

## No. XIII.

MUNICIPALITIES. An Act for establishing Municipal Institutions.  
[27th October, 1858.]

Preamble. **W**HEREAS it is expedient to establish Municipal Institutions in certain Cities Towns and Districts of New South Wales Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

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1. Any City Town or Hamlet now or hereafter established or any Rural District may as hereinafter provided be constituted a Municipality. Cities Towns or Districts may be incorporated.

2. The Governor with the advice of the Executive Council may on the receipt of a petition signed by not fewer than fifty householders resident within any such City Town Hamlet or Rural District praying that the same may be declared a Municipality under this Act and stating the number of the inhabitants thereof cause the substance and prayer of such petition to be published in the *Government Gazette* And unless a counter-petition signed by a greater number of householders resident as aforesaid be received by the Colonial Secretary within three months from the date of such publication the Governor with the advice aforesaid may by proclamation published in like manner declare such City Town or Hamlet or such Rural District to be a Municipality by a name to be mentioned in such proclamation And may also by the same or any other proclamation define the limits and boundaries thereof And upon such publication the Municipality shall be constituted accordingly. Proclamation of Municipalities on petition. Limits and boundaries defined.

3. If any such petition shall contain a request that the desired Municipality shall be divided into Wards or if in the case of a Municipality already constituted a petition containing a like request shall be presented to the Governor from the Council or from and signed by not fewer than fifty electors of such Municipality the Governor with the advice aforesaid may by the first or by a subsequent proclamation as the case may be duly published as aforesaid declare such Municipality to be and the same shall accordingly be divided if the population thereof exceeds one thousand into three Wards and if below that number into two Wards and each such Ward shall return at any first election three Councillors and at every subsequent election one Councillor. Municipalities may be divided into Wards.

4. On the receipt of a petition signed by fifty householders resident within any defined area adjoining to any such Municipality praying that such area may be united therewith the Governor with the like advice and after the like publication of such petition and with the consent of the Council of such Municipality and unless a counter-petition signed by a greater number of persons so situated as aforesaid be received by the Colonial Secretary within three months from the date of such publication may by like proclamation published as aforesaid declare such area to be united therewith and form part thereof And upon such proclamation being so published such area shall be united with and form part of the same Municipality. Adjoining area may be united.

5. On receipt of a petition signed by fifty householders resident in any Municipality created under this Act praying that such Municipality may be divided the Governor with the advice aforesaid and after publication of such petition as aforesaid and unless a counter-petition signed by a greater number of resident householders as aforesaid be received by the Colonial Secretary within three months from the date of such publication may by like proclamation declare such Municipality to be so divided and by the same or any other proclamation so published may define the boundaries of each division and thereupon each such division shall become and be a Municipality within and for all purposes of this Act. Municipalities may be divided.

6. After the constitution of any Municipality by any such proclamation all previous proceedings hereinbefore required shall be deemed to have been duly taken and no objection shall be allowed on the ground of any defect or irregularity in such proceedings or any non-compliance with the provisions of this Act. No objection allowed to preliminary proceedings.

7. The electors for the time being of every such Municipality shall immediately upon such publication as aforesaid become and be a body Municipality incorporated.

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body corporate under such name as the Governor shall with the like advice in such proclamation direct and shall by such name have perpetual succession and a common seal and be capable in law of suing and being sued and of purchasing and holding land situate within the limits of the same Municipality and in anywise alienating the same and of exercising all corporate functions in conformity with this Act in the name of the Council of the same Municipality.

Number of Council-  
lors.

8. Every such Council shall consist of six members where the population of the Municipality does not exceed one thousand and if above that number then of nine members.

Who to be Coun-  
cillors.

9. No person shall be eligible to be elected Chairman Councillor or Auditor for any such Municipality unless he shall hold a qualification as an elector for the same.

Who to be electors.

10. All persons named on any Electoral Roll for the time being within or for any such Municipality having a freehold leasehold or household qualification shall be and be deemed electors of such Municipality at the first election and for all future elections all such persons being also rate-payers as hereinafter mentioned shall be and be deemed to be electors thereof.

Definition of rate-  
payers.

11. Rate-payers for the purposes of this Act shall be persons who are liable to be assessed for the payment of some rate or who are at the time of claiming to vote assessed for the payment of some rate no portion whereof shall at that time be in arrear And every person named in the Electoral Roll having a freehold leasehold or household qualification shall *prima facie* be deemed a rate-payer.

Nomination of can-  
didates.

12. On a day to be notified by the Governor with the like advice for each such Municipality within three months after its incorporation and twice published in the *Gazette* and once in some local newspaper nearest thereto such day not being less than twenty days nor more than forty days from the date of such first publication and on the first Tuesday in February in every succeeding year the Returning Officer—who at the first election shall be named in the same notice and at every subsequent election shall be the Chairman—shall preside at a meeting of electors to be holden at noon in the Court House or Town Hall or some other place fixed for the purpose by public notice And at such meeting any electors may nominate any other electors as candidates for election as Councillors.

Election if no con-  
test.

13. If at such meeting as aforesaid no more candidates be nominated than the number of Councillors to be elected the Returning Officer shall declare the candidates nominated to be duly elected And in the event of there being more candidates nominated than the number to be elected the Returning Officer shall call for a show of hands for each candidate separately and thereafter shall declare upon which candidates the election has fallen and such candidates shall be elected accordingly Unless a poll be demanded by any candidate or by any four electors on his behalf in which case an election by ballot shall be holden as hereinafter provided.

Time of contested  
election.

14. Every election by ballot shall be holden on the seventh day next after the day of nomination And the voting at every such election shall commence at nine o'clock in the forenoon and shall finally close at four o'clock in the afternoon of the same day.

Arrangements for  
polling.

15. At every such election the Returning Officer shall appoint such other Presiding Officers and such Polling Clerks as may be required for taking the poll and may make and enforce all necessary regulations and fix the polling places and provide proper and convenient rooms or booths for polling. Provided always that no election shall be holden nor any voting take place in any church chapel or other place of public worship.

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16. In case the Returning Officer or any other Presiding Officer shall be prevented from attending any of his duties by illness or other sufficient cause he may by writing under his hand appoint a substitute to act for him And such substitute shall thereupon for the time being have all the power and authority of his principal.

Substitutes for Presiding Officers.

17. Every candidate for election or any elector on his behalf or in his absence any elector by whom he was nominated may appoint one person to be Scrutineer at the election And every such Scrutineer shall before acting make and subscribe in the presence of the Presiding Officer of the Ward a declaration in the form of the Schedule hereto marked A.

Scrutineers may be appointed.

18. At every polling place there shall be provided and set apart a separate ballot-room or compartment with writing materials into which no person may enter or remain except the Presiding Officer the Poll Clerk any Scrutineer so appointed and any electors while preparing their ballot papers as hereinafter provided but no longer And every person otherwise than as aforesaid wilfully entering or remaining in such room shall be guilty of a misdemeanor and may be forthwith given into custody and dealt with according to law.

Ballotting rooms.

19. Before and in time for every such election the Returning Officer shall cause to be printed or written ballot papers according to the form of the Schedule hereto marked B and also papers containing the declaration set forth in the Schedule hereto marked C And the Returning Officer shall on the morning of the day of election or at the earliest on the day next preceding such election deliver to the Presiding Officer of each polling place so many of such ballot papers signed by himself on the back thereof by a stamp or otherwise as shall be fully equal to the number of enrolled electors likely to vote at such polling place after omitting every person whose stated qualification is only that of salary lodging or board and lodging And shall sign in like manner and keep for himself a like sufficient number for the polling place at which he is to preside.

Ballot papers to be printed and furnished.

20. The Returning Officer shall provide for each polling place a ballot box the front of which shall be of glass and on the top of which there shall be an opening sufficient to receive the ballot papers folded as hereinafter mentioned And such box being previously locked by the Returning Officer with a key which shall be kept by himself and of which no other person shall have a counterpart shall be placed on a table before the Presiding Officer And every elector on applying to vote after having made and signed the declaration last aforesaid in the presence of the Presiding Officer or some person appointed by him for that purpose shall receive one of the ballot papers signed as aforesaid and shall in the ballot-room aforesaid strike through the names of all persons contained in such ballot paper except of the persons or person for whom he intends to vote and then fold up the same so as to conceal the interior and disclose only the Returning Officer's name so signed upon the back And shall then return to the polling table and there openly in the presence of the Presiding Officer Poll Clerk and Scrutineers present deposit such ballot paper in the ballot box Provided that in the case of any elector who is blind or cannot write the declaration shall be read over to him and his verbal assent thereto being obtained the Presiding Officer or Poll Clerk shall under his own name and hand write such elector's name in the elector's signing place and attest the same And such signature and attestation shall bind such elector to such declaration and to all the consequences thereof if false And such Presiding Officer or Poll Clerk shall also if such elector cannot read strike through upon such ballot paper the names of all persons so nominated except such as the elector shall

Ballot box and mode of voting.

Proviso as to blind men and marksmen

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Voter to be marked  
off on roll.

declare his intention of voting for Provided also that before any ballot paper shall be deposited in the box the Presiding Officer or Poll Clerk shall upon a certified copy of the Electoral Roll make a mark against the name of the person then voting which mark shall be *prima facie* evidence of the identity of such voter with the person whose name shall be so marked on the Electoral Roll and of the fact of his having voted at such election.

Nothing required of  
voters beyond  
declaration.

21. No inquiry shall be permitted from any person applying to vote who shall duly make as aforesaid the declaration hereby required And every person wilfully making such declaration falsely shall be and be deemed guilty of perjury and be liable to be dealt with accordingly.

Returning Officer  
shall only vote in  
case of equality.

22. Except as hereinafter provided the Returning Officer shall not vote Provided that in the event of the number of votes being upon final examination found equal for any two or more candidates any of whom would if no such equality existed have been found elected the Returning Officer shall have a casting vote and shall state in writing which of such candidates shall be declared to be duly elected.

Ballot boxes to be  
transmitted to the  
Returning Officer.

23. Each Presiding Officer shall immediately on the close of the poll transmit to the Returning Officer the ballot box still locked and shall also send carefully sealed up the Electoral Roll marked at his polling place signed by him and the Poll Clerk—the remainder of the ballot papers delivered to him by the Returning Officer and not used—and all declarations so signed as aforesaid And also all books kept by him during the polling with an exact statement of the numbers of electors who have voted—the number of ballot papers originally delivered to him—the number thereof used—and the number left unused and returned And such statement shall be signed by himself and the Poll Clerk and verified by the signatures of the Scrutineers then present.

Final state of the  
poll.

24. The Returning Officer shall immediately after receiving the ballot boxes and sealed up documents and papers aforesaid place the same in a chest for the purpose provided with three different locks and the Returning Officer and two of the other Presiding Officers shall lock the said chest with the three keys And such keys shall be kept by themselves respectively until the day next after the election And then the whole contents of the said chest shall in the presence of such of the Scrutineers as may then attend be examined at a place and time whereof public notice shall have been previously given and the result of the election ascertained therefrom by the said officers or the majority of them And the Returning Officer shall on the then next day declare publicly which of the said persons so nominated are duly elected Councillors.

Declaration of poll.

Election not to be  
questioned for defect  
of title.

25. No election under this Act shall be liable to be questioned by reason of any defect in the title or any want of title of any person by or before whom such election shall have been holden if such person shall have really acted at such election nor by reason of any formal error or defect in any declaration or other instrument or in any publication under this Act or intended so to be nor by reason of any such publication being out of time.

Invalidity no plea in  
action.

26. No advantage shall be taken of the invalidity of any election under this Act in any action or suit which may be brought by or against the Council but every such action or suit shall be tried as if no such objection existed.

Bribery and  
corruption.

27. For the purpose of preventing bribery and corruption all the acts enumerated as acts of bribery and corruption in any Electoral Act in force for the time being with reference to elections of Members to the Legislative Assembly shall be deemed to be acts of bribery and corruption *mutatis mutandis* with reference to all elections under this

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Act And every person whosoever guilty of any such act shall be deemed guilty of a misdemeanor And the acts of all authorized agents of a candidate shall be held to be acts of their principal if it be proved that such acts were committed with his consent.

28. Every person who having or claiming to have any right to vote in any election of Chairman Councillor or Auditor under this Act shall ask or take any money or other reward by way of gift loan or other devise or agree or contract for any money gift office employment or other reward whatsoever to give or to forbear to give his vote in any such election and every person who by himself or by any other person employed by him shall by any gift or reward or by any promise agreement or security for any gift or reward corrupt or procure or offer to corrupt or procure any other person to give or to forbear to give his vote in any such election shall for every such offence forfeit the sum of fifty pounds to be recovered with full costs of suit by any one who shall sue for the same.

Penalty for receiving or offering reward for voting or forbearing to vote.

29. Every person who shall vote or offer to vote a second time at the same election for any Councillor or who shall vote or offer to vote a second time at the same election for any Auditor or who shall personate or attempt to personate any other person for the purpose of voting at any such election shall be guilty of a misdemeanor.

Penalty for voting twice or personating voters.

30. All expenses of and incidental to the incorporation of any Municipality under this Act and the first election of Councillors and Auditors shall be certified under the hand of the Chairman and shall be paid out of the Consolidated Revenue Fund by warrant under the hand of the Governor directed to the Colonial Treasurer.

First expenses out of public funds.

31. So soon after each such election as conveniently may be the Councillors shall choose and appoint in such manner as they may deem expedient some one from among themselves to be their Chairman who shall go out of office at the next annual election of Councillors but may then be re-elected And the Chairman and Councillors shall together constitute the Council.

Councillors to choose their Chairman.

32. The Chairman of every such Municipality shall *ex officio* be a Justice of the Peace in and for such Municipality.

Chairman to be *ex officio* Justice of the Peace.

33. The Governor with the like advice in any such proclamation as aforesaid may declare that the Council of any Municipality shall consist of a Mayor and Aldermen and in every such case unless the context otherwise indicate the word "Chairman" whenever herein used shall mean Mayor and the word "Councillor" shall mean Alderman and the term "Council Clerk" shall mean Town Clerk.

Construction of words Chairman and Councillor.

34. In each Municipality if the Council shall consist of six Councillors two shall retire and if of nine three shall retire on the first Tuesday in February in each and every year the first to retire being the two or the three who had the smallest number of votes at the first election until all then elected shall have retired And in any case of doubt created by an equality of votes or by an election without a poll the decision shall be by lot And thereafter the Councillors longest in the Council shall first retire And every retiring Councillor may if otherwise qualified by re-elected.

What Councillors to retire annually.

35. On the day so fixed for the retirement of Councillors in each and every year an election of new Councillors by the like electors shall take place to fill the vacancies so created and shall be conducted in the like manner as nearly as may be as the first election of Councillors except that the Chairman of the Council for the time being shall be the Returning Officer.

Subsequent annual elections.

36. Any Municipality may be divided by the Council thereof if consisting of six members into two Wards and if consisting of nine members into three Wards subject to the approval of the Governor in Council published in the *Government Gazette* with such regulations as

Division into Wards may be made.

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to elections as may be rendered necessary by the change Provided that at every subsequent annual election each such Ward shall return one Councillor.

Election of Auditors.

37. On the day fixed for the first and each subsequent election of Councillors the electors of every Municipality shall elect two fit persons being electors for the same to be Auditors of the accounts of such Municipality and such Auditors shall continue in office until the then next ensuing day of election And the election of Auditors shall be conducted in the same manner as nearly as may be as the election of Councillors.

Accounts to be audited and published.

38. Every Municipal Council shall exhibit to the Auditors all books of account and vouchers or other documents in support thereof of which they may be in possession And not later than the thirty-first day of January and thirty-first day of July in every year a detailed account of the revenue and expenditure of such Council for the half year ending on the thirtieth day of June and thirty-first day of December last past respectively certified by the Chairman of the Council to be correct and by the Auditors to correspond with the books of account and vouchers or other documents as aforesaid exhibited to them shall be published in the *Government Gazette* and in some newspaper published or circulating in the neighbourhood And no endowment as hereinafter provided shall be paid to any such Council until the accounts in the form and subject to the requirements hereby imposed shall have been so published.

Disqualification for election as Councillors.

39. Every person being a Judge or Chairman of any Court of Justice or holding any office or place of profit under or in the gift or disposal of the Council or being an Officer on full pay in the Naval or Military Service or being directly or indirectly by himself or his partner engaged or interested in any contract or employment with by or on behalf of the Council or being of unsound mind shall be disqualified from being a Councillor or Auditor But this enactment shall not disqualify any elector by reason of being a proprietor or shareholder of any joint stock company contracting with the Council.

Penalty on Councillors taking contract.

40. Every person who being Chairman or a Councillor or Auditor under this Act shall continue to be or shall become directly or indirectly by means of partnership with any other person or otherwise howsoever wilfully or knowingly engaged or interested in any contract or agreement or employment with by or on behalf of the Council except as proprietor or shareholder of any company contracting as aforesaid shall be liable to a penalty of any sum not exceeding one hundred pounds and not less than fifty pounds and shall be for seven years after conviction disqualified from holding any office in or under the Council.

Extraordinary vacancies of Councillors.

41. If any extraordinary vacancy shall be occasioned in the office of Councillor or Auditor the electors entitled to vote shall upon a day to be fixed by the Chairman of which seven clear days written notice at the least shall be affixed on the building occupied as the place of meeting of the Council and otherwise notified as may be determined by any by-law under this Act elect to supply such vacancy another Councillor or Auditor who shall hold office until the time when his predecessor would have gone out of office and shall then go out of office but may be re-elected if still qualified.

Extraordinary vacancy of Chairman.

42. Upon any extraordinary vacancy in the office of Chairman the Councillors shall at their next meeting elect out of their own body another person to be Chairman for the remainder of the then current year.

Adjourned election in case of accident.

43. If from any cause any election under this Act shall not take place on the day appointed for the same it shall stand adjourned until

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until the same day of the following week and in any such case occurring after the first election the Councillors who are to retire or the Chairman as the case may be shall continue in office until such adjourned election.

44. No person elected as Councillor Chairman or Auditor under this Act shall act as such until he shall before a Commissioner of the Supreme Court or a Justice of the Peace have made and subscribed a declaration in the form of the Schedule hereto marked D.

Declaration of office for Chairman and Councillors.

45. Every person duly qualified and duly elected to the office of Councillor Chairman or Auditor shall accept such office by making and subscribing such declaration within thirty days after notice of his election or shall in lieu thereof pay to the Council a fine of twenty-five pounds in the case of Councillor or Auditor and a fine of fifty pounds in the case of Chairman and such offices respectively shall be deemed vacant and shall be filled up by a fresh election.

Penalty for refusing to accept office.

46. No Minister of Religion and no person disabled by deafness blindness or other permanent infirmity of body nor any person above the age of sixty years or who shall have already served the like office within three years next before the day on which he shall be elected or shall have paid the fine for not accepting or for resigning such office or for absence therefrom within the same period nor any Member or Officer of the Legislative Council or Legislative Assembly nor any person whose usual place of abode is not situate within the Municipality for which he shall have been elected shall be liable to any fine or penalty for neglecting or refusing to serve as Councillor or Chairman.

Persons exempt from office.

47. Every person elected into any corporate office under this Act may at any time resign such office and the resignation shall be held to be complete from the date of its being received by the Council Clerk or person acting as such. Provided that the person so resigning shall be liable to the same penalties as he would have been liable to pay for non-acceptance of the same office unless he shall permanently cease to dwell within the Municipality or shall become entitled to claim exemption from such penalties under any provision herein contained.

Provision for resigning office.

48. Any person holding the office of Chairman Councillor or Auditor having his estate placed under sequestration as insolvent under or taking the benefit of any Act for the relief of insolvent debtors or compounding with his creditors or being absent without leave from the Municipality for more than three months at one time (unless in case of illness certified by a duly qualified medical practitioner) shall thereby become disqualified and cease to hold such office and in the case of absence except by permanently ceasing to dwell within the Municipality shall be liable to the same fine to be recovered in the same manner as if he had refused to accept such office. And the Council shall thereupon declare such office to be vacant and the same shall be vacant accordingly. But every person so becoming disqualified to hold any office on account of insolvency or compounding as aforesaid shall on obtaining his certificate or on payment of his debts in full or obtaining a release from his creditors be capable of being re-elected.

Disqualification of Chairman and Councillors.

49. Any person acting as Chairman Councillor or Auditor without having made the declaration hereby required or not being duly qualified at the time of making such declaration or acting in or holding any such office after he shall cease to be qualified according to this Act shall for every such offence forfeit the sum of fifty pounds to be recovered together with full costs of suit by any elector who shall sue for the same within three months after the commission of the offence.

Penalty on disqualified persons acting as officers.



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Defect in elections  
not to invalidate pro-  
ceedings.

50. All proceedings of the Council or of any person acting as Chairman Councillor or Auditor shall notwithstanding it be afterwards discovered that there was some defect in his election or any disqualification be as valid as if every such person had been duly elected and qualified to be Chairman Councillor or Auditor respectively.

Council to decide as  
to payment of Chair-  
man &c.

51. The Council may determine whether any and what remuneration shall be allowed to the Chairman or to the Auditors.

Power to Council  
to appoint officers.

52. The Council may and shall appoint such officers and servants as in their discretion they may deem necessary and proper for the execution of the powers and duties hereby vested in the Council and assign remuneration to such officers and servants by way of salaries or wages which shall be in lieu of all fees perquisites and other emoluments whatever.

Powers as to  
nuisances.

53. The Council shall have power by themselves or their officers to abate and remove all nuisances within the Municipality or to cause and compel such nuisances to be abated and removed by the owners or occupiers of the premises upon or from or in respect of which the nuisance shall exist or have arisen and also to cleanse and keep cleansed or cause and compel to be cleansed and kept cleansed by such owners or occupiers every or any such nuisance.

Definition of  
nuisances.

54. The word "nuisance" in this Act shall include the following matters—Any premises in such a state as to be a nuisance or injurious to health any pool ditch gutter watercourse privy urinal cesspool drain or ashpit so foul as to be a nuisance or injurious to health any animal or the carcass of any animal or any part thereof in such a state or so kept or left as to be a nuisance or injurious to health—and any accumulation or deposit which is a nuisance or injurious to health.

Saving of nuisances  
at Common Law.

55. Nothing in the last two preceding sections shall be construed to prevent or affect prosecutions by information or indictment or any other proceeding in respect of nuisances now or hereafter existing which may be abated or made the subject of presentment or prosecution at the Common Law.

Chairman may  
suspend officers.

56. It shall be lawful for the Chairman to suspend from office at any time any officer or servant of the Council who may in his opinion be guilty of misconduct or neglect and if necessary temporarily to appoint another officer or servant to fulfil the duties of the officer or servant so suspended and to take security where necessary for the faithful discharge of the duties of such officer or servant during his temporary appointment. Provided that at the next meeting of the Council after such suspension the Chairman shall report the matter to the Council and if the officer or servant so suspended be dismissed by the Council no salary or wages shall be due or paid to him from and after the date of his suspension. And every officer or servant so temporarily appointed by the Chairman shall hold office and receive remuneration (which shall in no case exceed that paid to the officer or servant so suspended) only until the Council shall decide whether the person suspended shall be reinstated or be dismissed and a successor appointed in his stead.

If officers prevented  
from acting Chair-  
man may appoint  
others.

57. Whenever in consequence of death absence or otherwise it shall become impossible for any Councillor Council Clerk or other officer or person to perform any duty which by this Act he is directed to perform it shall be lawful for the Chairman to appoint any other Councillor or person to perform the same. And if for any like reason the Chairman shall be prevented from performing any duty imposed on him by this Act the Councillors shall by the majority of their voices appoint one of themselves to perform it.

Officers intrusted  
with money to give  
security and to  
account.

58. Every officer or servant who by reason of his office or employment under the Council may be intrusted with the custody or control

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control of any moneys shall give such security for faithfully and duly accounting for all such moneys as the Council may think sufficient and shall within seven days after having received any moneys or within such shorter time as the Council may appoint pay over the same to the Treasurer or into some Bank selected by the Council And shall also as and when the Council may direct deliver a list signed by him containing the names of all persons who have neglected or refused to pay any sums due by them And shall when and as required by the Council make out and deliver a true and perfect account in writing signed by him of all moneys received by him for the purposes of this Act distinguishing how and to whom and for what purposes such moneys have been disposed of And shall together with such account deliver the vouchers or receipts for all payments made by him and pay over to or receive from the Treasurer or Chairman the balance of such accounts if any And if any such officer or servant shall fail to render such account or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power or to pay over any such moneys or balance of moneys as aforesaid or if for the space of seven days after being thereunto required he shall fail to deliver up to the Council all books papers writings property effects matters and things in his possession or power belonging to the Council he shall be liable on proof thereof before any Justice of the Peace and on his still failing or refusing to do the act required to be committed to gaol until he shall have done such act And if it appear that he has failed to pay over any such moneys as aforesaid and he still fails or refuses so to do the Justice may cause the same to be levied by distress upon his goods and chattels and in default of any sufficient distress may commit him to gaol without bail for any time not exceeding three months unless such moneys be sooner paid Provided that upon proof on oath to any Justice that there is probable cause for believing that any such officer or servant so charged is about to abscond such Justice may without summons cause him to be forthwith apprehended upon warrant and may upon *prima facie* proof on oath of the charge require him to give bail for his subsequent appearance to answer the same Provided also that no such proceeding shall relieve any surety of the offender from any liability whatsoever.

59. The common seal and all charters deeds muniments and records of the Corporation or relating to the property thereof shall be kept in such place and in such custody as the Council shall direct. Custody of seal and records.

60. Every person who shall wilfully hinder or interrupt or cause or procure to be hindered or interrupted the Council or their managers surveyors agents servants or workmen or any of them in doing or performing any of the works or in the exercise of any of the powers and authorities authorized or vested in them by law shall for every such offence forfeit and pay any sum not exceeding ten pounds to be recovered before any two Justices of the Peace. Or Penalties for interrupting Council or their officers.

61. All acts authorized or required by law to be done by the Council and all questions of adjournment or others shall be done and decided by the majority of the members present at any meeting duly held the whole number present at such meetings not being less than half of the whole number of such Council Provided that if there be not a quorum present within half an hour of the time appointed for holding any meeting or if it should appear at any time during the holding of any meeting that there is not a quorum of members present the Chairman shall have power to adjourn such meeting or intended meeting to some other day Provided also that every such meeting of the Council shall be holden with open doors. Quorum at meetings.

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- Who to preside.** 62. The Chairman if present shall preside at all meetings of the Council and in his absence such Councillor as the members present shall choose shall preside And in case of an equality of votes the Chairman or Councillor presiding shall have a casting vote in addition to his original vote as Councillor.
- Notice of meetings.** 63. Notice of the time and place of every intended meeting not being an adjourned meeting of the Council shall be given in sufficient time to reach the residence or place of business of every Councillor twenty-four hours at least before such meeting.
- How meetings to be called.** 64. The Chairman may call a meeting of the Council as often as he shall think proper And if he shall refuse or delay to call any such meeting after receiving a requisition for that purpose signed by at least two Councillors such Councillors may call a meeting of the Council by giving like notice as aforesaid signed by themselves stating therein the business proposed to be transacted.
- How summons to be served on members of Council.** 65. In every case a summons to attend any meeting of the Council specifying the business proposed to be transacted shall be left at the usual or last known place of abode of every member of the Council or delivered to him personally twenty-four hours at least before such meeting and no business shall be transacted at any such meeting other than is specified in such notice.
- Quarterly meetings.** 66. There shall be four quarterly meetings in every year at which the Council shall meet for the transaction of general business and such meetings shall be holden at noon on such days of such months as shall be determined by any by-law made under this Act.
- Minutes of meetings.** 67. Minutes of the proceedings of every meeting of the Council shall be taken and being fairly transcribed into a book to be kept for that purpose shall be read at the then next meeting and shall be signed by the Chairman thereof.
- Copies and extracts from books.** 68. Any elector of the Municipality may at all seasonable times without fee make any copy of or take any extract from the Minute Book of the Council and also make any copy or take any extract from any Order of the Council for the payment of money.
- Committees.** 69. The Council may appoint out of their own body such and so many Committees either of a general or a special nature and consisting of such Councillor or Councillors respectively and may delegate to any such Committee such inquiries or power to do any such emergent acts as they may think fit Provided that every such Committee shall report all proceedings to the Council at the earliest possible opportunity.
- Committee meetings.** 70. Every such Committee may sit or meet and adjourn at discretion And at all meetings the Chairman if a member of the Committee and present shall preside and in his absence such Councillor as the members present shall appoint shall preside And all questions shall be determined by a majority of votes and in case of an equality the member presiding shall have a casting vote besides his original vote as a member of the Committee.
- Penalty on Council and officers for neglect of duties.** 71. If the Chairman or any Councillor or Auditor of any Municipality shall neglect or refuse to do any matter or thing which by law he is directed to perform such Chairman Councillor or Auditor shall for every such offence forfeit and pay a sum not exceeding ten pounds And every such penalty may be recovered with full costs of suit by any person who shall sue for the same within three months after the commission of the offence.
- Council to make by-laws for regulation of proceedings and general convenience of the town.** 72. The Council of any Municipality may make by-laws for the regulation of their own proceedings—the collection of their rates—determining the validity of disputed elections—the prevention and extinguishing of fires—the suppression of nuisances and houses of ill-fame—compelling residents to keep their premises free from offensive

or

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or unwholesome matters—the regulation and licensing of porters public carriers carters water drawers and public vehicles—regulating the killing of cattle and sale of butchers' meat and the establishment of slaughter-houses—the regulation of markets market dues fairs and sales—the preservation of public decency and public health—the restraining of noisome and offensive trades—and the general good rule and government of the Municipality.

73. The Council shall have the care and management of the roads public streets bridges ferries wharves jetties piers and public thoroughfares and shall also adopt such means as may seem to them desirable for the establishment and management of public cemeteries the securing of the necessary supply of water for domestic sanitary or irrigation purposes and may make by-laws for carrying out these objects and for the lighting and sewerage of the Municipality.

Public roads &c.  
under control of  
Council.

74. The Council may also make by-laws for the establishment of hospitals for the care of the destitute poor and sick and of asylums for the protection support and moral and religious instruction of destitute or deserted children and for the maintenance and management thereof And the Council may take over any existing hospital or asylum with the consent of the managing bodies thereof and make by-laws for its future maintenance and management.

Public hospitals and  
asylums for destitute  
children.

75. The Council may also make by-laws for the establishment of public libraries museums botanical gardens or other public places of recreation and for the maintenance and management thereof.

Public libraries  
gardens &c.

76. The Council may also make by-laws for regulating the right to be enjoyed by the inhabitants of the Municipality over any land lawfully set apart as a common for the depasturing of sheep cattle and horses or other animals belonging to any of such inhabitants.

Council to apportion  
commonage rights.

77. The Council may also establish tolls rates and dues upon any road market bridge ferry wharf or jetty within and belonging to the Municipality and erect toll gates toll bars or other works necessary for the collection of such tolls rates and dues and may make by-laws for the proper collection and management of such tolls rates and dues.

Council may estab-  
lish tolls &c.

78. For the purpose of constructing and maintaining any works relating to water supply sewerage lighting with gas or otherwise the Council of any Municipality may establish special rates or assessments and may levy the same upon the owners or occupiers of any property deriving any benefit or advantage from such works.

Special rates for  
sewerage water and  
lighting.

79. The Council of each Municipality may and shall annually within three months after the election of their Chairman cause an estimate to be made of the probable amount which will be required for the then current year in addition to any tolls rates or dues which may have been levied or authorized to be levied within the Municipality to carry on the fencing making and repairing of any roads bridges punts wharves piers or other public works within the Municipality and any other expenses necessary in carrying into effect the provisions of this Act and shall raise the amount so estimated by an assessment of all lands houses warehouses counting-houses shops and other buildings within the limits of such Municipality according to their fair average annual value whether occupied or not and notice of such assessment shall be given to the tenant landlord proprietor or occupier of the property so assessed Provided that no such rate shall exceed the sum of one shilling in the pound of such value And the rate so assessed shall be payable by the tenant or other person occupying or in possession of the premises for which such rate is payable and in case there is no such tenant or other person then by the proprietor thereof unless Her Majesty be such proprietor Provided that nothing herein shall prevent any private arrangement between landlords and

Council to estimate  
probable expenses  
for the year and levy  
rates.

*Municipalities.*

tenants as between themselves with respect to their ultimate liability to rates respectively Provided also that the Council may not impose or levy any rate whatsoever on any unoccupied land belonging to Her Majesty nor on any land or building belonging to and in the occupation or use of Her Majesty for any Government or public purpose.

Appeal from rates.

80. If any person shall think himself aggrieved by the value at which his property is assessed for any such rate or assessment as aforesaid it shall be lawful for him to appeal against the same to any two or more Justices of the Peace at the Court of Petty Sessions held within the district in which such property is situated and such Justices shall have power to hear and determine the same and to award relief in the premises as the justice of the case may require and the decision of the Justices shall be final as regards the matter of such appeal Provided that the person so appealing shall give notice in writing to the Council of his intention to appeal seven days at least before the holding of the Court at which such appeal may be heard and determined And provided also that the Chairman of any Municipality shall not act as a Justice of the Peace in any case of appeal against any rate or assessment.

Rates to remain a charge upon unoccupied premises.

81. In case any tenant proprietor or occupier shall fail after thirty days' notice to pay any such rate or assessment the Chairman on proof of such notice having been served on him personally or having been left at his last known residence or upon the premises for which such rate or assessment shall be due may issue his warrant for the levying of the amount by distress of the goods and chattels of such tenant occupier or proprietor and where the proprietor shall not occupy such premises and the tenant or occupier of such premises shall fail in the payment of any such rate or assessment and goods and chattels shall not be found sufficient for the payment thereof such proprietor shall be liable to such payment and to all proceedings for the recovery thereof as if he were the proprietor in occupation of such premises And any such unpaid rate or assessment shall be and remain a charge upon the premises for which the same is payable and may be recovered at any future time upon and after the expiration of thirty days from notice being given to the occupier thereof by distress and sale of any goods or chattels that may then be found upon such premises in the same manner and by the same authority as if the then occupier of such premises had himself been liable to the payment of the rate or assessment so remaining unpaid and the production of the receipt for such over-due rate or assessment paid by or levied from any tenant so rendered liable for any rate or assessment due or having accrued before the commencement of his tenancy shall be a good and sufficient discharge for the amount so paid or levied in payment of rent to the landlord.

Certain public roads &c. exempted from control of Council.

82. Nothing herein shall authorize the interference by any Council with any public road railway bridge ferry cemetery market wharf aqueduct public place or building whatsoever not formed constructed or erected by such Council which may be excepted from the jurisdiction of such Council by any proclamation made or to be made by the Governor with the advice aforesaid or respecting which provision shall have been or shall be made by any Act of Council or of Parliament.

By-laws to be enforced by penalty.

83. All by-laws so to be made by any such Council shall state some maximum penalty for any neglect or breach thereof respectively And every such penalty shall and may be awarded recovered and distributed by summary process before any two Justices of the Peace having jurisdiction within the Municipality Provided that no such maximum penalty shall exceed fifty pounds.

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84. Such by-laws shall not have any force or effect until confirmed by the Governor with the advice aforesaid under his hand And when so confirmed and published in the *Government Gazette* they shall be of the same force as if forming part of this Act.

By-laws to be approved by Governor in Council and gazetted.

85. No person shall be made liable to any incapacity disability forfeiture or penalty under this Act unless the action or prosecution be commenced within three months after such incapacity disability forfeiture or penalty shall be incurred.

Limitation of legal proceedings.

86. Every application to the Supreme Court for the purpose of calling upon any person to shew by what warrant he claims to exercise the office of Chairman or Councillor under this Act shall be made before the end of three calendar months after the election or the time when the person against whom such application shall be directed shall become disqualified and not at any subsequent time.

Limit of time for obtaining *quo warranto*.

87. Every Council may borrow by mortgage or otherwise on the credit of land or personal estate or on the revenue belonging to the Corporation for or towards or incidental to the making carrying on or completing of any permanent improvements of their Municipality any moneys not exceeding in the whole the estimated revenue thereof for three years Provided that no money shall be so borrowed except with the sanction of the Governor with the advice aforesaid in writing under his hand.

Council may borrow money.

88. Any Council or any person authorized by any Council may for any purpose of this Act enter upon and conduct through or make upon or under any private land any drains watercourses wells pumps pipes or any other necessary works Provided that such land be not occupied as a court-yard garden or dwelling-house or as an approach to any dwelling-house And every person affected thereby may recover compensation from such Council upon application to the nearest Court of competent jurisdiction in such amount as such Court shall find to be justly due which finding shall be final And such Court may award costs to either party which together with any sum so found due may be recovered in the same way as in any ordinary case of costs awarded by such Court.

Council may enter private lands for specified purposes.

89. Every person offending against this Act or any by-law made thereunder by refusal neglect or otherwise shall when no specific penalty shall have been provided for such offence be liable to a penalty according to the judgment of any two Justices in no case exceeding twenty pounds.

Penalties for offences against the Act.

90. All offences against this Act or any by-law made thereunder may be heard and determined and all penalties incurred by such offences respectively may be recovered in a summary way before two or more Justices and no such proceeding shall be removed by *certiorari* into the Supreme Court.

How to be recovered.

91. On or before the thirty-first of January and the thirty-first July in every year the Council of every Municipality shall cause to be prepared and transmitted to the Colonial Treasurer a detailed account of all sums of money actually raised within such Municipality by rates or assessments on houses and lands during the half year then last past such account being signed by the Chairman and countersigned by the Treasurer And upon receipt of such account it shall be lawful for the Governor by warrant under his hand addressed to the Colonial Treasurer to direct him to pay from the Consolidated Revenue Fund to the Treasurer of the Municipality by way of endowment to be applied to such corporate purposes as the Council shall determine for the benefit of such Municipality any sum or sums of money equal to but not exceeding the following proportions that is to say in each of the first five years after the incorporation of such Municipality a sum equal to but not exceeding the amount actually raised

Endowment.

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raised by rates or assessments on houses and lands as aforesaid in the year last past—in each of the next succeeding five years a sum equal to but not exceeding one moiety of the amount so raised in the year last past—and in each of the next succeeding five years a sum equal to but not exceeding one-fourth part of the amount so raised in the year last past—and thenceforth the contributions from public funds by way of endowment shall absolutely cease And all such sums from the Consolidated Revenue Fund shall be payable half-yearly and the Colonial Treasurer shall from time to time be allowed credit for any sum or sums of money paid by him in pursuance of any such warrant or order in writing as aforesaid and the receipt of the Treasurer of such Municipality under his hand countersigned by the Chairman shall be a sufficient discharge for the Colonial Treasurer.

Postponement of things chancing to fall on Sundays &c.

92. Whenever any matter or thing shall by this Act or by any by-law made thereunder be directed to be done or to take place on a certain day and that day shall happen to be Sunday Good Friday Christmas Day or any public holiday such matter or thing may be performed on the next day not being any such day as aforesaid And all changes of time rendered necessary by any such alteration may also lawfully be made.

Provisions of 5 & 6 Vic. c. 76 relating to District Councils repealed.

93. All the enactments contained in the Act of the Imperial Parliament fifth and sixth Victoria chapter seventy-six from section forty-one to section fifty both inclusive so far as they relate to New South Wales shall be and they are hereby repealed.

District Council may be dissolved.

94. Provided that upon any City or Town situate in any District within which any District Council exists under the said recited Act being constituted a Municipality under this Act the Governor with the advice aforesaid may in the proclamation constituting the same or in any other proclamation published as aforesaid dissolve any such District Council and thereupon make further and other provision for the execution of any duties or trusts or the exercise of any powers and authorities then executed or exercised or the receipt custody or management of any rents dues or other moneys or any trust estates or other property then received held or managed by such District Council or any of the members thereof as the Governor with the advice aforesaid shall deem necessary and proper.

Act not to affect Sydney Corporation.

95. Nothing herein shall affect the City of Sydney or “The Sydney Corporation Act of 1857.”

Commencement and short title.

96. This Act shall commence on the day of the passing thereof and shall be styled and may be cited as “The Municipalities Act of 1858.”

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## SCHEDULE A.

### *Scrutineer's Declaration.*

I A. B. appointed on behalf of C. D. one of the persons nominated for election this day as Councillor [or Alderman] or Auditor for to be Scrutineer at such election do hereby solemnly declare that I will faithfully assist as such Scrutineer and will not attempt to ascertain for whom any elector shall vote nor by any word or action directly or indirectly aid in discovering the same unless in answer to any question which I am legally bound to answer or in compliance with the provisions of the Municipalities Act of 1858.

*Equity and Banco Proceedings.*

## SCHEDULE B.

*Ballot Paper.*

|   |        |     |
|---|--------|-----|
| Election of Councillors [or Aldermen] and Auditors on the | day of | 185 |
| List of Candidates for Election.                          |        |     |

### Names as Councillors.

### Addresses.

### Names as Auditors.

## SCHEDULE C.

*Voter's Declaration.*

Voter's Number [ ]

I, A. B. \_\_\_\_\_ do hereby solemnly declare that I am the person named in the Electoral Roll for the Electoral District of \_\_\_\_\_ now in force my name being numbered therein as in the margin hereof And that my qualification therein stated is situated (or arises) within the limits of this Municipality And that I have not already voted at this election.

### SCHEDULE D.

*Declaration of Office.*

(Referred to in Section 41.)

I A. B. having been elected Chairman [or Mayor] (or Councillor [or Alderman]) (or Auditor) for the Municipality of C do hereby declare that I take the said office upon myself and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability and that I have not fraudulently or collusively obtained the office to which I have so been elected.