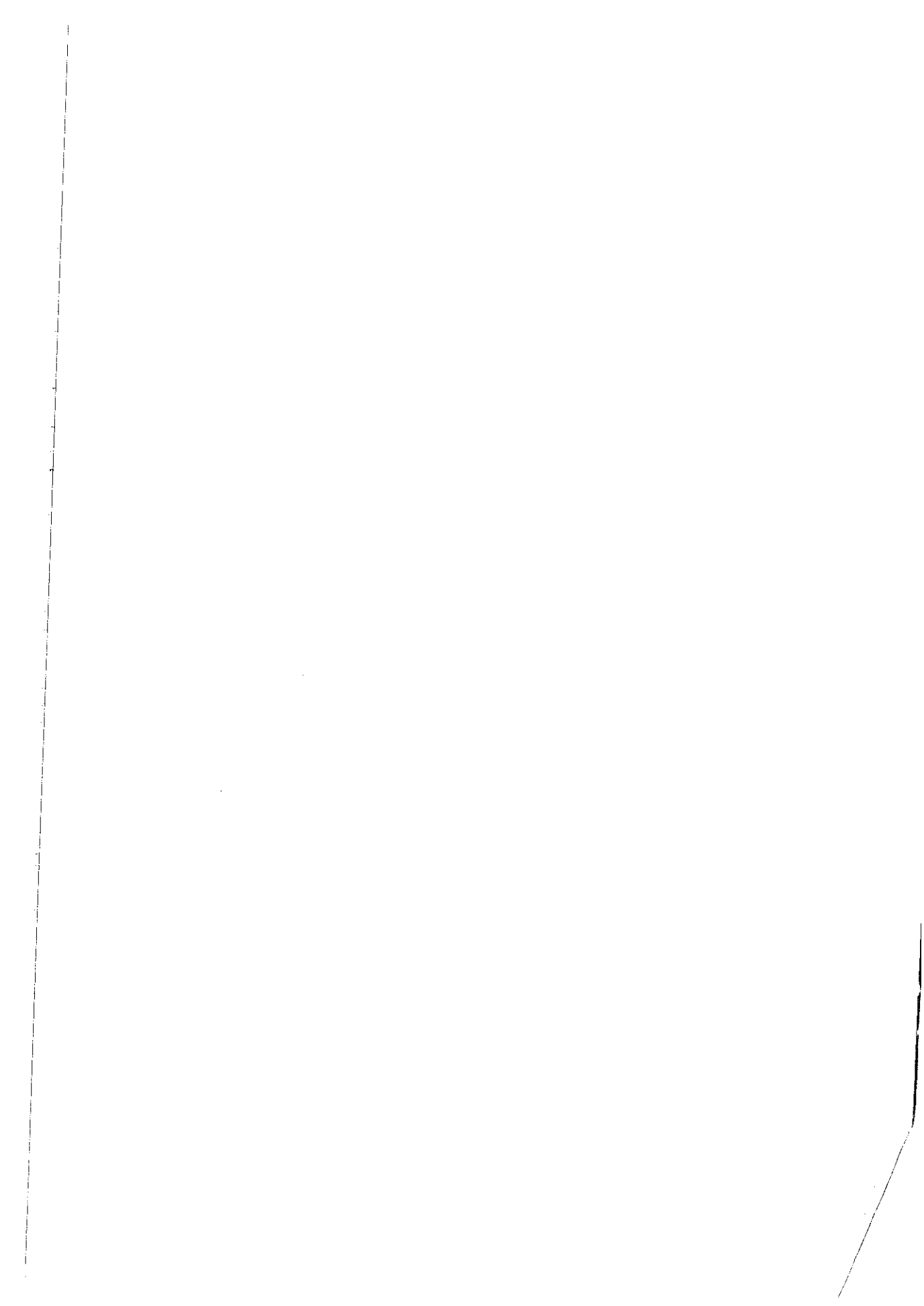




**HONIARA CITY (AMENDMENT) (NO. 2)  
ACT 2023**

**(NO. 6 OF 2023)**







# HONIARA CITY (AMENDMENT) (NO. 2) ACT 2023

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# HONIARA CITY (AMENDMENT) (NO. 2) ACT 2023

## 1 Short title

This Act may be cited as the *Honiara City (Amendment) (No. 2) Act 2023*.

## 2 Commencement

This Act commences on the day appointed by the Minister by notice in the *Gazette*.

## 3 Amendment of Honiara City Act 1999

This Act amends the *Honiara City Act 1999* (No. 2 of 1999) ("**Principal Act**").

## 4 Section 2 amended

Section 2 of the Principal Act is amended by inserting in the appropriate alphabetical order:

**"law enforcement officer"** means a law enforcement officer appointed under section 55M;

**"Ordinance"** means an Ordinance made by the City Council under section 34;

**"premises"** means:

- (a) an area of land, whether or not there is a building or structure on the land; or
- (b) a building or part of a building;

**"vehicle"** means a motor vehicle, bicycle, aircraft, vessel or other thing used to carry or transport a person or goods.

## 5 Section 37 repealed

Section 37 of the Principal Act is repealed.

**6 New Part XA inserted**

The Principal Act is amended by inserting after section 55:

**“PART XA ENFORCEMENT**

**Division 1 Preliminary matters for Part XA**

**55A Definitions for Part XA**

In this Part:

**“fixed penalty”** means a fixed penalty prescribed under section 55J and specified in an infringement notice;

**“infringement notice”** means an infringement notice issued by a law enforcement officer under section 55F;

**“prescribed offence”** means an offence under an Ordinance that is prescribed by that Ordinance as an offence for which an infringement notice may be issued and a fixed penalty paid;

**55B Purpose of Part XA**

- (1) This Part provides for the enforcement of this Act and Ordinances.
- (2) In doing so, this Part:
  - (a) provides for the appointment, function and powers of law enforcement officers; and
  - (b) provides for the manner of enforcement of this Act and Ordinances; and
  - (c) provides for prosecution of offences under this Act or an Ordinance.

**55C How Ordinances are enforced**

- (1) An Ordinance:
  - (a) is enforced by law enforcement officers; and

- (b) may only be enforced in a way specified in subsection (2)(a) or (b).
- (2) An Ordinance may be enforced in the following ways:
- (a) issue of an infringement notice under section 55F to a person for allegedly committing a prescribed offence;
  - (b) prosecution of an alleged prescribed offence as provided by Division 5.

*Note to section 55C.*

*An Ordinance may not provide for another way to enforce an Ordinance.*

*Under section 34 of the Principal Act, the City Council has power to make laws only if and to the extent that they relate to matters within the City Council's legislative competence or to matters specified in Part II of Schedule 5 to the Principal Act.*

*Under section 36 of the Principal Act, the Minister withholds assent if he or she is of the opinion that any provision of a Bill does not relate to a matter within the legislative competence of the City Council or for which the City Council does not have power under this Act to make.*

## **55D Monitoring of enforcement of Act and Ordinances**

The City Council must supervise and monitor the enforcement of this Act and Ordinances, including by:

- (a) supervising the use of infringement notices by law enforcement officers; and
- (b) supervising the arrest and detention of persons who allegedly commit an offence under this Act or an Ordinance; and
- (c) supervising the prosecution of offences under this Act or an Ordinance; and
- (d) ensuring there is no discriminatory or other improper practices carried out in enforcing this Act or an Ordinance.



## **Division 2      Infringement notices and fixed penalties**

### **55E      Purpose of Part XA, Division 2**

- (1) The purpose of this Division is to enable a person alleged to have committed an offence under an Ordinance that is a prescribed offence to pay a fixed penalty instead of:
  - (a) being prosecuted for the alleged prescribed offence; and
  - (b) a penalty that may be imposed on conviction for the alleged offence being imposed on the person.
- (2) This Division does not:
  - (a) require a law enforcement officer to give a person an infringement notice for an alleged prescribed offence; or
  - (b) affect the liability of a person to be prosecuted for the alleged prescribed offence if:
    - (i) the person is not given an infringement notice; or
    - (ii) the person was given an infringement notice but fails to pay the specified fixed penalty on or before the specified date; or
  - (c) prevent more than one infringement notice being given for the alleged offence; or
  - (d) prejudice the right to a civil claim for damages arising out of the commission of the prescribed offence.

### **55F      Issue of infringement notice**

- (1) A law enforcement officer may, if the law enforcement officer believes on reasonable grounds that a person has committed a prescribed offence, give an infringement notice to the person.
- (2) The law enforcement officer must give the person the infringement notice not later than 14 days after the law enforcement officer becomes aware of the alleged commission of the prescribed offence by the person.

- (3) The person to whom an infringement notice is given must pay the full amount of the fixed penalty specified in the notice on or before 12 pm on the day on which the infringement notice is given to the person or proceedings for prosecuting the offence in a court can be commenced against the person.

**55G Form and content of infringement notice**

- (1) An infringement notice must:
  - (a) comply with subsection (2); and
  - (b) be in the form specified in Schedule 7; and
  - (c) relate to a single alleged commission of an offence.
- (2) An infringement notice is issued on behalf of the City Council.
- (3) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) specify the following:
    - (i) the date and time the infringement notice is given to the person;
    - (ii) the name and address of the person to whom it is given;
    - (iii) the drivers licence number of the person (if any);
    - (iv) the registration number of the vehicle the person is driving (if any);
    - (v) a description of the alleged offence for which the infringement notice is given;
    - (vi) the fixed penalty payable under the infringement notice;
    - (vii) that the fixed penalty must be paid by 12 pm on the day the notice is given to the person;
    - (viii) how the amount of the fixed penalty is payable;

- (ix) that, if the full amount of the fixed penalty is not paid on or before 12 pm on the day it is issued, proceedings for prosecuting the offence in a court will be commenced against the person;
- (x) that payment of the full amount of the fixed penalty is not an admission of having committed the offence;
- (xi) a statement that the infringement notice is issued on behalf of the Honiara City Council and the name and signature of the law enforcement officer who gives the infringement notice to the person.

#### **55H Effect of issue of infringement notice**

Where a person is given an infringement notice, proceedings to prosecute for the offence must not be commenced against the person unless:

- (a) the time specified in the infringement notice for payment of the fixed penalty has passed; and
- (b) the person failed to pay the full amount of the fixed penalty on or before that time.

*Note to section 55H.*

*The effect of 55H is that payment of the fixed penalty bars prosecution of the person for the alleged commission of the offence.*

#### **55I Offences for which infringement notice issued**

An Ordinance must prescribe the offences under the Ordinance for which an infringement notice may be issued and a fixed penalty paid.

#### **55J Fixed penalties**

- (1) The Minister must by regulation prescribe the maximum fixed penalty for a prescribed offence or a class of prescribed offence.
- (2) The fixed penalty for a prescribed offence under an Ordinance:
  - (a) must be specified in the Ordinance; and
  - (b) must not be more than the prescribed maximum fixed penalty.

- (3) The full amount of the fixed penalty must be paid:
  - (a) on or before 12 pm on the day specified in the infringement notice as the day on which the infringement notice was issued; and
  - (b) either:
    - (i) to the City Council, by full payment being made to the City Council's cashier at the City Council office in Honiara in cash or by not negotiable cheque payable to the City Council; or
    - (ii) by full payment being made in cash to a law enforcement officer (and the law enforcement officer will give the payment to the City Council's cashier at the City Council office in Honiara); and
  - (c) on being received by the City Council at the City Council office in Honiara, into the City Fund.
- (4) The law enforcement officer, or the City Council, must, on receiving the full payment of the fixed penalty, give a receipt for the amount of the fixed penalty.
- (5) A copy of the receipt must be retained by the law enforcement officer and the City Council.

**55K Requirements relating to law enforcement officers issuing infringement notices**

- (1) Before a law enforcement officer gives a person an infringement notice under section 55F(1), the law enforcement officer must inform the person:
  - (a) that the law enforcement officer believes on reasonable grounds that the person has committed a prescribed offence; and
  - (b) of the details of the alleged offence and the amount of the fixed penalty for the alleged offence; and
  - (c) that the law enforcement officer will give the person an infringement notice and the person may choose to pay the fixed

penalty specified in the notice or to contest the contravention in a court; and

- (d) that, if the person chooses to pay the fixed penalty, the person must pay the full amount of the fixed penalty on or before 12 pm on the day the law enforcement officer gives the infringement notice to the person; and
- (e) that, if the person pays the full amount of the fixed penalty on or before 12 pm on that day, the person cannot be prosecuted for the alleged offence.

(2) The law enforcement officer must maintain a complete record of:

- (a) all infringement notices issued by the law enforcement officer (including a separate record of the prescribed offences and the fixed penalties specified on the infringement notices); and
- (b) whether the fixed penalty was paid or whether the alleged offence was contested in a court; and
- (c) all payments of fixed penalties received by the law enforcement officer, the receipts issued for the payments, the date and time when the law enforcement officer delivered the fixed penalties to the City Council and the amount of fixed penalties delivered to the Council.

#### **55L Offence for person to damage or alter infringement notice**

A person commits an offence if the person intentionally or recklessly:

- (a) damages or defaces an infringement notice that has been given by a law enforcement officer to the person or another person, with the result that all or some of the information specified on the infringement notice is illegible; or
- (b) alters or falsifies the information specified on an infringement notice that has been given by a law enforcement officer to the person or another person; or
- (c) destroys or discards or disposes of an infringement notice that was given by a law enforcement officer to the person or another person.

Maximum penalty            2,000 penalty units or imprisonment for 6 months, or both

### **Division 3            Law enforcement officers**

#### **55M            Appointment of law enforcement officers**

- (1) The Minister may, acting on the advice of the City Council, appoint a person to be a law enforcement officer of the City Council for the purpose of enforcing this Act or Ordinances.
- (2) A person may not be appointed to be a law enforcement officer unless the person has completed an appropriate training course, and been awarded a pass in the course, on:
  - (a) this Act, Ordinances and the Honiara City Council; and
  - (b) law enforcement; and
  - (c) treatment of detained persons.
- (3) The person may:
  - (a) be an officer or employee of the City Council; or
  - (b) be contracted to the City Council to carry out the function and duties of a law enforcement officer.
- (4) If a law enforcement officer is engaged by the City Council by contract, the contract may provide that the law enforcement officer's remuneration is calculated as a portion of the amount of fixed penalties paid into the City Fund under infringement notices issued by the law enforcement officer.
- (5) A law enforcement officer must comply:
  - (a) with this Act; and
  - (b) with the terms of the law enforcement officer's appointment; and
  - (c) the directions given to the law enforcement officer by the City Clerk.

## **55N Function and powers of law enforcement officers**

- (1) The function of a law enforcement officer is to enforce this Act and Ordinances.
- (2) In performing that function, if the law enforcement officer believes on reasonable grounds that a person is committing or has committed an offence under this Act or an Ordinance, the law enforcement officer may:
  - (a) require the person to state his or her full name and usual place of residence and to produce evidence of the person's identity; or
  - (b) enter and search premises or a vehicle which appear to be being used or to have been used for committing the alleged prescribed offence; or
  - (c) ask the person questions relating to the alleged prescribed offence; or
  - (d) ask the person to give the law enforcement officer specified information or a specified thing relating to the alleged prescribed offence, or to produce the information or thing at a specified place and time; or
  - (e) search the person's bags or other articles in the person's possession; or
  - (f) arrest and detain the person or arrest the person and take the person to the nearest police officer or police station; or
  - (g) ask another person, who the law enforcement officer reasonably believes has knowledge of matters in respect of information about the alleged commission of the offence, questions about such matters; or
  - (h) seize and retain goods or movable property which the law enforcement officer believes on reasonable grounds to have a connection with the alleged commission of the prescribed offence and issue a receipt for the goods to the person in whose possession the goods appear to be; or

- (i) as provided for by a court order, destroy or demolish property in connection with the commission of a prescribed offence; or
  - (j) under Division 2, issue infringement notices and receive payments of fixed penalties; or
  - (k) take necessary steps and use reasonable force to take an action under paragraph (b), (e), (f), (g), (h) and (i).
- (3) If a law enforcement officer arrests a person under the age of 18 years, the officer must as soon as practicable take the person to the nearest police officer or police station.
  - (4) A person is not obliged to provide information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.
  - (5) A police officer may assist a law enforcement officer perform the law enforcement officer's function.
  - (6) A law enforcement officer who arrests a person under subsection (2), must not after doing so continue investigating the case against a person, unless the law enforcement officer does so in accordance with a warrant obtained from a Magistrate.
  - (7) The procedures for arresting or detaining a person under this section must comply with the *Criminal Procedure Code* (Cap.7).

**55O Law enforcement officer to make a report**

- (1) A law enforcement officer must, for each day he or she is on duty, make a written report to the City Clerk on the performance of the law enforcement officer's function during the day exercise of the law enforcement officer's powers in the course of doing so.
- (2) The City Clerk must retain a copy of the report.

**55P Evidence of identity of law enforcement officer**

- (1) Every person who is a law enforcement officer must, when performing his or her function and duties:
  - (a) have on his or her person evidence of the person's appointment as a law enforcement officer and the person's identity; and



- (b) produce that evidence if requested to do so.
- (2) If a person ceases to be a law enforcement officer, the person must surrender all things and documents (including the evidence of the person's appointment and identity) given to the person for carrying out his or her and function and duties as a law enforcement officer.

**55Q Offences relating to law enforcement officers**

- (1) A person commits an offence if the person:
  - (a) assaults, obstructs or hinders a law enforcement officer performing his or her function; or
  - (b) aids or incites another person to assault, obstruct or hinder a law enforcement officer performing his or her function; or
  - (c) uses abusive, threatening or insulting language to a law enforcement officer performing his or her function; or
  - (d) if required by a law enforcement officer to give or produce information or to answer a question:
    - (i) gives, produces or provides false information; or
    - (ii) fails to comply with the requirement to the best of the person's knowledge, information and belief.

Maximum penalty: 20,000 penalty units or imprisonment for 5 years, or both

- (2) A person commits an offence if:
  - (a) the person is a law enforcement officer; and
  - (b) the person directly or indirectly asks for or takes an unlawful reward or payment.

Maximum penalty: 50,000 penalty units or imprisonment for 10 years, or both

- (3) A person commits an offence if the person directly or indirectly offers or gives a law enforcement officer an unlawful reward or payment.

Maximum penalty: 50,000 penalty units or imprisonment for 10 years, or both

(4) In subsections (2) and (3), "***unlawful reward or payment***":

(a) means any reward or payment of any kind, whether monetary or otherwise, which:

(i) is asked for, taken, offered or given in connection with the recipient's duties or work as a law enforcement officer; and

(ii) the recipient is not lawfully entitled to receive; and

(b) includes a promise or security for that reward or payment.

(5) A person commits an offence if:

(a) the person is a law enforcement officer; and

(b) the person enters into or acquiesces in any agreement to:

(i) do any act or thing; or

(ii) abstain from doing any act or thing; or

(iii) permit or connive in the doing of any act or thing; or

(iv) conceal any act or thing; and

(c) the conduct set out in paragraph (b)(i), (ii), (iii) or (iv) is or would be contrary to the proper execution of the person's duties and function as a law enforcement officer.

Maximum penalty: 50,000 penalty units or imprisonment for 10 years, or both

(6) A person commits an offence if:

(a) the person proposes or enters into any agreement with a law enforcement officer in order to induce the law enforcement officer to:

(i) do any act or thing; or

- (ii) abstain from doing any act or thing; or
  - (iii) permit or connive in the doing of any act or thing; or
  - (iv) conceal any act or thing; and
- (b) the conduct set out in paragraph (a)(i) to (iv) is or would be contrary to the proper execution of the law enforcement officer's duties and function as law enforcement officer.

Maximum penalty: 50,000 penalty units or imprisonment for 10 years, or both

#### **Division 4 Detention of persons**

##### **55R City Council may detain persons**

- (1) The City Council:
  - (a) may detain persons aged 18 years or more arrested by law enforcement officers; and
  - (b) may establish facilities for detaining those persons; and
  - (c) has a duty to take care of and protect the persons detained and must fulfil that duty.
- (2) The detention of a person under this section must be in accordance with:
  - (a) the Constitution; and
  - (b) the United Nations Standard Minimum Rules for Treatment of Prisoners (General Assembly resolution 70/175, adopted 17 December 2015).
- (3) The manner of construction of the City Council's detention facilities must be to a standard and in a manner that enables the City Council to comply with subsection (2).

##### **55S City Council's procedures for detaining persons**

- (1) Where the City Council establishes detention facilities, the City Council must:

- (a) establish procedures for:
  - (i) admitting and managing detainees, including their access to visitors and religious observance; and
  - (ii) maintaining good order and security at the facilities; and
  - (iii) managing the health and welfare of the persons detained; and
- (b) establish and maintain records of detained person's identity and reason for the person's detention, warrants, appearances, sentences and other information about the detention of the person.

**55T Visits and inspections of detention facilities**

- (1) In this section:
  - "visitor"** means:
    - (a) the Minister or a person authorised in writing by the Minister; or
    - (b) a Judge or Magistrate; or
    - (c) the Ombudsman or a person authorised in writing by the Ombudsman; or
    - (d) an official of the International Committee of the Red Cross.
- (2) A visitor may enter and inspect the City Council's detention facilities at any time.
- (3) When visiting the facilities, the visitor:
  - (a) must inquire into the treatment, behaviour and conditions of the persons detained at the facilities; and
  - (b) may not interfere with or give instructions about the control or management of the persons detained.
- (4) The visitor must, as soon as practicable after the visit, make a written report on the visit to the Minister.

- (5) The Minister must ensure that a copy of the report is given to the City Council.

## **Division 5          Prosecution of offences etc**

### **55U          Approval to prosecute**

An offence under an Ordinance may not be prosecuted under this Division unless the City Clerk has approved it.

### **55V          Law enforcement officer may charge and prosecute**

- (1) A law enforcement officer may:
- (a) charge a person with the alleged commission of an offence under an Ordinance; and
  - (b) appear, as the legal representative of the City Council, before a magistrate and prosecute the offence.
- (2) The procedures for charging or prosecuting an offence referred to in subsection (1) must comply with the *Criminal Procedure Code* (Cap. 7).".

### **7            Section 58 amended**

Section 58 of the Principal Act is amended by omitting "In any prosecution by or on behalf of the City Council and in any civil" and substituting "In any civil".

### **8            New sections 68A and 68B inserted**

The Principal Act is amended by inserting after section 68:

#### **"68A          Impersonation of officers etc**

A person commits an offence if the person:

- (a) represents, by words or conduct, that the person or another person is a member, officer or employee of the City Council; and
- (b) knows the representation is false.

Maximum penalty: 5,000 penalty units or imprisonment for 6 months, or both.

**68B Protection of officers etc from liability**

(1) In this section:

**“person”** means a person who is or was:

- (a) a member, officer or employee of the City Council; or
- (b) a visitor to detention facilities under section 55R.

(2) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power or performance or purported performance of a function under this Act or an Ordinance.

(3) Subsection (2) does not affect any liability the City Council would, apart from that subsection, have for the act or omission.”.

**9 New Schedule 7 inserted**

The Principal Act is amended by inserting after Schedule 6:

**“SCHEDULE 7**

(Section 55G)

**FORM OF INFRINGEMENT NOTICE**

**HONIARA CITY COUNCIL**

**INFRINGEMENT NOTICE**

*Honiara City Act 1999*

(Section 55G)

Section ..... of the ..... Ordinance .....

**UNIQUE REFERENCE NUMBER OF THIS NOTICE:** .....

**Time and date:** *(specify time and date law enforcement officer gives person the infringement notice)*

**To:** *(name of person alleged to have committed an offence)*

**Address:** *(specify address of person to whom infringement notice given)*

**Drivers licence:** *(specify driver's licence of person to whom infringement notice is give)*

**Vehicle registration number:** *(specify registration number of vehicle person to whom infringement notice is given is driving)*

1. You are alleged to have committed an offence under section..... of the .....*Ordinance*..... .  
The offence is an offence prescribed by section .....of the Ordinance as an offence for which an infringement notice may be given to you under section 55F of the *Honiara City Act 1999*.

*(specify particulars of offence and facts on which allegation that offence has been committed is based)*

2. The fixed penalty payable for the alleged offence is \$..... .
3. The full amount of the penalty is payable by you on or before 12 pm on this day, being ..... *(specify date infringement notice is given to the person)*.
4. You may pay the full amount of the fixed penalty to a law enforcement officer or to the City Council (by paying the cashier at the City Council office). The law enforcement officer or the City Council will give you a receipt for the payment.
5. If you pay the full amount of the fixed penalty on or before 12 pm on *(specify the date)* proceedings to prosecute you for the offence cannot be commenced.

If you do not pay the full amount, you can be charged and prosecuted for the alleged offence.

Payment of the full amount of the fixed penalty is not an admission of guilt.

This infringement notice is given to you on behalf of the Honiara City Council  
by *(insert name of law enforcement officer giving infringement notice)*

Signature of law enforcement officer:”.

Honiara, Solomon Islands  
Printed under the authority of the  
Solomon Islands Government

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