of 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.

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

Fees prohibited.

24. (1) The Commission shall be provided with a Secretary, legal officer and other officers and staff as the Cabinet, after consultation with the Commission, and in accordance with the Constitution considers necessary for the efficient administration of this Act.

Appointment of Secretary, officers and staff.

(2) The Commission may appoint the staff of the Commission.

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

Appointment of investigators, conciliators and advisers.

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

- (a) investigators or conciliators 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.

26. (1) Where a Commissioner, other than the Chief 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 such 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 Cabinet to act as Commissioner.

(2) The provisions of this Act, except section 6(3), shall apply to a person appointed under subsection (1) as they apply to a Commissioner, other than the Chief Commissioner.

Premises and supplies.

27. 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.

28. The Commission shall, within six 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 a general survey and statistics in relation to complaints received by it, the results of investigations and conciliations conducted under this Act, an evaluation of its programmes and activities, its recommendations for better compliance with human rights, steps taken to implement its recommendations, its annual

strategic plan, and other matters or developments as it thinks fit;

- (b) a copy of the statement of accounts required under section 22(2) and the auditor's report on that statement of accounts,

to the Attorney General who shall cause them to be laid before the House of Assembly within a period of three 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.

29. 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 30(3), disclose any information received by him or her as Commissioner.

30. (1) A Commissioner and every person appointed under section 24, 25 or 26 shall, subject to subsections (2), (3) and (4), maintain secrecy in respect of all matters that

Commissioners and staff to maintain secrecy.

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

(2) Subsection (1) shall not apply so as to prevent a Commissioner or any person appointed under section 24, 25 or 26 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 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 ground 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 six months, or both.

Duty of
Commission-
ers to disclose
interest.

31. (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.

32. (1) Except on the trial of any person in respect of his or her own testimony, no statement made or answer given by a person in the course of an investigation or conciliation by, or any proceedings before, the Commission is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of an investigation or conciliation by, or proceedings before, the Commission shall 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 no person or organisation shall be prejudiced in any way.

33. Proceedings shall not lie against a Commissioner, or against any person appointed under section 24, 25 or 26, 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. Immunity.

Rules of evidence.

34. In proceedings under this Act, a Commissioner, an investigator or a conciliator 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.

35. A person who

- (a) without lawful excuse, willfully obstructs, hinders or resists a Commissioner or any other person 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 six months, or both.

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

(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 , 2010.

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 (UKSI 2007 No. 1678) (hereinafter referred to as “the Constitution”).

The Bill provides for preliminary matters.

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 and any right and freedom protected under any international human rights instrument, whether or not 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 the carrying out of its functions.

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

Part I of the Bill would provide for the establishment and constitution of the Commission.

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

Clause 5 would provide for the functions of the Commission. The functions of the Commission would include (a) to promote public awareness, public education and research in relation to human rights and human rights issues; (b) to investigate and settle by conciliation complaints of acts or practices that may be inconsistent with or contrary to human rights; (c) to provide a forum for dealing with complaints and disputes concerning any matter relating to human rights and to provide conciliation services for unlawful discrimination disputes in respect of which civil proceedings have been or could be brought under or by virtue of section 41 of the Anti-Discrimination Act, 2001; (d) to prepare and publish guidelines and voluntary codes of practice for the avoidance of infringements of human rights; (e) to report on its activities to the House of Assembly through the Attorney General and to make additional reports pertaining to human rights to the Attorney General on its own initiative or on the request of the Attorney General; (f) to receive and invite representations from the public, and to consult and co-operate with other persons and bodies, with respect to matters affecting human rights; (g) to develop a national plan and an annual strategic plan for the promotion and protection of human rights in the Virgin Islands; (h) to intervene in court proceedings involving human rights issues with

the leave of the court; and (i) to inspect custodial facilities and places of detention with a view to strengthening the protection of detainees against torture and other cruel, inhuman or degrading treatment or punishment.

By clause 5(6), the Commission would be entitled to access to all custodial facilities and places of detention and to all information concerning the treatment of detainees and the conditions under which they are detained. The Commission would also be entitled to have private interviews with detainees and to have contact and meet with, and send information to, the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment.

By clause 6, the Commission would consist of three to five Human Rights Commissioners, that is to say, a Chief Human Rights Commissioner (“the Chief Commissioner”), and two to four other Human Rights Commissioners. The appointment of all the Commissioners would be executed by the Cabinet Secretary and be subject to the approval of the House of Assembly, but would initially be determined by the Cabinet after affording the public the opportunity to nominate suitable candidates and after consultation with the Leader of the Opposition. The Commissioners would be fit and proper persons with relevant knowledge, experience and expertise, they would collectively reflect gender balance and at least one Commissioner would be resident in the Sister Islands.

By clause 7, a Commissioner would be appointed to serve for a term not exceeding five years and would be eligible to be re-appointed for only one more term of the same length. The Chief Commissioner would serve on a full-time basis and would be accorded a rank and remuneration comparable to that of a senior judicial officer. All Commissioners would be required to act independently in the exercise of their duties.

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

By clause 10, the Chief Commissioner would be the chief executive officer of the Commission and 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 be exercised only with the agreement or concurrence of the parties to the complaint. Illegal immigrants would not be entitled to make complaints to the Commission. 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, 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.

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

Clause 21 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 22 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 23, fees would not be charged in respect of complaints, investigations or conciliations under the proposed Act.

Clause 24 would provide for the appointment of a Secretary, legal officer and other officers and staff. Clause 25 would provide for the appointment of investigators, conciliators and professional and technical advisers. Clause 26 would provide for the appointment of an Acting Commissioner to act for a Commissioner, other than the Chief Commissioner.

Clause 27 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
Date:

DRAFT