

LAWS OF PITCAIRN, HENDERSON, DUCIE
AND OENO ISLANDS

Revised Edition 2001

CHAPTER VIII

COMMISSIONS OF INQUIRY ORDINANCE

An ordinance to provide for Commissions of Inquiry

Ordinances:
No. 6 of 1999

Citation.

1. This ordinance may be cited as the Commissions of Inquiry Ordinance.

2. In this ordinance, unless the context otherwise requires—

Interpretation.

“commission” means a commission of inquiry issued under this ordinance;

“commissioner” means a commissioner appointed under section 3;

“inquiry” means an inquiry held under this ordinance.

3.—(1) It shall be lawful for the Governor at any time to issue a commission appointing one or more commissioners and authorising such commissioners, or any quorum of them, to inquire into any such matter in which an inquiry would, in the opinion of the Governor, be for the public welfare.

Issue of commissions of inquiry.

(2) Each such commission shall specify the subject of inquiry and may, if there is more than one commissioner, direct which such commissioner shall be chairman; it shall direct where and when such inquiry shall be made and the report thereof rendered; it shall prescribe how such commission shall be executed and may direct whether the inquiry shall or shall not be held in public.

(3) In the absence of a direction to the contrary, the inquiry shall be held in public, but the commissioners shall nevertheless be entitled to exclude any particular person or persons for the preservation of order or for any other reason.

4.—(1) The Governor may, at any time, if he considers it advisable so to do, revoke or issue a commission amending a commission previously issued; without prejudice to the generality of the foregoing power, the Governor may by any such amending commission appoint an additional commissioner or commissioners, vary the designation of the chairman of the commissioners, or appoint a new commissioner in the place of any commissioner who is or becomes unable or unwilling to act or dies or is, in the opinion of the Governor, for any reason unsuitable to continue to

Power to appoint new commissioner and to revoke or amend commission.

serve as a commissioner.

(2) Where the Governor issues an amending commission under subsection (1), it shall not be necessary, unless in the amending commission the Governor otherwise directs, for the inquiry to be begun afresh and any proceedings which have taken place under or in pursuance of the commission before such amendment shall be deemed, for all the purposes of this ordinance, to be part of the proceedings taking place under or in pursuance of the commission as so amended.

Commissions not affected by change of Governor.

5. No commission shall lapse by reason of, or be otherwise affected by the death, absence or removal of the Governor who has issued the same.

Commissioner's oath of office.

6. It shall be the duty of each commissioner appointed under this ordinance to make and subscribe an oath or affirmation in Form 1 in the schedule hereto, which oath or affirmation may be taken before the Governor or before such person as the Governor may appoint.

Secretary of commission.

7. The Governor may appoint a secretary to attend the sittings of the commissioners, to record their proceedings and keep their papers, to summon witnesses and minute their testimony and generally to perform such duties connected with an inquiry as the commissioners may require.

Duties of commissioners.

8.—(1) It shall be the duty of the commissioners, after making and subscribing the oath or affirmation under section 6, to make a full, faithful and impartial inquiry into the matter into which they are commissioned to inquire and to continue such inquiry in accordance with the directions, if any, in the commission and also, if so required by the Governor, to furnish the Governor with a full record of the proceedings of such commission.

(2) The commissioners may, in their discretion, and shall, if so directed by the commission, include in their report recommendations as to any matter into which they are commissioned to inquire or any matter arising out of or connected with the inquiry.

Division of opinion of commissioners.

9. If in any case the commissioners are divided on any question that arises during the proceedings of or in relation to their inquiry, the divergent views of the commissioners and the reasons therefor shall be recorded in the proceedings of the inquiry and in the event of any equal division on any question requiring to be decided by the commissioners collectively, the chairman of the commissioners shall have a second or casting vote:

Provided that nothing in this section shall be construed as

preventing any commissioner from submitting to the Governor a minority report on any matter in regard to which he or she dissents from the views or conclusions of all or any of the other commissioners.

10. The commissioners may make such rules, not inconsistent with the provisions of this ordinance and the terms of the commission, for the conduct and management of the proceedings of the inquiry and specifying the hours and times and places for sittings as they may from time to time think fit; and they may from time to time adjourn for such time and to such place as they may think fit, subject to such provisions as aforesaid and to the terms of the commission.

Commissioners' powers to regulate proceedings.

11.—(1) Commissioners acting under this ordinance shall have the powers of the Magistrate's Court to summon witnesses, and to call for the production of books, plans and documents and to examine witnesses and parties concerned on oath.

Power to summons and examine.

(2) Where the commissioners consider it desirable for the purpose of avoiding expense or delay or for any other special reason, they may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply to such interrogation.

(3) Summonses for attendance of witnesses or other persons or the production of documents may be in Form 2 in the schedule hereto and shall be signed by one of the commissioners or by the secretary and oaths and affirmations may be administered by one of the commissioners or the secretary.

(4) No person giving evidence in the proceedings of any inquiry shall be compellable to incriminate himself or herself and every person shall, in respect of evidence so given, be entitled to all the privileges and immunities to which a witness giving evidence before the Supreme Court is entitled in respect of evidence given by him or her before that Court.

(5) Any person who shall without just cause fail to answer and comply with a summons issued under subsection (1) or having attended at the inquiry shall refuse to take the oath or make an affirmation or to answer any questions lawfully put to him or her or to answer interrogatories administered under subsection (2) shall be guilty of an offence punishable by a fine of one hundred dollars.

12.—(1) Commissioners shall not be entitled to any remuneration, unless sanctioned by the Governor, beyond the actual expenses incurred in holding the inquiry but the

Remuneration of commissioners and secretary and expenses of inquiry and witnesses.

Governor may direct what remuneration, if any, shall be paid to the secretary and to any other person employed in or about a commission and may direct payment of any other expenses of the commission.

(2) All persons summoned to attend and give evidence or to produce books, plans or documents at any sitting of the commissioners shall be entitled to the same expenses as they would have been entitled to if they had been summoned to attend at the Court in a criminal trial and, subject to any regulations made under section 19, payment thereof shall be made in such manner as the Governor may direct.

(3) Sums of money so directed to be paid shall be paid out of the general revenue of the Islands.

Protection of
reputation and
character

13. Save in so far as the commissioners consider it essential for ascertaining the truth of the matter into which they are commissioned to inquire and record their reasons for so considering—

- (a) evidence adversely affecting the reputation of any person or tending to reflect in any way upon the character or conduct of any person shall not be received unless the commissioners are satisfied that it is relevant to the inquiry and that all reasonable efforts have been made to give such person prior warning of the general nature of the evidence and that, where no such warning has been given, the general nature of the evidence has been communicated to such person;
- (b) such person shall be given such opportunity as is reasonable and practicable to appear in person or to be represented by counsel or solicitor or, with the leave of the commissioners, by any other person at the hearing of such evidence to cross-examine any witness testifying thereto and to adduce without unreasonable delay material evidence in his or her behalf in relation to such evidence;
- (c) hearsay evidence which adversely affects the reputation of any person or tends to reflect in any way upon the character or conduct of any person shall not be received;
- (d) no expression of opinion shall be received in evidence of the character, conduct or motives of any person.

Right of appearance
and representation

14. Any person whose conduct is the subject of inquiry under this ordinance or who is in any way implicated or concerned in any manner under inquiry shall be entitled to

appear in person and to be represented by counsel or solicitor or, with the leave of the commissioners, by any other person in the proceedings of the inquiry or any part thereof and any other person who desires to appear or to be represented may, by leave of the commissioners, appear or be so represented.

15.—(1) A commissioner and the secretary to any commissioner shall not be liable to any civil action or suit for or in respect of any matter or thing done or omitted to be done by him or her in good faith as such commissioner or secretary, as the case may be.

Protection of
commission and
secretary

(2) No commissioner shall be liable to arrest under civil process while going to, presiding in or returning from the place where an inquiry under this ordinance is being held by him or her.

16. No person shall be liable to any action, suit, indictment or proceedings by reason of his or her publishing a true account of any evidence taken in public in pursuance of the powers conferred by this ordinance or of any report of the commissioners made public by the authority of the Governor

Protection of
publication of
evidence

17. The Governor may direct that a police officer shall attend upon commissioners to preserve order during the proceedings of the inquiry, to serve summonses on witnesses and to perform such administrative duties as the commissioners may direct.

Police officer may
be detailed to attend
commissioners

18. The Governor may make regulations for the better carrying out of the provisions and purposes of this ordinance.

Regulations

SCHEDULE

Form 1

(Section 6)

FORM OF OATH OR AFFIRMATION TO BE TAKEN BY A COMMISSIONER.

I, _____, having been appointed under a Commission issued by the Governor and dated the _____ day of _____ 20____, to be a commissioner to inquire into the matters specified in the said Commission, do swear [or do solemnly and sincerely affirm] that I will faithfully, fully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by virtue of the said Commission.

[In the case of an oath]
So help me God

Commissioner

Form 2

(Section 11(3))

SUMMONS TO A WITNESS

To A.B. [name of person summoned and his or her calling and residence if known]

You are hereby summoned to appear before [here name the commissioners] appointed by the Governor to inquire into [state briefly the subject of the inquiry] at _____ day of _____ 20____, at _____ of the clock in the _____ noon and to give evidence respecting the said inquiry [if the person summoned is to produce any documents, add]

And you are required to bring with you [specify books and documents required]

Therefore fail not at your peril.

Given under the hand of _____, [a Commissioner or secretary], this _____ day of _____ 20____.