No. 6299.

LOCAL GOVERNMENT ACT 1958.

An Act to consolidate the Law relating to Local Government.

[30*th September*, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *Local Government Act* 1958, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Part Divisions and subdivisions as follows:— Short title commencement and division.

Part I. — The Constitution of Municipalities generally, ss. 8–15.	Division 1.—Incorporation and Government of Municipalities and Boundaries of Districts, ss. 8–12.
	Division 2. — Appointment, &c., of Commissioner where no Council or Quorum of Council, ss. 13–15.
Part II. — Constituting and Altering the Constitution of Municipalities and Proclaiming Townships, ss. 16–50.	Division 1.—General Powers of the Governor in Council, ss. 16–21.
	Division 2. — Newly Constituted Municipalities, s. 22.
	Division 3.—Union of Municipalities, ss. 23–24.
	Division 4.—Severance from Municipal Districts, ss. 25–27.

- Part II. — Constituting and Altering the Constitution of Municipalities and Proclaiming Townships.
  - Division 5.—Annexation to Municipal Districts, ss. 28–31.
  - Division 6.—Subdivision or Re-subdivision of Municipal Districts and Alteration in the Council ss. 32–33.
  - Division 7.—Changes in Name, s. 34.
  - Division 8.—Procedure, ss. 35–44.
  - Division 9.—Advisory Board and Reference of Certain Matters Thereto, &c., ss. 45–50.
- Part III. — The Municipal Council, ss. 51–155.
  - Division 1.—Qualification of Councillors, ss. 51–56.
  - Division 2.—Retirement and Vacancies, ss. 57–62.
  - Division 3.—Travelling Expenses, ss. 63–64.
  - Division 4.—Election and Privileges of Chairman, ss. 65–72.
  - Division 5.—Municipal Roll, ss. 73–110.
    - (1) Persons entitled to be enrolled, ss. 73–77.
    - (2) Preparation of Voters' List, ss. 78–82.
    - (3) Inspection of Voters' List, s. 83.
    - (4) Claims and Objections, ss. 84–86.
    - (5) Revision of Voters' List, ss. 87–96.
    - (6) Voters' Roll, ss. 97–99.
    - (7) Voters' Roll in Exceptional Cases, ss. 100–105.
    - (8) Application of Provisions to Subdivided Municipal District, s. 106.
    - (9) Proceedings validated, ss. 107–108.
    - (10) Offences and Penalties, s. 109.
    - (11) Expenses, s. 110.
  - Division 6.—Election of Councillors, ss. 111–155.
    - (1) Application of Provisions to Unsubdivided and to Subdivided Municipal Districts, s. 111.
    - (2) Time of holding Elections, and Number of Councillors, ss. 112–118.

Part III. — The Municipal Council.
- Division 6.— Election of Councillors.
  - (3) Who shall elect, ss. 119–120.
  - (4) Who shall hold Elections, s. 121.
  - (5) Nomination of Candidates, ss. 122–130.
  - (6) Polling Places and Polling, ss. 131–148.
  - (7) Voting by post and Compulsory Voting at Elections of Councillors, s. 149.
  - (8) Proceedings validated, s. 150.
  - (9) Offences, ss. 151–152
  - (10) Expenses, s. 153.
  - (11) Recount of Votes by Stipendiary Magistrate, s. 154.
  - (12) Recount of Votes in respect of Polls on Proposals under Part II., Part XI. and Part XV., s. 155.

Part IV.—Ouster from Office of Chairman or Councillor, ss. 156–157.

Part V.—Officers of the Municipality, ss. 158–178.
- Division 1. — Officers appointed by the Council, ss. 158–167.
- Division 2.—Municipal Boards, ss. 168–178.

Part VI.—Proceedings of the Council, ss. 179–196.

Part VII. — By-laws, Regulations, and Joint Regulations, ss. 197–233.
- Division 1.—For what Purposes By-laws, &c., may be made, ss. 197–203.
- Division 2.—Manner of making — (*a*) Generally, ss. 204–210; (*b*) Regulations of Governor in Council, s. 211.
- Division 3. — Operation and Extent of Operation, ss. 212–213.
- Division 4.—In what Form, ss. 214–218.
- Division 5.—After Severance, Annexation, Union, &c., ss. 219–221.
- Division 6.—How enforced, ss. 222–227.
- Division 7.—How repealed, ss. 228–231.
- Division 8.—Validity how tested, s. 232.
- Division 9.—Interpretation, s. 233.

Part VIII.—Lands and Property of Municipalities, or of which Councillors as such are Trustees, ss. 234–242.

Part IX.—Funds and Revenues of Municipalities, ss. 243–250.

Part X.—Rates, ss. 251–314.
- Division 1.—Rateable Property, ss. 251–253.
- Division 2.—Valuations, ss. 254–265.
  - (1) General Provisions, s. 254.
  - (2) When and how Council may cause Valuation to be made, ss. 255–258.
  - (3) Effect upon Valuation of Union or Annexation, ss. 259–261.
  - (4) Form of Valuation and Powers and Duties of Valuer, ss. 262–265.
- Division 3.—General Rates, ss. 266–270.
- Division 4.—Extra Rates, ss. 271–276.
- Division 5.—Separate Rates, ss. 277–294.
  - (1) Purposes and Manner of making Separate Rate, ss. 277–289.
  - (2) Levying and expending Separate Rate, ss. 290–293.
  - (3) Borrowing on Separate Rate, s. 294.
- Division 6.—General Provisions as to Rates, ss. 295–302.
  - (1) Provisions applicable to General and Extra Rates only, ss. 295–297.
  - (2) Provisions applicable to General Extra and Separate Rates, ss. 298–302.
- Division 7.—Appeals against Rates, ss. 303–314.
  - (1) Generally, ss. 303–307.
  - (2) Where one Undertaking is rated to different Municipalities, ss. 308–314.

Part XI.—Rating on Unimproved Values, ss. 315–340.
- Division 1.—Interpretation, s. 315.
- Division 2.—Adoption of this Part, ss. 316–319.
- Division 3.—Rescission of Adoption of this Part, ss. 320–325.
- Division 4.—Provisions as to Polls, ss. 326–328.
- Division 5.—Effect of Adoption and of Rescission, ss. 329–331.
- Division 6.—Valuations, ss. 332–338.
- Division 7.—Regulations, ss. 339–340.

Part XII.—Payment and Recovery of Rates and other Moneys, ss. 341–385.
- Division 1.—Recovery of Rates by Legal Process, ss. 341–347.
  - (1) From Person rated, ss. 341-345.
  - (2) When Person rated fails to pay, ss. 346–347.
- Division 2.—Recovery by Legal Process of Moneys other than Rates, ss. 348–351.
- Division 3.—Recovery of Rates and other Moneys against Person appearing to be Owner of the Legal Estate, ss. 352–356.
- Division 4.—Power to Pay and Rights of Persons paying in certain Cases, ss. 357–359.
- Division 5.—Recovery of Rates and other Moneys by taking Possession of the Land, ss. 360-367.
- Division 6.—Recovery of Rates and other Moneys by Selling the Land, ss. 368–385.

Part XIII.—Interest on Rates and other Moneys, s. 386.

Part XIV.—Rates, &c., a Charge on Land: Restriction on Registration of Transfers of Residence Areas, Closer Settlement Areas, &c., ss. 387–390.

Part XV.—Borrowing Powers, ss. 391–461.
- Division 1.—General Provisions as to Borrowing, ss.391–439.
  - (1) Purposes for which Money may be borrowed, ss. 391–393.
  - (2) Extent of Borrowing Powers—
    (*a*) Ordinary, ss. 394–396;
    (*b*) Extended, ss. 397–398.
  - (3) Preparation of Plans, &c., and Publication of Notices, ss. 399–400.
  - (4) Poll of Ratepayers and Owners, ss. 401–406.
  - (5) Further Procedure if no Demand for Poll, or if Ratepayers and Owners fail to forbid, ss. 407–408.
  - (6) Debentures, ss. 409–419.

Part XV.—Borrowing Powers, ss. 391–461.
- Division 1.—General Provisions as to Borrowing, ss. 391–439.
  - (7) Liquidation of Loans, ss. 420–428.
  - (8) Loan Account, ss. 429–431.
  - (9) Investment of Sinking Funds, s. 432.
  - (10) Receiver, ss. 433–435.
  - (11) Borrowing on Overdraft of Current Account, ss. 436–439.
- Division 2.—Borrowing from Municipality whose District adjoins, s. 440.
- Division 3.—Borrowing by Mortgage over "Income," Separate Rate, or Special Improvement Charge, ss. 441–452.
- Division 4.—Borrowing by Debentures secured upon Separate Rate or Special Improvement Charge, ss. 453–458.
- Division 5.—Liability of Councillors, ss. 459–461.

Part XVI.— Accounts and Audit, ss. 462–501.
- Division 1.—Keeping and Ordinary Audit of Accounts: Continuous Audit, ss. 462–482.
- Division 2.—Duties, &c., of Collectors and other Officers, ss. 483–486.
- Division 3.—Qualification, Appointment, Remuneration, and Removal of Auditors and Inspectors of Accounts, ss. 487-490.
- Division 4.—Powers of Auditors and Inspectors of Accounts, ss. 491–493.
- Division 5.—Special Audit, ss. 494–501.

Part XVII.—Contracts, ss. 502–507.

Part XVIII.—Power to Purchase, take on Lease, or take Lands compulsorily, ss. 508–517.
- Division 1.—Interpretation, s. 508.
- Division 2.—Purchasing or taking on Lease Land from Persons willing to sell or lease the same, s. 509.
- Division 3.—Purchasing or taking compulsorily Lands less than a prescribed minimum area, s. 510.
- Division 4.—Taking Land compulsorily, ss. 511–516.
- Division 5.—Power of Private Persons to purchase Narrow Strips of Land abutting on or continuous with Streets, &c., s 517.

Part XIX.—Streets, Roads, Bridges, Ferries, Culverts, Levees, and Jetties, ss. 518–633.

- Division 1.—Dedication and Proclamation of Public Highways, ss. 518–522.
- Division 2.—Opening of New Street or Road: Widening and Diversion of Street or Road: Disposal of Old Street or Road, ss. 523–527.
- Division 3.—Sale of Unnecessary Street, &c., s. 528.
- Division 4.—Opening Private Roads in Shires, ss. 529–531.
- Division 5.—Reducing Width of Street or Road, ss. 532–534.
- Division 6.—Making, Maintenance, and Management of Streets, Roads, Bridges, Ferries, Culverts, Levees, and Jetties, ss. 535–550.
- Division 7.—Materials of Streets, &c., vested in Municipality, s. 551.
- Division 8.—Obstructions, &c., to Streets and Roads, ss. 552–561.
- Division 9.—Fixing the Levels of Streets and Laying out Streets on Private Property, ss. 562–574.
  - (1) General, s. 562.
  - (2) Fixing Levels of Streets, ss. 563-568.
  - (3) Laying out Streets, Roads, &c., on Private Property, ss. 569-574.
- Division 10.—Construction of Private Streets, ss. 575–600.
- Division 11.—Kerbing, Flagging, Paving, and Asphalting Footways, &c., s. 601.
- Division 12.—Securing Dangerous Places near Streets: Filling up Low Ground: Providing access to Land by Bridge or Crossings, ss. 602–604.
- Division 13.—Purchasing or taking Lands other than those required for Opening, &c., Streets or Roads, s. 605.
- Division 14.—Alignment Widening and Opening of Streets, ss. 606–633.
  - (1) Declaration of Alignment of Streets, ss. 607–619.
  - (2) Widening of Streets, ss. 620–631.
  - (3) Opening of New Streets, ss. 632–633.

Part XX.—Making and Maintenance of Streets, Roads, Bridges, Culverts, and Ferries on the Boundaries of Municipal Districts, ss. 634–641.
- Division 1.—Where One Side of Boundary Road or River, &c., is in an Outlying District, s. 634.
- Division 2.—Where Road, River, &c., is on the Boundary of Two or more Municipal Districts, ss. 635–641.

Part XXI.—Sewers, Drains, Water-courses, &c., ss. 642–656.
- Division 1.—Sewers, &c., vested in Municipality, ss. 642–643.
- Division 2.—Underground Sewerage, s. 644.
- Division 3.—Drains, Water-courses, &c., ss. 645–647.
- Division 4.—Power to remove Obstructions in River, &c., when Road, Bridge, &c., is in Danger from Floods, s. 648.
- Division 5.—Drainage of Houses, Buildings, or Lands, ss. 649–652.
- Division 6.—Interference with or Obstruction of Sewers, Drains, Water-courses, Flow of surface water, &c., ss. 653–655.
- Division 7.—Power to Scour, Cleanse, and Keep Open certain Drains constructed by Owners of Lands, s. 656.

Part XXII.—General Powers with respect to Works, ss. 657–660.
- Division 1.—Protection of Works, s. 657.
- Division 2.—Procuring Materials, ss. 658–659.
- Division 3.— Stacking, &c., of Stone, s. 660.

Part XXIII.—Weight to be carried on Vehicles, ss. 661–671.
- Division 1.—General, s. 661.
- Division 2.—Determination of Weight by Width of Tires, ss. 662–671.

Part XXIV.—Regulating Traffic of Traction Engines, ss. 672-686.

Part XXV.—Lighting, &c. : Water Supply: Arrangements with Authorities providing for Gas, Electricity, Water, and Sewerage, ss. 687–693.

Part XXVI.—Prevention of Fire, ss. 694–695.

Part XXVII.—Storage of Petroleum, &c., s. 696.

Part XXVIII.—Housing and Reclamation, ss. 697–755.
- Division 1.—Interpretation, s. 697.
- Division 2.—Housing Schemes to provide Dwellings for Persons of Small Means, ss. 698–712.
- Division 3.—Reclamation Schemes for the Improvement of Insanitary Low-lying or Over-crowded Areas, ss. 713–716.
- Division 4.—Closing of Streets, &c., ss. 717–722.
- Division 5.—Betterment Charge in Connexion with Reclamation Scheme, ss. 723–743.
- Division 6.—General, ss. 744–755.

Part XXIX.—Baths and Washhouses, s. 756.

Part XXX.—Markets and Weighbridges, ss. 757–781.

Part XXXI.—Tolls at Ferries, ss. 782–794.

Part XXXII.—Pounds and Abattoirs and Sheep Dips, ss. 795–796.

Part XXXIII.—Making and Supply of Ice, s. 797.

Part XXXIV.—Landing Grounds for Aircraft, s. 798.

Part XXXV.—Places of Recreation, Libraries, War Memorials, Air-raid Shelters, &c., ss. 799–805.

Part XXXVI.—Charitable Institutions, s. 806.

Part XXXVII.—Maternity and Child Welfare Centres, s. 807.

Part XXXVIII.—Bush Nursing Centres, s. 808.

Part XXXIX.—Power to Treat as to Noxious Trades, ss. 809–810.

Part XL.—Power to Maintain and Aid Public Agricultural and other Schools and Colleges, s. 811.

Part XLI.—Registration of Dancing Saloons, s. 812.

Part XLII.—Special Improvement Charge, ss. 813–823.

Part XLIII.—Inspection of Scaffolding and Building Cranes, ss. 824–833.

Part XLIV.—Compensation, how determined, ss. 834–850.

Part XLV.—Railway Agreements, s. 851.

Part XLVI.—Septic Tanks, ss. 852–861.

Part XLVII.—Legal Proceedings and Enforcement of Act, ss. 862–898.
- Division 1.—Legal Proceedings by and against Municipalities, ss. 862–882.
  - (1) General Provisions, ss. 862–868.
  - (2) Evidence, ss. 869–875.
  - (3) Notices to Owners and Occupiers and by Occupiers and Vendors of Rateable Property, ss. 876–881.
  - (4) Actions against Municipalities for Negligence in respect of Streets, &c., s. 882.
- Division 2.—Enforcement of Act, ss. 883–896.
  - (1) Generally, ss. 883–889.
  - (2) Penalties, &c., ss. 890–894.
  - (3) Decision of Disputes between Municipalities and Returns by Councils, ss. 895–896.
- Division 3.—Rules of the Supreme Court, s. 897.
- Division 4.—Power to prescribe Forms, s. 898.

Part XLVIII.—Unused Roads and Water Frontages, ss 899–916.

Part XLIX.—Building Regulations, ss. 917–934.

Repeal. First Schedule.

2. (1) The Acts mentioned in the First Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.

(2) Except as in this Act expressly or by necessary implication provided—

(*a*) all persons things and circumstances appointed elected done or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed ;

(*b*) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any proclamation regulation by-law Order application determination decision recommendation petition direction licence permit investment certificate exemption validation approval

disapproval objection appointment delegation classification condition notice fee liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act; nor shall such repeal affect the operation of—

(i) paragraph (*d*) of sub-section (1) and sub-section (4) of section two of the *Local Government* (*Rates*) *Act* 1938 as amended;

(ii) sub-section (4) of section thirty-one of the *Local Government* (*Amendment*) *Act* 1954; or

(iii) paragraph (*e*) of sub-section (6) of section five of the *Local Government* (*Building Regulations*) *Act* 1956.

Interpretation No. 5203 s. 3.

3. (1) In this Act unless inconsistent with the context or subject-matter—

"Cattle." "Cattle" includes horses mares fillies foals geldings colts bulls bullocks cows heifers steers calves asses mules sheep ewes wethers rams lambs goats and swine.

"Division." "Division" means Division of any Part of this Act.

"Ferry." "Ferry" includes any punt or any floating bridge which requires the attendance of some person in charge.

"The Minister." "The Minister" means the Minister of the Crown administering this Act or the Part of this Act to which the expression refers.

"Order in Council." "Order in Council" means any Order made by the Governor with the advice of the Executive Council.

"Owner of any property." "Owner of any property" means the person for the time being entitled to receive, or who if the same were let to a tenant at a rack-rent would be entitled to receive the rack-rent thereof.

"Part." "Part" means Part of this Act.

"Portion of Victoria." "Portion of Victoria" includes any area whether the same is in whole or in part included in or outside of a municipal district.

"Private street" or "private road." "Private street" or "private road" means a carriage-way either accessible to the public from a public street or forming a common access to lands and premises separately occupied, but not being a public highway.

"Public highway." "Public highway" includes any inland lake whether natural or artificial, and any navigable water vested in any municipality or the council thereof upon which boats are used to ply for hire.

"Rate." "Rate" wherever the context appears to require such extended meaning includes not only the sum charged in respect of any property under this Act, but also the assessment or valuation of any property and the amount of such assessment or valuation.

"Revenue." "Revenue" means the ordinary revenue of the municipality.

"Schedule." "Schedule" means Schedule to this Act.

"Street" and "road." "Street" and "road" respectively means a street or road being a public highway, and includes every public highway.

"In writing." "In writing" includes in printing or partly in printing and partly in writing: and any expression referring to writing shall unless the contrary intention appears be construed as including references to printing lithography photography and other modes of representing or reproducing words in a visible form.

"Borough." "Municipality." "Municipal district." "Chairman of municipality." "Town clerk." "Municipal clerk." (2) (*a*) Every city and town shall be deemed to be a borough: the corporation of every borough and shire shall be deemed to be a municipality: the district under the local government of a municipality shall be called its municipal district: the Lord Mayor of the city of Melbourne and the mayor of a borough and the president of a shire may be called the chairman of a municipality: the city clerk of a city may be called the town clerk of a borough: the town clerk of a borough and the secretary of a shire may be called the clerk of a municipality or a municipal clerk.

"Outlying district." (*b*) Any portion of Victoria no part of which is comprised in any municipal district may be called an outlying district.

"Subdivision." "Ridings." "Wards." (*c*) When any municipal district is divided into portions each of which portions separately returns councillors, the municipal district shall be said to be subdivided and each of such portions shall be called a subdivision: the subdivisions of a shire shall be called ridings, and the subdivisions of a borough wards.

"Municipal roll." (*d*) The municipal roll of any municipality shall mean the voters' roll or the aggregate of voters' rolls in force therein.

Application of Act. No. 5203 s. 4. **4.** This Act shall apply to every municipality constituted or to be constituted but shall not apply to the city of Melbourne or the city of Geelong except where expressly so stated.

In what newspapers certain advertisements shall be published. No. 5203 s. 5. **5.** In all cases in which any matter or thing is hereby required to be published advertised or inserted in a newspaper generally circulating in the municipal district or neighbourhood the said newspaper shall be such newspaper as the council has for the time being appointed in that behalf.

6. Whenever any day or the last of several days provided or appointed by or under this Act for any purpose in any year happens on a Sunday or a day which is a bank or public holiday throughout Victoria then such provision and appointment shall take effect as for the next following day which is not a Sunday or such bank or public holiday.

Provision for day appointed for any purpose of the last of several days being a Sunday &c. No. 5203 s. 6.

7. No misnomer or inaccurate description contained in this Act or in any Order in Council made thereunder shall in any wise prevent or abridge the operation of this Act with respect to the subject of such description, provided the same is designated so as to be understood.

Misnomer in this Act or in Order in Council &c. not to prejudice. No. 5203 s. 7.

PART I.—THE CONSTITUTION OF MUNICIPALITIES GENERALLY.

DIVISION 1.—INCORPORATION AND GOVERNMENT OF MUNICIPALITIES AND BOUNDARIES OF DISTRICTS.

8. (1) The inhabitants of every shire borough town and city for the time being subject to the provisions of this Act shall, under the name of the president councillors and ratepayers of such shire the mayor councillors and burgesses of such borough the mayor councillors and burgesses of such town or the mayor councillors and citizens of such city as the case may be, be a body corporate with perpetual succession and a common seal with power to break alter and change the same from time to time with the approval of the Governor in Council and shall by such name be capable in law of suing and being sued, of purchasing holding and alienating land, and of doing and suffering subject to the provisions of this Act all such other acts and things as bodies corporate may by law do and suffer.

Inhabitants of a shire &c. a corporation. No. 5203 s. 8.

(2) The corporation of every shire borough town and city as constituted under this Act shall be the same corporation as the corporation of the same shire borough town or city existing at the commencement of this Act.

Existing corporations.

9. Every municipality subject to the provisions of this Act shall be governed by a council, and all acts of the council shall be deemed to be acts of the municipality.

Municipal council. No. 5203 s. 9.

10. In every municipality existing at the commencement of this Act the council shall consist of the number of members assigned to it at the commencement of this Act, and the councillors shall be allotted to the respective subdivisions of the municipal district (if any) in the same manner as at the commencement of this Act unless and until such number or allotment is altered under the provisions of this Act.

Number &c. of councillors in existing municipalities. No. 5203 s. 10.

Number of councillors when fixed under this Act.
No. 5203 s. 11.

11. Whenever the number of councillors for any municipality is determined under the provisions of this Act, such number shall be in case the municipal district is not subdivided some multiple of three not less than six nor more than twenty-four, and in case such municipal district is subdivided the number produced by the return of three councillors for every subdivision.

Boundaries of municipal districts.
No. 5203 s. 12.

12. (1) The boundaries of all municipal districts existing at the commencement of this Act shall be the boundaries of all such municipal districts unless and until altered under this Act.

(2) The Governor in Council may by Order published in the *Government Gazette* set forth and declare the boundaries of all or any municipal districts or subdivisions as existing at the date of the Order.

Road or stream forming a common boundary.

(3) Where in the Second Schedule to the *Local Government Act* 1890 or in any document whether made before or after the commencement of this Act—

(*a*) any road street highway railway stream creek or water-course or any side of or line along the same; or

(*b*) any boundary of a parish county or allotment which (whether at the time of such description or at any time thereafter) runs along abuts on or is contiguous to any road street highway railway stream creek or water-course—

has been described as a boundary of the municipal district of any municipality (including the city of Melbourne and the city of Geelong) or of any subdivision of any such municipal district, a line along the centre for the time being of such road street highway railway stream creek or water-course shall be deemed to constitute such boundary of such municipal district or subdivision.

DIVISION 2.—APPOINTMENT, ETC., OF COMMISSIONER WHERE NO COUNCIL OR QUORUM OF COUNCIL.

Appointment of commissioner.
No. 5203 s. 13.

13. (1) In case at any time there is in any municipality no council or not sufficient councillors to form a quorum of the council and a duly constituted returning officer has given notice of an election of councillors either for the whole municipality or (in case the municipal district is subdivided) for every subdivision for which there is not the proper number of councillors in manner provided by this Act and a sufficient number of councillors has not been elected at such election together with the councillors (if any) already in office to form a quorum of the council, or in case any councillors refuse or neglect to attend or to remain in attendance at meetings of the council so that a quorum of the

council cannot be formed or maintained in every such case the Governor in Council may by Order to be published in the *Government Gazette* appoint some fit and proper person to be commissioner of such municipality and may remove every person so appointed.

Salary of commissioner.

(2) Every such commissioner shall be paid such salary out of the municipal fund of the municipality as the Governor in Council may determine.

Powers and duties of commissioner.

(3) Every commissioner so appointed shall be deemed the council of the municipality and shall have and exercise all the powers and be subject to all the duties of such council and all the powers and duties of the chairman or any councillor or councillors of such municipality or of any subdivision of the same.

On appointment of commissioner councillors (if any) to go out of office.

14. If when a commissioner is appointed for any municipality any councillors are in office in such municipality they shall thereupon go out of office.

Power after the appointment of a commissioner to restore the government of the municipality to a council.

No. 5203 s. 15.

15. When a commissioner has been appointed for any municipality the Governor in Council if he at any time thinks fit by Order published in the *Government Gazette* may appoint a day for holding an election of councillors for such municipality at which the whole number of councillors assigned to the municipality shall be returned, and in case the municipal district is subdivided shall be returned in equal numbers for every subdivision; and in case a sufficient number of councillors is elected at such election to form a quorum of the council the Governor in Council may cause the same to be notified in the *Government Gazette* and thereupon all the powers and duties of the commissioner shall cease.

PART II.—CONSTITUTING AND ALTERING THE CONSTITUTION OF MUNICIPALITIES AND PROCLAIMING TOWNSHIPS.

DIVISION 1.—GENERAL POWERS OF THE GOVERNOR IN COUNCIL.

General powers of the Governor in Council.

No. 5203 s. 16; No. 5843 s. 2.

16. Subject to the provisions of this Act, the Governor in Council may from time to time make Orders exercising the powers following:—

Constitution of shire.

(1) To constitute any portion of Victoria containing rateable property capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof, estimated under the provisions of this Act, a sum of Three thousand pounds, a shire.

Constitution of borough.

(2) To constitute any portion of Victoria, not exceeding in area nine square miles, and having no point in such area distant more than six miles from any other point therein, and containing a population of inhabitant householders not less than five hundred, and containing rateable property capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act a sum of Two thousand pounds a borough but not so as to constitute any portion of Victoria comprising portions of different boroughs a borough.

Union of boroughs.

(3) To unite any two or more boroughs which form one continuous area so as to form one borough, notwithstanding that the municipal district of such united borough may contain an area of more than nine square miles or that some point therein be distant more than six miles from some other point.

Union of municipalities for form one shire.

(4) To unite any number of municipalities, one of which is a shire, the municipal districts whereof form one continuous area, so as to form one shire.

Severance and annexation.

(5) To sever any portion of Victoria forming part of a municipal district from such municipal district and annex the same to any other municipal district with which the portion so severed forms one continuous area.

Annexation of outlying district.

(6) To annex an outlying district forming with the municipal district of some municipality one continuous area to such municipal district.

Subdivision or re-subdivision.

(7) To subdivide or re-subdivide any municipal district into any number of subdivisions not exceeding eight.

Alteration or abolition of subdivisions.

(8) To alter the boundaries of or abolish the subdivisions existing in any municipal district.

Number of councillors.

(9) To determine and alter within the limits prescribed by this Act the number of councillors assigned to any municipality.

Conterminous districts.

(10) To alter for the purpose of adjustment the boundaries of conterminous municipal districts or subdivisions.

Declaration of town.

(11) To declare any borough having in the twelve months ending on the last day of September preceding such declaration a revenue from general and extra rates of not less than Fifteen thousand pounds, a town.

Declaration of city.

(12) To declare any borough having in the twelve months ending on the last day of September preceding such declaration a revenue from general and extra rates not less than Thirty thousand pounds, a city.

(13) To alter the name of any municipal district and of the corporation thereof, or to alter the name of any ward or riding of any municipal district. Alteration of name.

(14) To declare any shire in Victoria not exceeding in area nine square miles and having no point in such area distant more than six miles from any other point therein and containing a population of inhabitant householders not less than five hundred and containing rateable property capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act a sum of Two thousand pounds, a borough:

Provided that no such Order shall be made where the effect thereof would be that—

(*a*) in the case of a shire the municipal district thereof would be so reduced as not to contain rateable property capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act, a sum of Three thousand pounds; or Proviso as to severance of shire.

(*b*) in the case of a borough the population contained in the area remaining in the municipal district thereof would be less than five hundred inhabitant householders, or the rateable property contained in such area would not be capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act, a sum of Two thousand pounds: Proviso as to severance of borough.

Provided further that an Order under this section to constitute portion of the municipal district of a shire a municipality and to sever the remainder of the municipal district of the shire therefrom and annex the whole of the remainder to any other municipal district or in several portions to the municipal districts of any municipalities with which such portion or portions forms or form one continuous area may be made notwithstanding that thereby such remainder of the municipal district of the shire does not contain rateable property capable of yielding, upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act, a sum of Three thousand pounds. Proviso in case of constitution of part of shire as a borough.

17. (1) If requested thereunto by petition signed by not less than twenty-five ratepayers resident in any portion not exceeding three square miles in extent of any shire and distant more than ten miles from the boundaries of the city of Melbourne the Governor in Council with the consent of the municipal council may by Order Power of the Governor in Council to proclaim townships. No. 5203 s. 17.

published in the *Government Gazette* proclaim such portion a township by any name and with any boundaries whether those respectively indicated by the petition or not mentioned in such Order and may from time to time in like manner and at the like request alter the name and boundaries thereof.

Deposit with petition to proclaim township.

(2) When any such petition is presented the sum of Twenty pounds shall be deposited therewith. The Minister may direct that such sum or any portion thereof be applied in or towards the payment of the costs of or incidental to any investigation by the Minister relating to the petition and that the balance (if any) be returned to the person named in the petition as the person to receive the same; and the same shall be dealt with as so directed.

Where order affects one municipality only or unites two or more municipalities Governor in Council may adjust rights &c.

No. 5203 s. 18.

18. When in consequence of the exercise of any of the powers contained in section sixteen of this Act so as to affect one municipality only or so as to unite two or more municipalities any property income assets rights liabilities expenses or matters require to be apportioned settled adjusted or determined the Governor in Council may from time to time by Order apportion settle adjust or determine the same.

Where order affects more than one municipality.

No. 5203 s. 19; No. 6128 s. 2.

19. When in consequence of the exercise of any of the powers contained in section sixteen of this Act so as to sever from any municipal district any part thereof any property income assets rights liabilities expenses or matters require to be apportioned settled adjusted or determined—

Councils of municipalities affected may make necessary agreements.

(1) the councils of the municipalities affected may from time to time make such agreements as may be necessary for such purposes or any of them. And any such agreement may provide—

(*a*) for the apportionment transfer or retention of any property income assets rights or liabilities; or

(*b*) for the joint use of any property; or

(*c*) for the payment of any expenses; or

(*d*) for the doing of any other matter or thing that may be necessary to do justice as between the municipalities concerned.

But no such agreement shall have any force or effect until the council of each municipality affected has by special Order approved of the same.

Where no agreement by councils Governor in Council may adjust &c.

(2) the Governor in Council may from time to time by Order apportion settle adjust or determine any property income assets rights liabilities expenses or matters which have not been apportioned settled adjusted or determined by agreement duly made and approved of by such councils under this

section; and by any such Order may provide for all or any of the matters or things for which any agreement between such councils may provide, but which have not been provided for by any such agreement.

Basis of adjustment &c.

(3) any apportionment settlement adjustment or determination made under this section shall be on a basis considered by the councils or (as the case requires) by the Governor in Council to be just and proper having regard to all the circumstances of the case.

Apportionment of liability in respect of loans from Crown.

(4) when in any of the cases aforesaid any municipality is indebted to the Crown in respect of moneys advanced to it by way of loan the Governor in Council may by Order apportion and declare the respective liability to be thereafter borne and discharged in respect of such loan by the several municipalities affected. And notwithstanding anything to the contrary contained in any Act or agreement such liability as so apportioned and declared shall be thereafter borne and discharged by and be recoverable by the Crown from such municipalities.

Power to unite or to sever and annex certain boroughs and shires without petition.

No. 5203 s. 20.

20. (1) (*a*) When it appears on the report of an inspector of municipal accounts—

(i) that any borough does not contain rateable property capable of yielding upon a rate not exceeding One shilling in the pound on the annual value thereof estimated under the provisions of this Act a sum of Three hundred pounds; or

(ii) that the general extra and separate rates made and levied by any shire during the twelve months ending on the thirtieth day of September next preceding the report of such inspector did not yield a sum of Two thousand five hundred pounds—

the Governor in Council notwithstanding anything in this Act may without petition or (as the case may be) without a proposal set out in a request and carried at a poll of ratepayers pursuant to sub-section (2) of section thirty-six of this Act but subject to the provisions hereinafter contained make Orders—

to unite such borough or shire with any other municipality the municipal districts of both of which form one continuous area so as to form one municipality; or

to sever any portion or portions of the municipal district of any such borough or shire from such municipal district and annex the same to any other municipal district or districts with which any such portion or

portions forms or form one continuous area or continuous areas notwithstanding that by such severance and annexation the whole of the municipal district of such borough or shire is annexed to other municipal districts.

(*b*) The Governor in Council may so far as is necessary to give effect to the powers conferred by this sub-section exercise any of the powers contained in section sixteen of this Act.

(*c*) The powers conferred by this sub-section may be exercised notwithstanding that as a result of such union or annexation the municipal district of any municipality to which any such borough or shire or portion thereof is united or annexed will (if a borough) exceed the area or limits prescribed by this Act for a borough.

Requirements before Order in Council made.

(2) (*a*) No Order shall be made as aforesaid unless—

(i) the Minister at least three months before the making of the Order—

gives notice in writing to the council of every municipality to be affected of his intention to proceed to obtain such an Order; and

publishes in the *Government Gazette* and in three consecutive issues of a newspaper generally circulating in Melbourne and in the municipal districts to be affected notice of such intention; and

(ii) the Minister has given to the council of every municipality to be affected and to any creditor thereof which or who within the said period of three months notifies him in that behalf full opportunity to show cause why the Order should not be made and the Minister has entertained inquired into and decided upon any representation made by or on behalf of any such council or creditor.

Procedure on inquiries by Minister.

(*b*) The provisions of this Act relating to the decision of disputes between municipalities shall so far as applicable and with such modifications and substitutions as are necessary extend and apply to inquiries and decisions by the Minister under this sub-section.

Contents of Orders.

When Order comes into effect.

Number of members of council for altered district.

(3) Every Order made as aforesaid—

(*a*) shall specify a day upon which the Order comes into operation;

(*b*) where any municipal district is diminished or increased in extent may prescribe the number of councillors to be elected for the district when altered;

(*c*) where the whole of the municipal district of any borough or shire is severed therefrom and annexed in different portions to other municipal districts shall declare— Where whole area of district annexed to other districts.

(i) that all councillors of the borough or shire shall go out of office upon a date to be specified in the Order; and

(ii) that thereupon the corporation of the borough or shire shall be dissolved and cease to exist—

and upon that day such councillors shall go out of office and the corporation shall be dissolved and cease to exist; and

(*d*) shall (where the circumstances so require) provide— Settlement adjustment and apportionment of differences assets and liabilities.

(i) for justice being done to any creditor of any municipality affected;

(ii) for the settlement of any differences and the apportionment settlement adjustment or determination of any property income assets rights liabilities expenses or matters requiring to be apportioned settled adjusted or determined between municipalities in consequence of the exercise by the Governor in Council of any powers hereinbefore conferred on him (including the apportionment of liabilities to the Crown in respect of moneys advanced to any municipality by way of loan); and

(*e*) shall (where the circumstances so require) direct the persons by whom and to whom any moneys found to be due are to be paid.

(4) Every Order made as aforesaid shall upon being published in the *Government Gazette* have the like force and effect as if it were expressly enacted in this Act. Publication of order, effect of.

(5) In matters not otherwise provided for the provisions of this Part relating to Orders made upon petition or (as the case may be) upon the carrying of a proposal set out in a request and submitted to a poll of ratepayers pursuant to sub-section (2) of section thirty-six of this Act shall so far as applicable and with all necessary modifications and substitutions extend and apply to Orders under the powers hereinbefore by this section conferred. Applicability of other provisions of this Part.

21. The provisions of this Part shall apply with respect to the city of Geelong and for the purposes of the application of such provisions the municipal district of the said city shall be deemed Application of this Part to city of Geelong. No. 5203 s. 21.

to form one continuous area and the Governor in Council may by Order modify the provisions of this Part or of any Act or enactment relating to the said city to such extent as appears to be necessary.

DIVISION 2.—NEWLY CONSTITUTED MUNICIPALITIES.

Order constituting new municipality. No. 5203 s. 22

22. (1) Every Order constituting any new municipality shall constitute the same as either a borough or a shire and shall—

(*a*) assign a name to such borough or shire;

(*b*) describe the boundaries thereof;

(*c*) determine of how many members the council shall consist;

(*d*) determine whether the municipal district constituted is to be subdivided or not and in case it is to be subdivided name and describe the subdivisions.

(2) Every such Order shall take effect according to the tenor of the same.

Operates to sever portion (if any) of existing municipal district.

(3) Every such Order constituting any new municipality having for or including in its municipal district portion of a previously existing municipal district shall operate to sever such portion from such previously existing municipal district.

Effect of constitution of new municipality as to debts actions &c.

(4) When any new municipality is constituted having for or including in its municipal district a portion severed from the municipal district of any previously existing municipality—

(*a*) such newly constituted municipality shall become jointly liable with such previously existing municipality to all creditors of such previously existing municipality in respect of all debts and liabilities due or incurred at the time of the severance;

(*b*) no action suit or other proceeding by or against any such previously existing municipality shall be affected or abated.

DIVISION 3.—UNION OF MUNICIPALITIES.

Order uniting municipalities. No. 5203 s. 23.

23. (1) Every Order uniting two or more municipalities shall—

(*a*) assign a name to the borough or shire formed by such union;

(*b*) determine of how many members the council shall consist;

(*c*) determine whether the municipal district of the united municipality is to be subdivided or not, and in case it is to be subdivided name and describe the subdivisions.

(2) Upon any union of municipalities the municipality formed by such union shall have a municipal district being the aggregate of the municipal districts of the municipalities united, and shall be deemed to be one and the same corporation as each of the municipalities by the union of which it was formed, and all rights and duties of such municipalities against or owing to each other shall be extinguished, and all property rights and liabilities of and all matters and things not otherwise provided for made or done by or on behalf of each of the municipalities so united shall vest in and attach to and be deemed to have been made or done by or on behalf of the municipality formed by such union. Effect of union of municipalities

24. (1) When municipalities are united the council of the municipality formed by such union shall until the day appointed for the next annual election consist of all the councillors of the municipalities united or who may be elected in their places to fill extraordinary vacancies. Effect of union on council. No. 5203 s. 24.

(2) On the day appointed for the next annual election all the councillors shall go out of office.

DIVISION 4.—SEVERANCE FROM MUNICIPAL DISTRICTS.

25. (1) Every Order severing from any subdivided municipal district any part thereof may abolish all the subdivisions and either constitute the municipal district an unsubdivided municipal district or re-subdivide the same. Powers in event of severance. No. 5203 s. 25.

(2) In case any such Order does not abolish all the subdivisions the same shall be deemed to cancel every entire subdivision severed, and as regards every subdivision of which a portion only is severed shall either cancel such subdivision and annex the residue thereof to some other subdivision or in separate portions to some other subdivisions or shall declare that such residue shall thenceforth be deemed such subdivision.

26. In case any subdivision is cancelled the councillors returned therefor shall upon such cancellation cease to be members of the council, and the number of councillors shall be reduced accordingly. Reduction in council on cancellation of subdivision. No. 5203 s. 26.

27. The powers hereinbefore in that behalf provided shall not be exercised in such a way as to reduce the number of councillors assigned to any municipality to less than six. Number not to be reduced to less than six. No. 5203 s. 27.

DIVISION 5.—ANNEXATION TO MUNICIPAL DISTRICTS.

28. (1) Every Order annexing any portion of Victoria to a subdivided municipal district shall— Order annexing district to a subdivided municipal district. No. 5203 s. 28.

(*a*) abolish all the subdivisions and constitute the municipal district an unsubdivided municipal district; or

(*b*) abolish all the subdivisions and re-subdivide the municipal district; or

(*c*) retain the existing subdivisions and constitute the annexed district a new subdivision or new subdivisions; or

(*d*) annex the annexed district to some subdivision or in separate portions to some subdivisions of the municipal district.

Subdivisions not to exceed eight.

(2) Such powers shall not be exercised in such a way as to cause the number of subdivisions in any municipal district to be greater than eight.

Election where portion of Victoria is annexed as a new subdivision. No. 5203 s. 29.

29. When any portion of Victoria is pursuant to this Act annexed as a new subdivision to any subdivided municipal district the Governor in Council if he thinks fit may by Order provide for the election forthwith of councillors for such new subdivision and give all such directions therefor as are necessary or expedient.

Borough exceeding prescribed extent to be constituted a shire. No. 5203 s. 30.

30. When any Order is made annexing any outlying district to any borough so that the municipal district after such annexation may contain an area of more than nine square miles or that some point therein be distant more than six miles from some other point therein such order shall constitute and be deemed to constitute such borough a shire.

How annexation of new subdivision affects the council. No. 5203 s. 31.

31. When an Order annexing any portion of Victoria to a subdivided municipal district retains the existing subdivisions and constitutes any new subdivision, such new subdivision shall at and after the next annual election return as many councillors as sit for each of the previously existing subdivisions and the number of the council shall be increased accordingly but the council shall not be otherwise affected by such Order.

DIVISION 6.—SUBDIVISION OR RE-SUBDIVISION OF MUNICIPAL DISTRICTS AND ALTERATION IN THE COUNCIL.

How subdivision re-subdivision or alteration in the number of councillors affects the council. No. 5203 s. 32; No. 6128 s. 3.

32. (1) When any Order is made whereby—

(*a*) the number of councillors in any municipality is altered by the exercise of the powers contained in paragraph (9) of section sixteen of this Act; or

(*b*) any municipal district is subdivided or re-subdivided—

such Order shall not affect the council or the filling up of extraordinary vacancies therein until the day appointed for the annual election next after such Order takes effect.

(2) In case any such Order affects one or more subdivisions, but not the whole municipal district, then all the councillors for the subdivision or subdivisions affected shall go out of office on such

day, but the election of councillors shall not be otherwise affected. In every other case in this section mentioned all the councillors shall go out of office on such day.

When alterations in subdivisions deemed abolition or re-subdivision. No. 5203 s. 33.

33. An Order altering the boundaries of any subdivisions in a municipal district or annexing any portion of Victoria to any subdivision shall not be deemed to re-subdivide the municipal district or abolish the subdivisions thereof or in any way affect the council or councillors of the municipality unless it is so expressed in the Order.

DIVISION 7.—CHANGES IN NAME.

Order declaring a borough a city or town or shire. No. 5203 s. 34.

34. (1) After the taking effect of any Order declaring any shire a borough or any borough a city or town or constituting any borough a shire under section thirty of this Act the same shall be called a borough city town or shire (as the case may be), and the name of the corporation thereof shall be changed accordingly.

Order changing name of municipal district.

(2) After the taking effect of any Order changing the name of any municipal district and of the corporation thereof the name shall be changed accordingly.

Corporation to remain the same.

(3) Every such corporation shall notwithstanding be deemed the same before and after such change of name, and no action or other matter or thing shall be affected or abated thereby.

DIVISION 8.—PROCEDURE.

Exercise of powers of Governor in Council under s. 16 &c., on petitions in certain cases and in others on requests setting out proposals when same have been carried at polls of ratepayers. No. 5203 s. 35; No. 6128 s. 4 (*a*).

35. (1) The Governor in Council may exercise—

(*a*) any of the powers hereinbefore conferred (other than those contained in paragraphs (1), (2), (3), (4), (5), (7), and (8) of section sixteen of this Act) after the presentation of a petition in pursuance of the provisions of this Act for the exercise thereof and after the publication of such petition as herein described and the lapse of one month at the least from the day of such publication and (except as in this Part provided) not otherwise; and

(*b*) any of the powers hereinbefore conferred which are contained in the said paragraphs (1), (2), (5), (7), and (8) after—

(i) the presentation of a request or requests in pursuance of the provisions of this Act setting out a proposal for the exercise of such power (which proposal is in this

Act referred to as the proposal set out in the request) for submission to a poll or polls of ratepayers as herein provided;

(ii) the publication of such request or requests as herein described;

(iii) the submission of the proposal to and the carrying of the same at the poll or polls as herein provided;

(iv) the receipt by the Minister of the notification of the result of the poll or polls from the returning officer or returning officers as herein provided; and

(*c*) any of the powers hereinbefore conferred which are contained in the said paragraphs (3) and (4), after presentation of a petition or a request or requests and completion in respect of each municipality concerned of the procedure set out in either paragraph (*a*) or paragraph (*b*) of this sub-section, and notwithstanding that different procedures are adopted in the several municipalities proposed to be united—

and (except as in this Part provided) not otherwise.

Power of Governor in Council to refuse prayer of petition.

(2) It shall be in the discretion of the Governor in Council absolutely—

(*a*) to refuse the prayer of any such petition or to grant the whole or any part of such prayer; or

Power to refuse to exercise power sought in request though proposal set out therein carried at poll.

(*b*) in the case of any such request or requests—

(i) (whether the proposal set out in the request or requests has or has not been carried at a poll or at polls aforesaid) to refuse to exercise the power desired to be exercised; or

Power to exercise power sought in request when proposal set out therein carried at poll.

(ii) (if the proposal set out in the request or requests has been carried at a poll or at polls aforesaid) to exercise such power in whole or in part and with or without any alterations or modifications of the said proposal or any substitutions therein which might have been included in any Order under any one or more of the powers contained in paragraphs (1), (2), (3), (4), (5), (7), and (8) of section sixteen of this Act if the exercise of such power or powers had been sought in the request or requests.

36. (1) (*a*) Petitions for the exercise of the powers contained in section sixteen of this Act (other than those contained in paragraphs (1), (2), (5), (7), and (8) thereof) shall be signed respectively in manner hereunder provided (that is to say):— Signature of petitions for exercise of powers under section 16 (3), (4), (6), (9)–(13).

No. 5203 s. 36; No. 5443 s. 2 (1) (*a*) (*b*), No. 6128 ss. 4(*b*), 8 (3) (*a*).

(i) For the union of municipalities—with the common seals of the municipalities affected; For union of municipalities.

(ii) For the annexation of an outlying district to a municipal district—with the common seal of the municipality; For annexation of outlying district.

(iii) For the alteration of the number of councillors for any municipality—with the common seal of the municipality; For alteration of number of councillors.

(iv) To declare any borough a city or town—with the common seal of such borough; For declaration of city or town.

(v) To alter the name of any municipal district and of the corporation thereof or to alter the name of any ward or riding of any municipal district—with the common seal of the municipality; For alteration of name.

(vi) To declare any shire capable of being constituted a borough under the provisions of this Act a borough —with the common seal of such shire. For declaration of shire a borough in certain cases.

(*b*) A petition signed so as to support the exercise of any of the powers hereinbefore mentioned shall be deemed sufficiently signed to support the exercise of any other of such powers which are necessary for the convenient exercise of such first-mentioned power. Petition so signed sufficient for exercise of other necessary powers.

(2) (*a*) A request or requests to the Governor in Council for the exercise of any power contained in paragraph (1), paragraph (2), paragraph (3), paragraph (4), paragraph (5), paragraph (7), or paragraph (8) of section sixteen of this Act shall be signed respectively in manner hereunder provided (that is to say):— Signature of requests for exercise of powers under s. 16 (1), (2), (5), (7), (8).

(i) For the constitution of a shire—by one-tenth of the persons whose names are inscribed on the municipal roll in respect of property in any portion of any municipal district proposed to be included in such shire; For constitution of shire.

(ii) For the constitution of a borough—by one-tenth of the persons whose names are inscribed on the municipal roll in respect of property in any portion of any municipal district proposed to be included in such borough; For constitution of borough.

For severance and annexation.

(iii) For the severance of any portion of Victoria included in a municipal district and the annexation of the same to any other municipal district—by one-tenth of the persons whose names are inscribed on the municipal roll in respect of property in such portion;

For subdivision &c. alteration of boundaries or abolition of subdivisions.

(iv) For the subdivision or re-subdivision of any municipal district or the alteration of the boundaries of or the abolition of the subdivisions existing in any municipal district—by one-tenth of the persons whose names are inscribed on the municipal roll in respect of property in such municipal district; and

(v) For the union of a municipality with another municipality—by one-tenth of the persons whose names are inscribed on the municipal roll in respect of property in the municipal district of the municipality in question.

Request signed so as to support exercise of power sufficient for exercise of other necessary powers.

(*b*) A request or requests aforesaid signed so as to support the exercise of any of the powers hereinbefore mentioned shall be deemed sufficiently signed to support the exercise of any other of such powers which are necessary for the convenient exercise of the first-mentioned power, and a proposal set out in the request or requests for the exercise of the said first-mentioned power and carried at a poll or polls of ratepayers as hereinafter provided shall be deemed to include a proposal or proposals for the exercise of any other or any others of such powers which is or are necessary for the convenient exercise of such first-mentioned power.

Presentation of requests.

(*c*) Every request aforesaid shall be made by writing under the hands of the appropriate persons aforesaid addressed to the Governor in Council and shall be left with or sent by post to the Minister, which shall be deemed the presentation thereof.

Requirements of requests.

(*d*) Every such request shall—

Setting out of power sought to be exercised.

(i) set out precisely what exercise of any of the powers contained in paragraphs (1), (2), (3), (4), (5), (7), and (8) of section sixteen of this Act is sought, and any request respecting the constitution of a new municipality, the annexation of any portion of Victoria to a municipal district, or the subdivision or re-subdivision of a municipal district shall describe the boundaries of the municipal district of the proposed new municipality, or of the portion of Victoria proposed to be annexed, or of every proposed subdivision (as the case may be);

Description of boundaries.

Declarations.

Deposit.

(ii) be accompanied with the necessary declaration or declarations verifying the signatures to the request and also with a deposit of the sum of Twenty pounds which sum shall be dealt with as herein provided;

(iii) state the name and address of some person to whom the deposit or any part thereof may be returned; and

Name of person to whom deposit to be returned.

(iv) be in such form (if any) as is from time to time appointed by the Governor in Council.

Form of request.

(*e*) On the presentation of any such request to the Minister, he shall forward the same—

Request delivered to Minister to be forwarded to council for examination and submission to poll.

(i) for the purpose of examining the same with a view to ascertaining whether the request complies with the requirements of this sub-section; and

(ii) for submission of the proposal set out in the request to a poll of ratepayers—

to the council of the municipality in whose municipal district the persons signing the request hold their rateable properties.

(*f*) Forthwith after the receipt by a council of any such request so forwarded, the council—

(i) shall cause the request and any declaration or declarations accompanying the same to be examined with a view to ascertaining whether the request complies with the requirements of this sub-section; and

Council to examine request and declarations.

(ii) if satisfied that the request complies with the said requirements, shall publish in a newspaper generally circulating in the municipal district a notice setting out the substance of the request and stating that a poll in accordance with the requirements of this sub-section of the ratepayers entitled to vote in respect of property held in the municipal district or in the portion thereof within the boundaries described in the request (as the case may be) will be taken on the proposal set out in the request on the day and at the time for the next following annual election of councillors.

Publication of notice setting out request and that poll to be taken on proposal to exercise power.

(*g*) The Minister shall cause notice in writing of the presentation of any and every such request to be given also to the council of every other municipality which would, if the proposal set out in the request or requests were carried at a poll or polls of ratepayers, be affected by any Order made upon the request or requests.

Notice to other municipalities affected.

(*h*) In the event of not less than two-fifths of the valid votes recorded—

Application of deposit.

(i) at the poll in the municipal district on the proposal set out in the request; or

(ii) (as the case may be) at each and every poll in municipal districts on the same proposal set out in each of the requests—

being recorded in favour of the proposal, the sum of Twenty pounds deposited with the Minister as aforesaid shall be returned to the person named in the request with respect to which the deposit was made as the person to receive the same; and

In any other case the said sum of Twenty pounds or so much thereof as is necessary to defray any costs and expenses incurred in or in connexion with the taking of the poll over and above the costs and expenses incurred in the holding of the election (if any) of councillors held at the same time shall be paid by the Minister into the municipal fund and the residue (if any) shall be returned to the person aforesaid.

Provisions as to poll of ratepayers on proposal set out in request.

(*i*) The following provisions shall apply with respect to every poll under this sub-section:—

Polling day.

(i) The poll shall be taken on the day and at the time for the annual election of councillors next following the presentation of the request;

Advertisement as to taking of poll.

(ii) The council not less than fourteen and not more than twenty-one clear days before the said day shall by advertisement published in a newspaper generally circulating in the municipal district give notice of the taking of the poll;

Returning officer.

(iii) The municipal clerk shall be the returning officer for the purposes of the poll and shall by writing under his hand appoint a deputy to assist him or to act in his place at any such poll, and may remove any such deputy, and shall appoint another in the place of any deputy who is so removed or who dies retires or becomes incapable of acting; and the deputy may do all or any of the acts or things which the returning officer is authorized or required to do;

Form of ballot-papers. Second Schedule.

(iv) The ballot-papers shall be printed in the proper form in the Second Schedule or to the like effect with such additions or alterations as are necessary in the case of postal ballot-papers; and for the purposes of ballot-papers hereunder the Governor in Council may make regulations prescribing the forms of the requisite summaries of proposals and such summaries or summaries to the like effect shall be sufficient in law;

(v) Every person whose name is inscribed on the municipal roll for the municipality (in the municipal district of which the poll is being taken) in respect of property situate— Persons entitled to vote.

(in the case of a poll respecting the constitution of a new municipality) in such portion of the municipal district as is proposed in the request to be included in the municipal district of the new municipality; or

(in the case of a poll respecting the severance of a portion of a municipal district and the annexation of the same to any other municipal district) in such portion of the municipal district as is proposed in the request to be so severed and annexed; or

(in the case of any other poll) in the municipal district in which the poll is being taken—

shall be entitled to vote and to receive as many ballot-papers as the number of votes to which such person is entitled;

(vi) The persons making the request under their hands or the hands of any three of them, the persons declaring themselves opposed to the proposal set out in the request under their hands or the hands of any three of them, and the council may severally in writing appoint one scrutineer to be present in each polling booth; Appointment of scrutineers.

(vii) Subject to this Part all proceedings shall be had and taken as nearly as may be as upon an election of councillors under the provisions of Part III. (including provisions relating to voting by post or to compulsory voting if such provisions apply to elections of councillors of the municipality; Proceedings as upon election of councillors. As to voting by post &c.

(viii) A proposal which in the opinion of the Minister is the same or substantially the same proposal as that set out in such request shall not be again submitted to a poll of ratepayers in a municipal district or in a portion thereof (as the case may be) within three years of the date of the rejection by a poll of ratepayers in that district or in that portion thereof (as the case may be) of the proposal set out in the request; Same proposal not to be re-submitted to poll within three years after rejection.

(ix) The proposal on which a poll is taken in any municipal district or portion thereof (as the case may be) shall be deemed to be carried at the poll in such district or portion thereof if a majority of the valid votes recorded are in favour of the proposal; Proposal carried if majority in favour.

Returning officer to notify Minister of result of poll.

(x) Within twenty-one days after the result of the poll has been ascertained the returning officer shall notify the Minister in writing of the number of valid votes recorded for and against the proposal.

No request to be presented in certain months.

(*j*) No request setting out a proposal aforesaid shall be presented under this sub-section during the months of April, May, June, July, or August.

Provision where more than one request setting out the like proposal for exercise of powers under s. 16 (1), (2).

(*k*) Where with respect to the proposed exercise of the powers contained in paragraph (1) or paragraph (2) of section sixteen of this Act more than one request under this sub-section sets out the like proposal, the provisions of this Part shall so far as applicable and with such adaptations as are necessary apply in regard to each such request; and in particular, without affecting the generality of the foregoing—

(i) the deposit of Twenty pounds shall be made in respect of each such request; and

(ii) the results notified by the respective returning officers to the Minister of all the polls held upon the proposal shall be taken into consideration before the exercise of the power.

Exercise of powers without petition. No. 5203 s. 37.

37. The Governor in Council may without any petition or (as the case may be) without any proposal set out in a request and carried at a poll of ratepayers pursuant to sub-section (2) of section thirty-six of this Act make Orders—

Where there is no council or quorum.

(*a*) exercising any of such powers in respect of any municipality or its municipal district or any portion thereof if in such municipality there is at any time no council or not sufficient councillors to form a quorum of the council; or

For adjustment of boundaries.

(*b*) altering for the purpose of adjustment the boundaries of conterminous municipal districts or subdivisions.

Presentation of petitions. No. 5203 s. 38.

38. Every petition shall be addressed to the Governor in Council and shall be left with or sent by post to the Minister, which shall be deemed the presentation thereof.

No petition in certain months. No. 5203 s. 39.

39. No petition under the provisions of this Part shall be presented during the months of April, May, June, July, or August.

Verification of petition. No. 5203 s. 40.

40. (1) Every signature to any petition other than the common seal of a municipality and every signature to any request to the Governor in Council in accordance with sub-section (2) of section thirty-six of this Act shall be verified by the statutory declaration of some person.

(2) Such declaration shall be in the form in the Third Schedule or to the like effect. Third Schedule.

(3) No petition or request aforesaid shall be received by the Minister unless the same is accompanied by a declaration or declarations in accordance with the provisions of this section.

41. (1) Every petition shall state precisely what exercise of any of the powers hereinbefore conferred on the Governor in Council is sought by the petitioners, and shall pray for such specific exercise thereof, and may in addition pray for any partial or alternative exercise of such powers. Form of petition. No. 5203 s. 41.

(2) Every petition shall be in such form (if any) as may from time to time be appointed by the Governor in Council.

(3) Every petition shall state the name and address of some person upon whom notices may be served on behalf of the persons signing the same, and to whom the deposit or any part thereof may be returned. Name of person to receive notices and return of deposit to be stated.

42. (1) The same petition may pray for the exercise of any one or more of the powers hereinbefore conferred on the Governor in Council. Petition may pray for the exercise of more powers than one and to be complete.

(2) Every petition shall be framed so as to enable the subject-matter of such petition to be completely disposed of in one order. No. 5203 s. 42.

43. On the presentation of any petition the Minister shall— Publication of substance and prayer of petition. No. 5203 s. 43.

(*a*) cause the substance and prayer thereof to be published in the *Government Gazette* and in some newspaper circulating in the neighbourhood referred to thereby, and the last day on which such petition is so published shall be deemed the day of the publication thereof; and

(*b*) except where any petition is required to be signed with the common seal of a municipality, cause notice in writing of such presentation to be given to the council of every municipality the municipal district of which would be affected by any Order made upon such petition. Notice to councils in certain cases.

44. (1) Every Order under the provisions of this Part shall be published in the *Government Gazette*. Operation of orders constituting new municipalities &c. No. 5203 s. 44; No. 5924 s. 2 (1).

(2) Notwithstanding anything in this Act any such Order—

(*a*) may provide for any election of councillors necessary to be held consequent thereon to be held on a day appointed by the Order, whether before or on or after the taking effect of any other provision whatsoever of the Order;

(*b*) in the case of any Order constituting a new municipality may in relation to any such election make provision, having regard to existing or usual provisions in any area concerned, as to voting by post, compulsory voting, the time for the closing of the poll, and any other matter expedient to be provided in relation to the election;

(*c*) in the case of an Order constituting a new municipality may provide that, until a date specified in the Order, the Order shall not, for all or for any specified purposes of this Act, operate to constitute the municipality or sever its municipal district from any other municipality;

(*d*) shall take effect from the day or days specified in the Order in that behalf (and different days may be so specified for the taking effect of the Order for different purposes) or, if no day is so specified, from the day of the publication in the *Government Gazette;*

(*e*) shall take effect according to the tenor thereof;

(*f*) may be amended revoked or replaced by another such Order.

No Order to be made in June, July, or August.

(3) No such Order shall for any purpose take effect or be specified to or published so as to take effect in the months of June July or August.

Rectification of errors.

(4) Any error in any Order under this Part or under any of the analogous provisions of any repealed Act may be rectified by the Governor in Council by any subsequent Order.

Non-compliance with matters preliminary not to invalidate order.

(5) No Order purporting to be made under this Part and within the powers by this Act conferred on the Governor in Council shall be deemed invalid on account of any non-compliance with any of the matters required by this Act as preliminary to such Order.

DIVISION 9.—ADVISORY BOARD AND REFERENCE OF CERTAIN MATTERS THERETO, ETC.

Power to Governor in Council to appoint advisory board.
No. 5203 s. 45.

45. (1) For the purposes in this Division provided the Governor in Council from time to time may appoint an advisory board (in this Division referred to as " the board ") of three persons with a knowledge of local government and remove any person so appointed and fill any vacancy however occurring in the membership of the board.

General powers and duties of the board &c.

(2) The board—

(*a*) may elect one of the members thereof to be chairman, may act by any two of its members, and may regulate its own proceedings; and

(*b*) shall inquire into any matters referred to it by the Minister under this Division and report to and advise the Minister thereon.

Councils affected and ratepayers to be given opportunity to be heard at inquiries.

(3) For the purposes of every such inquiry the board—

(*a*) shall take such steps as it deems necessary to secure—

(i) that the council of every municipality which in the opinion of the board is or may be affected by the subject-matter of the inquiry or by the report or any recommendations of the board thereon; and

(ii) that representatives of the ratepayers of every such municipality—

may have an opportunity of being heard; and

Matters to be considered by board.

(*b*) so far as it deems necessary for the purposes of the inquiry, shall take into consideration—

(i) the situation area and population of the municipal district or any part thereof of every such municipality;

(ii) the rateable value of the rateable properties in the municipal district or any part thereof of every such municipality;

(iii) the rates made and levied by every such municipality in the whole or any part of its municipal district;

(iv) the property revenues assets and rights and the debts and liabilities and the financial position of every such municipality; and

(v) generally, any other matters which the board deems relevant to the inquiry.

Power of Minister to refer to board requests for exercise of certain powers when proposals therefor have been carried at polls of ratepayers.

No. 5203 s. 46; No. 6128 s. 4 (*c*).

46. (1) The Minister may refer to the board any request or requests in accordance with sub-section (2) of section thirty-six of this Act for the exercise by the Governor in Council of any of the powers contained in paragraphs (1), (2), (3), (4), (5), (7), or (8) of section sixteen of this Act presented to the Minister when the proposal set out in the request or requests has been submitted to and carried at a poll or polls of ratepayers pursuant to the said sub-section (2).

Powers of board where requests referred to it.

(2) Where any such request has been referred to the board—

(*a*) the board may make such recommendations with respect thereto as the board thinks fit including recommendations—

(i) that the request or requests for the exercise of the power aforesaid be granted in whole or in part; or

(ii) that the request or requests be granted (whether in whole or in part) with any alterations or modifications of the proposal set out in the request or requests or any substitutions in such proposal which might have been included in any Order under any one or more of the powers contained in paragraphs (1), (2), (3), (4), (5), (7), and (8) aforesaid if the exercise of such power or powers had been sought in the request or requests; or

(iii) that the request or requests be refused;

Minister to take report of board into consideration.

(*b*) the Minister shall take into consideration the report and any recommendations of the board before any Order in Council in the matter is made; and

Powers of Governor in Council.

(*c*) without prejudice to any other powers under this Part and notwithstanding anything in this Part the Governor in Council may by Order—

(i) grant the request or requests for the exercise of the power in whole or in part;

(ii) grant (whether in whole or in part) the request or requests with any alterations or modifications of the proposal set out in the request or requests or any substitutions in such proposal which might have been included in any Order under any one or more of the powers contained in paragraphs (1), (2), (3), (4), (5), (7) and (8) aforesaid if the exercise of such power or powers had been sought in the request or requests; or

(iii) refuse to grant the request or requests.

Where new district of borough exceeds area for borough.

(3) Any powers of the Governor in Council under this section may be exercised notwithstanding that as a result of the exercise of such powers the municipal district of any borough to which any portion of the municipal district of any other municipality is thereby annexed will exceed the area or limits prescribed by this Act for a borough.

47. (1) The Minister if he is satisfied that any circumstances warrant his so doing may (without any request in accordance with sub-section (2) of section thirty-six of this Act setting out a proposal for the exercise of a power contained in section sixteen of this Act)—

Power to Minister to refer to board on application by councils certain questions as to subdivision severance annexation &c. without request under s. 36 (2). No. 5203 s. 47; No. 5745 s. 2.

(*a*) on the application of the council of any municipality under the common seal of the municipality—refer to the board the question of the advisability of the subdivision or re-subdivision of the municipal district of the municipality or the alteration of the boundaries of or the abolition of the existing subdivisions of the municipal district thereof, in manner specified in the said application ; or

(*b*) on the application of the council of any municipality under the common seal of the municipality—

(i) that portion of its municipal district be severed therefrom and annexed to the municipal district of any municipality with which that portion forms one continuous area ; or

(ii) that portion of the municipal district of any other municipality with which portion the municipal district of the first-mentioned municipality forms one continuous area be severed from the municipal district of such other municipality and annexed to the municipal district of the said first-mentioned municipality—

refer to the board the question of the advisability of the severance and annexation specified in the said application of such council.

(2) When any question has been referred to the board under this section— Powers of board.

(*a*) the board may make such recommendations with respect thereto as it thinks fit including recommendations—

(i) that the subject-matter of the application aforesaid as specified therein be provided for in whole or in part by Order in Council under this section ; or

(ii) that the subject-matter of the said application be provided for by Order in Council under this section (whether in whole

or in part) with any alterations or modifications thereof or any substitutions therein which—

in any of the cases mentioned in paragraph (*a*) of sub-section (1) of this section—might have been included in a proposal set out in a request in accordance with sub-section (2) of section thirty-six of this Act for the exercise of any of the powers contained in paragraphs (7) and (8) of section sixteen of this Act; or

in any of the cases mentioned in paragraph (*b*) of sub-section (1) of this section—might have been included in a proposal set out in a request in accordance with sub-section (2) of the said section thirty-six for the exercise of the power contained in paragraph (5) of the said section sixteen; or

(iii) that no further action be taken in the matter;

Minister to take report of board into consideration.

(*b*) the Minister shall take into consideration the report and any recommendations of the board; and

Powers of Governor in Council.

(*c*) the Governor in Council, without any request in accordance with sub-section (2) of the said section thirty-six and notwithstanding anything in this Part may if he thinks fit make any Order (with or without any alterations or modifications of or any substitutions in the subject-matter of the application of the council under this section) which he would have been empowered to make under the relevant powers contained in the said paragraphs of section sixteen of this Act or any of them if the exercise thereof had been included in a proposal set out in a request in accordance with sub-section (2) of the said section thirty-six and such proposal had been carried at a poll of ratepayers under the said sub-section (2).

Alteration of municipal boundaries notwithstanding that borough thereby exceeds prescribed area.

(3) Any powers of the Governor in Council under this section may be exercised notwithstanding that as a result of the exercise of such powers the municipal district of any borough to which any portion of the municipal district of any other municipality is thereby annexed will exceed the area or limits prescribed by this Act for a borough.

48. (1) The Minister without any petition or request under this Part may refer to the board the question of the advisability of the union of any two or more municipalities specified in the reference (the municipal districts whereof form one continuous area) so as to form one municipality.

Power of Minister to refer to board without petition question of union of specified municipality. No. 5203 s. 48; No. 6128 s. 4 (*d*).

(2) When any question has been referred to the board under this section— Report of board.

(*a*) the board may make such recommendations with respect thereto as it thinks fit including recommendations—

(i) that any two or more of the municipalities specified in the reference should be united ; or

(ii) that no union of any of the municipalities specified in the reference should be made ;

(*b*) the Minister shall take into consideration the report and any recommendations of the board ; and Minister to take report of board into consideration.

(*c*) the Governor in Council without any petition or request and notwithstanding anything in this Part may if he thinks fit make an Order to unite any two or more of the municipalities specified in the reference so as to form one municipality unless the board has recommended that those municipalities should not be united; and every such Order shall for all purposes take effect as if it had been made on petition or request. Power of Governor in Council to unite two or more of the municipalities without any petition.

49. The Minister may refer to the board any report made by an inspector of municipal accounts under section twenty of this Act. Power of Minister to refer to board reports of municipal inspectors under s. 20. No. 5203 s. 49.

50. When any report under section twenty of this Act is referred to the board the Minister shall take into consideration the report and any recommendations of the board before any Order in Council is made in the matter under the said section. Minister to take report of board into consideration before Order under s. 20 is made. No. 5203 s. 50.

PART III.—THE MUNICIPAL COUNCIL.

DIVISION 1.—QUALIFICATION OF COUNCILLORS.

51. (1) The persons following shall be qualified to hold the office of councillor in any municipality :— Qualification of councillors. No. 5203 s. 51.

(*a*) Every person liable to be rated in respect of property in the municipal district whether consisting of one

or more tenements of the rateable value of Twenty pounds at the least who has been so liable for a period of at least three months immediately preceding the nomination day for the election at and for which he was a candidate for the office of councillor.

(*b*) Every person who is the owner of rateable property in the municipal district whether consisting of one or more tenements of the rateable value of Twenty pounds at the least.

Change in qualification.

(2) No person shall cease to be qualified by reason of his ceasing to hold any particular property if he holds other rateable property in the municipal district consisting of one or more tenements of the rateable value of Twenty pounds at the least.

Councillor ceasing to have qualification set forth in nomination paper to deposit statement as to new qualification.

(3) Every councillor who ceases to have the qualification set forth in the nomination paper nominating such person as a candidate for the office of councillor shall forthwith deposit with the municipal clerk a statement that he has ceased to have such qualification and shall give correct particulars in such statement of the qualification which he has entitling him to continue to hold the office of councillor.

Who incapable to be or continue councillors.

No. 5203 s. 52.

52. No uncertificated and undischarged bankrupt or insolvent, and no person attainted of treason or convicted of felony or perjury or any infamous crime, no person of unsound mind, no person who is not a natural born or naturalized subject of Her Majesty, and no person not qualified as herein required or disqualified hereunder, shall be capable of being or continuing a councillor of any municipality.

Incapacity of councillors on the ground of interest.

No. 5203 s. 53; No. 6128 s. 5 (1).

53. (1) No person holding any office or place of profit under or in the gift of the council of any municipality or concerned or participating in any manner whether directly or indirectly in any contract with any municipality or in any work to be done under the authority of any such council or in the profit of such contract or work shall be capable of being or continuing a councillor of the municipality[a].

Exceptions.

(2) But no person shall be disqualified from being or continuing a councillor of any municipality by reason of—

Being interested in newspaper.

(*a*) being beneficially interested in any newspaper in which the council inserts advertisements ; or

Being shareholder of incorporated company.

(*b*) being a shareholder or member of any incorporated company consisting of more than twenty persons which has entered into any contract with or done any work under the authority of the council; or

(*a*) See also *Water Act* 1958, section 159.

(*c*) paying or being or becoming liable for the payment of any moneys due to any municipality under the provisions of the *Wire Netting Act* 1958 in respect of wire netting for fencing purposes; or

Paying &c. moneys under *Wire Netting Act.*

(*d*) renting from the council any building hall or room for the purpose of holding any meeting or entertainment therein; or

Renting hall &c.

(*e*) being or having been before the commencement of this Act an officer or member of any club or association incorporated or otherwise of twenty members at least having for its object the physical recreation or cultural activities of the members thereof notwithstanding that such club or association leases or rents any lands or buildings from any municipality for such object.

Member of Club &c.

In this sub-section " physical recreation " includes the games of cricket tennis football bowling or other sport and " cultural activities " includes social religious educational literary musical scientific agricultural horticultural or other like activities.

(3) And where in pursuance of the authority of any Act the council of any municipality carries on any gas works electric light works sanitary desiccating works baths weighbridges markets water supply ferries or other like works, it shall be lawful for any member of any such council to use any such conveniences or things or receive purchase take and use the residuum or product thereof in the same manner as any member of the public not being a councillor might do and to pay the council or the proper officers thereof without incurring any penalty or disqualification in respect thereof.

Using or purchasing products &c. of gas works or other works carried on by municipality.

54. (1) No person elected after the commencement of this Act shall be capable of acting as councillor, except in administering the declaration hereinafter mentioned, until he has made and signed before one of the council a declaration to the effect following :—

Declaration by councillors to be entered and signed in the minute book. No. 5203 s. 54.

" I, A.B., do solemnly declare that I will faithfully and impartially according to the best of my skill and judgment execute all the powers and authorities reposed in me as a councillor by virtue of the *Local Government Act* 1958 or any other Act."

(2) Such declaration shall be entered and signed together with the date on which it is signed in the minute book of the council.

(3) In case any person elected a councillor does not within three months after the day on which he has been declared to be elected make and subscribe such declaration his seat shall become vacant.

(4) Any councillor, whether he himself has made such declaration or not, may administer such declaration.

Councillors to take oath of allegiance. No. 5203 s. 55.

55. No person elected as a councillor of any municipality shall be capable of acting as such until he has taken the oath of allegiance to Her Majesty her heirs and successors before two or more councillors of such municipality who are hereby authorized to administer such oath notwithstanding that they themselves have not taken such oath.

Penalty for acting as councillor when incapacitated. No. 5203 s. 56.

56. (1) Every person who acts as a councillor, being incapacitated under the provisions hereof to be or continue such or before he has made and subscribed such declaration as aforesaid, shall, save in case of incapacity proceeding from unsoundness of mind, be liable for every such offence to a penalty of not more than Fifty pounds, and such penalty may be recovered by any person with full costs of suit in the Supreme Court or the County Court, and such penalty when recovered shall be paid into and form part of the municipal fund.

Person sued must prove his qualification.

(2) In every such action the person sued shall prove that at the time of so acting he was qualified under the provisions of this Act to be a councillor, and had made and subscribed the declaration aforesaid, or he shall be adjudged to pay the said penalty and costs without any other evidence being required from the plaintiff than that such person had acted as a councillor in the execution of this Act.

Acts nevertheless to be valid.

(3) Nevertheless all acts as a councillor of any person incapacitated as aforesaid, or who has not made or subscribed the declaration aforesaid, done previously to the recovery of the penalty shall be as valid as if such person had been capable and had made and subscribed such declaration.

DIVISION 2.—RETIREMENT AND VACANCIES.

Retirement of councillors in rotation. No. 5203 s. 57.

57. (1) On the day appointed for the annual election in every year one-third part of the councillors assigned to every municipality shall go out of office as by rotation, and the councillors who shall so go out of office shall always be the councillors who have been the longest time in office without re-election.

(2) If by reason of two or more councillors having become councillors at the same time it is not apparent under the foregoing sub-section which of such last-mentioned councillors ought at any one time to go out of office, then such councillors as to whom it is so not apparent shall go out of office in the order in which such councillors were declared elected, commencing with the councillor declared elected to fill the last vacancy and proceeding upwards.

(3) In all such cases if any councillors have been elected without a poll, the council one month at least previously to the day hereby appointed for the going out of office and in its default the Governor in Council shall for such occasion determine in what order and which of such councillors shall go out of office.

The like in subdivided municipal district. No. 5203 s. 58.

58. In the case of any subdivided municipal district the last preceding section shall be read in the manner following, that is to say, when by that section one-third part of the whole number of councillors assigned to the municipality are to go out of office, then in a subdivided municipal district one-third part of the number assigned to each subdivision shall go out of office.

Extraordinary vacancies. No. 5203 s. 59.

59. (1) The office of any councillor shall become vacant, and such vacancy shall be deemed to be an extraordinary vacancy within the meaning of this Act if such councillor—

(*a*) fails to make and subscribe within the time appointed the declaration hereinbefore provided ; or

(*b*) dies; or

(*c*) by notice under his hand delivered to the chairman or clerk of the municipality resigns his office of councillor ; or

(*d*) becomes incapable of continuing a councillor; or

(*e*) ceases to be qualified as aforesaid at any time during the time for which he is elected ; or

(*f*) is declared ousted of such office by the Supreme Court whether or not he was entitled to have been declared by the returning officer to be elected ; or

(*g*) is absent from four consecutive ordinary meetings of the council without leave obtained from the council in that behalf.

Non-attendance not to count for the purpose of vacating seats of councillors.

(2) The non-attendance of a councillor at the time and place appointed for any ordinary meeting of the council shall not be reckoned absence from an ordinary meeting of the council within the meaning of this section—

If no quorum.

(*a*) unless a meeting of the council at which a quorum is present is actually held on that day; or

During proceedings for ouster.

(*b*) while any proceeding in connexion with the ouster from office of such councillor is pending in the Supreme Court.

Extraordinary vacancy where all vacancies are not filled. No. 5203 s. 60.

60. (1) If at any election of councillors no seats or vacancies or a number of seats of vacancies less than the whole number which should have been filled at such election are filled then the seats and vacancies which are so not filled shall severally be

deemed extraordinary vacancies and to have occurred on the day appointed for such election or to which the same has been or stands adjourned.

Extraordinary vacancy where no election held on day appointed.

(2) If on any day appointed by or under this Act for holding any election of councillors no election is held the seats or vacancies which ought to have been filled at such election shall severally be deemed to be extraordinary vacancies and to have occurred on the day appointed for such election or to which the same has been or stands adjourned.

(3) But the councillors eventually elected to fill such seats or vacancies shall go out of office as if elected at such election.

Retirement of councillor elected to fill extraordinary vacancy. No. 5203 s. 61.

61. For the purpose of determining the time of his retirement as by rotation every councillor elected to fill an extraordinary vacancy shall be deemed to have been elected at the same time and in the same manner and (if the case so requires) in the same order as the last holder of the seat he was elected to fill who was elected otherwise than to fill an extraordinary vacancy.

Councillors may be re-elected. No. 5203 s. 62.

62. Nothing herein contained shall prevent any person from being immediately or at any time re-elected to the office of councillor if he for the time being is capable under the provisions hereof of being and continuing a councillor.

DIVISION 3.—TRAVELLING EXPENSES.

Travelling expenses of councillors of shires. No. 5203 s. 64 (1); No. 5843 s. 3.

63. Notwithstanding anything in this Act the council of any shire may in each year apply out of the municipal fund moneys necessary to pay the expenses *bona fide* incurred by councillors in travelling within the municipal district to and from their usual place of abode to attend meetings of such council :

Provided that the rate of payment for such expenses shall not exceed Ten pence per mile travelled to or from such meeting.

Reimbursement of councillors' travelling expenses incurred outside the municipality. No. 5203 s. 64 (2).

64. Notwithstanding anything in this Act the council of any municipality may in each year apply out of the municipal fund moneys necessary to pay the expenses *bona fide* incurred by any councillor in travelling in the discharge of municipal business outside the municipal district in any case where the payment of such expenses has been approved by resolution of the council.

DIVISION 4.—ELECTION AND PRIVILEGES OF CHAIRMAN.

Chairman of municipality. No. 5203 s. 65.

65. (1) As soon as conveniently may be after any vacancy taking place in the office of chairman of any municipality one of the councillors thereof shall be elected by the council to be chairman of such municipality.

(2) The chairman so elected shall in the case of the city of Melbourne be entitled the " Lord Mayor " in the case of a borough be entitled " the mayor " and in the case of a shire " the president."

Election of chairman. No. 5203 s. 66.

66. (1) In every newly constituted municipality or where municipalities are united the council shall at its first meeting elect a chairman for the municipality.

(2) On the fourth day after the day on which the returning officer declares the candidates at any annual election to be duly elected the council of the municipality shall hold a meeting at the hour of ten o'clock in the forenoon and shall elect a chairman for the municipality.

(3) Any failure to elect a chairman under the provisions of this section shall not invalidate any election of chairman subsequently made.

Precedence of chairman. No. 5203 s. 67.

67. (1) The chairman of every municipality shall take precedence at all municipal proceedings within the municipal district.

Who takes the chair at meetings of the council.

(2) The chairman of every municipality shall take the chair at all meetings of the council at which he is present and if at any meeting of the council the chairman of the municipality is not present one of the councillors present shall be elected chairman of such meeting by the council.

Equality of votes. No. 5203 s. 68.

68. If at any election of a chairman of any municipality or of any committee or of any meeting there is an equality of votes it shall be decided by lot which of the councillors having an equal number of votes shall be such chairman.

How chairman vacates office. No. 5203 s. 69.

69. The chairman of every municipality shall vacate his office of chairman—

(*a*) on the day previous to the first meeting of the council after the annual election ; or

(*b*) on ceasing to be a councillor (excepting when he is one of the councillors retiring by rotation at the annual election and is re-elected) ; or

(*c*) on resigning his office of chairman ; or

(*d*) on being declared ousted of such office by the Supreme Court—whichever first happens.

Resignation of chairman. No. 5203 s. 70.

70. The chairman of any municipality may by writing under his hand delivered to the council at any meeting thereof or to the clerk of the municipality resign his office of chairman.

Allowance to chairman. No. 5203 s. 71.

71. (1) Prior to the election of any chairman of any municipality the council may if it thinks fit grant an allowance (which, together with any amount applied pursuant to sub-section (7) of section two hundred and forty-six of this Act, does not in any year exceed Three pounds per centum of the revenue received by the council in that year from general and extra rates) to the chairman during his term of office: Provided that where but for this proviso the amount which the council could grant as aforesaid would be less than Fifty pounds the council may grant any amount not exceeding Fifty pounds.

To be paid quarterly.

(2) Such allowance shall be paid to the chairman for the time being in four quarterly instalments of equal amount out of the municipal fund for his own use.

Appointment of substitute for chairman. No. 5203 s. 72.

72. (1) Except where it is otherwise specially provided, if in any municipality there is no chairman, or the chairman is absent, incapable of acting, or refuses to act, all acts and things which under this Act may or are required to be done or had by or with regard to the chairman may and shall be done or had by or with regard to such one of the councillors as the council may appoint in that behalf.

(2) The council shall when the occasion requires make such appointment accordingly.

(3) But if from any cause the council does not make such appointment or if there is no council the Governor in Council may for the purposes of this section appoint one of the councillors or some other person respectively.

DIVISION 5.—MUNICIPAL ROLL.

(1) *Persons entitled to be enrolled.*

Qualification of voters. No. 5203 s. 73.

73. Every person who on the tenth day of June in any year is of the full age of twenty-one years and is liable to be rated in respect of any property within any municipal district shall be entitled to be enrolled in that year, according to the provisions hereinafter contained, upon the municipal roll, according to the following scale (that is to say):—

Votes in boroughs.

(*a*) In a borough, if such property, whether consisting of one or more tenements, is rated upon a value of less than Fifty pounds he shall have one vote; upon a value amounting to Fifty pounds, and less than One hundred, two votes; upon a value amounting to or exceeding One hundred pounds, three votes:

(*b*) In a shire, if such property, whether consisting of one or more tenements, is rated upon a value of less than Twenty-five pounds, he shall have one vote; upon a value amounting to Twenty-five pounds, and less than Seventy-five pounds, two votes; upon a value amounting to or exceeding Seventy-five pounds, three votes: Votes in shires.

Provided that—

(*c*) no person shall be entitled to be enrolled in respect of property of a less annual rateable value than Five pounds unless there is a house upon such property, and such person resides there; Minimum valuation for enrolment.

(*d*) the person in occupation of any rateable property shall be entitled to be enrolled in respect of such property instead of the owner thereof; and in no case shall the person in occupation of such property and the owner thereof be both separately enrolled in respect of such property or any part thereof; Occupier and owner not to be both enrolled.

(*e*) no married woman shall by reason of coverture only be disqualified from being enrolled or be deemed incapable of exercising any rights with respect to voting which are conferred by this Act; Married women.

(*f*) no person shall be entitled to be enrolled unless he is a natural born or naturalized subject of Her Majesty; Non-British subjects.

(*g*) every person who on the tenth day of June in any year is of the full age of twenty-one years and is liable to be rated as being the occupier of any rateable property held under lease or licence from the Crown shall be entitled to be enrolled in that year upon the municipal roll according to the provisions hereinbefore contained; Crown lessees and licensees.

(*h*) no person shall be disqualified from being enrolled upon the municipal roll of any municipality by reason only of non-payment of rates. Non-payment of rates no disqualification from voting.

74. (1) The occupiers of property in any municipal district (not being vacant land) which is exempted from being rated because it is vested in the municipality shall have the same right to be enrolled upon the municipal roll and of voting which they would have if they were liable to be rated or rated in respect of such property, and such property shall be included in every valuation and the names of the occupiers thereof shall be placed by the clerk of the municipality upon the voters' list. Occupiers of property vested in the municipality to be entitled to vote. No. 5203 s. 74; No. 5530 s. 2.

Enrolment of certain occupiers of Commonwealth property.

(2) The occupiers in any municipal district of property (not being vacant land)—

(*a*) which belongs to the Commonwealth of Australia; and

(*b*) in respect of which there is made to the municipality on or before the tenth day of June in any year a contribution in lieu of rates and equivalent to the amount of rates which would be chargeable thereon if the land were rated—

shall have the same right to be enrolled upon the municipal roll and of voting which they would have if they were on the tenth day of June in that year liable to be rated or rated in respect of such property, and such property shall be included in every valuation and the names of the occupiers thereof shall be placed by the clerk of the municipality upon the voters' list.

Enrolment of certain occupiers of municipal Government &c., properties.

(3) The occupiers in any municipal district of property (not being vacant land)—

(*a*) which is exempt from being rated because it is the property of Her Majesty or is vested in fee in any of the persons or corporations mentioned in paragraph (*d*) of sub-section (1) of section two hundred and fifty-one of this Act; and

(*b*) in respect of which a contribution in lieu of rates and equivalent to the amount of rates which would be chargeable thereon if the property were rated has been paid or by arrangement or agreement is payable to the council in respect of any year—

shall have the same right to be enrolled upon the municipal roll and of voting which they would have if they were on the tenth day of June in that year liable to be rated or rated in respect of such property, and accordingly such property shall be included in every valuation and the names of the eligible occupiers shall be placed by the clerk of the municipality upon the voters' list.

Power to corporations which are ratepayers to nominate persons to be placed on the roll.

No. 5203 s. 75; No. 6128 s. 6.

75. (1) When a corporation is liable to be rated in any year in respect of property in any municipal district or subdivision such corporation may by writing under the hand of the secretary of the corporation or other person for the time being acting in that capacity or, in respect of a corporation formed or incorporated outside Victoria, under the hand of the agent of the corporation in Victoria delivered on or before the tenth day of June in such years to the municipal clerk appoint any person to be enrolled in the place of such corporation.

(2) Any such person shall for the purposes of section seventy-three of this Act be deemed liable on the said tenth day of June to be rated in respect of property in such municipal district or subdivision of equal rateable value to that for which the corporation is liable to be rated.

Joint occupiers and owners not exceeding three entitled to be enrolled. No. 5203 s. 76.

76. (1) Where more persons than one are jointly liable to be rated in respect of any property each of such persons not exceeding three in all shall for the purpose of enrolment be deemed liable to be rated in respect of property of equal rateable value to that of the whole of such first-mentioned property divided by the number of persons so to be deemed liable.

(2) In case more than three persons are rated in respect of any property the persons so to be deemed liable shall be those whose names stand first in order upon the rate last made, or if no rate has been made upon the valuation and return made as herein required.

Enrolment in subdivided municipal district. No. 5203 s. 77.

77. Where any municipal district is subdivided every person entitled to be enrolled shall be enrolled upon the voters' roll to be made as hereinafter provided for every subdivision wherein any rateable property in respect of which he is so entitled is situated; and in respect of each subdivision shall have the number of votes to which he is entitled upon the value of the property therein for which he is liable to be rated.

(2) *Preparation of Voters' List.*

Collector or special collector to furnish lists. No. 5203 s. 78.

78. (1) Every collector appointed or employed by the council of any municipality to collect any rates or other moneys or any other person employed by the council to prepare and deliver the lists following or any of them hereinafter called a "special collector" shall between the fifteenth and twenty-fourth days of June in each year deliver to the municipal clerk—

Of persons who have ceased to be occupiers.

(*a*) a list containing the names of every person rated on the rate last made as the occupier of rateable property who had on or before the tenth day of the month of June then present ceased to occupy the property in respect of which he was rated;

Of persons who have become occupiers.

(*b*) a list containing the names of every person who had on or before such tenth day of June and since the rate last made become the occupier of rateable property;

Of owners whose properties have ceased to be occupied.

(*c*) a list containing the names of every owner of rateable property which was unoccupied on such tenth day of June and had ceased to be occupied since the rate last made.

(2) Every such collector or "special collector" shall—

(*a*) prepare such lists according to the best of his knowledge information and belief;

(*b*) insert therein the description of each rateable property referred to;

(*c*) verify such list by statutory declaration;

(*d*) give notice forthwith to every person whose name is contained in any such list as having ceased to occupy any property that his name has been included in such list and will not be inserted in the voters' list in respect of such property; such notice may be given by leaving it at such property or by sending it through the post to such person addressed to such property.

Power of collector or special collector to put questions &c.

(3) (*a*) Every such collector or "special collector" may put to any person in occupation or in charge or being the owner or the agent for the owner of any rateable property questions upon all such matters as may be necessary for the preparation of any such list.

Questions and answers to be in writing in certain cases.

(*b*) He may if he thinks fit put any such questions in writing, and in such case may require the answers to be in writing and signed by the person answering the same.

Penalty.

(*c*) If after being informed by such collector or "special collector" of his purpose in putting any question, and of his authority under this Act to put the same, any such person in occupation or in charge or any such owner or agent refuses or wilfully omits to answer the same as required, or wilfully makes any false answer or statement in reply to such question, he shall for every such offence be liable to a penalty of not more than Ten pounds.

Municipal clerk to have regard to such lists.

(4) The clerk of such municipality shall have regard to such lists in making out the voters' list, and shall as the case may require omit from or insert in such voters' list any such name or increase or reduce the number of votes to be given to any person so named.

Municipal clerk to make out voters' list.
No. 5203 s. 79.

79. (1) The clerk of every municipality shall during the week ending on the seventh day of July in each year make out from the last rate which by the rate-book kept as hereinafter provided appears to have been made for the municipality, or from the valuation and return made as hereinafter provided if no rate has been made and also from the lists (if any) delivered in accordance with the provisions of the last preceding section a list according to and containing the particulars indicated in the form in the Fourth Schedule to be called the "Voters' List" of the names of all persons who appear to be entitled to be enrolled upon the voters' roll for the municipality.

Fourth Schedule Form "A."

(2) He shall arrange such voters' list according to the alphabetical order of surnames contained therein. Names to be arranged alphabetically.

(3) He shall state in such voters' list against the name of each person the several particulars indicated in such Schedule as the same appear in or from the said rate or valuation and return (as the case may be), or in any list delivered in accordance with the provisions of the last preceding section. Particulars to be set out.

(4) Unless by any list so delivered it appears otherwise every person rated to the said rate or entered in the said valuation and return in respect of any rateable property shall, for the purpose of making out the said voters' list, be presumed to have been of full age and the occupier or owner (as the case may be) of such property on the tenth day of June in the said year, and to have been on that day liable to be rated as such owner or occupier respectively upon the rateable value of such property appearing in such rate or such valuation and return (as the case may be), but subject to being objected to as hereinafter provided as to any part of his qualification as a voter. Except in certain cases qualification to be presumed.

(5) The clerk of every municipality shall omit from the voters' list the names of all persons who are known to him not to be natural born or naturalized subjects of Her Majesty and shall send to each person whose name is so omitted a notice in writing of the fact of such omission. Omission of non-British subjects.

80. (1) When any portion of the municipal district of any municipality has been severed therefrom, the municipal clerk shall, in making out the voters' list for such municipality, omit in respect of the rateable property in the portion severed the names of all persons who would if the severance had not taken place have been entitled to have their names inserted in such list in respect thereof. Voters' list after severance. No. 5203 s. 80.

(2) He shall on or before the tenth day of June next after the severance furnish to the clerk of the municipality including in its district the portion so severed a statement according to and containing the particulars indicated in the form in the Fourth Schedule containing the names of all persons who at the date of the severance were rated in respect of property in such portion, unless one month at least before such tenth day of June he has been notified in writing by the clerk of such municipality that the statement is not required; and he shall after furnishing such statement be paid by the council of such municipality at the rate of Ten shillings for every one hundred or portion of one hundred names included therein. Municipal clerk in severed district to furnish statement. Fourth Schedule Form "B."

Voters list after annexation.

(3) If no rate or no valuation and return of the rateable property in such portion have been made since the severance, such statement shall for the purpose of this Part be deemed to be a part of the rate or valuation and return (as the case may be) from which the voters' list for such last-mentioned municipality is to be made out.

Voters' list after union of municipalities. No. 5203 s. 81.

81. In every united municipality at the time hereby appointed for making out the voters' list for the same next after such union every rate list or document from which the clerk of any of the several municipalities so united would hereby, if the said municipalities remained separate, be required to make out the voters' list at such time shall, unless there is a subsequent like rate list or document of the united municipality, be a rate list or document from which the clerk of such united municipality shall make out the voters' list thereof as herein provided.

First voters' list. No. 5203 s. 82.

82. (1) If at the time at which the municipal clerk is hereby required first to make out a voters' list for any municipality—

(*a*) no rate and no valuation and return have been made for such municipality; or

(*b*) a voters' list has not been made out at such time; or

(*c*) any such list has been made out but has not been revised and completed within the period herein provided—

Powers of Governor in Council.

the Governor in Council may appoint for that occasion the several times and intervals of time or as the case may require the several remaining times and intervals of time at or within which the acts in this Act required or permitted to be done with regard to the making and revision of the voters' list and completion of the voters' roll shall or may be had or done.

(2) In the case where no such rate and no such valuation and return have been made the first in order of such times shall be not less than three nor more than six months after the time when councillors were first in office in such municipality.

(3) In all cases such times shall be of the same distance from each other and such intervals shall be of the same length as in this Act prescribed or provided in that behalf respectively.

(3) *Inspection of Voters' List.*

Inspection of voters' list. No. 5203 s. 83.

83. (1) The municipal clerk shall forthwith after making out the voters' list notify by public advertisement in some newspaper generally circulating in the neighbourhood the fact that such list or a copy thereof may be inspected by any person between the eighth and fourteenth days of July inclusive in such year at the place or places stated in such advertisement.

(2) The municipal clerk shall in the case of an unsubdivided municipal district keep such list or a copy thereof at the office of the council, and in the case of a subdivided municipal district shall keep at some public place in each subdivision the list or a copy thereof for such subdivision. List to be open for inspection.

(3) Such list or a copy thereof may be inspected by any person without fee at all reasonable hours on such days and at the places so appointed.

(4) *Claims and Objections.*

84. (1) Any person whose name has not been inserted in any such voters' list who claims to have his name inserted therein in respect of any rateable property shall, on or before the said fourteenth day of July, give or send by post to the clerk notice thereof in writing according to the form in the Fifth Schedule or to the like effect, signed under his own hand. Claims. No. 5203 s. 84. Fifth Schedule.

(2) The name of any person claiming to have his name inserted in any voters' list in respect of any property for which the name of some other person appears therein shall not be inserted unless an objection has been lodged in the manner hereinafter provided and the name of such other person has in respect of such property been expunged by the revision court except where it appears to such court that such other person is entitled to have his name retained on such list as a joint owner or joint occupier of such property. Names of claimants not to be inserted unless name on list is expunged.

85. (1) Any person who name has been inserted in any voters' list or any person claiming to have his name inserted therein in respect of any rateable property for which the name of some other person appears in any such list, may object to any person as not being entitled to have his name retained in such list in respect of such property or as not entitled to have the number of votes set against his name therein. Objections. No. 5203 s. 85.

(2) Any person so objecting shall on or before the fourteenth day of July give or send by post to the municipal clerk and also give to the person objected to or send through the post by registered letter to such person addressed to the premises in respect of which his name appears to be entered in the voters' list or leave at the said premises notice in writing of such objection according to the form in the Sixth Schedule or to the like effect stating the ground of such objection and shall sign the same under his own hand. Notice of objection. Sixth Schedule.

86. The municipal clerk shall include the names of all persons so claiming as aforesaid in a list according to the form in the Seventh Schedule and shall include the names of all persons so objected to in a list according to the form in the Eighth Schedule and shall sign and keep the said list or copies thereof respectively List of claims and objections. No. 5203 s. 86. Seventh Schedule. Eighth Schedule.

to be perused by any person without fee at all reasonable hours during the four days (Sundays and any days which are bank or public holidays throughout Victoria excepted) next preceding the twenty-first day of July in such year.

(5) *Revision of Voters' List.*

Revision court. No. 5203 s. 87.

87. (1) An open court shall be held within the municipal district or at the office of the council for the purpose of revising the voters' list thereof.

How constituted.

(2) The court shall consist of the chairman of the municipality or in his absence of a chairman appointed by the other members of the court and of not fewer than three other councillors: Provided that where no notice of claim or objection with respect to any voters' list has been duly given or sent to the municipal clerk the court may consist of the chairman of the municipality only or in his absence of any other councillor thereof and the court so constituted shall have all the powers duties and jurisdiction of the court and of the chairman thereof.

Time of holding court.

(3) Such revision shall take place at such time between the twenty-first and the twenty-seventh days of July inclusive in every year as the chairman shall appoint.

Notice.

(4) The chairman shall give six clear days' notice of the holding of such court, and of the time and place thereof by causing such notice to be placed on the outer door or outer wall of or on a notice board outside some public or conspicuous building within the said district and by advertisement in some newspaper generally circulating in the neighbourhood.

Adjournment.

(5) Every such court may be adjourned, and if at any time for half-an-hour after the time appointed for holding any such court or adjourned court a sufficient number of councillors to form a court are not present then the chairman or in his absence the municipal clerk may and shall adjourn the court. But no such court shall be adjourned beyond the thirty-first day of July in any year.

Governor in Council may in certain cases appoint day for revision. No. 5203 s. 88.

88. (1) If from any cause the revision of any voters' list awaiting revision under this Act has not been made or completed within the time herein appointed or allowed for that purpose the Governor in Council may appoint a day not more than twenty days from the last day upon which such revision might have been made to be the day for holding a revision court for revising the said list.

(2) Such day shall as to all such acts and proceedings as yet remain to be done or had with respect to such list be deemed to be for all intents and purposes the day appointed for such revision.

(3) The time appointed in this Act for the delivery of the voters' roll to the chairman of the municipality shall be extended in the same proportion.

Municipal clerk valuers collectors &c. to attend court. No. 5203 s. 89.

89. (1) The municipal clerk shall himself or by some person on his behalf if he is unavoidably prevented from so doing, attend the revision court and produce to the court—

(*a*) the rate-book and the valuation and return;

(*b*) the lists (if any) delivered by any collector of rates and other moneys or by any "special collector";

(*c*) the voters' list;

(*d*) copies of the lists (if any) of the persons who have sent in claims and of the persons who have been objected to;

(*e*) such claims and objections (if any), and all statutory declarations in respect thereto.

(2) The valuer or valuers and all collectors of rates or other moneys under this Act and all "special collectors" shall also attend the court and shall produce to the court all books papers and documents in their possession relating to such claims and objections.

(3) The officers or persons aforesaid shall answer on oath all such questions as the court may put to them touching any matters necessary to be ascertained for revising the voters' list.

Statutory declaration by persons claiming. No. 5203 s. 90.

90. (1) Any person claiming to have his name inserted in the voters' list may make a statutory declaration that he was on the tenth day of June in that year of the full age of twenty-one years and liable to be rated in respect of the property for which he claims to have his name inserted in such list, and that he has in the manner hereinbefore provided served upon the municipal clerk the notice of claim hereinbefore required.

By persons objecting.

(2) Any person objecting to any person as not being entitled to have his name retained in the voters' list in respect of any rateable property or as not entitled to have the number of votes set against his name therein may make a statutory declaration that he has in the manner hereinbefore provided served upon the municipal clerk and upon the person so objected to the notice of objection hereinbefore required.

Declarations to be produced to revision court.

(3) Every such statutory declaration shall be delivered at the office of the council on or before the day previous to the day fixed for holding the revision court, and the municipal clerk shall produce all such declarations to the court.

Declarations to be evidence.

(4) Such declaration so produced shall be received by the said court as evidence of the truth of the matters therein contained, unless evidence satisfactory to the court be given to the contrary.

Revision court may summon witnesses &c. No. 5203 s. 91.

91. (1) The revision court shall have authority to hear receive and examine evidence, and by summons under the hand of the chairman of such court to require all such persons as the court may think fit to appear personally before such court at a time and place to be named in such summons, and to produce to such court all such books and papers in their possession and under their control as may appear necessary for the purpose of their examination.

Evidence to be on oath.

(2) All persons giving evidence shall be examined upon oath, and any member of the court or the municipal clerk shall have authority to administer to such persons the necessary oath.

Compelling attendance &c. of witnesses.

(3) The court shall have the like powers for compelling the attendance of witnesses summoned, and their examination upon and taking of oaths and affirmations, and their answering questions touching the premises, as by any law in force for the time being is vested in justices exercising summary jurisdiction; and the chairman of such court may issue any such summons at any time after he has appointed a time for holding the said court.

Decision of court. No. 5203 s. 92.

92. The court shall upon hearing in open court determine, as hereinafter mentioned, upon the validity of all claims and objections; and every such determination shall be by the decision of a majority and in case of an equal division of votes the chairman shall have a casting vote, in addition to his vote as a member of the court.

Equality of votes.

What names to be inserted. No. 5203 s. 93; No. 5843 s. 4 (*a*).

93. (1) The revision court shall insert in the voters' list under revision the name of every person who has claimed as aforesaid and is proved to the satisfaction of the court to be entitled to have his name inserted therein, and for one or more votes according to the provisions of this Act.

What names to be retained.

(2) The court shall retain on the said list the names of all persons to whom no objection has been duly made and the number of votes set against the same unaltered.

Retention of name if no appearance of objector.

(3) The court shall retain on the said list the name of every person who has been objected to by any person, and the number of votes set against the same unaltered, unless the person so objecting appears by himself or by some one on his behalf and proves the service of the requisite notices; or unless such service is proved by statutory declaration as hereinbefore provided.

What names to be expunged.

(4) The court on proof as aforesaid of the service of the requisite notices shall, unless so much of the qualification of the person objected to as is embraced in the grounds of objection to

be stated as aforesaid is proved to the satisfaction of the court, expunge the name of such person as not being entitled to have his name retained in the list in which it has been inserted, or alter and correct the number of votes set against the name of such person in any voters' list as not entitled to have such number of votes.

Names of persons dead

(5) The court shall expunge from the said list the name of every person who is proved to be dead.

Non-British subjects.

(6) The court shall expunge from the said list the name of any person against whom an objection has been made under this Division unless such person proves to the satisfaction of the court that he is a natural born or naturalized subject of Her Majesty and is in other respects duly qualified.

Mistakes &c. in description.

(7) The court shall by means of inspection of the voters' list and rate-book and valuation and return and the lists (if any) delivered by the collectors of rates or other moneys and by the "special collectors" correct any mistake or supply any omission which may appear to such court to have been made in the voters' list in respect of the name, place of abode, or trade or occupation of any person who is included therein, or in respect of the local description of the rateable property or the situation thereof.

Names not to be inserted or expunged without notice.

(8) But no person's name shall be inserted by the court in any such list, or shall, except in the case of death, be expunged therefrom, unless notice has been given as is hereinbefore required in each of the said cases.

Costs in cases of frivolous or vexatious claims and objections. No. 5203 s. 94.

94. In case it appears to the court that any person has made or attempted to sustain any frivolous or vexatious claim or objection, it shall be lawful for the court to award such costs not exceeding Five pounds as to the court may seem meet, to be paid by such person to the person resisting such claim or objection or to be paid into the municipal fund where there is no person resisting such claim or objection, and the same may in default of payment be recovered before a court of petty sessions.

Initialing and signing lists. No. 5203 s. 95; No. 5843 s. 5.

95. (1) The chairman of such court shall in open court write his initials against every name struck out or inserted as aforesaid, and against any part of the list in which the number of votes has been altered or any mistake has been corrected or omission supplied.

(2) The chairman shall also write his initials at the foot of every page of the list so settled.

Certificate of revision.

(3) The chairman shall then cause to be written at the foot or end of the list a certificate that the same has been revised and is correct with the date thereof.

(4) The chairman and (if there are any other members of the court) not fewer than two other members of the court shall severally sign such certificate.

Certified voters' list to be delivered to clerk who shall cause roll to be printed and delivered to chairman.
No. 5203 s. 96.
Ninth Schedule.

96. The voters' list so signed and certified shall be forthwith delivered to the municipal clerk and such clerk shall forthwith—

(*a*) cause the names thereon to be printed in a roll or book hereinafter called a roll, arranged in alphabetical order of the surnames in the form contained in and with the several particulars required by the Ninth Schedule;

(*b*) prefix to every name in such roll a number beginning such numbers at the first name on the said roll with the number one and continuing them on in regular arithmetical series to the last name thereon;

(*c*) cause a sufficient number of copies of such roll to be printed;

(*d*) before or on the twelfth day of August sign and deliver the said roll to the chairman of the municipality.

(6) *Voters' Roll.*

Roll signed and delivered to be voters' roll.
No. 5203 s. 97.

97. (1) The printed roll so signed as aforesaid by the municipal clerk and delivered to the chairman of the municipality shall be the voters' roll for the municipality, and shall continue in force until a new roll has been made for the municipality under the provisions of this Act, whether the same has been duly made at the time hereby appointed or afterwards.

No alteration to be made except to conform to certified list.

(2) Such printed roll shall not be added to or otherwise altered except so as to make it conform to the voters' list signed and certified as aforesaid.

Clerk to furnish copies of voters' roll.
No. 5203 s. 98; No. 5843 s. 6.

98. The clerk of every municipality shall from time to time deliver to the chairman thereof so many copies of every voters' roll for the time being in force therein as may be required, and shall furnish copies of every such roll to any person requiring them on the payment of One shilling for every five hundred or portion of five hundred names on such roll, and the amount received therefor shall be paid into the municipal fund.

Copy of voters' roll to be evidence.
No. 5203 s. 99.

99. Any printed copy with such additions or alterations (if any) as aforesaid to make it conform to the signed and certified voters' list purporting to be a copy of the voters' roll of any municipality and signed by the chairman of such municipality shall be *prima facie* evidence of such roll and of the contents thereof.

(7) *Voters' Roll in Exceptional Cases.*

Voters' roll after subdivision or annexation. No. 5203 s. 100.

100. When any alteration takes place in the municipal district of any municipality by annexation of any district previously forming part of a municipal district, or when the subdivisions in any municipal district are altered or abolished and at the time of such annexation or abolition or alteration of subdivisions a voters' roll or voters' rolls was or were in force in the district or districts affected thereby, the municipal clerk shall forthwith to the best of his knowledge and belief from such voters' roll or rolls or any voters' roll or rolls amended as mentioned in the next succeeding section make out a voters' roll or rolls in accordance with the provisions of this Act in conformity with the circumstances of such municipality and shall forthwith sign each such roll and deliver the same to the chairman, and every such roll shall be deemed to be the voters' roll for the municipality or subdivision to which the same refers.

Voters' roll after severance. No. 5203 s. 101.

101. When any part is severed from any municipal district the clerk thereof shall forthwith to the best of his knowledge and belief erase from any voters' roll or rolls in force therein the names of all persons inscribed on any such roll in respect of rateable property situated in the part so severed as so inscribed or alter the number of votes set against the name of any such person as the case may require and shall sign every roll so amended and deliver the same to the chairman, and every such roll shall be deemed to be the voters' roll for the municipality or subdivision to which the same refers.

Voters' roll of severed subdivision. No. 5203 s. 102.

102. When any entire subdivision is wholly severed from any municipal district any voters' roll for such subdivision shall cease to be of any force.

Voters' rolls for newly constituted municipalities. No. 5203 s. 103.

103. When any new municipality is constituted having for or including in its municipal district portion of any previously existing municipal district—

(*a*) the Governor in Council may appoint some person to make out a voters' roll or voters' rolls for the newly constituted municipality in conformity with the circumstances;

(*b*) the person so appointed shall forthwith make out and sign the same;

(*c*) every roll so signed shall be deemed to be the voters' roll for the newly constituted municipal district or any subdivision thereof to which the same relates; and

(*d*) every person of the full age of twenty-one years who is a natural born or naturalized subject of Her Majesty and who immediately before the date of

the constitution of the new municipality was liable to be rated in respect of any property within the said portion of the previously existing municipal district shall be entitled to be enrolled on such voters' roll for the municipal district or any subdivision thereof (as the case may be) of the newly constituted municipality.

Voters' roll after union.
No. 5203 s. 104.

104. When any municipalities are united, the voters' rolls in force at the time of such union for the respective municipalities united or for any subdivision thereof shall continue in force until the voters' roll for the new municipality or such subdivision has been made under the provisions of this Act.

Annexation of outlying district not to affect voters' rolls.
No. 5203 s. 105.

105. The annexation to any municipal district of any outlying district shall not invalidate or affect any voters' roll then in force for such municipal district or any subdivision thereof.

(8) *Application of Provisions to Subdivided Municipal District.*

Construction of this Part in subdivided district.
No. 5203 s. 106.

106. (1) The provisions of this Part relating to the voters' list and voters' roll shall be read with reference to any subdivided municipal district in manner following (that is to say):—

(*a*) Instead of the voters' list and voters' roll for the municipality there shall be a voters' list and voters' roll respectively for each subdivision ;

(*b*) The clerk shall insert in the voters' list for each subdivision the names of those persons who under the provisions hereinbefore contained appear to be entitled for the time being to be enrolled on the voters' roll for such subdivision;

(*c*) The printed roll for each subdivision when signed by the clerk and delivered to the chairman of the municipality shall be the voters' roll for the subdivision.

(2) Subject to the provisions of this section the sections of this Part and every provision thereof shall take effect according to their tenor respectively for each separate subdivision.

(9) *Proceedings validated.*

Governor in Council may direct correction of errors.
No. 5203 s. 107.

107. (1) If from any cause any act or thing required to be done in connexion with the preparation or revision of the voters' list or printing of the voters' roll has been omitted or not completed the Governor in Council may by order direct the same to be done ; and such order shall be published forthwith in the *Government Gazette.*

(2) Upon such publication any act or thing so omitted or not completed shall be done according to the tenor of such order, and any such act or thing and the voters' list or voters' roll shall then be as valid and effectual as if such act or thing had been done as provided by this Act.

Omission to publish &c. not to invalidate proceedings. No. 5203 s. 108.

108. No omission to notify by public advertisement with regard to any list or to keep any list for perusal or inspection shall be deemed to prevent invalidate or render imperfect any of the proceedings hereinbefore provided for with regard to the compilation or completion of any list or roll or to invalidate or render imperfect any such list or roll.

(10) *Offences and Penalties.*

Penalty for wilful or negligent act or omission. No. 5203 s. 109.

109. (1) Every officer of the council and every "special collector" who is guilty of any wilful misfeasance or wilful or negligent act of commission or omission contrary to any of the provisions of this Part, shall be liable to a penalty of not more than Fifty pounds.

Persons giving wrong information so as to procure names to be inserted in list or roll guilty of misdemeanour.

(2) Every person who gives any wrong information to the clerk of any municipality or to any valuer collecter or "special collector" or to any revision court whereby the name of any person is wrongfully inserted in any voters' list or voters' roll as owner or as joint owner, or as occupier or joint occupier of any property, when such person is not owner or joint owner, or occupier or joint occupier (as the case may be), shall be deemed guilty of a misdemeanour, and if he is thereof lawfully convicted, shall be liable to the like pains and penalties as by law are incurred by persons guilty of wilful and corrupt perjury.

Penalty for altering voters' list or voters' roll.

(3) Every person who—

(*a*) alters any voters' list after it has been signed and certified; or

(*b*) alters any voters' roll after it has been signed by the municipal clerk and delivered to the chairman of the municipality save in pursuance of this Act to make such roll conform to the signed and certified voters' list—

shall for every such offence be liable to a penalty of not more than Fifty pounds.

(11) *Expenses.*

Expenses of compiling lists &c. No. 5203 s. 110

110. The council of every municipality shall take an account of the reasonable expenses incurred by the municipal clerk or by any person appointed to discharge the like functions in carrying into effect for such municipality the provisions of this Part, and shall order the same to be paid out of the municipal fund.

DIVISION 6.—ELECTION OF COUNCILLORS.

(1) *Application of Provisions to Unsubdivided and to Subdivided Municipal Districts.*

Elections where municipal district is not subdivided.
No. 5203 s. 111.

111. (1) Where a municipal district is not subdivided the proceedings upon every election shall be taken and had for the whole municipal district.

Where district is subdivided.

(2) Where a municipal district is subdivided the like proceedings shall be taken and had for every subdivision thereof; and except as otherwise expressly provided all the provisions of this Division relating to the election of councillors shall be read as applying to elections of councillors to be held for each subdivision instead of for the municpal district at large, and all such provisions shall take effect in the cases of elections of councillors for subdivisions accordingly.

(2) *Time of Holding Elections and Number of Councillors.*

First election of councillors.
No. 5203 s. 112; No. 5924 s. 2 (2).

112. A first election of councillors in any newly constituted municipality shall be held on such day as the Governor in Council may appoint.

Annual election.
No. 5203 s. 113.

113. In every municipality an annual election of councillors shall be held on the fourth Thursday or the Saturday next following (as the council determines) in August in every year.

Return of councillors at the annual election.
No. 5203 s. 114.

114. At the annual election, except in those cases for which other express provision is made, one-third of the whole number of councillors for the time being assigned to the municipality shall be returned, and in the case of a subdivided municipal district shall be returned in equal numbers for every subdivision.

Return of councillors at first election or after union &c.
No. 5203 s. 115.

115. At every first election of councillors in any newly constituted municipality and at any annual election on the day appointed for which all the councillors in office in any municipality go out of office the whole number of councillors assigned to the municipality shall be returned, and in the case of a subdivided municipal district shall be returned in equal numbers for every subdivision.

Election to fill extraordinary vacancy.
No. 5203 s. 116.

116. On the occurrence of any extraordinary vacancy in the council of any municipality, a councillor shall be returned to fill such vacancy on the day appointed hereunder for holding an election to fill the same.

When held. No. 5203 s. 117.

117. (1) An election to fill every extraordinary vacancy shall be held on such day between the twenty-first day and the fortieth day (both days inclusive) after the occurrence of such vacancy as the chairman of the municipality, or in case there is no chairman or the chairman is absent incapable of acting or refuses to act the council of the municipality may appoint, and in default of such appointment on the fortieth day after the occurrence of such vacancy.

When vacancy by ouster deemed to occur.

(2) In the case of an extraordinary vacancy caused by the ouster of a councillor from office by the Supreme Court, such vacancy shall for the purpose only of fixing the date for the holding of such election be deemed to occur—

(*a*) if notice of appeal to the Full Court from the decision of the court is not served within the time allowed for appeal, then on the day next after the expiration of such time ; or

(*b*) if such notice of appeal is duly served, then upon the pronouncing of the decision of the Full Court upon such appeal.

When extraordinary vacancy not to be filled. No. 5203 s. 118.

118. In case any extraordinary vacancy occurs in the council of any municipality within two months before any annual election, and the previous occupant of the seat so become vacant if his seat had not so become vacant would have gone out of office on the day appointed for such election, or was one of several persons who might have gone out of office by rotation on such day, such extraordinary vacancy shall not be filled up, and the previous occupant of such seat shall be reckoned one of the councillors going out of office on such day.

(3) *Who shall elect.*

Voters where there is no roll. No. 5203 s. 119.

119. At every municipal election for any municipal district or subdivision for which no roll is in force every person of the full age of twenty-one years who is a natural born or naturalized subject of Her Majesty and who is liable for the time being to be rated under the provisions hereof in respect of property within the municipal district or subdivision (as the case may be) shall be entitled to vote, and every such person shall be entitled to one vote.

Voters where there is a roll. No. 5203 s. 120.

120. At every municipal election for any municipal district or subdivision for which a roll is in force every person whose name is inscribed on such roll shall be entitled to vote and to the number of votes for which he is enrolled.

(4) *Who shall hold Elections.*

Returning officer and deputies for municipal election.
No. 5203 ss. 121-125; No. 6128 s. 8 (1).

121. (1) Every municipal election shall be held before a returning officer.

(2) Subject to this section the municipal clerk shall be the returning officer.

(3) The returning officer shall by writing under his hand appoint a deputy to assist him or to act in his place at any such election, and may remove any such deputy, and shall appoint another in the place of any deputy who is so removed or who dies retires or becomes incapable of acting; and the deputy may do all or any of the acts or things which the returning officer is authorized or required to do.

(4) If the returning officer dies resigns or becomes incapable of acting his deputy, or if there is no such deputy then such other person as the Governor in Council appoints, shall be the returning officer.

(5) No returning officer or deputy returning officer shall be a councillor or a candidate for the office of councillor at the election.

(5) *Nomination of Candidates.*

Notice of election.
No. 5203 s. 126 (1); No. 6128 s. 7.

122. Between the twenty-ninth day and the twenty-second day (both days inclusive) before any election of councillors under this Act the returning officer shall give public notice of such election by advertisement inserted in some newspaper generally circulating in the neighbourhood.

Requirements of notices.
No. 5203 s. 126 (2).

123. Such notice shall require all candidates at such election to be nominated in manner hereinafter mentioned at the place named in such notice which shall be the office of the council or some place within the municipal district between the hours of ten o'clock in the forenoon and four o'clock in the afternoon on or before a day (hereinafter called the nomination day) between the fifth day and the seventh day (both days inclusive) after the time of giving such notice and named therein.

Mode of nomination.
No. 5203 s. 126 (3).

Tenth Schedule.

124. Any person desirous of nominating a candidate shall, before four o'clock in the afternoon of the nomination day, cause to be delivered at the place named in such notice to the returning officer or his deputy a nomination paper, in the form in the Tenth Schedule or to the like effect, stating therein the surname and christian or other names of such candidate, together with the other particulars required in and by the said Schedule.

Signing of nomination paper. No. 5203 s. 126 (4).

125. Such nomination paper shall be signed—

(*a*) under their own hands by not less than ten persons duly qualified to vote at such election ; and

(*b*) by the person named therein as a candidate in token of his assent to being so named.

Moneys to be deposited with returning officer. No. 5203 s. 127 (1); No. 6128 s. 9.

126. At the time of the delivery to the returning officer of any such nomination paper as aforesaid the candidate named therein or some person for him or on his behalf shall pay into the hands of the returning officer the sum of Ten pounds in cash to be dealt with as hereinafter provided.

What persons alone shall be deemed candidates. No. 5203 s. 127 (2).

127. No person who has not been so nominated as aforesaid or by whom or on whose behalf such payment has not been so made shall within the subsequent provisions of this Part be or be deemed to be a candidate at any election of councillors.

Returning officer to post names of candidates. No. 5203 s. 128.

128. The returning officer shall between the hours of nine o'clock in the forenoon and four o'clock in the afternoon upon each day between the giving as hereinbefore provided of public notice of any election and the day of nomination named therein keep posted outside the place as aforesaid named for the delivery of nomination papers the names of all persons who have previously become candidates for such election.

Penalties in case of nomination of incapacitated person. No. 5203 s. 129.

129. Every person who—

(*a*) procures or permits himself to be nominated as a candidate for the office of councillor in any municipality knowing himself to be under the provisions of this Act incapable of being or continuing such councillor ; or

(*b*) knowingly signs any nomination paper nominating or purporting to nominate as a candidate for the office of councillor in any municipality any person incapable of being or continuing such councillor ; or

(*c*) knowingly signs any nomination paper nominating any person as a candidate at and for any election of councillors not being himself qualified to vote at such election—

shall for every such offence be liable to a penalty of not more than Twenty pounds.

Declaration of election where uncontested. No. 5203 s. 130.

130. (1) If at the expiration of the time limited as hereinbefore provided for the nomination of candidates the number of persons who have become candidates as aforesaid does not exceed the number of councillors then to be elected, the returning officer shall declare such candidates to be duly elected, and they shall be deemed to be then duly elected accordingly.

When declaration to be made.

(2) Such declaration shall be made—

(*a*) in the case of an annual election, on the day appointed for such election ;

(*b*) in the case of an extraordinary election, on the nomination day.

Names of councillors elected to be published.

(3) After such declaration the returning officer shall forthwith publish in some newspaper generally circulating in the neighbourhood the names of the councillors so elected.

(6) *Polling Places and Polling.*

In shires, appointment of polling places by council.
No. 5203 s. 131; No. 6128 s. 10.

131. (1) In every shire—

(*a*) the council shall and may from time to time appoint and abolish polling places so that in case the shire is subdivided there may be always one polling place at the least for every riding;

(*b*) every such polling place shall be either in the shire or riding for which it is appointed or at some place outside such shire or riding not more than two miles from the nearest boundary thereof;

(*c*) the returning officer shall appoint for the taking of the poll at any election of councillors some place or places at or near to each polling place appointed by the council.

In boroughs returning officer to appoint places for taking poll.

(2) In every borough the returning officer shall appoint for the taking of the poll at any election of councillors some place or places—

(*a*) in the case of an unsubdivided municipal district, within the borough ; and

(*b*) in the case of a subdivided municipal district, within each ward :

Provided that if no place or not sufficient places for the taking of the poll can conveniently be appointed within any ward the returning officer may appoint some place or places at a distance of not more than half a mile from that ward for the taking of the poll.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this section in any shire or borough the returning officer may—

(*a*) where there is not a sufficient number of suitable places within the area permitted by the said provisions, with the consent of the Governor in Council appoint any place outside the area so permitted; and

(*b*) in any case appoint the municipal office—

as a place for the taking of the poll for the municipality or any subdivision thereof.

(4) The poll shall be taken at the place or places so appointed by the returning officer. Poll, where taken.

132. (1) At every such election the returning officer if it appears to him expedient for taking the poll may cause booths to be erected or rooms to be hired and used as such booths at the places appointed for taking the poll. Polling booths &c. No. 5203 s. 132.

(2) Such booths shall be so divided and allotted into compartments as to the returning officer may seem most convenient.

(3) There shall be at least one booth for every six hundred voters enrolled on the roll.

(4) The booths shall be numbered in arithmetical order and there shall be affixed over the entrance of each booth in succession letters of the alphabet in the alphabetical order denoting by the initial letter of the surname the voters entitled to vote thereat according to a distribution to be made under this section.

(5) No voter shall vote in any booth save that denoted by the initial letter of his surname.

(6) No such booth or room shall be in or on the premises of any licensed victualler.

(7) The returning officer may appoint poll clerks to attend in each booth at such election.

133. (1) If at the expiration of the time limited for the nomination of candidates the number of candidates exceeds the number of councillors to be elected the returning officer shall forthwith give public notice by advertisement inserted in some newspaper generally circulating in the neighbourhood stating the names of the persons so nominated and that a poll will be taken for the election of such councillors on the day and at the place or places appointed for holding the election under the provisions hereof and named in such notice. Contested election. No. 5203 s. 133.

(2) The returning officer shall forthwith cause ballot-papers to be printed with the surnames and christian or other names of all the candidates in full in the form in the Eleventh Schedule. Ballot-papers. Eleventh Schedule.

(3) Such poll shall take place accordingly and shall commence at eight o'clock in the forenoon and except as otherwise provided by or ordered in accordance with the next succeeding section close in the case of a shire at four o'clock and in the case of a borough at five o'clock in the afternoon. Time of poll.

Extension of hours for closing polls at municipal elections. No. 5203 s. 134.

134. (1) The council of any municipality other than those named in sub-section (3) of this section may present to the Governor in Council a petition praying that the time for closing the poll in such municipality be any hour not later than eight o'clock in the afternoon and named in the petition.

(2) The Governor in Council on receiving such petition may by Order published in the *Government Gazette* declare that such hour be the time for closing the poll in such municipality; and thereafter until altered by the Governor in Council on receiving a further petition from such council such hour shall be the time for closing the poll in such municipality.

Hours for closing poll in certain municipalities.

(3) In the case of the municipalities of Ballaarat, Bendigo, Box Hill, Brighton, Brunswick, Camberwell, Caulfield, Chelsea, Coburg, Collingwood, Essendon, Fitzroy, Footscray, Geelong, Geelong West, Hawthorn, Heidelberg, Kew, Malvern, Melbourne, Moorabbin, Mordialloc, Northcote, Oakleigh, Port Melbourne, Prahan, Preston, Richmond, Sandringham, South Melbourne, St. Kilda, and Williamstown the hour for closing the poll shall be eight o'clock in the afternoon.

Retirement of candidate within certain time. No. 5203 s. 135.

135. (1) If after a poll stands appointed as aforesaid at any election any candidate for such election and five of the persons having signed the paper nominating him as aforesaid are desirous that he retire from such candidature such candidate and the persons aforesaid, not later than seven clear days before the day of polling may—

(*a*) sign and deliver to the returning officer between the hours of nine o'clock in the forenoon and four o'clock in the afternoon a notice in the form in the Twelfth Schedule stating that such candidate so retires; and

Twelfth Schedule.

(*b*) publish in some newspaper generally circulating in the neighbourhood, but not necessarily a newspaper appointed by the council under section five of this Act, a copy of such notice.

(2) The returning officer, on such receipt of such notice, and on sufficient proof of such publication as aforesaid, shall—

(*a*) if the number of candidates is by such retirement reduced to the number of persons to be elected at such election, declare on the day appointed for the election the remaining candidates to be duly elected and they shall be deemed to be then duly elected accordingly. After such declaration he shall forthwith publish in some newspaper generally circulating in the neighbourhood the names of the councillors so elected; or

(*b*) if the said number is not so reduced, omit the name of such person so retiring from the ballot-papers to be used at the said election, and if such papers are already printed erase such name therefrom.

(3) No candidate who has so retired shall be capable of being elected at such election.

Who to preside at each booth. No. 5203 s. 136.

136. The returning officer or his deputy or some one to be appointed by writing under the hand of the returning officer or his deputy shall preside at each polling booth for taking the poll.

Scrutineers. No. 5203 s. 137.

137. Each candidate shall be entitled to appoint in writing one scrutineer to be present in each polling booth; and such scrutineers and the said returning officer or deputy or other person and the poll clerks, and any voters not exceeding six in number actually engaged in voting and to be named if necessary by the returning officer or deputy or other person so appointed, shall alone be permitted at any one time to enter or remain in the polling booth.

Power of returning officer and deputy &c. No. 5203 s. 138.

138. (1) Every such returning officer and deputy and other person so appointed shall have power and authority—

(*a*) to maintain and enforce order and keep the peace at any election or polling held by him;

(*b*) without any other warrant than this Act to cause to be arrested and taken before a justice any person reasonably suspected of—

(i) knowingly and wilfully making a false answer to any of the questions hereinafter mentioned; or

(ii) personating or attempting to personate any voter; or

(iii) attempting unlawfully to vote more than once at the same election; or

(iv) leaving or attempting to leave the polling booth after having received a ballot-paper and before having deposited the same in the box as hereinafter provided; or

(v) causing a disturbance at any election;

(*c*) without any other warrant than this Act to cause any person to be removed who obstructs the approaches to any polling booth or conducts himself in a disorderly manner.

Members of the police force to assist returning officer.

(2) All members of the police force shall aid and assist such returning officer or deputy or other person so appointed as aforesaid in the performance of his duty.

Pencils and ballot-box. No. 5203 s. 139.

139. (1) The returning officer or his deputy or other person so appointed shall provide pencils in every polling booth for the use of the voters, and also a locked box to be called the ballot-box with a cleft or opening therein capable of receiving the ballot-papers.

Ballot-box to be exhibited and then locked.

(2) Such box shall be opened and exhibited to the poll clerks and scrutineers before the polling begins, and shall be then locked and shall stand on a table opposite the returning officer or deputy or other person who shall keep the key of the said box.

Ballot-papers how delivered and dealt with. No. 5203 s. 140; No. 6151 s. 2 (a).

140. (1) The returning officer or his deputy or other person so appointed shall deliver to every voter who requires the same a ballot-paper, or if such voter appears by the roll to be entitled to give more votes than one then so many ballot-papers as may be equal to the number of votes not exceeding three which such voter so appears to be entitled to give.

Eleventh Schedule.

(2) Every ballot-paper shall be in the form in the Eleventh Schedule and initialed by the returning officer or his deputy or other person so appointed.

How vote to be marked.

(3) (*a*) Every voter shall without leaving the booth mark his vote on any or all of such ballot-papers by placing—

(i) the figure 1 opposite the name of the candidate for whom he votes as his first preference ; and

(ii) the figures 2, 3, 4 (and so on as the case requires) opposite the respective names of all the remaining candidates so as to indicate by such numerical sequence the order of his preference for each such candidate :

Provided that at any election where there are only two candidates a ballot-paper shall be deemed to be sufficiently marked if marked with the figure 1 as aforesaid so as to indicate the voter's first preference only:

Provided further that at any election where there are more than two candidates the provisions of this paragraph shall be deemed to be sufficiently complied with if the ballot-paper is marked with the figures 1, 2, 3, 4 (and so on as the case requires) opposite the names of all candidates on the ballot-paper except one, and in any such case the voter shall for all purposes of this Act be deemed and taken to have indicated the order of his preference for all the candidates and to have given his last preference vote for the candidate opposite whose name no figure is placed.

(*b*) A ballot-paper shall be rejected at the close of the poll if it is not marked in a manner prescribed or allowed by this sub-section; but except as otherwise expressly provided by this Act a ballot-paper shall not be rejected for any reason other than the reason set out in this paragraph but shall be given effect to according to the voter's intention so far as his intention is clear.

(4) In case any voter is unable to read or write, the returning officer or deputy or other person so appointed if required shall, in view of such one of the scrutineers as such voter may desire, mark such voter's ballot-paper or ballot-papers (as the case may be) in such manner as such voter indicates or shall at the request of such voter permit some other person appointed by such voter to mark such voter's ballot-paper or ballot-papers (as the case may be) for such voter. Voters unable to read or write.

(5) After the ballot-paper or ballot-papers (as the case may be) have been so marked such ballot-paper or ballot-papers shall be forthwith deposited in the said box.

(6) All the ballot-papers to which any person may be entitled at any polling booth shall be demanded and received by him at one and the same time; and no person having once demanded and received any such ballot-paper and voted by the same shall at the same election receive any other such paper or exercise any further right of voting. All ballot-papers to be demanded at one time.

(7) Notwithstanding anything in this Act contained as to the time of closing the poll, any person entitled to vote who at such time is within any room or booth for taking the poll shall be permitted to vote. Persons in polling booth &c. at time for closing poll to be permitted to vote.

141. (1) Before delivering any ballot-paper to a voter the returning officer or his deputy or other person so appointed shall upon a copy of the roll check off such voter's name as having voted, and mark against such name the number of papers delivered to such voter. Voters' name to be checked on roll. No. 5203 s. 141.

(2) When any voter claims to be entitled to vote and it is found that such voter's name has been already so checked off such returning officer or deputy or other person shall if such voter answers, in manner required by section one hundred and forty-three, all the questions set forth in that section deliver to him one ballot-paper for each vote not exceeding three to which he appears by such roll to be entitled. Paper to be specially marked where a vote is claimed and name is already checked off roll.

(3) Before delivering any such ballot-paper such returning officer or deputy or other person shall make and initial a memorandum of the delivery on such copy of the voters' roll.

142. (1) At every election of councillors under this Act when there is no voters' roll in force, the returning officer or his deputy or the person so appointed as aforesaid (as the case may be) shall put to every person tendering his vote the questions following :— Questions at election previous to marking of voters' roll. No. 5203 s. 142.

(*a*) What is your name in full and are you of the full age of twenty-one years?

(*b*) Are you the occupier or owner and which of rateable property within this borough [or shire ward or riding *as the case may be*] and liable to be rated

for such property under the *Local Government Act* 1958 [*or in the case of the city of Melbourne or city of Geelong* under the Acts relating to the city of Melbourne *or* city of Geelong] ?

(*c*) What is the rateable property in respect of which you claim to vote, and the name and situation thereof ?

(*d*) Have you already voted at this present election ?

(2) No other question shall be put to any person tendering his vote.

(3) No person who refuses to answer any of such questions, or whose answers to the same shall not show his right to give such vote, shall receive a ballot-paper or be permitted to vote.

Questions to be put to voter at all other elections. No. 5203 s. 143.

143. (1) At all elections of councillors where there is a voters' roll in force the returning officer or his deputy or other person so appointed as aforesaid may if he sees fit, or if required so to do by any candidate or scrutineer, shall put to any person tendering his vote the questions following or any of them :—

(*a*) Are you the person whose name appears as A.B. in the roll now in force for the borough [*or* shire ward or riding *as the case may be*] being enrolled therein in respect of property described to be situated in [*here specify the street or other place described in the roll*] ?

(*b*) Were you on the tenth day of June last of the full age of twenty-one years ?

(*c*) Have you already voted at the present election?

(*d*) Are you a natural born or naturalized subject of Her Majesty ?

(2) No other questions shall be put to any person tendering his vote.

(3) No person who refuses to answer any of such questions or who does not answer the first, second and fourth of such questions absolutely in the affirmative, and the third of such questions absolutely in the negative, shall receive a ballot-paper or be permitted to vote.

The counting of votes at the polling booth. No. 5203 s. 144; No. 6151 s. 2 (*b*).

144. (1) (*a*) Immediately upon the close of the poll the returning officer or deputy or other person so appointed and the poll clerks (if any) at each polling booth shall in the presence and subject to the inspection of such of the scrutineers as choose to be present but of no other person—

(i) open each ballot-box at such polling booth ;

(ii) arrange the ballot-papers by placing in a separate parcel all those on which a first preference is indicated for the same candidate and (if there are

more than two candidates) preference votes are also duly given or deemed to be given for all the remaining candidates, omitting ballot-papers which require to be rejected;

(iii) count all first preference votes given for each candidate respectively; and

(iv) make and keep a record of the number of votes counted from each ballot-box.

Duties of deputies &c.

(*b*) Each deputy or other person so appointed shall in respect of the polling booth at which he presides—

(i) certify a list of the number of such first preference votes given for each candidate verified as well by the signature of the deputy or other person so appointed and the poll clerks (if any) as by the signatures of such of the scrutineers as are present and consent to sign the same;

(ii) make out an account verified as aforesaid in which such deputy or other person so appointed shall charge himself with the number of ballot-papers originally delivered to him specifying therein the number thereof delivered to and used by voters and the number not so delivered or left unused;

(iii) make up—

in one parcel the ballot-papers which have been used in voting at the said polling booth during the election;

in another separate parcel the ballot-papers which have remained unused thereat; and

in another separate parcel all copies of voters' rolls and papers used during the polling by the said deputy or other person so appointed;

(iv) seal up the said several parcels and permit any scrutineer who desires so to do to affix his seal to such parcels;

(v) indorse the said parcels severally with a description of the contents thereof and with the name of the municipality and the name of the subdivision (if any) and the name of the polling booth and the date of polling and sign his name to such indorsement; and

(vi) transmit such list and such account and such sealed parcels to the returning officer.

Duties of returning officer at the booth at which he presides.

(*c*) The returning officer shall in respect of the polling booth at which he presides—

(i) make out a list of the number of first preference votes given for each candidate respectively and a like account of the ballot-papers as hereinbefore

required in the case of deputies or other persons so appointed duly verified by the signatures of the returning officer the poll clerks (if any) and such of the scrutineers as are present and consent to sign the same ; and

(ii) seal up in separate parcels in respect of the said polling booth the ballot-papers rolls and papers used by him during the polling and indorse the same in like manner as is hereinbefore required in the case of deputies or other persons so appointed.

Further general duties of returning officer to ascertain the result of the voting.

(*d*) The returning officer shall as soon as practicable—

(i) ascertain from the list made out by himself as aforesaid and the certified lists received from the deputies or other persons so appointed the number of first preference votes given for each candidate ; and

(ii) add the first preference votes so given for each candidate to the first preference votes given for each candidate by the allowed postal ballot-papers (if any) so as to ascertain the total number of first preference votes given for each candidate respectively.

Ascertaining result of poll where only one councillor to be elected and only two candidates.

(2) At an election where only one councillor is to be elected and there are only two candidates the result of the poll shall be ascertained as follows :—

(*a*) The candidate who has received the greater number of first preference votes (including the casting vote of the returning officer if necessary) shall by the returning officer be declared duly elected as hereinafter provided.

Casting vote.

(*b*) If the two candidates have received an equal number of votes the returning officer shall in such case have the casting vote.

Ascertaining result of poll where only one councillor to be elected and more than two candidates

(3) At an election where only one councillor is to be elected, and there are more than two candidates the result of the poll shall be ascertained as follows :—

Where result ascertained first count.

(*a*) The candidate who has received the greatest number of first preference votes, if that number constitutes an absolute majority of votes (including the casting vote of the returning officer if necessary), shall by the returning officer be declared duly elected as hereinafter provided.

Declaration as to defeated candidate and first distribution of preferences.

(*b*) If no candidate has an absolute majority of votes (including the casting vote of the returning officer if necessary) the returning officer, upon receipt of the several sealed parcels from the deputies or other persons so appointed and with the assistance of such officers as he deems necessary and in the

presence and subject to the inspection of any one scrutineer (if present) appointed by each candidate but of no other person, shall—

(i) open all the sealed parcels containing used ballot-papers ;

(ii) arrange such ballot-papers together with the allowed postal ballot-papers (if any) by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given or deemed to be given for all the remaining candidates, omitting ballot-papers which require to be rejected;

(iii) declare the candidate who has received the fewest first preference votes a defeated candidate ;

(iv) distribute the ballot-papers counted to such defeated candidate amongst the the non-defeated candidates next in order of the voters' preference ; and

(v) after such distribution again ascertain the total number of votes given to each non-defeated candidate.

Candidate successful on second count to be declared elected.

(*c*) The candidate who has then received the greatest number of votes, if such number constitutes an absolute majority of votes (including the casting vote of the returning officer if necessary), shall by the returning officer be declared duly elected as hereinafter provided.

Further declarations and distributions of preferences.

(*d*) If no candidate then has an absolute majority of votes (including the casting vote of the returning officer if necessary) the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to such defeated candidate amongst the non-defeated candidates next in order of the voters' preference shall be repeated, and the votes shall be recounted after every such redistribution until one candidate has received an absolute majority of votes (including the casting vote of the returning officer if necessary), and such candidate shall by the returning officer be declared duly elected as hereinafter provided.

Provision for equality of votes and casting vote.

(*e*) If on any count two or more candidates have an equal number of votes and one of them has to be declared a defeated candidate the returning officer shall decide which is to be declared a defeated candidate,

and if on the final count two candidates have received an equal number of votes the returning officer shall in such case have the casting vote.

Ascertaining result of poll where two or more councillors to be elected.

(4) At an election where two or more councillors are to be elected the result of the poll shall be ascertained as follows:—

First vacancy.

(*a*) The first vacancy shall be filled in the manner provided in the last preceding sub-section for ascertaining the result of the poll where only one councillor is to be elected and there are more than two candidates:

Provided that, for the purposes of this paragraph, any reference in the last preceding sub-section to a defeated candidate or a non-defeated candidate shall be read and construed as if such reference were a reference to an excluded candidate or a continuing candidate respectively.

Second vacancy.

(*b*) The second vacancy shall be filled in the following manner:—

(i) The returning officer, with the assistance of such officers as he deems necessary and in the presence and subject to the inspection of any one scrutineer (if present) appointed by each candidate but of no other person, shall—

re-arrange all the ballot-papers, other than the ballot-papers which require to be rejected, under the names of the respective candidates in accordance with the first preference indicated thereon, except that each ballot-paper on which a first preference for the elected candidate is indicated shall be placed in the parcel of the candidate next in order of the voter's preference; and

ascertain the total number of votes given to each continuing candidate;

Where result ascertained on first count.

(ii) The candidate who has received the greatest number of votes, if such number constitutes an absolute majority of votes (including the casting vote of the returning officer if necessary), shall by the returning officer be declared duly elected as hereinafter provided;

(iii) If no candidate has an absolute majority of votes (including the casting vote of the returning officer if necessary) the returning officer, with the assistance of such officers as he deems necessary and in the presence and subject to the inspection of any one scrutineer (if present) appointed by each candidate but of no other person, shall— Further declarations and distributions of preferences.

declare the candidate who has received the fewest votes an excluded candidate;

distribute the ballot-papers counted to such excluded candidate amongst the continuing candidates next in order of the voters' preference; and

after such distribution again ascertain the number of votes given to each continuing candidate;

(iv) The candidate who has then received the greatest number of votes, if such number constitutes an absolute majority of votes (including the casting vote of the returning officer if necessary), shall by the returning officer be declared duly elected as hereinafter provided; Candidate successful on second count to be declared elected.

(v) If no candidate then has an absolute majority of votes (including the casting vote of the returning officer if necessary) the process of declaring the candidate who has the fewest votes an excluded candidate and distributing the ballot-papers counted to such excluded candidate amongst the continuing candidates next in order of the voters' preference shall be repeated, and the votes shall be recounted after every such redistribution until one candidate has received an absolute majority of votes (including the casting vote of the returning officer if necessary) and such candidate shall by the returning officer be declared duly elected as hereinafter provided. Further declarations and distributions of preferences.

(*c*) The third and every subsequent vacancy shall be filled in the manner provided in the last preceding paragraph for filling the second vacancy: Provided that every ballot-paper on which the first preference Third and subsequent vacancies.

for any elected candidate is marked shall be placed in the parcel of the continuing candidate next in order of the voter's preference.

Provision for equality of votes and casting vote.

(*d*) If on any count two or more candidates have an equal number of votes and one of them has to be declared an excluded candidate the returning officer shall decide which is to be declared an excluded candidate, and if on the final count for filling any vacancy two candidates have received an equal number of votes the returning officer shall in such case have the casting vote.

Adjournment of count of votes.

(5) If on the day of the poll the count of the votes by the returning officer cannot be completed he shall adjourn such count and inform the scrutineers and the officers appointed to assist him at such count as regards the time and place when and where such count will be continued and conducted by him.

Further adjournments.

(6) The count of the votes may from time to time be adjourned as the returning officer deems necessary until it has been duly completed; and each adjournment shall be announced by the returning officer to the scrutineers and the officers assisting him.

Before adjournment ballot-papers &c. to be sealed in ballot-boxes.

(7) Before every adjournment of the count of the votes—

(*a*) all ballot-papers and other documents connected with such count shall be placed in one or more ballot-boxes; and

(*b*) the returning officer shall in the presence of such scrutineers and officers as are present seal such ballot-box or boxes; and before recommencing the count the seal on such ballot-box or boxes shall be exhibited unbroken to such of the scrutineers and officers as are present.

Declaration of result of poll.

(8) The returning officer shall as soon as conveniently may be on or after the day of the poll publicly declare the number of first preference votes given for each candidate and (if the case so requires) the details of the distribution of preference votes and the name or names of the candidate or candidates elected and (if more than one candidate is elected) the order in which such candidates were elected; and such candidate or candidates so named shall, subject to the provisions of this Act, be deemed to be then duly elected accordingly, and the returning officer shall forthwith publish in some newspaper generally circulating in the neighbourhood the name or names of the councillor or councillors so elected and (if more than one councillor is elected) the order in which such councillors were elected.

Interpretation.

(9) In this section—

"Absolute majority of votes."

"Absolute majority of votes" means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which require to be rejected).

"Continuing candidate" means a candidate not already elected or excluded from the count. "Continuing candidate."

145. (1) The returning officer shall forthwith after the declaration of the poll cause all the sealed parcels of ballot-papers and voters' rolls to be sealed up in a packet indorsed with a description of the contents thereof signed by the returning officer and delivered to the clerk of such municipality to be by the said clerk safely and secretly kept for twelve months after such delivery of the same. Disposal of ballot-papers &c. No. 5203 s. 145.

(2) The clerk shall after the expiration of such period of twelve months cause such ballot-papers and copies of rolls to be destroyed in the presence of three of the councillors.

146. (1) When the proceedings at any election under this Act are interrupted or obstructed at any polling place by any riot or open violence or when at any such polling place no ballot-papers or copies of the voters' roll have been provided or the number of ballot-papers is insufficient for the taking of the poll the returning officer or deputy or other person so appointed (as the case may be) shall not finally close the poll but shall adjourn the taking of the poll at such polling place to the day following. Adjournment of polling for riot &c. or for insufficiency of ballot-papers &c. No. 5203 s. 146.

(2) If necessary such returning officer deputy or other person shall further adjourn such poll until such interruption or obstruction has ceased or until the necessary ballot-papers or copies of the voters' roll have been provided when such returning officer deputy or other person shall again proceed with the taking of the poll at the place at which the proceedings have been so interrupted or obstructed. Further adjournment.

147. If from any cause not being such as in the last preceding section mentioned after a poll stands appointed for any election no such poll takes place on the day appointed for the same the poll shall stand adjourned until the same day of the following week and the returning officer shall give not less than three days' previous notice thereof by advertisement or by placards affixed in public places in the municipal district. Adjournment when from some cause no poll on day appointed. No. 5203 s. 147.

148. (1) Notwithstanding anything in this Act any person, whose name appears in any voters' list certified and signed under the provisions of section ninety-five of this Act but has been omitted from the corresponding municipal roll being used at any election under this Act, may if he claims to vote at such election be permitted to vote if he— Vote of person whose name is omitted in error from municipal roll. No. 5203 s. 148.

(*a*) makes before the returning officer or deputy returning officer or person appointed to preside at the polling booth a declaration in the form prescribed by regulations under this section; and

(*b*) answers to the satisfaction of the returning officer or deputy returning officer or person so appointed any questions so prescribed.

Application of provisions as to voting &c.

(2) Where a person claims to vote under the provisions of this section the provisions of this Act relating to the conduct of elections (except so far as such provisions are expressly modified by this section or are necessarily modified by the fact of such person's name being omitted from the roll) shall with such adaptations as are necessary apply as if he were a person tendering his vote or votes or voting in the usual way.

Procedure.

(3) Where a person claims to vote under the provisions of this section and is permitted to do so and receives a ballot-paper or ballot-papers he shall subject to the provisions of this section—

(*a*) mark his ballot-paper or ballot-papers as required by or under this Act;

(*b*) fold the same in the manner prescribed by regulations under this section; and

(*c*) return the same so folded to the returning officer or deputy returning officer or person appointed as aforesaid.

Duty of returning officer &c.

(4) The returning officer or deputy returning officer or person appointed as aforesaid shall thereupon in the presence of the voter and of such scrutineers as are present—

(*a*) without unfolding the ballot-paper or ballot-papers enclose the same in an envelope bearing on the outside of the envelope the declaration of the voter and addressed to the returning officer; and

(*b*) forthwith securely fasten the envelope and deposit it in the ballot-box.

Blind &c. voters.

(5) If any person claiming to vote as an unenrolled voter satisfies the returning officer or deputy returning officer or person appointed as aforesaid that he is blind or that his sight is so impaired or that he is otherwise so physically incapable that he is unable to make the prescribed declaration or (as the case may be) to vote without assistance or that he is unable to read or write, the returning officer or deputy returning officer or person appointed as aforesaid shall—

(*a*) at the request of such person and for him and in the presence of a witness if so desired by such person fill in the form of declaration with the required particulars;

(*b*) read over to such person the form of declaration;

(*c*) require such person to sign the form of declaration—

(i) in his own handwriting if he is able to do so; or

(ii) with his mark as his personal signature if he is unable to sign his name in his own handwriting, and cause the signature of such person so made by a mark to be witnessed;

(*d*) complete and attest the declaration;

(*e*) if such person is permitted to vote—

(i) at the request of such person and for him and in the presence of a witness if so desired by such person mark such person's ballot-paper or ballot-papers in such manner as such person indicates and fold the same; or

(ii) at the request of such person permit some other person appointed by him to mark fold and return the ballot-paper or ballot-papers to the returning officer or deputy returning officer or person appointed as aforesaid for him; and

(*f*) thereupon proceed as hereinbefore provided as if the same so folded had been returned to him by the voter.

Transmission of ballot-paper to municipal clerk.

(6) Immediately upon the close of the poll the returning officer or deputy returning officer or person appointed as aforesaid shall without opening the envelope transmit it to the municipal clerk.

Report by municipal clerk.

(7) The municipal clerk on receipt of the envelope shall without opening the same or allowing any other person to do so—

(*a*) examine the declaration of the voter;

(*b*) after making any such inquiry as may be necessary return the envelope unopened to the returning officer;

(*c*) report to him whether in his opinion the voter is or is not a person to whom sub-section (1) of this section applies; and

(*d*) endorse on the envelope the number of votes to which the voter is entitled.

Allowance or disallowance of vote.

(8) If the municipal clerk reports that in his opinion the voter is a person to whom sub-section (1) of this section applies, the returning officer shall open the envelope and if the ballot-paper or ballot-papers is or are marked as required by or under this Act allow the vote or not more than the number of votes so endorsed on the envelope; but if the municipal clerk reports that in his opinion the voter is not a person to whom sub-section (1) of this section applies or if any such ballot-paper or ballot-papers is or are not so marked the vote or votes shall be disallowed.

Penalty for false declaration.

(9) If any person makes a false declaration under this section for the purposes of voting at any election he shall be liable to imprisonment for a term of not more than twelve months.

Caution.

(10) Before any person makes any declaration under this section the returning officer or deputy returning officer or person appointed as aforesaid shall warn him that if he makes a false declaration he will be liable to such imprisonment.

Refusal of claim.

(11) Where the claim of any person to vote under this section is refused the returning officer or deputy returning officer or person appointed as aforesaid shall make a note in writing of the fact of the claim and the reasons for the refusal thereof and shall sign the same in the presence of such scrutineers as are present and any of those scrutineers may also sign the note.

Municipal clerk to make necessary alteration in roll.

(12) In any case where the municipal clerk reports that in his opinion the voter is a person to whom sub-section (1) of this section applies, the municipal clerk shall alter the voters' roll accordingly and initial the alteration and insert the date of making the alteration and the alteration shall be deemed and taken to form part of the roll accordingly.

Extension of provisions to all polls.

(13) The provisions of this section shall with such adaptations as are necessary extend and apply to all polls under this Act.

Regulations.

(14) The Governor in Council may make regulations for or with respect to any matters which by this section are required or permitted to be prescribed or which are necessary or expedient to be prescribed for carrying into effect the purposes of this section.

Application to Melbourne and Geelong.

(15) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

(7) *Voting by Post and Compulsory Voting at Elections of Councillors.*

Voting by post and compulsory voting.
No. 5203 s. 149; No. 5843 s. 7.

149. (1) The Governor in Council may make regulations which may pursuant to this section be applied to elections of councillors of any municipality.

(2) Such regulations shall be based on provisions of any Act or regulation for the time being in force relating to voting by post or compulsory voting at elections for the Legislative Assembly with such alterations and adaptations as in the opinion of the Governor in Council are necessary; but no such regulation shall make it compulsory for any owner of vacant land whose usual place of residence is outside the municipal district to vote as such owner.

(3) The Governor in Council on the petition of the council of any municipality may by Order published in the *Government Gazette*—

(*a*) apply to elections of councillors for such municipality with any modifications provided for in such Order all or any of the regulations relating to voting by post or compulsory voting made under this section;

(*b*) alter or revoke any such Order.

(4) Where—

(*a*) pursuant to any such Order any such regulations apply in relation to any municipality; and

(*b*) after the making of such Order such regulations are altered or replaced by other regulations under this section—

unless the Governor in Council by Order (for which no petition of the council shall be required) otherwise directs such regulations shall in relation to such municipality apply as so altered or replaced from time to time.

(5) Any Order or regulation which under this section applies for the time being to elections of councillors for any municipality shall with such adaptations as are necessary apply to any other poll under this Act in such municipality.

(8) *Proceedings Validated.*

Election not to be questioned for defect in title of persons presiding *de facto* or nominating. No. 5203 s. 150.

150. No election of councillors shall be liable to be questioned by reason only of—

(*a*) any defect in the title or any want of title of the person by or before whom such election or any polling for the same has been held, if such person has been actually appointed to preside or hold the poll, or has been acting in the office giving the right to preside at such election; or

(*b*) any want of qualification in any person signing any nomination paper whose name appears on the certified voters' list or on the voters' roll.

(9) *Offences.*

False answer polling twice taking away ballot-paper and personation. No. 5203 s. 151.

151. (1) Every person who at any municipal election wilfully makes a false answer to any question or any part of a question which is lawfully put to him or who polls more than once or offers to poll more than once at the same election or who departs or attempts to depart from any polling booth after having received a ballot-paper without having deposited the same in the ballot-box as provided by this Act or who personates any other person or any deceased person for the purpose of voting at such election

shall for every such offence be liable to imprisonment with or without hard labour for a term of not more than one year. Nothing in this section shall apply to any person by reason only of his exercising the right of voting as often as it appears by the roll he is entitled so to do.

Breaking seal or opening parcels.

(2) Save in compliance with the express provisions of the law relating to municipal elections any person who without the lawful command of some competent court or tribunal knowingly and wilfully breaks the seal of or opens any sealed parcel or packet which has been sealed up under the provisions of this Act shall be guilty of a misdemeanour.

Returning officer or deputy &c. divulging name of candidate for whom person may vote.

(3) Every person who being a returning officer deputy returning officer person appointed to preside at an election scrutineer or poll clerk under the provisions of this Act learns or has the means of learning for what candidate any person votes or has voted at any election by word or act or any other means whatsoever directly or indirectly divulges or discovers or aids in divulging or discovering the same save in answer to some question which he is legally bound to answer shall be guilty of a misdemeanour.

Articles &c. commenting on candidates for election to show name of author.

(4) (*a*) If after public notice has been given by the returning officer of any election of councillors under this Act and before the declaration of the election or of the result of the poll (as the case may be) any article report letter or other matter commenting on any candidate is published or printed in any newspaper circular pamphlet "dodger" or other printed matter and the true full name and place of residence of the author of such article report letter or other matter is not printed at the foot thereof, the printer publisher and proprietor of such newspaper circular pamphlet "dodger" or other printed matter shall be severally liable to a penalty of not more than Fifty pounds.

(*b*) This sub-section shall not apply to the publication in a newspaper of an article which consists solely of a report of a meeting and does not contain any comment (other than comment made by a speaker at the meeting) upon a candidate.

Offences by returning officers &c.
No. 5203 s. 152.

152. If the municipal clerk, or any person having been duly appointed hereunder to act as returning officer or deputy returning officer, or any person having been appointed under the hand of the returning officer or deputy as hereinbefore mentioned, at any election, and having undertaken so to act, is guilty of any wilful misfeasance or wilful or negligent act of commission or omission contrary to any of the provisions of this Part and not hereinbefore provided for he shall for every such offence be liable to a penalty of not more than Fifty pounds.

(10) *Expenses.*

153. (1) The moneys paid to the returning officer by for or on behalf of a candidate at the time of the delivery to the returning officer of the nomination paper of such candidate in respect of any election of councillors shall— Application of moneys deposited on nomination. No. 5203 s. 153.

(*a*) if such candidate is declared elected; or

(*b*) if such candidate has retired as hereinbefore provided; or

(*c*) (in the case of an election where only one councillor is to be elected) if the number of first preference votes received by such candidate is not less than one-fifth of the number of first preference votes received by the candidate declared elected; or

(*d*) (in the case of an election where two or more councillors are to be elected) if after distributing to each candidate all preference votes cast in his favour (excluding preference votes numbered higher than the total number of candidates to be elected) the number of preference votes received by such candidate is not less than one-fifth of the average number of preference votes so distributed received by the candidates declared elected—

be repaid by the returning officer to such candidate, and in default of such repayment may be recovered before a court of petty sessions. Repayment of deposit.

(2) Subject to the provisions of the last preceding sub-section, the returning officer shall apply the said moneys in and towards defraying the necessary reasonable expenses incident to such election whether incurred before or after such moneys were paid to the returning officer. Application in other cases.

(3) The returning officer shall within one month after the election lay before the council a detailed account of all moneys so received applied and repaid by him in respect thereof, and shall within the time aforesaid pay to the municipal treasurer any balance remaining in his hands. Account and payment of balance

(4) All reasonable expenses of or incident to any election incurred by the returning officer and not covered by the moneys to be paid by the candidates as hereinbefore provided shall be repaid to him by the council out of the municipal fund, and may be recovered before a court of petty sessions. Payment of expenses of returning officer.

(11) *Recount of Votes by Stipendiary Magistrate.*

154. (1) (*a*) If within three days after the declaration of the poll at any election any candidate— Recount. No. 5203 s. 154.

delivers to the returning officer an application for a recount of the ballot-papers; and

lodges with the returning officer the sum of Ten pounds—

the returning officer shall forward the application forthwith to the clerk of the court of petty sessions held nearest to the municipal office and such clerk shall forthwith lay the application before a stipendiary magistrate.

(*b*) The stipendiary magistrate shall fix a date for the recount as soon as practicable after the receipt of the application; and the clerk of petty sessions shall give seven days' notice of the date to every candidate.

(*c*) Upon such day the stipendiary magistrate shall proceed to recount the ballot-papers in the presence and subject to the inspection of the returning officer and the clerk of the municipality and the scrutineers (if any) appointed as hereinafter provided if such scrutineers choose to be present.

Procedure upon recount.

(2) For the purposes of such recount—

(*a*) upon the request in writing of the stipendiary magistrate the returning officer or the clerk of the municipality (as the case may be) shall deliver to the stipendiary magistrate all such sealed parcels or sealed packets of ballot-papers and voters' rolls relating to the election as are required for the recount;

(*b*) notwithstanding anything in any Act the stipendiary magistrate may break the seal of and open every such parcel and packet;

(*c*) any candidate at his own cost may appoint in writing a scrutineer who shall be entitled to be present at the recount;

(*d*) the stipendiary magistrate shall have the same powers and duties as the returning officer had upon the original ascertainment of the result of the poll and may reverse any decision in relation to that original ascertainment as to the allowance or admission or disallowance or rejection of any ballot-paper;

(*e*) during the recount if on any count two or more candidates have an equal number of votes and one of them has to be declared a defeated candidate or an excluded candidate the returning officer shall declare which is to be declared a defeated candidate or an excluded candidate (as the case may be) and if on the final count for filling any vacancy two candidates have received an equal number of votes the returning officer shall in such case have the casting vote;

(*f*) the deputy returning officer or if there is no deputy returning officer the clerk of the municipality may in case of the death or incapacity of the returning

officer do all or any of the acts or things which the returning officer is authorized or required to do and shall be deemed to be the returning officer.

Preservation of secrecy of ballot.

(3) (*a*) Every such stipendiary magistrate returning officer clerk of the municipality and scrutineer—

Thirteenth Schedule.

shall make and sign before a justice a declaration in the form of the Thirteenth Schedule;

shall maintain and aid in maintaining the secrecy of the ballot;

shall not attempt to ascertain for what candidate any person voted at the election; and

if in the discharge of his duties at or concerning the recount he learns or has the means of learning for what candidate any person voted at the election shall not by word or act or by any other means whatsoever directly or indirectly divulge or discover or aid in divulging or discovering the same save in answer to some question which he is legally bound to answer.

(*b*) Every such declaration shall be safely kept by the municipal clerk at the office of the council.

(*c*) Every person guilty of any contravention of this sub-section shall be liable to a penalty of not more than Fifty pounds.

Stipendiary magistrate to report to council.

(4) (*a*) On the conclusion of the recount the stipendiary magistrate shall report to the council his determination thereon.

Effect of recount on results of election.

(*b*) If the stipendiary magistrate in consequence of the recount determines and reports to the council—

(i) that any candidate declared elected was not duly elected such candidate shall thereupon cease to be a councillor; or

(ii) that any candidate not declared elected was duly elected such candidate shall be and continue to be a councillor as if he had been duly elected.

Re-sealing and return of parcel and packet.

(5) On the conclusion of the recount the stipendiary magistrate shall forthwith cause all the ballot-papers and voters' rolls to be placed in parcels and with any unopened parcels of ballot-papers and voters' rolls to be sealed up in a packet endorsed with a description of the contents thereof signed by the stipendiary magistrate and to be delivered or returned to the clerk of the municipality to be by the said clerk safely and secretly kept and afterwards destroyed as provided by section one hundred and forty-five of this Act.

Withdrawal of application.

(6) (*a*) Any candidate who has made application for a recount of votes may at any time after lodging the same with the returning officer withdraw the same by a further application in writing under his hand addressed to the said stipendiary

magistrate and left with or forwarded by post to the clerk of petty sessions who shall lay the application for withdrawal before the said stipendiary magistrate.

(*b*) Subject to any order made by the stipendiary magistrate as to the costs and expenses (apart from the cost of scrutineers) of and incidental to the recount or the application therefor incurred up to the date of the receipt of the application for withdrawal the stipendiary magistrate shall direct the deposit to be returned to the person who made the same; and the returning officer shall return the same accordingly.

Costs.

(7) (*a*) After the recount is concluded the stipendiary magistrate may (subject to the provisions hereinbefore contained as to scrutineers) make such order as he thinks just as to the costs and expenses of and incidental to the recount or any application for the same; and in such order shall state to whom and in what amounts the same shall be paid.

(*b*) All such costs and expenses shall be payable accordingly by the candidate making such application and may be recovered in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

Return of deposit.

(*c*) Notwithstanding anything in this sub-section where any candidate who has made application for a recount has been reported by the stipendiary magistrate to have been duly elected the deposit made by such candidate shall be returned to him in full and he shall not be liable to pay any costs or expenses under this sub-section.

Expenses of recount.

(*d*) All reasonable expenses of or incidental to any recount incurred by the stipendiary magistrate returning officer municipal clerk or clerk of petty sessions and not covered by the deposit as hereinbefore provided shall be repaid by the council out of the municipal fund and may be recovered in any court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

Expenses payable for services of stipendiary magistrate at recount.

(8) (*a*) On the conclusion of any recount there shall in addition to all other costs and expenses aforesaid forthwith be paid into the Consolidated Revenue the sum of Three pounds three shillings in respect of the services of the stipendiary magistrate.

(*b*) Where the candidate who has made application for the recount has been reported by the stipendiary magistrate to have been duly elected such sum shall be paid by the council out of the municipal fund; otherwise such sum shall be paid out of the deposit of the candidate who has made application for the recount or if the amount of such deposit (after payment thereout of the costs and expenses aforesaid) is insufficient to meet the same then such sum or so much thereof as is necessary shall be paid by the said candidate.

(*c*) Such sum shall be and be deemed to be a debt due to the Crown and shall be recoverable accordingly.

Return of deposit.

(9) Subject to any order made under sub-section (7) of this section as to costs and expenses and also to the payment of any sum payable under sub-section (8) of this section out of the deposit the returning officer shall repay the deposit to the person who made the same.

(12) *Recount of Votes in respect of Polls on Proposals under Part II., Part XI. and Part XV.*

Provision for recount of votes in respect of polls on proposals for the constitution &c., of municipalities, rating on unimproved values and borrowing for permanent works. No. 5203 s. 155.

155. (1) The provisions of this section shall apply with respect to any poll on a proposal under Part II. or Part XI. or Part XV.

(2) (*a*) If within fourteen days after the notification of the result of the poll by the returning officer—

(i) any ratepayer delivers to the returning officer an application for a recount of the ballot-papers and lodges with the returning officer the sum of Ten pounds; or

(ii) the council delivers to the returning officer an application for such a recount—

the returning officer shall forward the application forthwith to the clerk of the court of petty sessions held nearest to the municipal office and such clerk shall forthwith lay the application before a stipendiary magistrate.

(*b*) The stipendiary magistrate shall fix a date for the recount as soon as practicable after the receipt of the application; and the clerk of petty sessions shall give seven days' notice of the date to every such ratepayer and to the council.

(*c*) Upon such day the stipendiary magistrate shall proceed to recount the ballot-papers in the presence and subject to the inspection of the returning officer and the scrutineers (if any) appointed as hereinafter provided if such scrutineers choose to be present.

(3) For the purpose of such recount—

(*a*) upon the request in writing of the stipendiary magistrate the returning officer or the clerk of the municipality (as the case may be) shall deliver to the stipendiary magistrate all such sealed parcels or sealed packets of ballot-papers and voters' rolls relating to the poll as are required for the recount;

(*b*) notwithstanding anything in any Act the stipendiary magistrate may break the seal of and open every such parcel and packet;

(*c*) any twenty ratepayers at their own cost may appoint in writing a scrutineer and the council may appoint a scrutineer and every such scrutineer shall be entitled to be present at the recount;

(*d*) the stipendiary magistrate shall have the same powers and duties as the returning officer had upon the original ascertainment of the result of the poll and may reverse any decision in relation to that original ascertainment as to the allowance or admission or disallowance or rejection of any ballot-papers; and

(*e*) the deputy returning officer or if there is no deputy returning officer the person appointed by the Governor in Council may in case of the death or incapacity of the returning officer do all or any of the acts or things which the returning officer is authorized or required to do and shall be deemed to be the returning officer.

(4) (*a*) Every such stipendiary magistrate returning officer and scrutineer—

Fourteenth Schedule.

(i) shall make and sign before a justice a declaration in the form in the Fourteenth Schedule or to the like effect;

(ii) shall maintain and aid in maintaining the secrecy of the ballot;

(iii) shall not attempt to ascertain whether any person voted for or against the proposal at the poll; and

(iv) if in the discharge of his duties at or concerning the recount he learns or has the means of learning whether any person voted for or against the proposal at the poll, shall not by word or act or any other means whatsoever directly or indirectly divulge or discover or aid in divulging or discovering the same save in answer to some question which he is legally bound to answer.

(*b*) Every such declaration shall be safely kept by the municipal clerk at the office of the council.

(*c*) Every person guilty of any contravention of this sub-section shall be liable to a penalty of not more than Fifty pounds.

(5) (*a*) On the conclusion of the recount the stipendiary magistrate shall report to the returning officer his determination thereon.

(*b*) As soon as may be after the receipt of such report the returning officer shall give or cause to be published in respect of the determination of the result of the poll on the recount the like

notification or notice which by this Act is required to be given or published in respect of the original determination of the result of the poll, and such notification or notice in respect of the determination of the result of the poll on the recount shall for all purposes take effect in substitution for any like notification or notice in respect of the original determination of the result of the poll.

(6) On the conclusion of the recount the stipendiary magistrate shall forthwith cause all the ballot-papers and voters' rolls to be placed in parcels and with any unopened parcels of ballot-papers and voters' rolls to be sealed up in a packet endorsed with the description of the contents thereof signed by the stipendiary magistrate and to be delivered or returned to the clerk of the municipality to be by the said clerk safely and secretly kept and afterwards destroyed as provided by section one hundred and forty-five of this Act.

(7) (*a*) The council or any ratepayer who has made application for a recount of the votes may at any time after delivering such an application to the returning officer withdraw the same by a further application addressed to the stipendiary magistrate and left with or forwarded by post to the clerk of petty sessions who shall lay the application for withdrawal before the stipendiary magistrate.

(*b*) Subject to any order made by the stipendiary magistrate as to the costs and expenses (apart from the cost of scrutineers) of and incidental to an application by a ratepayer for a recount or the recount consequent thereon incurred up to the date of the receipt of the application for withdrawal the stipendiary magistrate shall direct the deposit to be returned to the ratepayer who made the application for the recount and the returning officer shall return the same accordingly.

(8) (*a*) After the recount is concluded the stipendiary magistrate may (subject to the provisions hereinbefore contained as to scrutineers) make such order as he thinks just as to the costs and expenses of and incidental to the recount or any application for the same, and in such order shall state to whom and in what amounts the same shall be paid.

(*b*) In any case where the recount is made on the application of a ratepayer all such costs and expenses shall be payable accordingly by such ratepayer and may be recovered in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

(*c*) Notwithstanding anything in this sub-section where in consequence of a recount made on the application of a ratepayer the result of the poll is reversed the deposit made by such ratepayer shall be returned to him in full and he shall not be liable to pay any costs or expenses under this sub-section.

(*d*) All reasonable expenses of or incidental to any recount incurred by the stipendiary magistrate returning officer or clerk of petty sessions and not covered by the deposit as hereinbefore provided shall be repaid by the council out of the municipal fund and may be recovered in any court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

(9) (*a*) On the conclusion of any recount there shall in addition to all other costs and expenses aforesaid forthwith be paid into the Consolidated Revenue the sum of Three pounds three shillings in respect of the services of the stipendiary magistrate.

(*b*) Where the result of the poll is reversed in consequence of a recount made on the application of a ratepayer or where a recount is made on the application of the council such sum shall be paid by the council out of the municipal fund ; otherwise such sum shall be paid out of the deposit of the ratepayer who made the application for the recount or if the amount of such deposit (after payment thereout of the costs and expenses aforesaid) is insufficient to meet the same then such sum or so much thereof as is necessary shall be paid by the said ratepayer.

(*c*) Such sum shall be and be deemed to be a debt due to the Crown and shall be recoverable accordingly.

(10) Subject to any order made under sub-section (8) of this section as to costs and expenses and also to the payment of any sum payable under sub-section (9) of this section out of the deposit the returning officer shall repay the deposit to the ratepayer who made the same.

"Ratepayer" to include owner in case of poll on proposal to borrow for permanent works.

(11) In this section so far as relates to any poll on a proposal under Part XV., "ratepayer" shall be deemed to include an owner entitled to vote at the poll.

Application to Melbourne and Geelong.

(12) The provisions of this section so far as the same relate to polls on proposals under Part XI. shall extend and apply to the city of Melbourne and the city of Geelong.

PART IV.—OUSTER FROM OFFICE OF CHAIRMAN OR COUNCILLOR.

Power to the Supreme Court to oust from office person unduly claiming to be councillor. No. 5203 s. 156.

156. (1) If any person is declared elected to be or holds or exercises the office of chairman or councillor of any municipality unduly or contrary to the provisions of this Act or being incapable under the provisions hereof of being or continuing such chairman or councillor the Supreme Court may on the application of any ratepayer of the municipality oust such person of such office.

(2) But no person shall be ousted under the powers in this Part contained as having been elected unduly or contrary to this Act unless proceedings are taken for that purpose before the expiration of four months from the declaration of such election.

157. (1) Subject to any rules of the Supreme Court for the time being in force in that behalf any such person as in the last preceding section mentioned may be ousted of any such office in manner hereinafter appearing, that is to say— Procedure for the foregoing purpose. No. 5203 s. 157.

(*a*) Upon affidavit of the facts and upon payment into court of the sum of Twenty pounds as security for costs to abide the result of such application it shall be lawful for the Supreme Court or any judge thereof to grant a rule or order calling upon such person to show cause to the court why he should not be by the said court ousted of the said office ; Disputed elections &c.

(*b*) Where upon the return of such rule or order it appears to the court that such person so elected or holding or exercising such office respectively was elected unduly or contrary to this Act, or was at the time of his election or while holding or exercising such office respectively incapable under the provisions hereof of becoming or being or continuing such chairman or councillor (as the case may be) the court may make such rule or order absolute, or if the matter does not so appear may discharge such rule or order, and in either and every such case with or without the payment of costs to or by either party as to the court may seem meet ;

(*c*) The person against whom any rule or order is made absolute as aforesaid shall be deemed thereby to be ousted of such office accordingly.

(2) Subject to any rules of the Supreme Court for the time being in force in that behalf it shall be lawful for the Supreme Court or any judge thereof, where any proceedings whether under this Act or not with respect to any election as having been made unduly or contrary to this Act, or with respect to the unlawful holding or exercise by any person of the office of chairman or councillor hereunder is pending in such court, to order from time to time that an inquiry be had by any fit person to be named by the said court or judge in the order, touching any matters of fact which it seems to the said court or judge necessary or expedient to ascertain for dealing with the proceedings so pending, and that such person do report to the said court touching the said matters. Supreme Court may direct an inquiry to be made.

(3) The provisions of any Act now or hereafter to be in force relating to evidence so far as the same apply to powers rights and liabilities conferred or imposed in case of an order for the issue of a commission for the examination of witnesses except so far as relates to costs and the conditions under which examinations or depositions are to be read in evidence shall be deemed to apply in case of any order under sub-section (2) of this section in like

manner as if the person ordered to report hereunder had been authorized and required to take examinations under any such commission.

(4) Such person shall have power to call upon the municipal clerk for and to inspect the ballot-papers and the copies of the voters' roll sealed up therewith as required by this Act.

PART V.—OFFICERS OF THE MUNICIPALITY.

DIVISION 1.—OFFICERS APPOINTED BY THE COUNCIL.

Appointment removal &c. and salaries of officers. No. 5203 s. 158.

158. (1) The council shall from time to time appoint a municipal clerk a treasurer and a surveyor or engineer for the municipality, and such valuers collectors and other officers to assist in the execution of this Act as may be necessary.

(2) The council may from time to time remove any of such officers and appoint others in the place of such as may be so removed or as may die resign or discontinue their offices.

(3) The council may out of the municipal fund pay such salaries and allowances to the said officers respectively as the council determines.

Treasurer not to be rate collector.

(4) No person shall at the same time hold the offices of treasurer and rate collector of any municipality, and every person who wilfully offends against the provisions of this sub-section shall forfeit and pay the sum of One hundred pounds with a further sum of Ten pounds for every day he may hold the offices of treasurer and rate collector of any municipality contrary to such provisions, to be recovered with full costs of suit by any person liable to be rated in such municipality who may sue for the same in any court having jurisdiction.

Town clerk and shire secretary.

(5) In every borough the municipal clerk shall be intituled the town clerk and in every shire the shire secretary.

Power to suspend officers. No. 5203 s. 159; No. 5843 s. 8.

159. (1) The council may at any ordinary or special meeting resolve that a special meeting be called to consider the removal from his office of any officer appointed by the council and thereupon may suspend such officer from his office pending the holding of such meeting, and may appoint some other person to perform the duties of such officer in the meanwhile.

(2) This section shall not apply in respect of any officer to whom the next succeeding section applies.

Provision with respect to the removal discharge &c. of certain municipal officers. No. 5203 s. 160; No. 5443 s. 3.

160. (1) The provisions of this section shall apply to municipal clerks, treasurers, surveyors or engineers, such valuers and rate collectors as are officers of a municipality, building surveyors and building inspectors (all of whom are hereinafter called "officers").

(2) Where the council proposes to remove discharge or terminate the employment of any officer (otherwise than pursuant to a requisition of the Minister given under section one hundred and sixty-four of this Act) the council shall either order an inquiry as hereinafter provided or suspend him.

(3) Where any officer is suspended the council shall state in writing the reasons for the suspension.

(4) Within one week after the suspension the officer may (if an inquiry as hereinafter provided has not already been held) apply to the council for such an inquiry. Thereupon the council shall order an inquiry. If the officer does not apply for an inquiry the council may proceed to determine the matter.

(5) Any inquiry under this section shall be held by a person appointed by the Governor in Council.

(6) The person holding the inquiry shall report to the council and his report shall be read in open council.

(7) Where an inquiry is ordered the decision of the council shall not be given until after the reading of the report as aforesaid.

(8) The person holding the inquiry shall have all the powers conferred by sections fourteen fifteen and sixteen of the *Evidence Act* 1958, with the necessary adaptations thereof, as if such person were a board appointed by the Governor in Council.

(9) The council shall pay to the Minister the expenses of the person holding the inquiry (including the salary of any public servant engaged thereon) or such portion thereof as the Minister decides.

(10) The person holding the inquiry may award costs and expenses (including the expenses of the person holding the inquiry) to an amount assessed by him against either the council or the officer. Any costs and expenses so awarded may be recovered in the same manner as a civil debt recoverable summarily.

(11) The person holding the inquiry shall also determine whether the officer shall or shall not be paid his salary or any part thereof for the period of his suspension.

(12) This section shall apply to every municipality including the city of Melbourne and the city of Geelong.

Council may appoint person to act in place of clerk. No. 5203 s. 161.

161. (1) If in any municipality there is no clerk of such municipality or the clerk is absent incapable of acting or refuses to act as in this Act provided all acts and things which may or are required to be done or had by or with regard to the clerk may and shall be done and had by and with regard to such person as the council may appoint in that behalf.

(2) The council shall when the occasion requires make such appointment accordingly, but no such appointment shall be made so as to evade the provisions of the next succeeding section.

Qualification of municipal clerks. No. 5203 s. 162; No. 5843 s. 9.

162. (1) Every person hereinafter appointed as a municipal clerk shall be the holder of a "certificate of competency" issued by the Municipal Clerks Board.

Municipal clerk to be full-time appointment.

(2) Except with the consent of the Minister first obtained no person shall be appointed as municipal clerk of a municipality otherwise than in a full-time capacity:

Provided that this sub-section shall not operate to prevent a municipal clerk from holding also the office of secretary of a sewerage authority or waterworks trust or river improvement trust or of any local authority or body which is composed of representatives of municipalities.

Surveyors and engineers to have certificates. No. 5203 s. 163; No. 5443 s. 4 (a); No. 5745 s. 3.

163. (1) No person shall hereafter be appointed a surveyor or engineer by the council of any municipality unless he is the holder of a "certificate of competency" or a "certificate of qualification" issued by the Municipal Surveyors Board or the Municipal Engineers Board under the provisions of this Act or any previous Act relating to local government.

Restriction on holding of certain offices under municipalities.

(2) Except with the consent of and upon such conditions as are approved by the Minister—

(*a*) no person shall at the same time hold the offices of clerk and of surveyor or engineer in any municipality;

(*b*) no person shall at the same time hold the offices of surveyor or engineer in more municipalities than one; and

(*c*) no person shall be appointed as a consulting engineer or as a part-time engineer by the council of any municipality.

(3) Except with the consent of the Minister given after considering a report by the Municipal Building Surveyors Board no person shall be appointed as a building surveyor by the council of any municipality unless he is the holder of a certificate of qualification issued by the Municipal Building Surveyors Board under the provisions of this Act or any corresponding previous enactment.

(4) Except with the consent of the Minister no person shall be appointed by the council of any municipality as a municipal electrical engineer or to any office which would place him in engineering charge of the construction or operation of any works or plant for the supply of electricity by an undertaker within the

meaning of the *Electric Light and Power Act* 1958 unless he is the holder of a certificate of qualification issued by the Municipal Electrical Engineers Board under the provisions of this Act.

Penalty on evasion. No. 5203 s. 164; No. 5443 s. 4 (*b*).

164. If the council of any municipality with intent to evade this Act—

Surveyors or engineers.

(*a*) appoints or employs to perform the duties of surveyor or engineer under any designation whatever any person who does not possess the qualification required by the *Local Government Act* 1915 or any Act thereby repealed or the *Local Government Act* 1928 or the *Local Government Act* 1946 or this Act or appoints to perform the duties of building surveyor any person who does not possess a certificate of qualification issued by the Municipal Building Surveyors Board; or

Municipal clerks.

(*b*) employs or continues to employ as municipal clerk any person not qualified to hold the office of municipal clerk; or

(*c*) appoints or employs or continues to employ any person in contravention of the provisions of sub-section (2) of the last preceding section; or

(*d*) except with the consent of the Minister appoints to perform the duties of municipal electrical engineer or to any office referred to in sub-section (4) of the last preceding section any person who does not possess a certificate of qualification issued by the Municipal Electrical Engineers Board—

the Minister shall by writing under his hand require such council to remove or cease to employ such person, and in default of compliance with such requirement shall by order under his hand cause all or any moneys payable or to become payable to such municipality out of the Consolidated Revenue or on account of the fees fines or penalties which may be payable to such council not to be paid until the Minister is satisfied that the provisions of this Act have been complied with by such council.

Gratuities to municipal officers. No. 5203 s. 165.

165. (1) On the resignation or death of any officer or employé appointed or employed by the council of any municipality or on the cessation or abolition of the office of any such officer or employé or on any such officer or employé attaining such age as the council determines to be the retiring age for such an officer or employé the council may cause to be paid to such officer or employé or to such of his surviving relatives as the council may think fit any gratuity which to the council seems fit.

Power to grant superannuation allowances &c. to municipal officers &c.

(2) Without affecting the powers conferred by the foregoing provisions of this section or any power to make by-laws for the purposes of such provisions, the council of any municipality, for the purposes of making provision for any officers or employés appointed or employed by the said council and for dependants of such officers and employés on the resignation retirement or death of such officers or employés or on the cessation or abolition of the offices of any such officers or employés, may do all or any of the following things :—

(*a*) Grant and pay superannuation allowances pensions or gratuities.

(*b*) Create establish and constitute any fund or funds for any of the purposes aforesaid.

(*c*) Join or co-operate in any scheme and support aid or subscribe to any association fund or trust for any of the purposes aforesaid.

(*d*) Deduct from the salaries or wages of such officers and employés as contributions to any fund scheme association or trust for any of the purposes aforesaid such amounts as the council by by-law determines.

(3) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Officers exacting or accepting fees or concerned in contract &c.
No. 5203 s. 166; No. 6128 ss. 5 (2), 11.

166. (1) Every officer employed by the council who—

(*a*) exacts or accepts on account of anything done by virtue of his office or in relation to the matters to be done under this Act any fee or reward whatsoever other than the salary or allowance by way of salary allowed by the council ; or

(*b*) is in anywise concerned or interested in any bargain or contract made by the council—

shall be incapable of being afterwards employed by the council and shall forfeit a sum not exceeding One hundred pounds.

(2) Any person may sue for such penalty by action of debt in any court of competent jurisdiction and shall on recovery thereof be entitled to full costs of suit.

(3) Notwithstanding anything in this section contained no officer shall incur any incapacity or disqualification or be liable to a penalty by reason of—

Certain bargains &c. exempted.

(*a*) being a shareholder or member of any incorporated company consisting of more than twenty persons which has entered into any contract with or done any work under the authority of the council ; or

(*b*) paying or being or becoming liable for the payment of any moneys due to any municipality under the provisions of the *Wire Netting Act* 1958 in respect of wire-netting for fencing purposes ; or

(*c*) renting from the council any building hall or room for the purpose of holding any meeting or entertainment therein ; or

(*d*) being or having been before the commencement of this Act an officer or member of any club or association incorporated or otherwise of twenty members at least having for its object the physical recreation or cultural activities of the members thereof notwithstanding that such club or association leases or rents any lands or buildings from any municipality for such object.

In this sub-section " physical recreation " includes the games of cricket tennis football bowling or other sport and " cultural activities " includes social religious educational literary musical scientific agricultural horticultural or other like activities.

(4) And where in pursuance of the authority of any Act the council of any municipality (including the city of Melbourne and the city of Geelong) carries on any gas works electric light works sanitary desiccating works baths weighbridges markets water supply ferries or other like works it shall be lawful for any officer of such council to use any such conveniences or things or receive purchase take and use the residuum or product thereof in the same manner as any member of the public not being an officer might do and to pay the council or the proper officers thereof without incurring any penalty or disqualification in respect thereof.

Security by officers intrusted with moneys. No. 5203 s. 167.

167. (1) Before any officer intrusted by the council with the custody or control of moneys by virtue of his office enters thereon the council shall take sufficient security for the faithful execution of such office by such officer from some association or incorporated company carrying on in Victoria the business of a guarantee society.

(2) The council shall pay out of the municipal fund any premium payable in respect of such security.

DIVISION 2.—MUNICIPAL BOARDS.

Appointment of boards. No. 5203 s. 168.

168. (1) The Governor in Council may from time to time appoint three fit and proper persons to be a board hereinafter designated the " Municipal Clerks Board," and three fit and proper persons to be a board hereinafter designated the " Municipal Engineers Board," and may remove every person so appointed.

(2) Such Municipal Clerks Board shall from time to time hold examinations of such persons as desire to qualify themselves to hold the office of municipal clerk under the provisions of this Act.

(3) Such Municipal Engineers Board shall from time to time hold examinations of such persons as desire to qualify themselves to hold the office of municipal surveyor or engineer under the provisions of this Act.

Power to make regulations. No. 5203 s. 169.

169. (1) The Municipal Clerks Board may from time to time make alter or rescind regulations to be approved by the Governor in Council and published in the *Government Gazette* prescribing the time place and manner of holding examinations of such persons as desire to qualify themselves to hold the office of municipal clerk, the subjects of such examinations, the fees payable by candidates thereat, and the conditions to which such candidates must conform.

(2) The Municipal Engineers Board may from time to time make alter or rescind regulations to be approved by the Governor in Council and published in the *Government Gazette* prescribing the time place and manner of holding examinations of such persons as desire to qualify themselves to hold the office of municipal surveyor or engineer, the subjects of such examinations, the fees payable by candidates thereat, and the conditions to which such candidates must conform.

Alteration in subjects of examination to take effect twelve months after publication.

(3) No regulation under this section prescribing altering or affecting the subjects of examination shall be of any force or effect until twelve months after the same has been published in the *Government Gazette.*

Certificate of competency.

(4) Each of such boards shall issue to every person who has passed such respective examinations to the satisfaction of the board and as to whose general conduct and character the board is satisfied a certificate to be called—

(*a*) in the case of the Municipal Clerks Board, a "certificate of competency";

(*b*) in the case of the Municipal Engineers Board, a "certificate of qualification".

Certificate of qualification as surveyor or engineer or as municipal clerk. No. 5203 s. 170.

170. (1) If any person proves to the satisfaction of the Municipal Engineers Board that he is the holder of a certificate or diploma issued by any body in which such board has confidence which is in the opinion of such board with or without any other test of competency which may be required by such

board and to which he may conform a sufficient test of his competency to perform the duties required of a municipal surveyor or engineer under the provisions of this Act such board shall issue to every such person a certificate to be called a " certificate of qualification."

(2) The Municipal Engineers Board shall make regulations to be approved of by the Governor in Council and published in the *Government Gazette* setting forth what certificates or diplomas of what bodies with or without any and if so what further proof of competency will be accepted by such board as a sufficient ground for granting a certificate of qualification.

Certificates how signed. No. 5203 s. 171.

171. Every certificate issued by either of such boards shall be under the hands of at least two members of the respective boards.

Cancellation of certificate by boards. No. 5203 s. 172.

172. Each of such boards shall have power after notice to the holder of any certificate granted by it and giving him an opportunity to be heard to cancel such certificate on the ground that his general conduct and character do not entitle him to continue to hold such certificate.

Cancellation of certificate fraudulently obtained. No. 5203 s. 173.

173. If any certificate issued by either of such boards is fraudulently obtained the Supreme Court may cancel the same.

Cancellation of certificate in case of conviction of felony or misdemeanour. No. 5203 s. 174.

174. (1) If any holder of any certificate of the Municipal Surveyors Board or the Municipal Engineers Board granted under any Act for the time being in force relating to local government or of any certificate of the Municipal Clerks Board be convicted of any felony or misdemeanour the Governor in Council may by Order to be published in the *Government Gazette* cancel his certificate.

(2) After the publication of such Order the holder of the certificate so cancelled shall cease to be qualified to exercise any office for which such certificate is a qualification.

Municipal Building Surveyors Board. No. 5203 s. 175; No. 5443 s. 4 (*d*).

175. (1) The Governor in Council may from time to time appoint three fit and proper persons to be a board hereinafter designated the Municipal Building Surveyors Board and may remove every person so appointed.

(2) Such Municipal Building Surveyors Board shall from time to time hold examinations of such persons as desire to

qualify themselves to hold the office of municipal building surveyor under the provisions of this Act.

(3) The Municipal Building Surveyors Board shall issue to every person who has passed the prescribed examinations to the satisfaction of the Board and as to whose general conduct and character the Board is satisfied a certificate to be called a "certificate of qualification":

Provided that if any person who on the eighteenth day of December One thousand nine hundred and forty-four held the office of or carried out the duties of building surveyor in any municipal district proves at any time to the satisfaction of the Municipal Building Surveyors Board that he has for a period of five years at least held the office of or carried out the duties of building surveyor in any municipality or municipalities in Victoria, including the city of Melbourne and the city of Geelong, the Board shall issue to such person a certificate of qualification.

Power to Board to make regulations. No. 5203 s. 176.

176. (1) The Municipal Building Surveyors Board may from time to time make alter or rescind regulations to be approved by the Governor in Council and published in the *Government Gazette* prescribing the time place and manner of holding examinations of such persons as desire to qualify themselves to hold the office of municipal building surveyor, the subjects of such examinations, fees payable by candidates thereat, and the conditions to which such candidates must conform.

Regulations prescribing &c. subjects of examination.

(2) No regulation under this section prescribing altering or affecting the subjects of examination shall be of any force or effect until twelve months after the regulation has been published in the *Government Gazette*.

Issue of certificates of qualification. No. 5203 s. 177; No. 5443 s. 4 (*e*).

177. (1) The Governor in Council may from time to time appoint three fit and proper persons to be a board hereinafter designated the Municipal Electrical Engineers Board and may remove every person so appointed.

(2) Such Municipal Electrical Engineers Board shall from time to time hold examinations of such persons as desire to qualify themselves to hold the office of municipal electrical engineer under the provisions of this Act.

(3) The Municipal Electrical Engineers Board shall issue to every person who has passed the prescribed examinations to the satisfaction of the Board and as to whose general conduct

and character the Board is satisfied a certificate to be called a "certificate of qualification":

Provided that if any person at the commencement of the *Local Government Act* 1949 holding the office of or carrying out in any municipal district the duties of municipal electrical engineer or of any municipal office referred to in sub-section (4) of section one hundred and sixty-three of this Act proves at any time to the satisfaction of the Municipal Electrical Engineers Board that he has for a period of five years at least held any such office or carried out the duties thereof in any municipality or municipalities in Victoria, including the city of Melbourne and the city of Geelong, the Board shall issue to such person a certificate of qualification. 6th December, 1949.

(4) The Municipal Electrical Engineers Board may from time to time make alter or rescind regulations to be approved by the Governor in Council and published in the *Government Gazette* prescribing the time place and manner of holding examinations of such persons as desire to qualify themselves to hold the office of municipal electrical engineer, the subjects of such examinations, fees payable by candidates thereat, and the conditions to which such candidates must conform.

(5) No regulation under this section prescribing altering or affecting the subjects of examination shall be of any force or effect until twelve months after the regulation has been published in the *Government Gazette*.

178. The provisions of sections one hundred and seventy to one hundred and seventy-four of this Act shall extend and apply to and in relation to the Municipal Building Surveyors Board or (as the case requires) the Municipal Electrical Engineers Board as if for any reference therein to the Municipal Engineers Board there were substituted a reference to the Municipal Building Surveyors Board or (as the case requires) the Municipal Electrical Engineers Board. Extension and application of ss. 170-174. No. 5203 s. 178; No. 5443 s. 4 (*f*).

PART VI.—PROCEEDINGS OF THE COUNCIL.

179. (1) The council of every municipality in which no meeting of the council has as yet been held shall hold its first meeting at some convenient place within the municipal district on the third Wednesday after the first election of councillors or as soon after such period as conveniently may be at the hour of Ten o'clock in the forenoon, and shall proceed to put this Act into execution. First meeting of council. No. 5203 s. 179.

Ordinary meeting of council.

(2) The council of every municipality shall hold ordinary meetings for the transaction of general business at the office of the council on such day and hour in each week month or other stated space of time as the council from time to time appoints.

(3) When any such appointment is made the municipal clerk shall give notice thereof to each of the councillors, and they shall afterwards until the time of such ordinary meetings is changed and notice of such change given to the councillors attend such ordinary meetings without notice.

Meetings of shire council at places other than the municipal offices.

(4) Notwithstanding anything in this Act requiring the holding of meetings of the council at the office of the council it shall be lawful for the council of a shire to hold meetings for the transaction of the business of the council at places other than the office of the council but only at such places and on such days as are appointed for the purpose by special Order.

Decision of questions at meetings of the council.

(5) At all meetings of the council save where it is otherwise provided all the councillors present shall vote, and the questions there considered shall be decided by open voting and by the majority present.

(6) If there is an equal division of votes upon any question the chairman at such meeting shall in addition to his own vote as councillor have a second or casting vote except as hereinbefore provided at any election of a chairman of any municipality or of any meeting.

Quorum of council.
No. 5203 s. 180.

180. (1) All powers vested in the council under this Act may be exercised at any meeting held in pursuance of this Act by any nine councillors present thereat or by any smaller number forming the major part of the number of councillors for the time being assigned to the municipality.

(2) No business shall be transacted at any meeting of the council unless the said number of councillors is respectively present.

Councillor having pecuniary interest.
No. 5203 s. 181.

181. (1) No councillor shall vote upon or take part in the discussion of any matter in or before the council in which such councillor has directly or indirectly by himself or his partners any pecuniary interest :

Provided that if any such matter relates to any contract with an incorporated company consisting of more than twenty persons and there are not sufficient councillors to form a quorum who are not shareholders or members of such company the Governor in Council on the request of the council may authorize the councillors who are shareholders or members of such company to vote upon or take part in the discussion of such matter.

(2) Every councillor who knowingly offends against this section shall for every such offence be liable to a penalty of not more than Fifty pounds. Penalty.

182. (1) The councillors present at any meeting may from time to time adjourn such meeting. Adjournment of meetings. No. 5203 s. 182.

(2) If at any meeting of the council there is not present within half-an-hour after the time appointed for such meeting the number of councillors hereby authorized to exercise the powers vested in the council the councillors present or the major part of them or any one councillor if only one is present or the municipal clerk if no councillor is present may adjourn such meeting to any time not further distant than seven days from the date of such adjournment.

(3) Except where any meeting is adjourned to a subsequent hour on the same day the municipal clerk shall forthwith deliver or send by the post or otherwise to each councillor notice in writing of such adjourned meeting and of the time to which such meeting has been adjourned.

183. (1) The ordinary meetings of the council shall be held for transacting the ordinary business of the council under this Act. Business at ordinary meetings. No. 5203 s. 183.

(2) Ordinary business shall, amongst other matters, include the following :—

(*a*) Superintending the conduct of the officers of the council ;

(*b*) Inquiring into the conduct of the contractors or other persons employed by the council to execute any works ;

(*c*) Inquiring into the state and progress of such works;

(*d*) Generally giving such directions from time to time as may be necessary for carrying into effect the purposes of this Act.

(3) If at any ordinary meeting any councillor objects that any motion moved without notice does not deal with ordinary business such motion shall be of no effect unless the same is agreed to at such meeting by a majority of the whole number of members of the council; but nothing herein contained shall validate any extraordinary business transacted without notice.

(4) All ordinary meetings shall be held with open doors unless it becomes necessary to exclude strangers on account of their disorderly conduct.

Notice of extraordinary business. No. 5203 s. 184.

184. (1) Where any business other than ordinary business is required or intended to be transacted done or adopted at any ordinary meeting of the council notice thereof shall be given to each of the councillors in the manner and time required for special meetings.

(2) No such extraordinary business shall be transacted or adopted at any ordinary meeting unless due notice of such business has been given to each councillor.

Resolutions how revoked or altered. No. 5203 s. 185; No. 5331 s. 2.

185. No resolution at any meeting of the council shall be revoked or altered at any subsequent meeting unless—

(*a*) notice of the intention to propose such revocation or alteration is given to each of the councillors seven clear days at least before holding the meeting; and

(*b*) such revocation or alteration is determined upon—

(i) by a majority of the whole number of members of the council if the number of councillors present at such subsequent meeting is not greater than the number present when such resolution was agreed to; or

(ii) by a majority if the number of councillors present at such subsequent meeting is greater than the number present at such former meeting.

Special meetings. No. 5203 s. 186.

186. (1) The council may hold special meetings and the chairman of the municipality or any three or more of the councillors may call a special meeting.

(2) No such meeting shall be held unless in case of a borough two clear days' notice and in case of a shire four clear days' notice thereof at least be given.

(3) Such notice shall be in writing and shall specify the time of meeting and the object thereof and shall be delivered or sent by the post or otherwise to the place of abode or to the usual place of business (if any) within the municipal district of each councillor.

(4) No business shall be transacted at such meeting except such as is stated in the notice thereof.

Call of the council. No. 5203 s. 187.

187. (1) The chairman of the municipality or any three or more of the councillors may make a call of the whole council to attend any ordinary or special meeting of the council.

Every councillor who without reasonable excuse to the satisfaction of the council does not attend in compliance with such call or who being present at the meeting leaves the same without the permission of the chairman before all the business has been concluded shall be guilty of an offence against this Act.

Notice of such call shall be sent to each councillor in the manner and time required for special meetings.

Power of Minister to make a call of the whole council.

(2) The Minister may whenever he sees fit by notice published in the *Government Gazette* make a call of the whole council of any municipality to attend a meeting of the council to be held not less than seven days after the publication of the notice.

The notice shall specify the time and place of meeting and the object thereof and a copy of the notice as published in the *Government Gazette* shall be sent by post at least four days before the time of meeting to the place of abode or to the usual place of business (if any) within the municipal district of each councillor.

Every councillor who without reasonable excuse to the satisfaction of the Minister does not attend at the time and place specified in the notice or before all the business has been concluded leaves the meeting without the permission of the chairman shall be liable to a penalty of not more than Twenty pounds.

Ouster from office of councillor who refuses or neglects to attend council meetings. No. 5203 s. 188.

188. Where any councillors refuse or neglect to attend or to remain in attendance at any meeting of the council so that a quorum of the council cannot be formed or maintained, the clerk of the municipality shall within the three days after such meeting make a call of the whole council to attend a meeting of the council to be held not more than seven days after the day appointed for the first-mentioned meeting, and if any councillor without reasonable excuse refuses or neglects to attend or to remain in attendance at such meeting, such councillor shall thereupon be incapable of being or continuing a councillor, and the Supreme Court on the application of the Minister may oust such councillor of his office as councillor; and the provisions of section one hundred and fifty-seven of this Act shall so far as applicable and with such adaptations as are necessary extend and apply to and in respect of such ouster.

Special order. No. 5203 s. 189.

189. Where by this Act the council is empowered to do anything by "special order" only, the council shall not do such thing unless—

(*a*) the resolution to do the same has been agreed to by the council in some meeting for which notice of such resolution has been given as for extraordinary business; and

(*b*) the resolution has been confirmed in a subsequent meeting held not sooner than twenty-five clear days after the preceding meeting; and

(*c*) the time for holding such subsequent meeting and the substance of such resolution have been advertised in some newspaper generally circulating in the neighbourhood twice at least at intervals of not less than six days in the period intervening between the two meetings; and

(*d*) notice of such subsequent meeting and of such resolution has been given to each of the councillors in the manner and time required for special meetings.

Committees of council and quorum. No. 5203 s. 190.

190. (1) The council may from time to time as the council sees fit appoint occasional or standing committees and may fix the quorum of every such committee, and every such committee shall appoint one of the members thereof to be chairman of such committee and the council may from time to time continue alter or discontinue such committee and such committee may from time to time remove such chairman and every such committee shall report to the council.

Meetings chairman &c. of committees.

(2) Every committee so appointed may meet from time to time and may adjourn from place to place as the committee thinks proper.

(3) No business shall be transacted at any meeting of the committee unless the quorum of members (if any) fixed by the council and if no quorum is fixed three members are present.

(4) At all meetings of the committee if the chairman is not present one of the members present shall be appointed chairman.

(5) All questions shall be determined by a majority of the votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee except as hereinbefore provided at any election of a chairman of such committee.

Vacancy in council not to invalidate proceedings. No. 5203 s. 191.

191. No proceeding of the council or of any committee shall be invalidated or be illegal in consequence only of there being any vacancy in the number of councillors at the time of such proceeding.

Nor want of capacity &c. of any person to be councillor. No. 5203 s. 192.

192. All proceedings of the council or of a committee of the council or of any person acting as a councillor shall notwithstanding it is afterwards discovered that there was some defect in the election or appointment of the councillors or persons acting as aforesaid or that they or any of them were incapable of being councillors be as valid as if every such person had been duly elected and appointed and was capable of being a councillor.

Offices &c. of council. No. 5203 s. 193.

193. (1) The council may from time to time provide and maintain fit and convenient municipal offices together with all necessary and proper furniture for the same for holding the meetings and transacting the business of the council and for the use of the municipal officers and for the holding of such public meetings and transacting such public business relating to the municipality as the council may from time to time under the powers of this Act direct or allow to be held or transacted therein.

(2) For such purpose the council may purchase or rent any lands or buildings which it thinks necessary or may alter remove or enlarge any building or may cause any new buildings to be erected upon any land purchased or rented under the provisions of this Act or otherwise belonging to the municipality.

Office of council. No. 5203 s. 194.

194. (1) The office of the council shall be at some place—

(*a*) in the case of a borough within the borough;

(*b*) in the case of a shire within the shire or within five miles outside the boundary thereof.

Attendance of municipal clerk at office.

(2) The council shall require the municipal clerk or some other person duly authorized by it in that behalf to attend at such office at stated times to be from time to time appointed by the council for the purpose of receiving notices and transacting the ordinary business of the council.

Notice of situation of office.

(3) Due notice of the situation of such office and of the days and hours on and during which attendance is given there shall be published by the council within the limits of the municipal district.

Minutes of proceedings. No. 5203 s. 195.

195. (1) The council shall cause minutes of all the proceedings at each meeting of the council together with the names of the councillors present and of the names of all councillors voting upon any question for the decision of which a division is called and all reports of committees presented at such meeting to be duly entered from time to time in a book to be provided for the purpose which shall be kept by the municipal clerk under the superintendence of the council.

Confirmation.

(2) Such minutes shall after confirmation by the council at the next meeting be signed by the chairman of such next meeting, unless the same are confirmed at the meeting to which the minutes relate and signed by the chairman of that meeting.

Inspection. No. 5203 s. 196.

196. Such book shall at all reasonable times be open to the inspection of any councillor or ratepayer or creditor of the municipality.

PART VII.—BY-LAWS, REGULATIONS, AND JOINT REGULATIONS.

DIVISION 1.—FOR WHAT PURPOSES BY-LAWS ETC. MAY BE MADE.

Purposes for which by-laws may be made.
No. 5203 s. 197; No. 5443 s. 5, No. 5745 s. 4, No. 5843 s. 10, No. 6151 s. 3.

197. (1)[a] Subject to the provisions hereinafter contained by-laws may be made for any municipality for the purposes mentioned in this Act and for the purposes following:—

Fifteenth Schedule.

(i) The adoption of any of the provisions of the Fifteenth Schedule hereto.

(ii) Carrying out any of the purposes provided for in the Fifteenth Schedule hereto.

Water supply.

(iii) Carrying out any of the purposes provided for in any Act or portion of an Act relating to water supply which the municipality is empowered to adopt by by-law.

(iv) Regulating the supply and distribution of water from waterworks under the management of the council.

Sewerage and drainage.

(v) Regulating sewerage and drainage and prohibiting or regulating the discharge onto roads of water supplied for irrigation.

Fires.

(vi) Preventing and extinguishing fires.

(vii) Compensating owners of buildings removed to prevent the spread of fire.

Lighting.

(viii) Regulating lighting with gas or otherwise.

Health.

(ix) Providing for the health of the residents in the municipal district and against the spreading of contagious or infectious diseases.

Vermin.

(x) (*a*) Requiring the destruction of any rats ants or other vermin or pests.

(*b*) Requiring the destruction on the property or premises of any owner or occupier and the adjacent half-width of any street or road on which the property or premises abuts of any weeds declared by the by-law to be noxious weeds.

(*c*) Providing that in the event of failure of any owner or occupier of any property or premises to comply with the requirements of any by-law made pursuant to sub-paragraph (*a*) or (*b*) of this paragraph (x) the council may cause measures to be taken to destroy the vermin pests or weeds at the expense of the owner or occupier and recover the cost thereof as a civil debt recoverable summarily.

(*a*) See section 33 of the *Dog Act* 1958 which enables by-laws to be made under this section for the purposes of that Act.

(xi) Suppressing nuisances including controlling and regulating the use of premises with a view to preventing objectionable noises at unreasonable times. Nuisances.

(xii) Preserving public decency. Public decency.

(xiii) Preserving good order and decency in any building belonging to the municipality or under the control and management of the council, or preventing damage to such building or to the furniture or fittings thereof, or regulating any meeting or gathering held therein. Municipal buildings.

(xiv) Conducting public meetings of the ratepayers. Meetings of ratepayers.

(xv) Establishing and regulating fairs and public sales labour marts and offices. Fairs &c.

(xvi) Regulating the use of merry-go-rounds, swing boats, or shooting galleries. Merry-go-rounds &c.

(xvii) Regulating traffic and processions. Traffic and processions.

(xviii) Regulating the hours during which and conditions on which locomotive engines or rollers impelled by steam or electricity may proceed over any road. Hours for engines &c. on roads.

(xix) Prohibiting or regulating the locking of the wheel of any vehicle when descending a hill, unless there is placed at the bottom of such wheel during the time of its being locked a skid-pan, slipper, or shoe in such manner as to prevent the road from being injured by the locking of such wheel. Locking wheel of vehicle on hill.

(xx) Prohibiting or regulating the use on any road of any vehicle not having the nails on its wheels countersunk in such manner as may be specified in such by-law or having on its wheels any bars spikes or other projections forbidden by such by-law or of any vehicle which moves wholly or partly on crawler or revolving tracks. Wheels of vehicles.

(xxi) Prohibiting or minimizing noises in any public highway including the prohibition or the regulation of the use on vehicles of brakes which are calculated to cause noises. Noises in highway.

(xxii) (*a*) Appointing in streets and roads including any portions of streets or roads which have been directed to be tree reserves pursuant to the provisions of section five hundred and fifty-seven of this Act or any corresponding previous enactment (but without unduly obstructing the thoroughfares or prejudicially affecting such tree reserves) standing places for motor cars. Standing places for motor cars.

(*b*) Providing for openings through any such standing places for any purpose prescribed by the by-law or for cross traffic.

(*c*) Prescribing the conditions on which and the days and hours during which and the period of time for which all or any of such standing places may be occupied by motor cars.

(*d*) Regulating the use of any such standing places and the number of motor cars to be allowed to stand thereon and the manner in which motor cars may be placed or left thereon or removed therefrom.

(*e*) Prohibiting the occupation by motor cars of any openings through such standing places.

(*f*) Prescribing in respect of each of the periods hereinafter mentioned reasonable fees (if any) for the occupation by a motor car of a position on any such standing place or standing places, but so that no such fee shall exceed for the period of—

twelve months—Ten pounds;

six months—Five pounds ten shillings;

three months—Three pounds;

one month—One pound;

one week—Five shillings;

one day—Three shillings;

any space of time shorter than one day which is specified in the by-law—One shilling and six pence.

(*g*) Prescribing conditions under which any person having paid any such fee in respect of any motor car may be permitted to occupy a position by the same motor car on any of such standing places at any time or times during the period for which the fee was paid.

(*h*) Prescribing the duties of officers or attendants for such standing places.

(*i*) Prohibiting the leaving (whether unattended or not) of motor cars or other vehicles standing in any street or road or part thereof specified in the by-law.

Requiring information as to identity of persons committing offences against parking &c. by-laws.

(xxiii) Requiring the owner or person apparently in control of any motor car or other vehicle left standing (whether unattended or not) in any street or road to give information with respect to any person (other than the said owner or person apparently in control) who is or was the driver of such motor

car or vehicle which may lead to the identification of any person who is leaving or has left such motor car or vehicle so standing in contravention of any by-law.

Protection and control of tree reserves, ornamental plantations, safety zones &c. in streets and roads.

(xxiv) Providing for the protection and control of—

(*a*) tree reserves and gardens garden plots lawns and ornamental plantations in or upon any street or road;

(*b*) trees shrubs and plants planted and tree-guards statues monuments fountains and seats erected in or upon any street or road; and

(*c*) posts fences raised pavings and places of refuge in or upon any street or road—

for protecting persons being on or passing along any street or road or footway; or

for regulating traffic along any street or road or on footways; or

for making the crossing of any street or road less dangerous to any such persons.

Removal of grass and grass seed from roads.

(xxv) Prohibiting or regulating the removal of grass growing on any road or the seed of such grass and making provision with respect to permits for such removal and charging reasonable fees in respect of such permits.

Driving of cattle in streets.

(xxvi) Regulating the driving of cattle in or along any street or prohibiting the driving of cattle in or along any specified street in any municipal district.

Drawing &c. sledge &c. on footway or carriageway.

(xxvii) Prohibiting or regulating the drawing or trailing of any sledge, timber, or other heavy material upon any footway or carriage-way.

Spitting on footpaths.

(xxviii) Prohibiting spitting or expectorating on footpaths.

Throwing &c. vegetable matter on highway.

(xxix) Prohibiting the throwing placing or leaving upon any public highway of orange peel, banana peel, or other vegetable matter.

Deposit removal or destruction of refuse or rubbish.

(xxx) (*a*) Prohibiting the deposit or leaving of refuse or rubbish on streets roads lanes or passages.

(*b*) Prohibiting or regulating the deposit or leaving of refuse or rubbish on any land.

(*c*) Requiring the removal or destruction by the owner or occupier of any land of refuse or rubbish thereon (other than refuse or rubbish the removal

of which the council has undertaken or contracted for under section forty-eight of the *Health Act* 1958).

Use of roads &c.

(xxxi) (*a*) Prohibiting or regulating the soliciting or collection in any road or street or from house to house adjacent thereto of gifts of money or of subscriptions for any purpose.

(*b*) Controlling the use of footways or roadways by children using skates trucks scooters or other like toy vehicles.

(*c*) Prohibiting or regulating camping on roads.

(*d*) Authorizing the placing on roads in situations approved by the municipal engineer (subject, in the case of State highways main roads and tourists' roads, to the further approval of the Country Roads Board) of stands or platforms for milk and cream cans and prescribing the nature and size and regulating the use of such stands and platforms.

(*e*) Providing for the proper custody and control of animals in cattle sale-yards.

(*f*) Regulating the keeping of animals or birds with power to limit the number of any such animals or birds kept on any property.

(*g*) Prohibiting or regulating the leaving standing of caravans on streets or roads and the placing of caravans on private property.

(*h*) Prohibiting or regulating the leaving standing of derelict or unregistered motor cars on streets or roads and providing for the removal and disposal of such motor cars and the imposition of charges for such removal and disposal.

Poster &c. on footpath &c.

(xxxii) Regulating or prohibiting the writing, painting, printing, stencilling, placing or affixing of any letter, figure, device, poster, sign, or advertisement upon any footpath, street or road, or upon any building fence or other property vested in the municipality or under the control and management of the council thereof.

Hawkers and street traders &c.

(xxxiii) (*a*) Regulating the use of streets roads and public places by street hawkers and itinerant traders dealing in goods with power to prohibit any such persons during particular hours from using any streets roads or public places.

(*b*) Appointing stands in streets roads and public places for such street hawkers and itinerant traders with power to abolish enlarge or diminish any

such stands; and limiting the space to be occupied by each person on any such stand and the time during which each such person may remain on any such stand and the number of persons who may occupy any particular stand.

(*c*) Prescribing the charges to be paid for the right to use such stands with power to vary the charges according to the stand used and to increase or decrease such charges; and prescribing the conditions upon which and the times during which such stands may be occupied.

(*d*) Fixing by priority of application or by lot tender or otherwise the positions on any such stand which persons are to occupy.

(*e*) Prescribing rules to be observed by persons occupying such stands (including rules for securing the cleanliness of carts trucks barrows boxes baskets and crates used by such persons and the wholesomeness and cleanliness of the commodities sold or offered or exposed for sale) and with respect to the conduct of such persons.

(*f*) Prescribing the nature and size of hand-trucks barrows or other vehicles to be used on such stands and prohibiting any animal whether attached to any truck barrow or vehicle or not from standing on any such stand during the time fixed for occupation thereof by street hawkers and itinerant traders.

(*g*) Providing the form of authority to be issued for occupying such stands the conditions upon which such authorities are issued and under which they will be permitted to be transferred, and the fee to be paid for a transfer of any such authority; and prohibiting any person who is not named in such an authority or is not a transferee of such an authority duly permitted under the said by-laws from occupying any such stand.

(*h*) Prohibiting or regulating the sale of goods from stalls motor cars carts trucks barrows boxes baskets crates bags or other vehicles or receptacles standing or placed on any street road or public place within any area within any municipal district set forth in the by-law.

(xxxiv) (*a*) Prohibiting on from and after a date specified in the by-law or regulating— Erection or use of tents &c. for sale of goods.

(1) the erection or use on any land within the municipal district or within any area set forth in the by-law within the municipal

district of tents or other temporary structures or buildings for the sale of goods therein or therefrom; and

(2) the sale of goods in or from such tents structures or buildings; and

Sale of goods from stalls &c. on private vacant land.

(*b*) Prohibiting or regulating the sale of goods from stalls motor cars carts trucks barrows or any other vehicles boxes baskets crates bags or other receptacles standing or placed on vacant land (not being Crown land, or land under the care and management of the municipality, or a public place with the meaning of section three of the *Police Offences Act* 1958) within any area set forth in the by-law within the municipal district.

Quarrying and blasting.

(xxxv) (*a*) Prohibiting regulating or controlling quarrying operations, and blasting operations elsewhere than in any mine quarry clay pit gravel pit or sand pit.

Excavating.

(*b*) Prohibiting regulating or controlling excavating operations (other than quarrying or blasting operations) and, without restricting the generality of the foregoing provisions of this sub-paragraph—

(1) prohibiting regulating or controlling the carrying on of such excavating operations within the distance prescribed in the by-law from any street road building or land; or

(2) requiring in the carrying on of such excavating operations that banks or sides of excavations be sloped down or banked or shored up as prescribed in the by-law.

Fences &c. with spikes &c.

(xxxvi) Regulating or prohibiting the use in or on any fence or other erection on land adjoining any street or road of any wire with spikes or jagged projections or regulating the use in or on any such fence or erection of any other kind of wire and requiring that all wire (whether with or without spikes or jagged projections) so used and any such fence or other erection on which it is so used shall be maintained in a good state of repair.

Use of private property at junction of streets for growing of trees &c.

(xxxvii) (*a*) Prohibiting or regulating the use of private property situate at the junction of streets or roads for the growing of trees shrubs or hedges abutting on any such street or road or within ten feet therefrom or within a distance of thirty feet from the junction of any streets or roads.

(*b*) Requiring the removal or lopping of trees shrubs or hedges (whether planted before or after the commencement of this Act) from or on private

property so situate where such trees shrubs or hedges abut on or are within ten feet of such street or road or within a distance of thirty feet from the junction of any streets or roads;

(*c*) Requiring the reduction to a height not exceeding three feet six inches of any portion of a fence within thirty feet of the junction of any streets or roads; and

(*d*) Authorizing the council at the expense of the owner (the amount of which expense may be recovered by the council in a court of petty sessions as a civil debt recoverable summarily)—

(1) to remove or lop trees shrubs or hedges growing or being on private property so situate which are not removed or lopped as required by or under any by-law made under sub-paragraph (*b*) hereof;

(2) to reduce in height any portion of a fence which is not reduced in height as required by or under any by-law made under sub-paragraph (*c*) hereof.

(xxxviii) (*a*) Prescribing areas within the municipal district as residential areas and prohibiting or regulating within the whole or any part of any such residential area the use of any land or the erection (including adaptation for use) or the use of any building for the purposes of such classes of trades, industries, manufactures, businesses, or public amusements as are specified in the by-law and prescribing areas within the municipal district as business areas and prohibiting or regulating within the whole or any part of any such business area the use of any land or the erection (including adaptation for use) or the use of any building or portion of a building for the purposes of a dwelling or for the purposes of such classes of trades, industries, manufactures, businesses or public amusements as are specified in the by-law.

Residential areas and use of buildings for trades &c. or public amusement.

(*b*) Requiring that vacant land within any area within the municipal district set forth in the by-law and declared therein to be a populous or residential area shall be enclosed with a substantial fence constructed of such material and in such manner as is prescribed by the by-law.

Fencing vacant land.

(*c*) Requiring the removal of undergrowth weeds or grass from land within any area within the municipal district set forth in the by-law and

Removal of undergrowth weeds and grass from land.

declared therein to be a populous or residential area in cases where in the opinion of the council such undergrowth weeds or grass constitutes a fire menace to neighbouring property, and enabling the council, in the event of default by the owner or occupier, to remove the same and to recover the cost thereof from the owner or occupier.

Temporary herding of cattle in populous or residential areas.

(*d*) Regulating or prohibiting the temporary herding of cattle within any area within the municipal district set forth in the by-law and declared therein to be a populous or residential area.

Cattle on unenclosed land.

(xxxix) Prohibiting or regulating cattle being allowed to graze or wander upon any land not enclosed by a substantial fence.

Landing grounds for aircraft &c.

(xl) Providing for the care protection management and use of any lands provided by the council as landing grounds for aircraft and of any buildings erections apparatus and equipment on such lands and prescribing reasonable fees for the use of such lands buildings erections apparatus or equipment.

Commons and public reserves.

(xli) Controlling and managing and preserving commons and public reserves of which the management is vested in the council.

Public conveniences &c.

(xlii) Prescribing the terms and conditions and the fees (if any) to be charged for the use of cabmen's shelters or closets privies urinals or conveniences provided by the council and regulating the conduct of persons using the same.

Buildings, accommodation for bathers, sanitary &c. conveniences.

(xliii) Providing for the care protection management and use of any building structure accommodation for bathers or sanitary or other convenience erected or provided by the council pursuant to section eight hundred and two of this Act or any corresponding previous enactment and prescribing reasonable fees for the use thereof.

Gratuities on resignation &c. of officers employés &c.

(xliv) Fixing gratuities payable on the resignation retirement or death of officers or employés or on the cessation or abolition of their offices to such officers or employés or their relatives and determining to what (if any) officers or employés or relatives of officers or employés the same shall be payable and prescribing any matters or things necessary or expedient to be prescribed for carrying the provisions of sub-section (2) of section one hundred and sixty-five of this Act into effect.

General.

(xlv) Generally for maintaining the good rule and government of the municipality.

(2) Every by-law made by any municipality under any of the provisions of this section for regulating traffic on footways shall make provision requiring persons passing along such footways to keep, unless for justifiable cause, on the left side thereof. Traffic by-laws as to footways to require pedestrians to keep to left.

(3) (*a*) The council of any municipality— By-laws as to standing places for motor cars.

(i) may by resolution from time to time discontinue for such period as it thinks fit any standing place for motor cars appointed under any by-law under paragraph (xxii) of sub-section (1) of this section or any corresponding previous enactment; and

(ii) may appoint or employ officers or attendants for any standing places so appointed and remove any such officer or attendant.

(*b*) Nothing in paragraph (xxii) of sub-section (1) of this section or in this sub-section or in paragraph (*b*) of sub-section (9) of this section shall—

(i) limit or affect any powers conferred by any enactment other than the said paragraph (xxii) of sub-section (1) of this section on the council of any municipality to fix or appoint any stands or standing places for any vehicles other than motor cars to which the said paragraph (xxii) applies; or

(ii) affect any such stands or standing places heretofore or hereafter fixed or appointed by any such council under such powers.

(*c*) In the said paragraph (xxii) and in this sub-section unless inconsistent with the context or subject-matter :—

"Motor car" means a motor car within the meaning of section three of the *Motor Car Act* 1958, not being a vehicle of any class for which stands or standing places may be fixed or appointed by the council of any municipality under the powers conferred by any enactment other than the said paragraph (xxii). "Motor car."

(4) (*a*) By-laws made under sub-paragraphs (*a*) and (*b*) of paragraph (xxxiii) of sub-section (1) of this section shall provide that a child (as defined by the *Labour and Industry Act* 1958) shall not be employed as a street hawker or itinerant trader nor be permitted to manage or occupy a stand in any street road or public place. Children not to be employed as street hawkers.

(*b*) For the purposes of the said paragraph (xxxiii) of sub-section (1) of this section and of this sub-section the expression "public place" shall have the same meaning as in section three of the *Police Offences Act* 1958. "Public place."

Saving as to *Health Act.*

(*c*) The said paragraph (xxxiii) and this sub-section shall be read and construed as in aid and not in derogation of the provisions of the law relating to the public health.

By-laws prohibiting quarrying or blasting operations.

(5) (*a*) Any by-law under sub-paragraph (*a*) of paragraph (xxxv) of sub-section (1) of this section prohibiting quarrying operations shall not apply to any land on which any such operations were commenced before the fourth day of January One thousand nine hundred and eleven and have since that date continued without substantial interruption nor to any other land on which quarrying operations were being carried on at the commencement of the *Local Government (Amendment) Act* 1954 unless the Minister in writing approves of the application of the by-law to such other land.

14th December, 1954.

Prohibiting excavating operations.

(*b*) Save as provided in clauses (1) and (2) of sub-paragraph (*b*) of paragraph (xxxv) of sub-section (1) of this section, any by-law under the said sub-paragraph (*b*) prohibiting excavating operations (other than quarrying operations) shall not apply to any land on which any such operations were commenced before the tenth day of November One thousand nine hundred and thirty-eight and have since that date continued without substantial interruption nor to any other land on which excavating operations were being carried on at the comencement of the *Local Government (Amendment) Act* 1954 unless the Minister in writing approves of the application of the by-law to such other land.

14th December, 1954.

Description of residential or business areas.

(6) In addition to the provisions contained in the next succeeding sub-section and in sub-paragraph (iii) of paragraph (*a*) of sub-section (9) of this section the following provisions shall have effect with respect to by-laws prescribing residential or business areas under paragraph (xxxviii) of sub-section (1) of this section :—

(*a*) It shall be sufficient—

(i) if any such residential or business area is described by reference to streets or roads or portions thereof and land abutting thereon to a depth specified in the by-law ; and

Description of classes of trades &c.

(ii) if the by-law specifies that it applies with respect to—

(1) all classes of trades industries manufactures businesses or public amusements or dwellings;

(2) any classes of trades industries manufactures businesses or public amusements or dwellings mentioned in the by-law ; or

(3) all classes of trades industries manufactures businesses or public amusements or dwellings except those mentioned in the by-law.

(*b*) Any such by-law may contain provisions requiring the pulling down and removal of buildings erected adapted for use or used contrary to the by-law and authorizing the council to pull down and remove buildings erected adapted for use or used contrary to the by-law or not pulled down or removed as required by or under the by-law and to sell the materials and apply the proceeds in reimbursing the expenses of pulling down and removing such buildings and in paying into the municipal fund any fees or penalties due by the owner thereof. Provisions as to pulling down and removal of buildings.

(*c*) In addition to the penalties provided for in section two hundred and twenty-two of this Act any such by-law may impose a further penalty of not more than Ten pounds for each day on which an offence against the by-law is continued after notice has been given to the offender by the council of the commission of the offence or after a conviction or order of any court (as the case may be). Penalties.

(7) No by-law under sub-paragraph (*a*) of paragraph (xxxviii) of sub-section (1) of this section shall preclude— By-laws prescribing residential areas &c.

(*a*) the continuance of the use of any land or building for the purposes for which the land or building was lawfully used immediately before the coming into operation of the by-law; or

(*b*) the enlargement rebuilding or extension of any building and the continuance of the use of the building as so enlarged rebuilt or extended for the purposes for which it was lawfully used immediately before the coming into operation of the by-law, so long as the building as so enlarged rebuilt or extended does not extend beyond—

(i) the premises on which the building was situated immediately before the coming into operation of the by-law; and

(ii) any adjoining land which immediately before the coming into operation of the by-law was in the same ownership and might lawfully have been used for the same purposes.

Generality of ss. 197, 198 not to be affected.

(8) None of the provisions of paragraphs (xxiii), (xxiv), (xxx), (xxxi), (xxxiv), and (xxxvii) of sub-section (1) of this section shall affect the generality of this section or (in the case of the said paragraph (xxxiv) or the said paragraph (xxxvii)) of the next succeeding section.

Approval of Governor in Council required in respect of certain by-laws.

(9) All by-laws made—

(i) under paragraph (xxvi) or under sub-paragraph (*f*) (*g*) or (*h*) of paragraph (xxxi) or under paragraph (xxxiii) of sub-section (1) of this section;

(ii) (under sub-paragraph (*a*) of paragraph (xxxv) of sub-section (1) of this section) prohibiting quarrying or blasting operations; or

under sub-paragraph (*b*) of the said paragraph (xxxv);

(iii) under sub-paragraph (*a*) of paragraph (xxxviii) of sub-section (1) of this section; or

(under sub-paragraph (*d*) of the said paragraph (xxxviii)) prohibiting the temporary herding of cattle; or

(iv) under paragraph (xxii) or paragraph (xl) of sub-section (1) of this section—

shall be subject to the approval of the Governor in Council.

Approval of Governor in Council on recommendation of Commissioner of Crown Lands and Survey.

(10) No by-law under paragraph (xliii) of sub-section (1) of this section shall have any force or effect unless or until it is approved by the Governor in Council on the recommendation of the Commissioner of Crown Lands and Survey.

Application to Melbourne and Geelong.

(11) The preceding sub-sections and sub-section (13) of this section shall apply to the city of Melbourne and the city of Geelong.

By-laws as to fallowing land in Mallee country.

(12) The council of every municipality whose municipal district is in whole or in part within the Mallee country as defined in the *Land Act* 1958 may, if in the opinion of the council drift sand is likely to accumulate on a public highway, make by-laws regulating or prohibiting fallowing of or burning off on land within any distance not exceeding three chains from such highway.

(13) If any person is convicted of an offence against a by-law made under sub-paragraph (*a*) of paragraph (xxx) of sub-section (1) of this section the cost of removal by the council of any refuse or rubbish the subject-matter of the offence may be recovered by the council from the offender in any court of competent jurisdiction as a civil debt recoverable summarily.

198. (1) The council of every municipality with the approval of the Governor in Council may make by-laws for the following purposes or any of them or for any purpose in connexion therewith:—

Power to councils with the approval of the Governor in Council to make by-laws regulating buildings, hoardings, &c. No. 5203 s. 198; No. 5443 s. 6, No. 5843 ss. 11, 26 (2), No. 6151 s. 4.

(*a*) Regulating restricting restraining or prohibiting the erection construction use occupation conversion and alteration of and any addition to buildings or erections and regulating restraining or prohibiting the erection and construction of hoardings or of fences abutting on or within ten feet of any street or road.

(*b*) Requiring the pulling down and removal of buildings, erections, or hoardings or of fences abutting on or within ten feet of any street or road and requiring the demolition and removal of the remains of buildings which have been wholly or partly burnt down or demolished.

Removal &c. of buildings, hoardings &c.

(*c*) Authorizing the council to pull down demolish and remove buildings erections or hoardings or fences or any part thereof erected constructed converted altered or added to contrary to any such by-law or not pulled down demolished or removed as required by or under any such by-law, and to sell the materials and apply the proceeds in reimbursing the expenses of pulling down demolishing and removing such buildings erections hoardings or fences or such part thereof and in paying into the municipal fund any fees or penalties due by the owner thereof. For the purpose of this paragraph and paragraphs (*a*) and (*b*) "hoarding" means structure used for the exhibition of advertisements and includes sky-sign.

Advertisements in public parks &c.

(*d*) Regulating restricting or preventing the exhibition of advertisements in such places and in such manner or by such means as to affect injuriously the amenities of a public park or pleasure promenade or to disfigure the natural beauty of a landscape.

(*e*) Regulating and controlling all advertisements attached or fixed to or painted on any hoardings or on any building or on any fence rock cliff or tree and regulating and controlling the erection or use of coloured lights and signs in the vicinity of traffic control lights or signs or of street intersections.

Fees.

(*f*) Appointing fees which may be charged and received by the council for any act done or to be done by any of its officers under such by-laws and for any permit or licence to be issued by the council.

Removal &c. of wooden buildings.

(*g*) Regulating the transportation or removal by road of wooden buildings or structural parts thereof, including provision for—

(i) the giving of reasonable security for due compliance with the by-law;

(ii) the route to be followed and any deviation thereof as determined by the council or its engineer; and

(iii) the supervision of the work of transportation and removal and the payment of reasonable charges for such supervision.

Prohibiting erection of verandahs other than cantilever &c. verandahs.

(*h*) (i) Prohibiting on from and after a date specified in the by-law the erection or placing, against or in front of any house or building abutting upon any public footway in any street or part thereof specified in the by-law, of any verandah over or across such footway unless such verandah is supported by cantilevers brackets or projecting supports and not otherwise; and

Removal of verandahs other than cantilever &c. verandahs.

(ii) Requiring the pulling down and removal before a date specified in the by-law (not being less than ten years after the coming into operation of the by-law) of all verandahs before the first-mentioned date erected or placed against or in front of any house or building abutting upon any such public footway which verandahs are upon over or across such footway and are supported otherwise than by cantilevers brackets or projecting supports.

(*i*) Regulating restricting or prohibiting the use of caravan or camping parks or sites and regulating the conduct or management thereof.

By-laws restricting vehicular access between certain roads and adjoining properties.

(*j*) Declaring any streets or roads or parts thereof within the municipal district to be roads of limited access and—

(i) prohibiting the provision without the consent of the council of any further facilities for vehicles to enter or leave any land which abuts on any such road of limited access and to which reasonable alternative means of vehicular access are or can be made available;

(ii) prohibiting any person from entering or leaving with a vehicle or from permitting any person to enter or leave with a vehicle any such land except by a passage in regular use before the commencement of the by-law or subsequently approved by resolution of the council;

(iii) prohibiting or regulating the presence of animals on any such road of limited access.

Power to obliterate unsightly advertisements &c.

(2) When any by-law made under the powers of paragraphs (*a*) to (*e*) of sub-section (1) of this section or of paragraph (xxxii) of sub-section (1) of section one hundred and ninety-seven is in operation in any municipal district the council of such district may obliterate abolish or remove any advertisement upon any hoarding building fence rock cliff or tree if in the opinion of the council unsightly or objectionable.

Building by-laws.

(3) Without restricting the generality of the powers conferred by any other sub-section of this section for the making of by-laws for regulating and restraining the erection and construction of buildings any such by-laws may—

by-law shall apply—

Extent of application.

(i) to the whole or any specified part or parts of the municipal district or any specified area or areas therein; or

(ii) to any specified class or classes of buildings;

(*a*) provide that the whole or any portion of any such

(*b*) prescribe the minimum area and the minimum depth and width of frontage of land upon which any dwelling-house or any shop or any dwelling-house and shop combined may thereafter be erected;

Minimum area of depth and width of frontage for dwellings.

(*c*) provide that every dwelling-house thereafter erected shall have attached thereto for the exclusive use of the occupiers thereof a prescribed area of open land;

Open spaces for dwellings.

(*d*) provide with respect to buildings thereafter erected for—

Height means of escape fire prevention ventilation lighting exits &c.

(i) regulating or limiting the height of buildings;

(ii) means of escape from buildings in case of fire and the prevention of fire in buildings;

(iii) the ventilation and lighting of buildings and the provision of bathrooms and baths in buildings;

(iv) exits from and stairways in buildings other than private dwelling-houses;

(v) the minimum size of any dwelling-rooms; and

(vi) the minimum area to be covered by any dwelling-house or any dwelling-house and shop combined.

What by-law may require authorize &c.

(*e*) require any work or thing to be executed or done of such materials within such time or in such manner as may be directed or approved in any particular case by the council or any officer or person authorized in that behalf by the council; and

Determination and regulation of matters by council or officer.

(*f*) leave any matter or thing to be from time to time determined applied dispensed with or regulated by the council by resolution or by any officer authorized in that behalf by the council either generally or for any class of cases or in any particular case.

Power to remove verandah in certain cases.

(4) (*a*) If in contravention of any by-law under paragraph (*h*) of sub-section (1) of this section any person erects any verandah or the owner of any verandah fails neglects or refuses to pull down and remove such verandah, then, without affecting the liability of any such person or owner to any penalty under the by-law, the council may—

(i) after giving twenty-eight days' notice in writing to the owner of the verandah of its intention so to do, pull down and remove the verandah; and

(ii) sell the materials thereof and apply so much of the proceeds as is necessary in reimbursing the expenses of such pulling down and removal, and pay the residue (if any) of such proceeds to the owner or other person entitled thereto.

No compensation to be made except for negligence.

(*b*) The council shall not be liable to make compensation to any person who incurs any loss or damage by reason of the exercise by the council of any powers conferred by paragraph (*h*) of sub-section (1) of this section or by this sub-section except any loss or damage arising from the negligence of the council in pulling down or removing any verandah.

Saving as to enactments, by-laws &c. prohibiting &c. erection of verandahs even if supported by cantilevers &c.

(*c*) Nothing in paragraph (*h*) of sub-section (1) of this section or in this sub-section shall be read or construed so as to limit or affect any power of a council under any enactment by-law or regulation heretofore or hereafter in force—

(i) to prohibit or regulate the erection or placing, against or in front of any house or building abutting upon any public footway in any street or part thereof, of any verandah over or across such footway where such verandah is or is proposed to be supported by cantilevers brackets or projecting supports; or

(ii) to require the pulling down and removal of any such verandah whenever so erected or placed.

Fifteenth Schedule.

(5) The power to make by-laws conferred by this section shall be in addition to the power to make by-laws for the adoption of any of the provisions of or carrying out any of the purposes provided for in the Fifteenth Schedule.

(6) In this section " dwelling-house " includes—

(*a*) any portion of a building used or intended to be used or adapted to be used or designed for use as a separate dwelling; and

(*b*) any building used or intended to be used or adapted to be used or designed for use as two or more separate dwellings.

By-laws or regulations as to roads of limited access.

(7) If the council of a municipality does not, within six months after being requested in writing so to do by the Country Roads Board, make a by-law under paragraph (*j*) of sub-section (1) of this section declaring a specified road or part thereof within the municipal district, which road or part is a State highway main road developmental road tourists' road or forest road under the *Country Roads Act* 1958, to be a road of limited access and prohibiting or regulating persons or matters in accordance with the said paragraph (*j*), the Governor in Council may, after consultation by the Minister with the council, make a regulation to the like effect in respect of such road or part thereof, and any such regulation when made may be enforced in all respects as if it were a by-law made by the said Board pursuant to section sixty of the *Country Roads Act* 1958.

(8) This section shall apply to the city of Melbourne and the city of Geelong.

Referees under building by-law.
No. 5203 s. 199; No. 5988 s. 5 (3).

199. In the case of any municipality the council of which under the powers conferred by this Act or by any corresponding previous enactment has made any by-laws for regulating restricting restraining or prohibiting the erection construction use occupation conversion and alteration of and any addition to buildings or erections or regulating restraining or prohibiting the erection and construction of hoardings the provisions of the regulations contained in the Sixteenth Schedule as to referees for the purposes of such Act and the said by-laws shall apply.

Sixteenth Schedule.

This section shall not apply in any municipal district or part thereof in which regulations under Part XLIX. of this Act are in operation.

Regulations and joint regulations.
No. 5203 s. 200.
Fifteenth Schedule.

200. Regulations and joint regulations may be made for any municipality or municipalities in which any provision of the Fifteenth Schedule hereto is in force authorizing the making of such regulations or joint regulations and for the purposes prescribed by such provision.

By-laws &c not to be contrary to law.
No. 5203 s. 201.

201. No by-law regulation or joint regulation shall contain matter contrary to any public law in force in Victoria.

Certain municipalities not to adopt certain subdivisions of the Fifteenth Schedule.
No. 5203 s. 202.

202. (1) Except as in this section provided it shall not be lawful for the council of any municipality any portion of the municipal district of which is within eight miles of the corporate limits of the city of Melbourne or city of Geelong to adopt as a by-law any part of the first subdivision of Part X. of the Fifteenth Schedule; but such council may make separate regulations for appointing places for the standing of carriages and carts within the municipal district.

(2) The council of any municipality any portion of the municipal district of which is within eight miles of the corporate limits of the city of Melbourne may adopt as a by-law any part of the first subdivision of Part X. of the Fifteenth Schedule in respect of any portion of the municipal district which is beyond eight miles from the corporate limits of the city of Melbourne.

Fifteenth Schedule.

"Prescribed space."
"Common prescribed space."
No. 5203 s. 203.
Fifteenth Schedule.

203. In the case of any municipality making such a by-law any reference to the "prescribed space" or "common prescribed space" within the meaning of the first subdivision of Part X. of the Fifteenth Schedule wherever occurring in this Act or in any other Act or in any by-law regulation or joint regulation shall for the purposes of this and the last preceding section be construed as not including any portion of the municipal district of such municipality within eight miles of the corporate limits of the city of Melbourne.

DIVISION 2.—MANNER OF MAKING.

(*a*) *Generally.*

Making of by-laws regulations, and joint regulations.
No. 5203 s. 204.

204. (1) By-laws regulations and joint regulations may be made for municipalities in the manner hereinafter mentioned.

(2) Any by-law regulation or joint regulation made under this or any other Act may be made to apply to and have operation throughout the whole or any part or parts of the municipal district or municipal districts concerned.

Passing and sealing of by-laws and regulations.

(3) Every by-law and regulation shall be passed by a special order of the council of the municipality and sealed with the common seal of the municipality.

Passing and sealing of joint regulations.

(4) Joint regulations shall be passed in like manner separately by the council of and sealed with the common seal of every municipality concerned in making the same.

(5) This Division shall apply to the city of Melbourne and city of Geelong and to by-laws of the said cities made under this Act or under any Act relating to the city of Melbourne or city of Geelong.

Inspection and notice of proposed by-law regulation or joint regulations. No. 5203 s. 205.

205. (1) After any resolution for passing any by-law regulation or joint regulation has been agreed to by the council a copy of such by-law regulation or joint regulation shall be deposited at the office of the council and shall be there open to the inspection of any person at all reasonable times.

(2) The notice required to be advertised for a special order shall set forth such proposed by-law regulation or joint regulation or the general purport thereof and that a copy thereof is open to inspection as aforesaid.

Provision in case the councils whose consent is required to joint regulation fail to concur. No. 5203 s. 206.

206. (1) When any provision is adopted by virtue of which the councils of any municipalities are empowered to make any joint regulation and no joint regulation has been made thereunder, any of such councils may cause to be prepared a draft of a proposed joint regulation and may submit the same to each of the other councils for their approval.

(2) If within three months after such draft is so submitted all the councils concerned do not agree in passing a joint regulation under such provision, any one or more of such councils may pass and seal such regulation, and the Governor in Council may thereupon if he thinks fit after notice to the councils of all the municipalities concerned confirm such joint regulation with or without alterations.

(3) The joint regulation so confirmed shall have the same force and effect as if it had been passed by all the councils concerned in making the same and sealed with the common seals of their respective municipalities.

Publication of by-laws &c. No. 5203 s. 207.

207. After any by-law regulation or joint regulation has been sealed and, when necessary, approved or confirmed by the Governor in Council, the council of the municipality or, in the case of a joint regulation, the council of one of the municipalities passing the same—

(*a*) shall either—

(i) cause such by-law regulation or joint regulation to be published at length in the *Government Gazette;* or

(ii) cause a notice of the making of such by-law regulation or joint regulation, setting out its title and a summary of the contents thereof and stating that a copy thereof is open for inspection free of charge during office hours at the office of the council, to be published in the *Government Gazette* and in some newspaper generally circulating in the municipal district;

(*b*) shall forthwith cause such by-law regulation or joint regulation to be printed at length;

(*c*) shall cause a true copy of such by-law regulation or joint regulation to be available to and open for inspection by any person during office hours free of charge; and

(*d*) shall, for the sum of One shilling or such smaller sum as the council appoints, supply to any person during office hours at the office of the council a printed copy of the by-law regulation or joint regulation certified by the municipal clerk to be a true copy thereof.

Publication of by-laws adopting certain provisions.
No. 5203 s. 208.
Fifteenth Schedule.

208. Notwithstanding anything in the last preceding section it shall be sufficient, in publishing in the *Government Gazette* or in any newspaper a by-law or notice of the making of a by-law adopting the Fifteenth Schedule to this Act or Part I. of the *Police Offences Act* 1958 or any portion of such Schedule or Part, to set out the Parts headings and clauses of such Schedule or the sections of such Part so adopted.

Provision for the accession of other councils where a joint regulation is already in force.
No. 5203 s. 209.

209. If after the coming into operation in and for any two or more municipalities of any provision authorizing the making of joint regulations any joint regulation has been made thereunder whether the same is as yet in force or not and if after such making the said provision has come into operation in any other municipality so that the council thereof is under such provision empowered to make together with the councils of such first-mentioned municipalities joint regulations for the purposes of such provision any such joint regulation theretofore made under such provision for the first-mentioned municipalities shall so far as applicable be deemed to be a joint regulation of all the councils of all the municipalities in this section referred to, to all intents and purposes as though the same had been made by all, and although not purporting to apply to the municipalities in which such provision shall so lastly have come into operation.

Forms.
No. 5203 s. 210.
Fifteenth Schedule.

210. (1) The council of every municipality may from time to time appoint or alter forms of applications certificates licences registration registry books and other like books documents or instruments mentioned in any subdivision of the Fifteenth Schedule or any provision thereof which shall respectively be in force in the municipality.

(2) The expression "the appointed form" or any like expression in the said schedule shall be deemed to apply to a form so appointed.

(b) Regulations of Governor in Council.

Regulations of Governor in Council. No. 5203 s. 211.

211. Save where otherwise expressly enacted all regulations of the Governor in Council made under any Act relating to local government for the time being in force shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

DIVISION 3.—OPERATION AND EXTENT OF OPERATION.

Coming into operation of by-laws regulations and joint regulations. No. 5203 s. 212.

212. Every by-law regulation or joint regulation shall come into operation—

(*a*) at the time named in that behalf in such by-law regulation or joint regulation; or

(*b*) in case no such time is named in the by-law regulation or joint regulation, then on the day after the day of the publication thereof or of the publication of notice of the making thereof or of the publication of the adoption as a by-law of the Fifteenth Schedule or of Part I. of the *Police Offences Act* 1958 or of any portion of any of them (as the case may be) as herein provided in the *Government Gazette*.

Fifteenth Schedule.

Extent of operation of by-law or regulation. No. 5203 s. 213.

213. (1) Every by-law or regulation shall have the force of law throughout the municipal district of the municipality the council whereof has passed the same or any part or parts of such district or the prescribed space or any part thereof according to the tenor of such by-law or regulation.

Extent of operation of joint regulation.

(2) Every joint regulation shall have the force of law throughout the common prescribed space of the municipalities the councils whereof are concerned in passing the same or any part or parts thereof according to the tenor of such joint regulation.

DIVISION 4.—IN WHAT FORM.

By-laws how intituled and numbered. No. 5203 s. 214. Seventeenth Schedule.

214. (1) All by-laws made under this Act may be in the form in the Seventeenth Schedule or to the like effect, and shall be intituled according to the purport thereof and to the Part Division or section of this Act under which they are made.

(2) They shall be numbered consecutively and so that no by-law shall bear the number borne by any other by-law of the municipality whether in force or repealed.

Regulations &c. how intituled.
No. 5203 s. 215.
Seventeenth and Fifteenth Schedules.

215. (1) All regulations and joint regulations made under this Act may be in the form in the Seventeenth Schedule or to the like effect and shall be intituled according to the purport thereof and according to the Part subdivision or clause of the Fifteenth Schedule under which they are made.

How numbered.

(2) They shall be numbered consecutively so that no regulation of any municipality and no joint regulation of any municipalities respectively whether in force or repealed shall bear the same number as any other such regulation or joint regulation.

By-laws &c. to be intituled as of the municipalities concerned.
No. 5203 s. 216.

216. Every by-law regulation and joint regulation shall be intituled as of the municipality or municipalities of which it is such by-law regulation or joint regulation.

Express repeal of by-laws &c.
No. 5203 s. 217.

217. (1) Every by-law regulation and joint regulation shall contain clauses expressly repealing all by-laws regulations and joint regulations and parts thereof respectively inconsistent with or repugnant thereto and theretofore in force in the municipality or municipalities.

(2) In such clauses the by-laws regulations and joint regulations repealed shall be specified by number and title or otherwise efficiently indicated, and in case of a part of a by-law regulation or joint regulation in addition to such number title or other description of such by-law regulation or joint regulation the purport of such part shall be expressed.

By-laws &c. not invalidated by non-compliance.
No. 5203 s. 218.

218. (1) No omission to comply with any of the provisions of the last four preceding sections of this Act shall render invalid any by-law regulation or joint regulation or shall prevent the repeal thereby by operation of law of any other by-law regulation or joint regulation.

Penalty for affixing seal contrary to foregoing provisions.

(2) But every chairman or councillor of a municipality who affixes or causes to be affixed the common seal of the municipality to any by-law regulation or joint regulation not in compliance with such sections shall be liable to a penalty of not more than Twenty pounds.

DIVISION 5.—AFTER SEVERANCE, ANNEXATION, UNION, ETC.

By-law &c. after severance and constitution of new municipality.
No. 5203 s. 219.

219. When any new municipality is constituted having for or including in its municipal district a portion severed from the municipal district of any previously existing municipality all by-laws and regulations of such previously existing municipality in force in the portion of its municipal district forming or included in the municipal district of such newly constituted municipality shall so far as they are applicable be deemed by-laws and regulations respectively of such newly constituted municipality and may by it be repealed or altered, and save as aforesaid all

by-laws and regulations of such previously existing municipality shall as to the portion forming or included in the municipal district of the newly constituted municipality be repealed.

Effect of annexation on by-laws &c. No. 5203 s. 220.

220. (1) Upon the annexation to one municipal district of any portion severed from another all by-laws and regulations in force in the portion severed which are applicable to the altered circumstances thereof shall remain in force therein, and as so in force shall be deemed by-laws and regulations respectively of the municipality of the municipal district to which the same is annexed and may by it be repealed or altered.

(2) No by-law or regulation of such municipality the application whereof can be restricted to any separate portion of the municipal district shall be deemed in force in such annexed portion unless and until it is by any by-law or by-laws provided otherwise, but all other by-laws and regulations of such municipality shall be deemed in force in such annexed portion.

(3) All by-laws and regulations of the municipality from the municipal district of which such portion was severed which are inapplicable to the altered circumstances shall as to such severed portion be by such severance repealed.

Effect of union on by-laws &c. No. 5203 s. 221.

221. (1) Upon any union of municipalities all by-laws and regulations in force at the time of the union in any of the municipalities united which are applicable to the altered circumstances shall become by-laws and regulations respectively of the municipality formed by such union and may be by it repealed or altered, but until so repealed or altered every such by-law and regulation shall remain in force in the district only in which it was in force previous to such union and every by-law and regulation which cannot be restricted to any particular district shall be deemed inapplicable, and all by-laws and regulations which are inapplicable to the altered circumstances shall be by such union repealed.

Effect of union on joint regulations.

(2) When any joint regulation is in force in any municipalities and such municipalities are united such joint regulation shall become the regulation of the municipality formed by such union; and when any joint regulation is in force in any three or more municipalities and any number of such municipalities less than the whole are united such joint regulation shall become the joint regulation of the municipality formed by such union and the remaining municipality or municipalities.

DIVISION 6.—HOW ENFORCED.

By-laws may be enforced by penalty. No. 5203 s. 222.

222. (1) Any by-law made under this Act may for wilful act or default contrary thereto impose a penalty or maximum and minimum penalties, and may also impose different penalties in

case of successive convictions in respect of successive similar offences under such by-law. No such penalty shall exceed Twenty pounds.

Power to impose cumulative penalties.

(2) Notwithstanding anything contained in the preceding sub-section any such by-law may impose penalties which for the aggregate of several acts or for one act having several effects contrary to such by-law may amount to more than Twenty pounds and may in case of a continuing offence impose a penalty of not more than Five pounds for each day on which an offence against the by-law is continued after a conviction or order by any court.

Expenses in addition to penalty.

(3) A by-law may provide that in addition to any penalties any expense incurred by the council in consequence of a breach of the by-law or in the execution of work directed by the by-law to be executed by any person and not executed by him shall be paid by the person committing such breach or failing to execute such work.

Offences against by-laws &c.
No. 5203 s. 223.

223. All offences against any by-law regulation or joint regulation in force in any municipality shall be deemed to be offences against this Act.

Regulations not to impose penalty.
No. 5203 s. 224.

224. No regulation or joint regulation shall impose any penalty.

Saving of remedies against nuisances.
No. 5203 s. 225.

225. Nothing contained in any by-law regulation or joint regulation in force in any municipality shall be construed to exempt any person guilty of a nuisance at common law from prosecution suit or action in respect thereof nor from the consequences of being convicted thereof.

No prosecution for same offence under this Act and under Police Offences and Health Acts.
No. 5203 s. 226.

226. No person shall be prosecuted or punished for the same offence—

(*a*) under this Act or any by-law regulation or joint regulation in force in any municipality or municipalities and under any law now or hereafter in force relating to police offences;

(*b*) under this Act or any by-law regulation or joint regulation in force in any municipality or municipalities and under any law now or hereafter in force relating to the public health.

Operation of portions of the Fifteenth Schedule.
No. 5203 s. 227.

227. No person to whom in any municipality subdivision one of Part X. of the Fifteenth Schedule hereto applies shall be in anywise affected by any by-law regulation or joint regulation in force in any other municipality within the same common prescribed space with such first-mentioned municipality, and in which such subdivision is not in force; and no person shall be subjected to

any penalty or disability for the same cause both under the said subdivision and under any such by-law regulation or joint regulation.

DIVISION 7.—HOW REPEALED.

Manner of altering or repealing by-laws regulations and joint regulations. No. 5203 s. 228.

228. (1) Every by-law ordinance in the nature of a by-law or regulation in force in any municipality may be altered or repealed by any subsequent by-law inconsistent therewith or expressly altering or repealing the same in force in such municipality.

(2) Every regulation in force in any municipality may be altered or repealed by any subsequent regulation inconsistent therewith or expressly altering or repealing the same in force in such municipality.

(3) Every joint regulation in force in any municipalities may be altered or repealed by any subsequent joint regulation inconsistent therewith or expressly altering or repealing the same in force in such municipalities.

Repeal of by-laws &c. by Governor in Council. No. 5203 s. 229.

229. Every by-law or ordinance in the nature of a by-law regulation or joint regulation in force in any municipality or municipalities may be repealed by the Governor in Council by Order published in the *Government Gazette*.

Repeal of by-laws adopting *Fifteenth* Schedule or *Police Offences Act*. No. 5203 s. 230.

230. Upon the repeal of any by-law or any provision of any by-law adopting any provision of the Fifteenth Schedule or the *Police Offences Act* 1958 such provision shall cease to be in force in the municipality.

Effect of repeal of by-laws regulations and joint regulations. No. 5203 s. 231.

231. Notwithstanding the repeal by any by-law of any Act or the repeal of any by-law or regulation or joint regulation, every offence wholly or partly committed against such Act by-law or regulation or joint regulation before the repeal thereof shall be heard determined and punished, and every act or proceeding done or commenced and every right privilege and protection acquired and every liability incurred shall continue be prosecuted and be of the same force and effect as if such Act by-law regulation or joint regulation had not been repealed.

DIVISION 8.—VALIDITY HOW TESTED.

Mode of testing the validity of by-law &c. No. 5203 s. 232.

232. (1) If any ratepayer of a municipality desires to dispute the validity of any by-law regulation or joint regulation made as aforesaid therein, and pays into the Supreme Court the sum of Fifteen pounds as security for the costs of the proceedings hereinafter mentioned, it shall be lawful for such ratepayer to apply to the said court upon an affidavit of the facts for a rule

calling upon the municipality or in the case of a joint regulation the municipalities concerned to show cause why such by-law regulation or joint regulation should not be quashed for the illegality thereof; and the said court may make the said rule absolute or discharge it with or without costs as to the court shall seem meet.

(2) No by-law regulation or joint regulation shall be impeachable in any court of petty sessions or before justices.

DIVISION 9.—INTERPRETATION.

Meaning of "proper officer." No. 5203 s. 233. Fifteenth Schedule.

233. Wherever in any subdivision of the Fifteenth Schedule the expression "the proper officer of the council" or the like expression is used, the same shall mean such officer or person as has been charged by the council with respect to such subdivision or any provision thereof.

PART VIII.—LANDS AND PROPERTY OF MUNICIPALITIES OR OF WHICH COUNCILLORS AS SUCH ARE TRUSTEES.

Application of Part VIII. to Melbourne and Geelong No. 5843 s. 21 (1).

234. The provisions of this Part shall extend and apply to the city of Melbourne and the city of Geelong.

Vesting of property. No. 5203 s. 234.

235. All property real and personal at the commencement of this Act vested in the council of any municipality shall from and after the commencement of this Act vest in the municipality.

Power to municipalities to sell lands. No. 5203 s. 235.

236. (1) Any municipality may with the consent of the Governor in Council sell and convey in fee simple or for any lesser estate any lands purchased for value or acquired by such municipality from Her Majesty or any other person which are not in the opinion of the council required for the purposes of any undertaking for which the same were purchased or acquired and are not otherwise subject to any trust.

(2) (*a*) Any such sale and conveyance may with the consent of the Governor in Council be subject to any restrictive covenant entered into by the purchaser with the municipality.

(*b*) Any such restrictive covenant contained in the conveyance of the land if expressed to bind the assigns of the purchaser shall run with the land and a transfer subject to such a covenant may be registered under the *Transfer of Land Act* 1958, and the covenant shall bind the assigns of the purchaser and be enforceable by the municipality notwithstanding that it is not expressed to be for the benefit of any land of the municipality.

237. Any municipality may let on lease for any term not exceeding seven years and subject to any exceptions reservations covenants and conditions any lands vested in such municipality.

Power to municipalities to lease lands for not more than seven years.
No. 5203 s. 236.

238. (1) Any municipality may from time to time with the consent of the Governor in Council demise all or any part of the lands vested in such municipality—

Power with the approval of the Governor in Council to make leases for more than seven years.
No. 5203 s. 237; No. 6048 s. 2.

(*a*) for any term of years not less than seven years and not exceeding twenty-one years, to take effect in possession or within six months from the making of the demise at the best yearly rents that can be reasonably obtained by auction or tender without taking anything in the nature of a fine or premium; or

Power with the approval of Governor in Council to grant buildings and improving leases.

(*b*) upon building or improving leases for any term of years not exceeding thirty years (unless the Governor in Council gives a special authority to make a demise for a longer term not exceeding in all seventy-five years) to take effect in possession or within six months from the making of the demise at the best rent which can be reasonably obtained by auction or tender taking into consideration the money to be expended in building or improvement.

There shall be contained in every demise under this section a condition for re-entry for non-payment of rent and also that the lessees covenant for the due payment of the rent reserved and for delivery up to the municipality at the end or sooner determination of the term of the lands and hereditaments demised together with all buildings and improvements erected thereon in good order and condition.

Power to council to use or licence any person to use &c. town hall for providing entertainment &c.

(2) Notwithstanding anything in this Act or in the *Land Act* 1958 or in any other Act or enactment or in any Crown grant or in any permanent or temporary reservation of land, in any case where—

(*a*) any land on which is situated any town hall or shire hall or other like building is vested in any municipality or in the council thereof; or

(*b*) the council of any municipality is the committee of management of any land on which is situated any such hall or building—

the municipality is hereby empowered and shall be deemed always to have been empowered to use such hall or building or to grant a licence to any person to use such hall or building for the purpose of providing entertainment or holding meetings or functions therein whether or not any charge or payment for admission thereto is or has been made.

(3) The last preceding sub-section shall be read in aid of and not in derogation from any other powers of a municipality with respect to land vested in that municipality or in the council thereof or of which the council of that municipality is the committee of management.

Power to make leases to the Crown or the Board of Land and Works.

No. 5203 s. 238; No. 5602 s. 2.

239. (1) Every municipality shall have and be deemed to have had power to let on lease to Her Majesty or the Board of Land and Works for any term and subject to any exceptions reservations covenants or conditions any land building or tenements vested in such municipality.

Power to convey to Crown Board or Minister of Education.

(2) Every municipality may grant convey or transfer in fee simple or for any less estate, and either with or without a money or other valuable consideration, unto Her Majesty or to the Board of Land and Works or to the Minister of Education any land building or tenement; and every such grant conveyance or transfer heretofore made shall be good and valid in law and equity.

Power to councils to arrange for construction of or to purchase dwellings for officers or employés.

(3) The council of any municipality—

(*a*) may arrange for the construction of or may purchase dwelling-houses for the use of its officers or other employés and may repair the same; and

(*b*) notwithstanding anything in this Part may let any such dwelling-house to any of its officers or other employés upon such terms and subject to such covenants conditions exceptions and reservations as are agreed upon.

Cost of construction &c. and purchase of such dwelling-houses deemed permanent works and undertakings.

(4) The cost and expenses of the construction of such dwelling-houses arranged to be constructed by the council of any municipality or the purchase as aforesaid by the council of dwelling-houses shall be deemed permanent works and undertakings within the meaning of Part XV.

Power to municipalities to lease market reserves.

No. 5203 s. 239.

240. Any municipality with the consent of the Governor in Council may let on lease, for any term and subject to any exceptions reservations covenants and conditions, any lands within the municipal district reserved for market purposes.

Council of municipality appointed cemetery trustees.

No. 5203 s. 240.

241. (1) Whenever the council of any municipality has been heretofore, or is hereafter, appointed trustee of any cemetery all hereditaments and property granted or held on trust to or by such council or other the trustees of such cemetery for the purposes of such cemetery, shall vest in the municipality, subject to the trusts affecting the same, and the council of such municipality shall have and perform all the powers and trusts by law conferred on the trustees of such cemetery and may appropriate any part of the municipal fund towards the establishment and maintenance

of any such cemetery if within the municipal district or with the consent of the Governor in Council if without the municipal district.

Power to appropriate municipal fund towards maintenance of cemeteries.

(2) Without limiting the effect of the foregoing provisions of this section, the council of any municipality may appropriate any part of the municipal fund towards the maintenance of any cemetery within or (with the consent of the Governor in Council) outside the municipal district.

Councillor may be appointed on any public trust board or committee to hold office only so long as he continues a councillor.

No. 5203 s. 241.

242. (1) When the power of appointing trustees of any public trust or members of any board or committee for public purposes is vested in the Governor in Council or in the council of any municipality and it is lawful to appoint a councillor of any municipality a trustee of such trust or a member of such board or committee, any person being such councillor may be appointed to hold office so long only as he may continue such councillor, and in such case upon ceasing to be such councillor he shall cease to be such trustee or a member of any such board or committee.

Vesting of property when any trustee ceases to be trustee.

(2) When any person ceasing to be a trustee under the provisions of this section is as such trustee seised or possessed of or entitled to any property real or personal including choses in action jointly with any other person or persons who do not all cease to be trustees at the same time such property shall on such person so ceasing to be a trustee vest exclusively in the remaining trustee or trustees as if he were dead, and in any other case such person so ceasing to be a trustee shall upon being thereunto required execute any conveyance or transfer that may be necessary to vest any such property vested in him as such trustee in the succeeding trustees, but this shall not render any conveyance or transfer necessary in any case in which such property would otherwise vest in the succeeding trustees without any conveyance or transfer.

Part IX.—Funds and Revenues of Municipalities.

Of what the ordinary revenue of the body corporate shall consist

No. 5203 s. 242.

243. (1) The ordinary revenue of every municipality shall consist of the moneys following (that is to say):—

(*a*) Rates;

(*b*) Tolls and rent of tolls;

(*c*) Moneys received by the council under any grant or appropriation by Act of the Parliament of Victoria not containing any other or different provision;

(*d*) All other moneys which the council may receive under or in pursuance of this or any other Act not being the proceeds of any loan.

Municipal fund.

(2) All such moneys shall be carried to the account of a fund to be called the "municipal fund."

Application of municipal fund.

(3) Such funds shall be applied by the council towards the payment of all expenses necessarily incurred in carrying this Act into execution and of doing and performing all acts and things which the said council is or shall be by this or any other Act empowered or required to do or perform.

Empire Day. No. 5203 s. 243; No. 5843 s. 12, No. 6025 s. 11.

244. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may apply out of the municipal or town fund in any year any sum of money in connexion with the celebration of Empire Day.

Authority to municipalities to contribute to memorials to King George V.

(2) The council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal or town fund of the municipality (which fund is hereby declared to be available for the purpose) contribute any sums of money approved by the council for or towards any memorial (whether within or outside the municipal district) in commemoration of the reign of His late Majesty King George V.

Power to establish &c. ambulance services.

(3) The council of any municipality (including the city of Melbourne and the city of Geelong) may either alone or in combination with any other such council from time to time on such terms and conditions as may appear expedient appropriate such portion of the municipal fund as it sees fit towards establishing maintaining or otherwise aiding any ambulance service within or outside the municipal district.

Application of money for purposes of tourists' resorts &c.

(4) The council of any municipality (including the city of Melbourne and the city of Geelong) may expend (whether inside or outside the municipal district) any sum (not exceeding in any one year one per centum of the revenue received by the council in the previous year from general rates) in connexion with tourists' resorts tourists' facilities and contributions towards tourist bureaus.

Authority to municipal council to apply municipal or town fund towards activities in connexion with emergency home help for mothers &c.

(5) The council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal or town fund of the municipality apply any sums of money in contributions or donations towards providing equipment for or establishing and maintaining activities in connexion with emergency home help in the case of any expectant mother nursing mother or mother incapacitated by illness or in respect of the care of any child of a deceased mother or in respect of aged or infirm persons.

Social Services, Melbourne.

(6) The council of the city of Melbourne may out of the town fund apply any sums of money for or towards the provision of any social services for the benefit of the people of that city.

Authority to councils to apply moneys for bus shelters.

(7) The council of any municipality (including the city of Melbourne and the city of Geelong) may upon such terms and conditions as it thinks fit appropriate such portion of the municipal

fund as it sees fit for or towards the cost of the erection and maintenance of shelters for bus passengers on any street or road or on any land of the Crown or of any public authority available for the purpose.

Authority to councils to establish tree plantations and acquire land therefor.

(8) The council of any municipality (including the city of Melbourne and the city of Geelong) may—

(*a*) purchase land for the purpose of establishing tree plantations;

(*b*) establish tree plantations on such land or on any other land owned by the municipality;

(*c*) maintain improve discontinue or remove any such plantation;

(*d*) sell any trees or timber from any such plantation or grant to any person the right to cut down and carry away or remove any such trees or timber on such terms and subject to such conditions as the council thinks fit—

and the purchase of any land for the purposes of this sub-section and the establishment of tree plantations shall be permanent works and undertakings within the meaning of Part XV. of this Act.

Power to municipalities to contribute to National Art Gallery and Cultural Centre Trust Fund.

(9) The council of any municipality (including the city of Melbourne and city of Geelong) may out of the municipal fund contribute any sums of money approved by the council to the National Art Gallery and Cultural Centre Trust Fund.

Expenses of obtaining Acts of Parliament. No. 5203 s. 244; No. 5443 s. 7.

245. (1) If in the opinion of the council it is for the general benefit of the inhabitants of any municipal district that any work undertaking or thing be done carried out or provided by the council and the same cannot be effected without obtaining an Act of the Legislature for the purpose it shall be lawful for the council to retain and employ such professional or other like services and to provide such stationery and other materials as may be necessary to promote and procure the passing of such Act, and to expend so much of the municipal fund as may be necessary in and about such purposes and the payment of any fees of office required with respect to such Act.

Contributions by councils to cost of litigation.

(2) A council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal or town fund of the municipality apply any sums of money in contributions towards the cost of any litigation to which the municipality is not a party but which in the opinion of the council involves a question of law which affects or may affect such municipality.

Expenses of rolls of ratepaying electors and other rolls. No. 5203 s. 245; No. 5745 s. 6.

246. (1) The council of every municipality shall pay out of the municipal fund all reasonable expenses lawfully incurred by the municipal clerk in or about any of the acts or things which by any Act for the time being in force relating to the election of members to serve in the Parliament of Victoria are directed or which he is authorized or required to do or suffer or which may be necessary for securing the correctness so far as relates to any part of the municipal district of any electoral roll made under the said Act.

Power to pay subscription to district municipal association out of municipal fund.

(2) Where any association corporate or unincorporate consisting of representatives of councils of municipalities of municipal districts in any part or parts of Victoria has been or is established (whether before or after the commencement of this Act) for the purpose of promoting the efficient carrying out of municipal government and of watching over and protecting the interests rights and privileges of municipalities or for like purposes, any municipality having for the time being a representative on such association may out of the municipal fund pay to the association the amount of any subscription duly fixed by the rules of the association to be paid annually by the several municipalities represented in the association.

(3) Nothing in the last preceding sub-section shall limit or affect the operation of the Municipal Association Acts.

Destruction &c. of insects &c.

(4) The council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal fund or town fund expend such moneys as it thinks fit for the destruction of insects or bacteria harmful to human health and the removal or the abatement (altogether or as far as may be) of conditions permitting or favouring the multiplication or prevalence of such insects or bacteria harmful to human health.

Authority to municipalities to apply money towards celebration of centenary of certain historical events &c.

(5) With the approval of the Governor in Council the council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal or town fund of the municipality (which fund is hereby declared to be available for the purpose) apply any sums of money for or towards the celebration (whether within or outside the municipal district) of any royal visit or other special occasion or the centenary of any event of historical interest to the municipality or the preparation and publication of historical records of the municipality.

Power to council to repay moneys overpaid &c.

(6) The council of any municipality (including the city of Melbourne and the city of Geelong) may out of the municipal fund make repayments of moneys overpaid or wrongly paid to the council by any person.

Power to Councils to appropriate municipal or town fund for purposes not otherwise expressly authorized or prohibited.

(7) The council of any municipality (including the city of Melbourne and the city of Geelong) may in any year (to an extent which together with any amount granted as an allowance to the chairman of the municipality does not exceed Three pounds per centum of the revenue received by the council in that year from general and extra rating) apply the municipal or town fund of the

municipality for purposes for which the application of the municipal or town fund is not expressly authorized or prohibited by or under this Act or any other Act:

Provided that where but for this proviso the amount authorized to be applied as aforesaid would in any year be less than One hundred pounds, any amount not exceeding One hundred pounds may be so applied.

Bank account. No. 5203 s. 246; No. 5843 s. 13.

247. (1) All moneys of the council amounting to Twenty pounds and upwards shall within seventy-two hours, or such shorter period as the council may direct, after they have come to the hands of the proper officer of the council be paid into such bank and in such manner as the council from time to time appoints and directs for that purpose.

Bank accounts and cheques.

(2) No such money shall be drawn out of such bank save by cheque signed by—

(*a*) two councillors; and

(*b*) the municipal clerk or some other person employed and authorized in that behalf by the council—

but notwithstanding anything in the foregoing—

(i) a council may establish in any bank an advance account in the name of the municipality for the purposes of meeting urgent accounts for salaries or wages;

(ii) any such advance account may be operated upon by cheques signed by—

at least one councillor; and

the municipal clerk or some other person employed and authorized in that behalf by the council.

Councils may sell deposit receipts &c. of certain banks.

(3) Where under the terms of reconstruction of any banking company any municipality is the holder of any deferred deposit receipts or stocks or shares in such banking company on the terms and conditions and for the period mentioned in the order of the court which authorized such reconstruction or the issue of such deferred deposit receipts or stocks or shares as aforesaid the council of such municipality may sell and transfer the said deferred deposit receipts or stocks or shares at such rates as the council of the municipality may deem proper.

Investments by municipalities in Commonwealth loans. No. 5203 s. 247.

248. Notwithstanding anything in any Act, it shall be lawful for any municipality (including the city of Melbourne and the city of Geelong), with the consent of the Governor in Council, to invest any part of its municipal or town fund in stock Treasury bonds or other public securities of the Government of the Commonwealth of Australia issued under the authority of any Commonwealth Act.

Apportionment of portion of the net income among the subdivisions. No. 5203 s. 248.

249. (1) When any municipal district is subdivided the council shall cause at least one-half of the net income of the municipality in every year to be apportioned among the subdivisions in proportion to the amount of general rates received therefrom respectively in such year.

(2) The amount so apportioned to each subdivision shall be expended in such subdivision.

Meaning of "net income."

(3) In this section "net income" means the balance after subtracting from the amount of general rates received in such year all sums paid or payable out of the municipal fund on account of any loan and to any sinking fund formed under the provisions of any Act to secure the liquidation of any loan.

Municipalities Assistance Fund. No. 5512 s. 3.

250. (1) There shall be maintained in the Treasury a fund known as the "Municipalities Assistance Fund" (in this section referred to as the fund).

(2) To the credit of the fund there shall be paid half the amount of all motor car drivers' licence fees less cost of collection paid under the *Motor Car Act* 1958.

(3) Out of the fund there shall be paid—

(*a*) sums approved by the Minister towards the cost of works of municipalities and other public bodies (but the said Minister shall not in any one financial year so approve sums exceeding One hundred thousand pounds in all);

(*b*) contributions required to be paid out of the fund under the *Country Fire Authority Act* 1958.

(4) If the amount standing to the credit of the fund is at any time insufficient to meet the sums and contributions authorized to be paid out of the fund, money may from time to time be issued and applied out of the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly) to meet such insufficiency.

PART X.—RATES.

DIVISION 1.—RATEABLE PROPERTY.

What is rateable property. No. 5203 s. 249; No. 5443 s. 8. No. 5602 s. 2. No. 6128 s. 12.

251. (1) All land shall be rateable property within the meaning of this Act save as is next hereinafter excepted (that is to say):—

(*a*) Land the property of Her Majesty which is unoccupied or used for public purposes.

(*b*) Land used exclusively for—

(i) Commons.

(ii) Mines.

(iii) Public worship.
(iv) Mechanics' institutes.
(v) Public libraries.
(vi) Cemeteries.
(vii) Primary schools in which education is given free to the scholars.
(viii) Institutions or schools for technical instruction which receive in aid of their funds any sums from the Consolidated Revenue.
(xi) Charitable purposes.
(x) Lands permanently reserved as sites for State Agricultural Colleges.

(*c*) Land vested in or in the occupation of or held in trust for or under the management and control of—
(i) any municipality or the council thereof; or
(ii) any Authority under the *Water Act* 1958.

(*d*) Land vested in fee in—
(i) the Victorian Railways Commissioners.
(ii) the Minister of Education.
(iii) the Board of Land and Works.
(iv) the Commissioners of the Melbourne Harbor Trust.
(v) the Melbourne and Metropolitan Board of Works.
(vi) the Commissioners of the Geelong Harbor Trust.
(vii) the Geelong Waterworks and Sewerage Trust.

Certain war memorials and soldiers' &c. clubs.

(*e*) Land held in trust and used exclusively for the purposes of—
(i) a memorial to persons who served in the war which commenced in the year One thousand nine hundred and fourteen or the war which commenced in the year One thousand nine hundred and thirty-nine or any continuation thereof.
(ii) a club the members of which are persons who served in either or both of the said wars and no others.

Church halls.

(*f*) Land in the occupation of or under the management and control of any religious body and upon which is situated any hall or other building used in

connexion with any church exclusively for any purposes connected with or in support of the objects of such religious body.

Ministers' residences &c.

(*g*) Land vested in or held in trust for any religious body and used exclusively for either or both of the following purposes:—

(i) As a residence of a practising minister of religion;

(ii) Education and training of persons to be ministers of religion.

Hospitals.

(*h*) Land in the occupation of or under the management and control of any committee or managers of any hospital (being a subsidized institution under the *Hospitals and Charities Act* 1958) if upon that land there is established a hospital or part of a hospital conducted by such committee or managers in association with such subsidized institution and that land is part of or contiguous with the land upon which such subsidized institution is established.

(*i*) Land the property of the government of any country out of Australia which is part of the British Commonwealth or of any foreign country, in any case where the Governor in Council, having regard to corresponding exemptions in such country, declares such land not to be rateable property.

(*j*) Land used exclusively for the purposes of an ambulance service certified by the Hospitals and Charities Commission to be an ambulance service subsidized under the *Hospitals and Charities Act* 1958.

Extension of exemption with respect to lands used for certain religious educational and charitable purposes.

(2) Land shall not be deemed not to be used exclusively for any of the purposes referred to in sub-paragraphs (iii) (vii) (viii) or (ix) of paragraph (*b*) of sub-section (1) of this section by reason only of the fact that any building on such land is used not only for any purposes referred to in the said sub-paragraphs but also for any purpose connected with or in support of the objects of any religious educational or charitable body or authority occupying or controlling such land.

Extent of exemption under sub-s. (1) (*c*), (*d*).

(3) Notwithstanding anything in any Act contained any land referred to in paragraph (*c*) or paragraph (*d*) of sub-section (1) of this section shall be deemed to be rateable property while the same is leased or occupied for any private purpose other than mining or as railway refreshment rooms by any person or corporation other than the respective persons and corporations named in the said paragraphs but shall not be deemed (except for the purposes of sanitary rates and charges) to be rateable

property while the same is leased or occupied as railway premises in the occupation of any officer or employé of the Victorian Railways Commissioners or the Board of Land and Works.

Cities of Melbourne and Geelong.

(4) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Application of sub-ss. (1) (*f*), (*g*), (*h*), (2).

(5) The provisions of paragraphs (*f*), (*g*) and (*h*) of sub-section (1) and of sub-section (2) of this section shall apply only for the purposes of this Act and any like Act relating to the city of Melbourne or the city of Geelong and shall not apply for the purposes of any other Act under which land is rateable by reference (however expressed) to the provisions of this Division or any corresponding previous enactment.

Rating of certain lands. No. 5203 s. 250; No. 5443 s. 9.

252. (1) Where pursuant to section one hundred and thirty of the *Land Act* 1958 or section fifty-two of the *Forests Act* 1958 or any corresponding previous enactment, any person has obtained or obtains a grazing licence to enter with cattle sheep or other animals upon any park lands reserves or other Crown lands and therewith to depasture the same then for the purposes of this Act the lands so entered upon and described in such licence shall be deemed and taken to be rateable property and the said licensee shall be deemed and taken to be the occupier thereof.

(2) All unused roads and water frontages licensed under Part XLVIII. of this Act or under any corresponding previous enactment or of which any person ought to have a licence pursuant to the provisions of the said Part or enactment shall be deemed to be rateable property and the licensee or such person shall be deemed to be the occupier thereof.

Meaning of "mines." No. 5203 s. 251.

253. In this Division the word "mines" means all lands held or hereafter to be held as a claim under a miner's right for mining purposes, or included or hereafter to be included in any lease granted by the Crown for mining purposes, and shall include all buildings covering machinery on any mine, except such buildings and machinery not used exclusively for the purpose of such mine, and except the surface of lands alienated from the Crown included in any such lease or claim, which shall not for the time being be actually occupied or used for shafts and approaches thereto, for the storage of debris, or for mining machinery and buildings enclosing or covering the same used exclusively for the purposes of such mine.

DIVISION 2.—VALUATIONS.

(1) *General Provisions.*

Valuation to be made by valuers. No. 5203 s. 252.

254. (1) Every valuation made under this Part shall be made by a competent person or persons to be called valuers.

Value how computed.

(2) In every such valuation the property rateable shall be computed at its net annual value, that is to say, at the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and deducting therefrom the probable annual average cost of insurance and other expenses (if any) necessary to maintain such property in a state to command such rent: Provided that no rateable property shall be computed as of an annual value of less than Five pounds per centum upon the fair capital value of the fee-simple thereof.

Valuation of Crown lands occupied (other than under lease) for pastoral purposes.

(3) Notwithstanding anything in the last preceding sub-section contained every person occupying (otherwise than under any lease) park lands reserves or other Crown lands for pastoral purposes only shall be rated in respect of such annual value thereof as aforesaid, and not on the capital value thereof.

Notice of valuation.

(4) In respect of each rateable property valued a notice stating the amount at which such property has been valued shall be given to the occupier or owner of such property.

Rates to be made on valuation.

(5) The rates made by the council of every municipality for the purposes of this Act shall be made upon such valuation.

Application of provisions of sub-section (2) to cities of Melbourne and Geelong.

(6) Notwithstanding anything in any Act, the provisions of sub-section (2) of this section shall extend and apply to the city of Melbourne and the city of Geelong; and every Act and enactment relating to the said cities or either of them shall with such adaptations as are necessary be read and construed and take effect accordingly; and, in particular, without affecting the generality of the foregoing—

Method of computing net annual value of rateable property.

Construction of references to "annual value" in Acts &c. relating to Melbourne or Geelong.

(*a*) any reference in any such Act or enactment to the annual value of property in the said cities or either of them shall be read and construed and take effect as if it were a reference to the net annual value thereof within the meaning of the said sub-section (2);

Amendment of 6 Vict. No. 7 s. 67 as amended by No. 4279 s. 95 and No. 4574 s. 3.

Assessment of value of buildings.

(*b*) in section sixty-seven of the Act of the Governor and Legislative Council of New South Wales made and passed in the sixth year of the reign of Her late Majesty Queen Victoria intituled "*An Act to incorporate the Inhabitants of the Town of Melbourne*" as amended by any Act for the expression "section two hundred and fifty-two of the *Local Government Act* 1928" there shall be substituted the expression "section two hundred and fifty-four of the *Local Government Act* 1958"; and

Amendment of No. 178 s. 42 as amended by No. 4279 s. 95.

Assessment of value of land.

(*c*) in section forty-two of the Act of the Parliament of Victoria made and passed in the twenty-seventh year of the reign of Her late Majesty Queen Victoria intituled "*An Act to further alter and*

amend the Laws relating to the Corporations of the City of Melbourne and of the Town of Geelong respectively and to extend and apply other existing Acts thereto" as amended by any Act for the expression "section two hundred and fifty-two of the *Local Government Act* 1928" there shall be substituted the expression "section two hundred and fifty-four of the *Local Government Act* 1958."

(2) *When and how Council may cause Valuation to be made.*

First valuation. Valuations from time to time. No. 5203 s. 254.

255. The council of every municipality constituted after the commencement of this Act shall, within three months after the constitution thereof, and the council of every municipality may from time to time as seems fit but at least once in every six years shall subject to the next succeeding section cause to be made for such municipality a valuation of all rateable property within the municipal district.

Extension and further extension of period for making valuations. No. 5203 s. 254.

256. Where the council of a municipality is of opinion that no general appreciable change has taken place in the values of rateable property within the municipal district, the council may by special order (confirmed at least three months before the date of the expiration of the period of six years after the date of the return of the last valuation of all rateable property in the municipal district) extend the period of six years referred to in the last preceding section for such a period from such date as the council thinks fit, such period not to exceed four years and, where such extension of a period is less than four years, the council may by special order (confirmed at least three months before the expiration of any period of extension) from time to time further extend the period but so that the total of the periods of the extension and the further extension or extensions does not exceed four years in all:

Provided that—

(*a*) at any time before such special order is confirmed the owner of any rateable property in the municipal district may appear before the council and object to such extension, and the council shall hear the objection and consider the same before confirming such order; and

(*b*) such special order shall not have any force or effect unless the same (whether with or without variation with respect to the lessening of the period of extension as hereinafter provided) is approved by the Governor in Council at least one month before the date of the expiration of the period of six years after the date of the return of the last

valuation of all rateable property in the municipal district or (in the case of a further extension) at least one month before the expiration of the period of extension or the last period of further extension (as the case may be); but the Governor in Council may approve the special order with a variation providing that the extension is to be for a less period than that set forth in the special order, in which case the special order varied as aforesaid shall have full force and effect.

Valuation of property in some subdivisions only.
No. 5203 s. 255.

257. In the case of a subdivided municipal district it shall not be necessary to have a new valuation made of all the rateable property in such district at one time, but such valuation may be made of the rateable property in any one or more subdivisions thereof as may seem fit to the council of such municipalitiy, and any valuation so made shall be deemed to be part of the existing valuation, and to be in substitution for so much thereof as refers to property in any such subdivision or subdivisions.

Supplementary valuation.
No. 5203 s. 256.

258. (1) The council of every municipality may also without causing a valuation to be made of all rateable property within the municipal district or any one or more of the subdivisions thereof cause a supplementary valuation of any rateable property to be made from time to time in any of the following circumstances:—

(*a*) Where the property is not included in the valuation then in force ; or

(*b*) Where properties in respect of which two or more persons are liable to be rated have been valued together as one property ; or

(*c*) Where any property in respect of which only one person is liable to be rated has been valued as if more than one person was liable to be rated therefor; or

(*d*) Where the property valued is of greater or less extent than is described in the valuation ; or

(*e*) Where the property has become rateable since the return of the existing valuation ; or

(*f*) Where by reason of the destruction or removal of buildings or other improvements or where from any other cause whatsoever the net annual value of any particular property is in the opinion of the council materially decreased ; or

(*g*) Where by reason of the erection or construction of buildings or other improvements or where from any other cause whatsoever the net annual value of any particular property is in the opinion of the council materially increased.

(2) Any supplementary valuation when returned shall be deemed to be a part of the valuation in force and shall have the effect of cancelling anything contained in the existing valuation inconsistent with such supplementary valuation but where the supplementary valuation of any property has been made in any of the circumstances referred to in paragraphs (*e*) (*f*) or (*g*) of the last preceding sub-section the amount of any rate payable in respect of such property in respect of any period in which the supplementary valuation is returned shall be calculated *pro rata* on the existing valuation of such property for the portion of such period up to and including the day on which the supplementary valuation is returned and on the supplementary valuation of such property for the remainder of such period.

(3) This section shall extend and apply to the city of Melbourne and the city of Geelong.

(3) *Effect upon Valuation of Union or Annexation.*

Existing valuations in united municipalities. No. 5203 s. 257.

259. In every municipality formed by union the valuations (if any) last in force for the municipalities united shall be deemed to be one valuation, and to have been made hereunder by the council of the united municipality to all intents and purposes.

Valuation on annexation of portion of existing municipal district. No. 5203 s. 258.

260. In every municipality to which any portion of a previously existing municipal district has been annexed the valuation (if any) last in force for such portion so annexed shall be deemed to be part of the valuation for such municipality and to have been made by the council of such municipality to all intents and purposes.

Valuation on annexation of outlying district. No. 5203 s. 259.

261. The council of every municipality to which any outlying district has been annexed as herein provided, shall forthwith on such annexation cause to be made for such portion, either separately or together with the remainder of the municipal district, a valuation of the rateable property in such portion and such valuation if separate together with any valuation for the time being in force for the remainder of such municipal district shall be deemed to be the valuation for the municipality.

(4) *Form of Valuation and Powers and Duties of Valuer.*

Form of valuation and return. No. 5203 s. 260. Eighteenth Schedule.

262. Every valuer shall make and return his valuation in the form contained in the Eighteenth Schedule, and shall also at the same time state in such return with regard to each rateable property the several particulars shown in the respective columns of the said schedule ; but whenever the name of the owner of any rateable property is not known to such valuer it shall be sufficient to designate such owner as " the owner " without stating his name.

Declaration by valuer. No. 5203 s. 261.

263. (1) Before any valuation or return is made the person appointed to make it shall make and subscribe a statutory declaration to make such valuation and return impartially and truly according to the best of his judgement.

(2) An entry or minute shall be made in the book of the proceedings of the council of the making and subscribing of such declaration and of the date thereof.

(3) Any justice to whom application is made for that purpose shall administer such declaration.

Entry on premises by valuer. No. 5203 s. 262.

264. Every valuer shall, for the purpose of making the valuation and return as aforesaid, have power to enter at all reasonable hours in the day time into and upon any rateable property within the municipal district without being liable to any legal proceedings on account hereof.

Valuer empowered to make inquiries. No. 5203 s. 263.

265. (1) It shall be lawful for any valuer to put either verbally or in writing to any person in occupation or charge, or being the owner or the agent of the owner of any rateable property which such valuer is authorized under the provisions hereof to value, questions upon all such matters as may be necessary to enable such valuer to state correctly the several particulars herein required to be stated in his valuation and return with regard to the premises.

(2) If after being informed by such valuer of his purpose in putting such questions, and of his authority under this Act to put the same, any such person in occupation or charge or any such owner or agent refuses or wilfully omits to answer the same to the best of his knowledge and belief either verbally or in writing as such valuer may have requested, or wilfully makes any false answer or statement in reply to such question, he shall for every such offence be liable to a penalty of not more than Ten pounds.

(3) This section shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 3.—GENERAL RATES.

Council may make and levy general rate. No. 5203 s. 264; No. 5443 s. 10 (1).

266. (1) The council of every municipality shall once at least in every year, and may from time to time as it sees fit in manner hereinafter mentioned, make and levy rates to be called "General rates" equally in respect of all rateable property within the municipal district.

(2) No such rates made in any one year shall exceed the amount of Four shillings in the pound of the net annual value of such property as estimated under the provisions of this Act, or

be less than Sixpence in the pound of such value, but notwithstanding anything in this Part or in any Act relating to local government the minimum amount payable under any such general rate made upon any person in respect of any rateable property shall be Five shillings.

(3) The council of every newly constituted municipality shall within four months after the first election of councillors for such municipality make one such rate of not less than Sixpence in the pound of such annual value.

Meaning of "year."

(4) The word "year" wherever it occurs in this section shall be taken to mean any twelve months ending on the last day of September.

How and on whom rates may be made and levied. No. 5203 s. 265; No. 5602 s. 2.

267. Every general rate which the council of any municipality is by this Act authorized to make or levy shall be made and levied by it—

(*a*) for one year or half a year or such other period less than a year but not less than three months as it thinks fit; and

(*b*) upon every person who occupies, or if there is no occupier or if the occupier is the Crown or the Minister of Education or any of the persons or corporations mentioned in paragraph (*c*) or paragraph (*d*) of sub-section (1) of section two hundred and fifty-one of this Act, then upon the owner of any rateable property whatsoever within the municipal district.

Proportion of existing rate leviable on annexation of outlying district. No. 5203 s. 266.

268. Upon the annexation by any municipality as herein provided of any outlying district during the period for which any general rate has been made for such municipality, such rate or such portion thereof as bears to the whole the same proportion as the portion of the said period yet unexpired bears to the whole of the said period shall forthwith, upon the valuation herein provided for and being entered therewith in the proper form herein prescribed for rates, be and be deemed to be a general rate made as herein provided in respect of all rateable property in the district so annexed, and for the part of the said period so unexpired as aforesaid.

Estimate to be prepared before making rate. No. 5203 s. 267.

269. (1) The council from time to time, before proceeding to make any general rate which it is by this Act authorized to levy, shall cause an estimate to be prepared of the money required for the several purposes, in respect of which the council is authorized to expend or apply the municipal fund, showing—

(*a*) the several sums already available for such purposes;

(*b*) the several sums required;

(*c*) the rateable value of the property assessable;

(*d*) the rate on each pound of such value necessary to raise the money required.

(2) Such estimate, after the same has been approved of by the council, shall be forthwith entered on the rate-book to be kept as hereinafter provided.

Power in subdivided district to make and levy general rates at differing amounts in pound for subdivisions. No. 5203 s. 268.

270. (1) Notwithstanding anything in sub-section (1) of section two hundred and sixty-six of this Act, the council of any municipality the municipal district whereof is subdivided may on the requisition in writing under the hands of not less than two-thirds of the councillors for any subdivision of the municipal district make and levy any general rate so that the amount in the pound thereof made and levied equally in respect of all rateable property in the said subdivision is greater than the lowest amount in the pound of the same general rate made and levied in respect of other rateable property within the municipal district; and the estimate required for the general rate shall be prepared accordingly.

Additional moneys to be expended in subdivision and to be accounted for.

(2) Whenever any council makes and levies any general rate under the powers conferred by this section the whole of the additional moneys received by reason of the general rate being of such greater amount in the pound shall (notwithstanding anything in section two hundred and forty-nine of this Act)—

(*a*) be expended in the subdivision from which they are received; or

(*b*) if there is any alteration in such subdivision, be expended in the area forming such subdivision at the time the general rate was made—

and such receipts and expenditure shall be shown in the books of account of the council accordingly.

"Income" for borrowing purposes.

(3) For the purposes of sub-section (3) of section three hundred and seventeen and of section three hundred and thirty of this Act—

(*a*) the additional moneys aforesaid shall be deemed not to be income from general rates; and

(*b*) the said lowest amount in the pound of the general rate aforesaid shall be deemed to be the amount in the pound thereof.

Statutory limit of rates not to be exceeded.

(4) Nothing in this section shall be taken to authorize any council to exceed the statutory limit of the amount in the pound of any rates which it is authorized to make and levy.

DIVISION 4.—EXTRA RATES.

Power to make rates for particular subdivisions to be called extra rates. No. 5203 s. 269.

271. (1) Subject to the provisions of this Act, the council of any municipality the municipal district whereof is subdivided may from time to time as the council sees fit make and levy rates to be called "extra rates" equally in respect of all the rateable property within any one or more of the subdivisions or any portion or portions thereof of the municipal distict exclusively of the others.

Extra rate to be made only on requisition.

(2) No extra rate shall be made or levied in respect of any rateable property in any subdivision of any municipal district except in accordance with the requisition of not less than two-thirds of the councillors for the time being returned by such subdivision in writing under their hands in the form or to the effect in the Nineteenth Schedule, until one month after such requisition has been delivered to the chairman or clerk of the municipality.

Nineteenth Schedule.

Estimate to be prepared before making rate. No. 5203 s. 270.

272. (1) The council from time to time, before proceeding to make any extra rate which the council is by this Act authorized to levy, shall cause an estimate to be prepared of the money required for the several purposes, in respect of which the council is authorized to expend or apply such extra rate, showing—

(*a*) the several sums required for the purposes specified in the requisition and in respect of which the rate is to be expended or applied;

(*b*) the rateable value of the property assessable;

(*c*) the rate on each pound of such value necessary to raise the money required.

(2) Such estimate, after the same has been approved of by the council, shall be forthwith entered on the rate book to be kept as hereinafter provided.

Extra rates upon whom levied. No. 5203 s. 271; No. 5443 s. 10 (2), No. 5602 s. 2.

273. (1) Every extra rate which the council of any municipality is by this Act authorized to make or levy shall be made and levied by it—

(*a*) for one year or half a year or such other period less than a year, but not less than three months as it thinks fit; and

(*b*) upon every person who occupies or if there is no occupier or if the occupier is the Crown or the Minister of Education or any of the persons or corporations mentioned in paragraph (*c*) or paragraph (*d*) of sub-section (1) of section two hundred and fifty-one of this Act, then upon the owner of any rateable property whatsoever within the subdivision or such portion or portions thereof of the municipal district.

Extra and general rates together in any subdivision not to exceed 4s. in the pound.

(2) The council of a municipality shall not make or levy any extra or general rate so that the amount of extra and general rates made in any year in respect of the rateable property in any subdivision or any portion or portions thereof of the municipal district may exceed the amount of Four shillings in the pound of the net annual value of such property in such subdivisions or any portion or portions thereof as estimated under the provisions of this Act.

(3) The word "year" in the last preceding sub-section shall be taken to mean any twelve months ending on the last day of September.

Separate account and expenditure of extra rate.
No. 5203 s. 272.

274. The council shall in every case in which it makes and levies any such extra rate as hereinbefore mentioned cause a separate and distinct account to be kept of all moneys collected or received and of all payments and disbursements in respect of such rate and except in paying the expenses incurred in the making and levying of such rate shall expend the said moneys in the subdivision or any portion or portions thereof upon which such rate was made.

Alteration in subdivision not to affect the area within which any extra rate is levied and expended
No. 5203 s. 273.

275. When any extra rate has been made or levied upon any subdivision or any portion or portions thereof of any municipal district, such rate shall during the period for which the same was made notwithstanding any alteration in the subdivisions in such municipal district or in the area comprised in any of them continue to be levied upon and expended in the area forming such subdivision or any portion or portions thereof at the time such rate was made.

Extra rates in part of unsubdivided municipal district.
No. 5203 s. 274.

276. (1) Subject to the provisions of this Act, the council of any municipality the municipal district of which is unsubdivided may from time to time as the council sees fit make and levy rates to be called "extra rates" equally in respect of all rateable property within any one or more areas specified in the requisition hereinafter referred to in the municipal district exclusive of the rest of the municipal district.

Extra rate to be made only on requisition.

(2) No extra rates shall be made or levied in respect of any rateable property in any such area except in accordance with the requisition of a majority of the councillors in writing under their hands in the form and to the effect of the Nineteenth Schedule as modified for the purposes of this section until one month after such requisition has been delivered to the chairman or clerk of the municipality.

Application of ss. 272-274.
Nineteenth Schedule.

(3) The provisions of sections two hundred and seventy-two to two hundred and seventy-four of and the Nineteenth Schedule to this Act shall so far as applicable and with such adaptations as are necessary extend and apply for the purposes of this section

and, in particular, without affecting the generality of the foregoing, the said sections and Schedule shall for the purposes of this section be read and construed—

(*a*) as if in sub-section (1) of section two hundred and seventy-three of this Act for the words "within the subdivision or such portion or portions thereof of the municipal district" there were substituted the words "within the area or areas of the municipal district in regard to which the extra rate is leviable";

(*b*) as if in sub-section (2) of the said section—

(i) for the words "in any subdivision or any portion or portions thereof of the municipal district" there were substituted the words "in any area or areas of the municipal district in regard to which the extra rate is leviable"; and

(ii) for the words "in such subdivisions or any portion or portions thereof" there were substituted the words "in such area or areas";

(*c*) as if in section two hundred and seventy-four for the words "in the subdivision or any portion or portions thereof" there were substituted the words "in the area or areas"; and

(*d*) as if in the said Nineteenth Schedule—

(i) the expression "returned for the riding" were omitted; and

(ii) for the words "above-named riding of the above-named shire" there were substituted the expression "area (*or* areas) of the above-named shire hereinafter specified. (*Specify the area or areas*)".

Construction of references to extra rates in other enactments.

(4) In this Act or any other Act any reference to extra rates within the meaning of this Act or any corresponding previous enactment shall unless the context otherwise requires include a reference to extra rates under this section or any corresponding previous enactment.

DIVISION 5.—SEPARATE RATES.

(1) *Purposes and Manner of making Separate Rate.*

Separate rates. No. 5203 s. 275.

277. When it appears to the council of any municipality that any works or undertakings authorized by this Act are for the special benefit of any particular portion of the municipal

district the council may make and levy a rate herein called a "separate rate" in respect or rateable property in such portion exclusively.

Separate rate not to be made without petition. No. 5203 s. 276.

278. No such rate shall be made or levied unless a petition as hereinafter provided praying the council to make and levy the same is previously presented to the council.

Signature of petition. No. 5203 s. 277.

279. (1) Every such petition must be signed by a majority of the occupiers of property in respect of which such rate is proposed to be made and levied and by one-third at least of the owners of such property such owners being the owners of property in respect of which more than one-third of the total amount to be levied for the first year on account of such rate will be payable.

(2) For the purposes of this section the word "owner" shall have the same meaning as in the *Lands Compensation Act* 1928 or any amendment thereof.

Contents of petition. No. 5203 s. 278.

280. Every such petition shall—

(*a*) describe the property in respect of which the rate is to be made and levied ;

(*b*) state the amount or the different amounts in the pound which such rate is not to exceed ;

(*c*) state the period (if any) hereinafter referred to as the "period of maintenance" during which after the completion of the works and undertakings the proceeds of the rate are to be applied to maintain them in good order and to make good any damage that may happen to them.

Prayer of petition. No. 5203 s. 279.

281. Every such petition may pray that such rate be made and levied—

(*a*) equally in respect of all rateable property in respect of which such rate is to be made and levied ; or

(*b*) at different amounts in the pound in respect of different properties or in respect of properties in different areas.

Estimate to be prepared. No. 5203 s. 280.

282. (1) Before proceeding to make any separate rate the council shall cause to be prepared an estimate of—

(*a*) the cost of the proposed works and undertakings;

(*b*) the expenditure thereon during the period of maintenance (if any) ;

(*c*) all other expenditure in connexion with such rate.

Separate rate to be sufficient to pay interest and repay loan.

(2) No separate rate shall be made unless such rate is fixed at such amount or amounts as will in the opinion of the council be sufficient in each year to provide the full amount required for

the payment of interest on all moneys borrowed on the security of such rate and for the liquidation of such loan by periodical repayments or for the formation of a sinking fund as hereinafter provided (as the case may be).

Council may vary from prayer of petition in certain matters. No. 5203 s. 281.

283. The council in making the separate rate may vary from the prayer of the petition as regards—

(*a*) the properties in respect of which the rate is to be levied ; or

(*b*) the amount or amounts in the pound of the rate; or

(*c*) the period of maintenance (if any) ; or by providing for such period if no period is stated in the petition.

Notice of intention to make separate rate. No. 5203 s. 282.

284. (1) Notice of intention to make every separate rate shall be given by the council in some newspaper generally circulating in the neighbourhood not less than seven clear days previous to such rate being made.

(2) Such notice shall contain the following particulars :—

(*a*) The time at which it is intended to make the rate ;

(*b*) A description of the rateable property in respect of which the rate is to be made ;

(*c*) The period of maintenance (if any) ;

(*d*) The place where the estimate and the statement of the proposed rate are deposited for inspection.

Separate rate how made. No. 5203 s. 283.

285. The rate shall be so made by the council as to distinctly define the amount in the pound of the rate and the property in respect of which the rate is to be levied or in case different amounts in the pound are to be levied in respect of different properties or properties in different areas the amounts to be levied in respect of such properties respectively.

Separate rate to be confirmed by Governor in Council. No. 5203 s. 284.

286. No separate rate shall be of any force or effect until it has been confirmed by order of the Governor in Council.

Powers of Governor in Council. No. 5203 s. 285.

287. The Governor in Council may—

(*a*) confirm the rate as made by the council; or

(*b*) vary the rate made by the council as regards any of the matters with respect to which the council are empowered to vary from the prayer of the petition.

Variations to be published. No. 5203 s. 286.

288. (1) When any variation as aforesaid has been made either by the council or the Governor in Council the rate shall not be confirmed until such variations shall have been notified in the *Government Gazette* and published by the council in some newspaper generally circulating in the neighbourhood.

Signatures to petitions may be added.

(2) Within one month from the date of the latest publication of such notice any person who has signed the petition may by writing under his hand delivered or sent by post by registered letter to the Minister withdraw his signature and any person qualified to sign the petition may in like manner accede to the petition.

Signatures to petitions may be withdrawn.

(3) At the expiration of such month the rate as varied shall be confirmed by the Governor in Council if the signatures to the petition remaining unwithdrawn together with the signatures of any persons who may have acceded to the petition are such as are hereinbefore required to a petition but not otherwise.

Order confirming separate rate to be published. No. 5203 s. 287.

289. Any order of the Governor in Council confirming a separate rate shall be forthwith published in the *Government Gazette* and the publication of such order shall be conclusive evidence that such rate has been in every respect duly made and confirmed.

(2) *Levying and Expending Separate Rate.*

Upon whom separate rate levied. No. 5203 s. 288.

290. (1) Every separate rate shall in the first year be made upon the persons who would be liable to be rated in respect of the properties included therein if such rate were a general rate.

Duration of separate rate.

(2) Every such rate shall continue to be payable in every subsequent year without any further resolution or order and the rate for each successive year shall be deemed to be made on the persons who on the first day of each of such successive periods of one year would be liable to be rated in respect of such properties if such rate were a general rate.

Recovery of separate rate.

(3) Every such rate shall in each year be levied upon and recoverable from the same persons as if such rate were a series of general rates made for successive periods of one year, commencing from the day on which such rate was made.

Valuation upon which separate rate is payable.

(4) Unless it is otherwise provided in the resolution by which the rate is made the valuation of the properties included in the rate shall in each year be the valuation of such properties for the purposes of the general rate made last before the day on which such separate rate was made or last before such first day of each subsequent period of one year respectively.

Application of moneys received in respect of a separate rate. No. 5203 s. 289.

291. (1) The money received by the council in respect of of any separate rate shall be applicable for the following purposes:—

(*a*) The execution of the works and undertakings for which the rate was made and the purchase of land and materials required for that purpose;

(*b*) The repayment of any money borrowed for the foregoing purposes and interest thereon, or the formation of any sinking fund formed to secure the repayment of such money and interest;

(*c*) The maintenance of the works and undertakings for which the rate was made during the period of maintenance (if any) and making good any damage thereto during such period;

(*d*) Expenses connected with the foregoing purposes or any of them or with making and levying the rate.

Limit of total amount to be levied.

(2) No more money shall on the whole be levied in respect of any separate rate than may be sufficient for such purposes.

Provision for excess in last year of rate.

(3) If in the last year in which any separate rate is levied the amount required for such purposes is less than the rate for that year will produce the council may reduce the amount of the rate to be levied in such year, and in such case the amount so levied shall be levied upon the persons liable to the rate so that each person shall pay the same proportion of the total amount to which he is liable in respect of the separate rate for that year.

Where no period of maintenance, cost of repairs &c. to be charged to municipal fund.

No. 5203 s. 290.

292. (1) Upon the completion of the works or undertakings or in case there is a period of maintenance upon the expiration of such period the expenses of maintaining and of making good any damage to the works and undertakings shall be charged to the municipal fund.

Period of maintenance may by special order be terminated.

(2) But at any time after the completion of the works and undertakings and before the expiration of the period of maintenance the council if it is of opinion that the whole or any of the works or undertakings are for the benefit of the public or of the ratepayers generally may by special order to be approved by the Governor in Council charge to the municipal fund the maintenance of such works and undertakings and making good any damage thereto.

Separate account to be kept of separate rate.

No. 5203 s. 291.

293. The council shall in every case in which it makes and levies any separate rate cause a separate and distinct account to be kept of all moneys collected and received and of all payments and disbursements in respect of such rate and shall apply the said moneys for the several purposes in respect of which they have been authorized to make and levy such rate and not otherwise.

(3) *Borrowing on Separate Rate.*

Power to borrow on security of separate rate.
No. 5203 s. 292.

294. (1) When any separate rate has been duly made and confirmed the council may for the purpose of carrying out the works and undertakings for which such rate was made borrow money for any period not exceeding sixteen years on the security of such rate in any one but not both of the following ways:—

(*a*) By mortgage; or

(*b*) By the issue of debentures.

(2) All such moneys shall be borrowed subject to the respective provisions contained in Part XV. with regard to borrowing on the security of a separate rate by mortgage or the issue of debentures.

DIVISION 6.—GENERAL PROVISIONS AS TO RATES.

(1) *Provisions applicable to General and Extra Rates only.*

Rates to be made for particular periods.
No. 5203 s. 293.

295. Every general or extra rate may be made for and in respect of such period as the council thinks fit and as shall be named therein but this section shall not prevent the council from making or levying during any such period another rate if it otherwise has power hereunder to make or levy the same.

Notice of intention to make rate.
No. 5203 s. 294.

296. Notice of the intention of making every such rate and of the time at and the period for which the same is intended to be made and of a place where the estimate prepared in accordance with this Act is deposited for inspection by the ratepayers shall be given by the council by placards posted up in public and shall be advertised in some newspaper generally circulating in the neighbourhood not less than four clear days previous to such rate being made.

Remission or deferment of rates on account of poverty.
No. 5203 s. 295; No. 6151 s. 5.

297. (1) The council may from time to time upon the application of any person who is liable to the payment of any such rate and who in the opinion of the council is in necessitous circumstances—

(*a*) remit or excuse the payment of the rate or any part thereof or the interest or any part of the interest thereon; or

(*b*) defer the payment of the rate or any part thereof and the interest thereon for such time as the council thinks fit but so that the amount unpaid and the interest thereon shall subject to this Act remain a charge on the property.

(2) This section shall extend and apply to the city of Melbourne and the city of Geelong.

(2) *Provisions applicable to General, Extra and Separate Rates.*

Form &c. of rate
No. 5203 s. 296; No. 5443 s. 11 (1) (*a*), (*b*).
Twentieth Schedule.

298. (1) Every general rate extra rate and separate rate shall be entered in a book or books to be kept for that purpose which book or books shall be called the " rate book " and may be in the form given in the Twentieth Schedule or as near thereto as the circumstances of the case will permit or in such other form or forms as the Governor in Council by Order published in the *Government Gazette* appoints from time to time.

Rate to be signed and sealed.

(2) Every such rate shall be signed by not less than three members of the council and shall be sealed with the seal of the municipality.

Loose-leaf &c. rate book.

(3) (*a*) Notwithstanding anything in the preceding provisions of this section a rate book may be constituted of a series of cards or loose-leaves in such form or forms as the Governor in Council by Order published in the *Government Gazette* appoints from time to time.

Evidence.

(*b*) In any proceeding for levying or recovering any rate or interest thereon or for taking possession of land for arrears of rates or interest thereon or for enforcing any charge upon land, or in any proceeding consequent upon any of the foregoing, if the entry in the rate book (where it is constituted of a series of cards or loose-leaves as aforesaid) is on a card or loose-leaf it shall not be received in evidence, unless it is shown by the statutory declaration of or an affidavit by the clerk of the municipality that the card or loose-leaf is part of a series of entries which are covered by a certificate of total rates levied which has been signed by not less than three members of the council and sealed with the seal of the municipality and countersigned by the said clerk.

References to rate book.

(*c*) In this Act, references to the rate book shall include, where the case requires, references to a rate book constituted as provided in this sub-section and this Act shall, with such adaptations as are necessary, be read and construed accordingly.

Rates vested in municipality.
No. 5203 s. 297.

299. (1) Every rate authorized to be made or levied under the provisions of this Act shall be vested in the municipality.

Rates to be payable as the council may appoint.

(2) Every such rate shall be payable at such times and either in whole or in such parts or instalments as the council shall appoint.

Owner where name not known to be rated as " owner " only.
No. 5203 s. 298.

300. Whenever the name of any owner liable to be rated or charged with payment of a rate under the provisions of this Act is not known to the council or to the person making the valuation, it shall be sufficient to rate such owner by the designation of " The owner " without stating his name.

Estimate and rate to be open for inspection by the ratepayers who may take copies.
No. 5203 s. 299.

301. (1) The estimate hereinbefore referred to and the rate immediately after the same is made, shall be open to the inspection of any person interested or rated in such rate at all reasonable times; and any such person may take copies of or extracts from such estimate or date without paying anything for the same.

(2) Every person having the custody of such estimate or rate who refuses to permit or does not on request by any person so interested or rated as aforesaid permit him to take copies of or extracts from such estimate or rate, shall for every such offence be liable to a penalty of not more than Five pounds.

Alteration or amendment of rate.
No. 5203 s. 300.

302. (1) The council may from time to time alter or amend any rate made or to be made by—

(*a*) inserting therein the name of any person claiming and entitled to have his name therein as owner or occupier; or

(*b*) inserting the name of any person who ought to have been rated or who has since the making of the rate become liable to be rated; or

(*c*) striking out the name of any person who ought not to have been rated; or

(*d*) raising or reducing the sum at which any person has been rated if it appears to it that owing to any error in entering the rate in the rate book such person has been underrated or overrated; or

(*e*) making any alteration or amendment which in the opinion of the council is necessary in consequence of a supplementary valuation being returned during the period for which such rate was made; or

(*f*) making such other alterations or amendments therein as will make such rate conformable to any Act under which the same is payable.

(2) No such alteration or amendment shall be held to avoid the rate.

(3) No alteration or amendment in the rate book shall be valid unless the same is initialed by the chairman of the municipality and the date of such alteration or amendment is also inserted, but the council shall not alter the municipal roll after the revision thereof hereinbefore provided for.

(4) Every person aggrieved by any such alteration or amendment shall have the same right of appeal therefrom as he would have had if his name had been originally inserted in such rate and no such alteration or amendment had been made, and as respects such person, the rate shall be considered to have been made at the time when he received notice of such alteration or amendment.

(5) Every person whose rates are altered or amended or who by any such alteration or amendment has become rated in respect of any rateable property shall be entitled to receive seven days' notice of such alteration or amendment before the rate shall be payable by him.

Such rates to cease to be a charge on the land.

(6) In any case where any rate has been remitted or excused pursuant to sub-section (6) of section three hundred of the *Local Government Act* 1946 or to any corresponding previous enactment it shall cease to be recoverable by the council from any person and shall cease to be a charge on the land in respect of which it was made.

DIVISION 7.—APPEALS AGAINST RATES.

(1) *Generally.*

Appeal to court of petty sessions for incorrectness &c. in valuation.

No. 5203 s. 301; No. 5443 s. 12 (1) (3).

303. (1) If any person thinks himself aggrieved on the ground of unfairness or incorrectness in—

(*a*) the valuation of any rateable property included in any rate; or

(*b*) the amount assessed thereon—

he may at any time during the month of February next after such rate is made or (in any case where such rate is made on or after the first day of February in any year and before the first day of October next following) within one month after such rate is made give notice in writing to the council of his intention to appeal to a court of petty sessions consisting of a stipendiary magistrate sitting without any other justice or justices held near to such rateable property.

Council to fix time for hearing appeals and give notice thereof to appellants.

(2) After the expiration of the time for giving notice of intention to appeal the council shall take all necessary steps to have a time fixed for the hearing by the court of petty sessions of the appeals in respect of which notice has been given; and shall give to each person who has given notice of intention to appeal at least seven clear days' notice in writing of the time so fixed.

In default of council, appellant may fix time for hearing appeal.

(3) But if the council fails within fourteen days after the expiration of the time for giving notice of intention to appeal to fix a time for the hearing of any appeal, any such person aggrieved may cause such appeal to be set down for hearing and shall give to the council at least seven clear days' notice in writing of the time fixed for the hearing.

(4) But the appeal shall not, in either case, be entertained by the court of petty sessions unless the respective notices required by this section have been given.

Petty sessions to hear and determine appeals.

(5) At the sessions for which such notice is given, or any adjournment thereof, or at any sessions to which the court thinks fit to adjourn the appeal, the court of petty sessions shall hear

and determine all matters of complaint on the ground of unfairness or incorrectness in the valuation of such rateable property or in the amount assessed thereon of which notice has been given, but no other objection, and subject to any appeal pursuant to the next succeeding section its decision shall be final; but the court of petty sessions shall not have power to quash or set aside any rate.

(6) No such notice of appeal shall prevent the recovery of any such rate as hereinafter provided.

Appeal generally to County Court.
No. 5203 s. 302; No. 5443 s. 12 (2).

304. (1) If any person thinks himself aggrieved for any cause of grievance, whether cognizable under the last preceding section or not, by any rate made under the authority of this Act, or by any matters included in or omitted from the same, he may at any time during the month of February next after the same is made or (in any case where such rate is made on or after the first day of February in any year and before the first day of October next following) within one month after the same is made give notice in writing to the council of his intention to appeal to the next sittings of the County Court held nearest to the rateable property in respect of which such appeal is made.

(2) Any municipality or person aggrieved may appeal from a decision of a court of petty sessions under the last preceding section to the next sittings of the County Court held nearest to the rateable property in respect of which the appeal is made.

Notice.

(3) No appeal under this section shall be entertained unless at least fourteen clear days' notice in writing of such appeal, stating the nature and grounds thereof, is given by the aggrieved party to the council of the municipality or (as the case requires) by the appellant to the respondent.

County Court to hear and determine appeal.

(4) Such court shall have jurisdiction to hear and determine the appeal in a summary way at the sittings thereof for which notice of appeal is given, or at the next following sittings when the judge of such court thinks fit to adjourn the appeal to such next following sittings, and the decision of such court shall be final and conclusive on all points; but the court before which the appeal is heard and determined shall if so required by any party to such appeal state the facts by way of special case for the determination of the Supreme Court thereon in which case that court may determine the same, and the Supreme Court shall have full power to determine how and by whom the costs of the proceedings in the Supreme Court and in the County Court are to be borne.

Stating special case.

Notice of appeal not to prevent recovery of rate.

(5) No such notice of appeal shall prevent the recovery of any such rate as hereinafter provided.

Power to owner to appeal where occupier is rated.
No. 5203 s. 303.

305. (1) Any owner of rateable property shall be deemed to be a person aggrieved within the meaning of the last two preceding sections notwithstanding that the occupier is the person rated.

(2) But if the owner and occupier both appeal separately neither shall be allowed any costs of his appeal unless he can show that before giving notice of appeal he requested the other in writing to join in the appeal and the other neglected or refused to do so, and in such event the party neglecting or refusing to join shall pay the costs of his own appeal.

Costs where owner and occupier both appeal.

306. (1) Upon any such appeal as aforesaid where there appears to be just cause for giving relief the court of petty sessions and the County Court respectively shall have the power to amend the rate in respect of which the appeal is made by altering the sum at which any person is rated therein and where the rate is amended the rate-book shall be produced and the stipendiary magistrate (where the court is a court of petty sessions) or the judge (where the court is the County Court) shall make and initial the appropriate alterations in the rate-book.

Amendment of rate by justices or court.
No. 5203 s. 304.

(2) The County Court shall have the like power of amending the said rate by inserting therein or striking out the name of any person or in any other manner which such court may think necessary for giving relief and without quashing or wholly setting aside such rate.

(3) But if the County Court is of opinion that it is necessary for the purpose of giving relief to the person appealing that the rate should be wholly quashed, then such court may quash the same.

Quashing of rate by County Court.

(4) If such court quashes such rate then notwithstanding the quashing of such rate all sums of money charged by such rate on any person charged by such rate may, if such court so orders, be levied by such means and in the same manner as if no appeal had been made against such rate; and the money which any person charged on such rate pays or which is recovered from him shall be taken as a payment on account of the next effective rate made upon him.

If court so orders quashed rate may be levied.

307. (1) It shall be lawful for the court of petty sessions and the County Court respectively to order and award—

Costs of appeal.
No. 5203 s. 305.

(*a*) upon any such appeal as aforesaid to the party for whom such appeal is determined; or

(*b*) upon proof there to be made of notice of any appeal having been given under the provisions hereinbefore contained where the person giving such notice has not afterwards prosecuted such appeal, to the person to whom such notice appears to have been given—

such costs and charges as by the court of petty sessions or the County Court respectively in its discretion may be thought

reasonable and just, to be paid respectively by the party against whom such appeal is determined or by the party so giving notice and not prosecuting (as the case may be).

(2) All such costs and charges may be recovered by the like means and in like manner respectively as any costs awarded by any court of petty sessions or by the County Court may lawfully be recovered.

(2) *Where one Undertaking is rated to different Municipalities.*

Special appeal from valuation where one property is valued in different rating districts.
No. 5203 s. 306.

308. Where the lands works or other rateable property of any person incorporated or other company or association comprising one undertaking extend continuously beyond the boundaries of any municipal district so that the one undertaking is, under this Act or this Act and any Acts in force relating to the city of Melbourne and the city of Geelong, subject to more than one separate valuation for the purpose of rating, although there is no actual separation of the different parts of the property rated, such person company or association may notwithstanding anything in this or any of the said Acts contained appeal from the valuation thereof in manner hereinafter provided.

Notice of appeal to County Court if in time as to one rating district may be given as to other rating districts though time for appeal may have expired.
No. 5203 s. 307.

309. Within the time for an appeal against a valuation for rating purposes limited in that behalf by this or any of the said Acts such person company or association may give notice of his or its intention to appeal to the County Court held at the place nearest to the principal office of the appellant for such undertaking, or if in any case there is no such principal office within the district of any of the municipalities concerned then to the County Court held at the place nearest to the rateable property in respect of which such appeal is made, by serving a notice as by this or any of the said Acts in that behalf directed, and may on the same day, although the time limited for an appeal against any valuation of any other part of the property may have expired, give a like notice of appeal therefrom to the council of any other municipality so that the valuation of different parts of the same property may be made the subject of one appeal.

Copy of annual accounts &c. to be served with notice of appeal.
No. 5203 s. 308.

310. In case of any such appeal by any company or association a copy of the last annual account of the total receipts and expenditure of the company or association, and showing the items of receipt and expenditure under different heads, shall be served with every notice of appeal which may be given as aforesaid.

Setting down appeal.
No. 5203 s. 309.

311. The appellants shall on the same day serve a copy or copies of the notice or notices of appeal upon the registrar of the County Court, and the registrar, subject to any subsequent alterations by the court, shall within seven days from such service

fix a day not more than twenty-one nor less than fourteen days from the service upon such registrar for hearing the appeal or appeals of which notice has been given as aforesaid.

Appeal to be heard and determined by court which may direct consolidation of appeals. No. 5203 s. 310.

312. (1) Upon such day or any day to which the court may adjourn such appeal such court shall proceed to hear and finally determine the matter of such appeal or appeals, and if there is more than one appeal may at the hearing direct the consolidation thereof for the purpose of assessing the value of the property as a whole to be by such court apportioned between the different municipalities whose valuations are the subject of appeal.

(2) But the court before whom the appeal is heard and determined shall if so required by any party to such appeal state the facts by way of special case for the determination of the Supreme Court thereon in which case that court may determine the same, and the Supreme Court shall have full power to determine how and by whom the costs of the proceedings in the Supreme Court and in the County Court are to be borne.

Court may give all necessary directions upon allowance of appeal. No. 5203 s. 311.

313. The said court may direct any necessary corrections to be made in any rate-book, and may give such other directions as may be necessary for giving effect to any alteration made by it in the amount of valuation.

Court to have jurisdiction as to costs. No. 5203 s. 312.

314. The costs of every such appeal shall be in the discretion of the court, which shall in the case of consolidated appeals adjudicate separately upon the costs of the separate appeals consolidated, and every order as to costs shall be an order of the court and enforceable in the same manner as other orders of the court.

PART XI.—RATING ON UNIMPROVED VALUES.

DIVISION 1.—INTERPRETATION.

Interpretation. No. 5203 s. 313.

315. (1) In this Part unless inconsistent with the context or subject-matter—

"Act relating to local government" includes this Act and any Act or enactment relating to the city of Melbourne or the city of Geelong. "Act relating to local government."

"Capital improved value" of land means the sum which the land, if it were held for an estate in fee-simple unencumbered by any mortagage, might be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might in ordinary circumstances be expected to require. "Capital improved value."

"Council" means council of a municipality. "Council."

"Improvements."

"Improvements" on land means all works actually done or material used thereon by the expenditure of capital or labour on or for the benefit of the land, nevertheless in so far only as the effect of such work done or material used is to increase the value of the land, and the benefit thereof is unexhausted at the time of the valuation; but does not include work done or material used on or for the benefit of land by the Crown or by any statutory public body, unless such work has been paid for by the contribution of the owner or occupier for that purpose:

Provided that—

(*a*) the payment of rates or taxes shall not be deemed to be a contribution within the meaning of this definition; but

(*b*) such portion of the general rate compulsory irrigation charge and charge for water paid in any irrigation and water supply district to the State Rivers and Water Supply Commission on account of any land as the said Commission certifies is the proportion of such rate compulsory charge or charge for water which would need to be levied for interest redemption fund or depreciation fund shall each year after its payment be capitalized on a five per centum basis and the amount so capitalized shall be considered improvements.

"Mortgage."

"Mortgage" includes every charge whatsoever upon land howsoever created if such charge is registered under any Act relating to the registration of deeds or instruments affecting title to land, and includes a transfer or conveyance to a registered building society subject to a deed of defeasance in favour of a borrower.

"Municipality." "Municipal district."

"Municipality" or "Municipal district" includes the city of Melbourne and the city of Geelong.

"Municipal fund."

"Municipal fund" includes town fund.

"Municipal roll."

"Municipal roll" includes burgess roll or citizen roll.

"Net annual value."

"Net annual value" of rateable property means the net annual value thereof computed as provided in this Act; and (in the case of the city of Melbourne and the city of Geelong) includes the annual value thereof computed as provided in any Act or enactment relating to the city of Melbourne or the city of Geelong.

"Poll" means a poll of the ratepayers of the municipality concerned. "Poll."

"Prescribed" means prescribed by this Part or regulations under this Part. "Prescribed."

"Special rateable properties" means— "Special rateable properties."

(*a*) land works or other rateable property owned or occupied by any person incorporated or other company or association for the purposes of railways tramways waterworks hydraulic works electric light and power works or gas works; or

(*b*) land works or other rateable property of any person incorporated or other company or association comprising one undertaking extending continuously beyond the boundaries of any municipal district so that the one undertaking is under any Act or Acts relating to local government subject to more than one separate valuation for the purposes of rating although there is no actual separation of the different parts of the rateable property; or

(*c*) land works or other rateable properties declared to be "special rateable properties" pursuant to this Part.

"Unimproved capital value" of land means the sum which the land, if it were held for an estate in fee-simple unencumbered by any mortgage, might in ordinary circumstances be expected to realize at the time of valuation if offered for sale on such reasonable terms and conditions as a *bona fide* seller might be expected to require and assuming that the improvements (if any) had not been made. "Unimproved capital value."

(2) In estimating the value of improvements on any land for the purposes of this Part the value of the improvements shall be taken to be the sum by which the improvements (so far as the benefit thereof is unexhausted at the time of valuation) are estimated to increase the value of the land: Value of improvements.

Provided that the value of improvements (other than vineyards orchards hop gardens and lucerne pastures) shall in no case be deemed to be more than the cost of the improvements estimated at the time of valuation exclusive of the cost of repairs and maintenance.

DIVISION 2.—ADOPTION OF THIS PART.

Power to adopt this Part.
No. 5203 s. 314.

316. This Part may as hereinafter provided be adopted in any municipality—

By determination of council.

(*a*) by determination of the council; or

After a poll.

(*b*) by a proposal for the adoption thereof being carried at a poll.

Procedure.
No. 5203 s. 315.

317. This Part may be adopted by determination of the council as follows:—

Special order.

(1) The council by special order may pass a resolution that it proposes to adopt this Part.

Provisional valuation to be made.

(2) The council shall thereupon forthwith cause to be made a provisional valuation of all rateable properties within the municipal district (except "special rateable properties") computed at the unimproved capital value and the improved capital value and the net annual value thereof and in other respects as a valuation would be made if this Part had been adopted in the municipality.

(3) There shall be added to the valuation a statement setting forth—

(*a*) the amount in the pound of the general rate last made on the basis of the net annual value of rateable properties;

(*b*) the amount in the pound of the rate on the basis of the unimproved capital value of rateable properties which in its total revenue producing capacity corresponds with the amount in the pound of the said general rate; and

(*c*) with respect to each such rateable property—

(i) the sum which would be leviable in respect of each such rateable property on the basis of the net annual value thereof under a general rate of the same amount in the pound as the general rate last made; and

(ii) the sum which would be leviable in respect of each such rateable property under a rate on the basis of the unimproved capital value thereof at the

amount in the pound mentioned in paragraph (*b*) of this sub-section.

(4) The valuation—

(*a*) shall be in the prescribed form and shall set forth such other particulars (if any) as are prescribed; and — Form.

(*b*) shall be kept at the office of the council and be open to inspection during office hours by any ratepayer free of charge. — Valuation to be open to inspection.

(5) In respect of each such rateable property included in the valuation a notice setting forth the matters included in the valuation and statement aforesaid relating to such rateable property shall be given to the occupier or owner thereof. — Notice to be given by council.

(6) Forthwith after the valuation is prepared and notice as aforesaid has been given the council shall publish in the *Government Gazette* and in a newspaper generally circulating in the municipal district a notice stating— — Publication of notice that valuation has been made &c.

(*a*) that the council proposes to adopt this Part;

(*b*) that the valuation has been prepared and is open to inspection as aforesaid;

(*c*) that one-tenth of the persons whose names are inscribed on the municipal roll may by writing under their hands addressed to the chairman or the clerk of the municipality and delivered at the office of the council within one month after the date of the last publication of the notice demand that the proposal to adopt this Part be submitted to a poll of the ratepayers;

(*d*) that if no such demand for a poll is made the council will adopt this Part; and

(*e*) that if this Part is adopted rates will (subject to this Part) be made and levied in respect of rateable properties on the basis of the unimproved capital value thereof.

No notice under this sub-section shall be published in the month of July or the month of August.

(7) One-tenth of the persons whose names are inscribed on the municipal roll by writing under their hands addressed to the chairman or clerk of the municipality and delivered at the office of the council within one month after the date of the last — Demand for poll.

publication of such notice may demand that the proposal to adopt this Part be submitted to a poll of the ratepayers.

Powers of council if no demand for poll.

(8) If within the said period of one month no such demand is made the council may determine to adopt this Part.

If no determination within twelve months proceedings to lapse.

(9) If the council does not make such a determination within twelve months after the expiration of the said period of one month the resolution passed by special order as aforesaid and all proceedings under this section consequent thereon shall (subject to the provisions of the next succeeding section) be deemed to have lapsed and to be of no effect.

Power of ratepayers to demand a poll. No. 5203 s. 316.

318. (1) Notwithstanding that the council has not published a notice that it proposes to adopt this Part one-tenth of the persons whose names are inscribed on the municipal roll may by writing under their hands addressed to the chairman or the clerk of the municipality and delivered at the office of the council demand that a proposal to adopt this Part be submitted to a poll of the ratepayers.

Notice to be published by council.

(2) Forthwith after the delivery of any such demand—

(*a*) the council shall publish in a newspaper generally circulating in the municipal district a notice stating that the demand has been received and that a poll of the ratepayers in compliance with the demand will be taken on the day and at the time for the next following annual election of councillors; and

Provisional valuation to be made.

(*b*) the council shall cause a provisional valuation of rateable properties to be made in the prescribed form, with a statement and the information and particulars required to be set forth in a provisional valuation made as hereinbefore provided.

When valuation to be completed.

(3) The valuation shall be completed at least one month before the day for the taking of the poll and shall be kept and be open to inspection as hereinbefore provided.

Notice to be given by council.

(4) In respect of each rateable property included in such valuation a notice setting forth the matters included in the valuation and statement aforesaid relating to such rateable property shall at least twenty-one clear days before the day for the taking of the poll be given to the occupier or owner thereof.

Advertisements.

(5) After the valuation has been prepared then every advertisement giving notice of the taking of the poll shall set forth—

(*a*) that the said valuation has been prepared and is open to inspection as aforesaid; and

(*b*) that if the proposal is carried rates will (subject to this Part) be made and levied in respect of rateable properties on the basis of the unimproved capital value thereof.

No demand between February and August.

(6) No demand under this section shall be made during the months of February to August (both inclusive).

Valuations to be available purposes of making rates. No. 5203 s. 317.

319. Where a provisional valuation has been prepared as hereinbefore provided in connexion with any proposal to adopt this Part then—

(*a*) if this Part is adopted in accordance with any such proposal the said valuation shall so far as applicable be deemed and taken to be a valuation of such rateable properties for the purposes of the making and levying of rates under this Part; and

(*b*) if this Part is not so adopted the said valuation shall so far as applicable be deemed and taken to be a valuation of such rateable properties for the purposes of the making and levying of rates under any Act relating to local government.

DIVISION 3.—RESCISSION OF ADOPTION OF THIS PART.

Rescission of adoption of Part. No. 5203 s. 318.

320. The adoption of this Part in any municipality may as hereinafter provided be rescinded—

(*a*) by determination of the council; or

(*b*) by a proposal for the rescinding thereof being carried at a poll.

Rescission by determination of council. No. 5203 s. 319.

321. The adoption of this Part may be rescinded by determination of the council as follows:—

(*a*) The council may by special order pass a resolution that it proposes to rescind the adoption of this Part.

Notice to be given by council.

(*b*) The council shall thereupon forthwith publish in the *Government Gazette* and in a newspaper generally circulating in the municipal district a notice stating—

(i) that the council proposes to rescind the adoption of this Part;

(ii) that one-tenth of the persons whose names are inscribed on the municipal roll may by writing under their hands addressed to the chairman or the clerk of the municipality and delivered at the office of the council within one month after the date of the last publication of the

notice demand that the proposal to rescind the adoption of this Part be submitted to a poll of the ratepayers; and

(iii) that if no such demand for a poll is made the council will rescind the adoption of this Part:

Notice not to be published in July or August.

Provided that no such notice shall be published in the month of July or the month of August.

Demand for poll.

(*c*) One-tenth of the persons whose names are inscribed on the municipal roll by writing under their hands addressed to the chairman or clerk of the municipality and delivered at the office of the council within one month after the date of the last publication of such notice may demand that the proposal to rescind the adoption of this Part be submitted to a poll of the ratepayers.

Powers of council if no demand for poll.

(*d*) If within the said period of one month no such demand is made the council may determine to rescind the adoption of this Part.

If no determination within twelve months proceedings to lapse.

(*e*) If the council does not make such a determination within twelve months after the expiration of the said period of one month the resolution passed by special order as aforesaid and all proceedings under this section consequent thereon shall be deemed to have lapsed and to be of no effect.

Demand for poll on proposal to rescind adoption of Part. No. 5203 s. 320.

322. (1) Notwithstanding that the council has not published a notice that it proposes to rescind the adoption of this Part one-tenth of the persons whose names are inscribed on the municipal roll by writing under their hands addressed to the chairman or the clerk of the municipality and delivered at the office of the council may demand that a proposal to rescind the adoption of this Part be submitted to a poll of the ratepayers.

Notice to be published by council.

(2) Forthwith after the delivery of any such demand the council shall publish in a newspaper generally circulating in the municipal district a notice stating that the demand has been received and that a poll of the ratepayers in compliance with the demand will be taken on the day and at the time for the next following annual election of councillors.

No demand under this section in July or August.

(3) No demand under this section shall be made in the month of July or the month of August.

Valuation not necessary in case of proposal for rescission. No. 5203 s. 321.

323. In the case of any proposal to rescind the adoption of this Part it shall not be necessary for the council to cause a provisional valuation to be prepared as hereinbefore provided in the case of a proposal for the adoption of this Part.

Proposals not to be again submitted within three years. No. 5203 s. 322.

324. (1) Where in any municipality this Part has been adopted whether—

(*a*) by the determination of the council in any case where a poll was not demanded; or

(*b*) at a poll—

the council shall not give notice that it proposes to rescind this Part and a proposal for rescinding the adoption thereof shall not be submitted to a poll within three years after the date of the adoption.

(2) Where in any municipality a proposal for rescinding the adoption of this Part has been carried at a poll—

(*a*) the council shall not give notice that it proposes to adopt this Part; and

(*b*) a proposal for the adoption thereof shall not be submitted to a poll—

within three years after the date of the carrying of the rescinding proposal.

(3) Where in any municipality a proposal for the adoption of this Part or a proposal for rescinding the adoption thereof has been rejected at a poll—

(*a*) the council shall not give notice that it proposes to adopt this Part or to rescind the adoption thereof (as the case may be); and

(*b*) no such proposal shall be submitted to a poll—

within three years after the date of the rejection of the proposal for adoption or rescinding (as the case may be).

Provision for case where proposal to adopt Act hereby repealed has been rejected. No. 5203 s. 323.

325. (1) In the case of any municipality in which before the commencement of this Act a proposal for the adoption of any previous enactment corresponding with this Part was rejected at a poll proceedings for the adoption of this Part shall not be instituted within three years from the date of the rejection of such proposal.

Rescission of adoption of Acts repealed.

(2) In the case of any municipality in which Part XI. of the *Local Government Act* 1946 or any corresponding previous enactment has been adopted and the adoption thereof has not been rescinded before the commencement of this Act the

provisions of this Part as to the rescinding of the adoption of this Part shall extend and apply to the rescinding of the adoption of the said Part or of any corresponding previous enactment but the period during which proceedings for the rescinding of the adoption thereof may not be instituted shall be calculated from the date of the adoption thereof.

DIVISION 4.—PROVISIONS AS TO POLL.

Poll to be taken. No. 5203 s. 324; No. 5843 s. 14.

326. (1) When a demand for a poll has been delivered at the office of the council pursuant to this Part a poll of the ratepayers shall be taken in compliance with the demand.

Deposits.

(2) Together with the delivery of the demand there shall be deposited at the office of the council a sum of Thirty pounds which sum shall be dealt with as hereinafter provided.

(3) (*a*) The said sum of Thirty pounds shall in the following cases be returned to any person named in the demand as the person to receive the same:—

(i) Where the council has given notice that it proposes to adopt this Part or any corresponding previous enactment or to rescind the adoption of this Part or any corresponding previous enactment and not less than two-fifths of the valid votes recorded at the poll were recorded against the proposal; and

(ii) Where the council has not given notice as aforesaid but a poll has been demanded on a proposal for the adoption of this Part or of any corresponding previous enactment or the rescinding of the adoption of this Part or any corresponding previous enactment and not less than two-fifths of the valid votes recorded at the poll were recorded in favour of the proposal.

(*b*) In every other case the said sum of Thirty pounds or so much thereof as is necessary to defray any costs and expenses incurred in or in connexion with the taking of the poll over and above the costs and expenses incurred in the holding of the election (if any) of councillors shall be paid into the municipal fund, and the residue (if any) shall be returned to the person aforesaid.

Provisions as to polls. No. 5203 s. 325; No. 5443 s. 2 (2), No. 6128 s. 8 (2) (*b*), No. 6151 s. 6.

327. The following provisions shall apply with respect to every poll under this Part:—

(1) The poll shall be taken on the day and at the time for the annual election of councillors next following the delivery of the demand; and (whether the

municipal district is subdivided or not) the proceedings upon the poll shall be taken and had for the whole municipal district.

(2) The council not less than fourteen and not more than twenty-one clear days before the said day shall by advertisement published in a newspaper generally circulating in the municipal district give notice of the taking of the poll.

(3) The municipal clerk shall be the returning officer for the purposes of the poll and shall by writing under his hand appoint a deputy to assist him or to act in his place at any such poll, and may remove any such deputy, and shall appoint another in the place of any deputy who is so removed or who dies retires or becomes incapable of acting; and the deputy may do all or any of the acts or things which the returning officer is authorized or required to do.

(4) The voting-papers shall be printed in the appropriate form in the Twenty-first Schedule or to the like effect with such additions or alterations as are necessary for postal voting-papers. Twenty-first Schedule.

(5) Every person whose name is on the municipal roll shall be entitled to receive as many voting-papers as the number of votes to which such person appears by such roll to be entitled.

(6) The persons demanding the poll under their hands or the hands of any three of them, the persons declaring themselves opposed to the demand under their hands or the hands of any three of them, and the council may severally in writing appoint one scrutineer to be present in each polling booth.

(7) Subject to this Part all proceedings shall be had and taken as nearly as may be as upon an election of councillors under the provisions of Part III. (including provisions relating to voting by post or to compulsory voting if such provisions apply to elections of councillors of the municipality).

(8) Notwithstanding anything in this Part—

(*a*) the Governor in Council may from time to time by Order published in the *Government Gazette* postpone the day and time for the taking of the poll (whether or not the due day has already passed) to the day and time for the annual election of councillors in the following year; and Power to extend time for taking poll as to rating on unimproved values.

(*b*) where any such Order is made—

(i) the demand and the delivery thereof and any deposit and provisional valuation in connexion therewith shall, notwithstanding any failure to act in compliance with the said demand at the due time, be valid and effectual for all the purposes of this Act and of any poll held pursuant to this sub-section;

(ii) neither the council nor any member of the council shall be in any way liable by reason of any failure by the council before the making of the Order to take the poll thereon on the date prescribed by sub-section (1) of this section or to do any act matter or thing preliminary thereto;

(iii) the times for the doing of all acts matters and things preliminary to the taking of the poll shall be postponed until the appropriate days times and periods before the day and time to which the taking of the poll is postponed;

(iv) save as is otherwise expressly provided in this sub-section the provisions of this Act shall apply to and in respect of the taking of the postponed poll and the result of such poll in the same manner in all respects as they apply in the case of polls taken in the ordinary course; and

(v) nothing in this sub-section shall be construed as preventing the abandonment or the withdrawal of the demand in any circumstances in which such demand might have been

abandoned or withdrawn apart from the provisions of this sub-section.

Requirements for carrying a proposal at a poll.

328. (1) The proposal with respect to which a poll is taken shall not be deemed to be carried unless—

No. 5203 s. 326.

(*a*) a majority of the valid votes recorded are in favour of the proposal; and

(*b*) the number of valid votes recorded forms at least one-third of the number of votes for which voters are inscribed on the municipal roll.

Result of poll to be published.

(2) Within twenty-one days after the result of the poll has been ascertained the returning officer—

(*a*) shall cause a notice of the number of valid votes recorded for and against the proposal and also the number of votes for which voters are inscribed on the municipal roll to be published in the *Government Gazette* and also in some newspaper generally circulating in the municipal district; and

(*b*) in such notice shall declare the proposal to be carried or rejected (as the case may be).

(3) The date of the publication of the notice in the *Government Gazette* shall for the purposes of this Part be deemed and taken to be the date of the carrying or rejection of the proposal (as the case may be).

DIVISION 5.—EFFECT OF ADOPTION AND OF RESCISSION.

Effect of adopting this Part.

329. (1) In the case of every municipality in which this Part has been adopted all rates made by the council on and after the first day of October next following the date of the adoption, and thereafter so long as the adoption remains unrescinded, shall be made and levied in respect of rateable properties (other than "special rateable properties") on the basis of the unimproved capital value thereof.

No. 5203 s. 327.

Effect of rescinding adoption of this Part.

(2) In the case of every municipality in which a proposal for rescinding the adoption of this Part or any corresponding previous enactment has been carried all rates made by the council on and after the first day of October next following the date of the carrying of the rescinding proposal shall be made and levied as if this Part had not been passed; but the carrying of the rescinding proposal shall have no effect with regard to rates made before the said first day of October.

As to modification and application of s. 73 (qualifications of voters) in municipalities where rating on unimproved values is in operation.
No. 5203 s. 328.

330. Notwithstanding anything in this Act, in the case of any municipality in which this Part or any corresponding previous enactment has been adopted and so long as the adoption remains unrescinded—

(*a*) section seventy-three of this Act shall be read and construed as if for the references to the respective values set forth therein there were substituted references to the respective unimproved capital value units equivalent to such respective values:

For the purposes of this section, the respective unimproved capital value units shall be ascertained in the following manner :—

First, the amount (in pence) in the pound of the rate which, on the basis of the net annual value of all rateable property in the municipality, would be required to be levied to produce approximately as nearly as practicable the same total amount of revenue in the municipality as the total amount of revenue produced by the rate made and levied under this Part shall be ascertained ;

Secondly, the respective values set forth in the said section seventy-three shall be multiplied respectively by the amount (in pence) so ascertained ;

Thirdly, the products respectively obtained as the result of each of the last-mentioned calculations shall then be divided by the amount (in pence) in the pound of the rate made and levied under this Part—

and the the respective resultant numbers (computed in each case to the nearest whole number) shall be deemed to be the respective unimproved capital value units (in pounds) ;

(*b*) in applying the provisions of the said section seventy-three as so modified regard shall be had to the unimproved capital value of the property and not to the net annual value of the property ; and

Fourth Schedule.
Ninth Schedule.

(*c*) the Fourth and Ninth Schedules shall be read and construed as if—

(i) after the expression "Yearly value of rateable property" there were inserted the expression "Unimproved capital value";

(ii) after the expression "£50" there were inserted the expression "£236 (*or as the case may be*)"; and

(iii) after the expression "£12" there were inserted the expression "£57 (*or as the case may be*)".

As to rating on unimproved capital values in new municipality constituted out of portion severed from another municipality. No. 5203 s. 329.

331. Where portion of the municipal district of a municipality in which rating on unimproved capital values is in force is severed from such municipal district and constituted a new municipality—

(*a*) this Part shall be deemed to have been adopted in such new municipality on the day on which it was adopted in the first-mentioned municipality; and

(*b*) if any proposal for rescinding the adoption of this Part has been rejected at a poll of the ratepayers of such first-mentioned municipality at any date before such severance, such a proposal shall be deemed to have been rejected also at a poll of the ratepayers of the new municipality at such date.

DIVISION 6.—VALUATIONS.

332. (1) For the purposes of rates under this Part—

Valuations and appeals. No. 5203 s. 330; No. 6151 s. 7.

(*a*) valuations of rateable properties (other than "special rateable properties") shall be made and appeals and objections against rates may be made and shall be dealt with in accordance with the provisions of any Act relating to local government with the following modifications:—

Valuations to set out unimproved capital value and capital improved value and net annual value.

(i) In every valuation such rateable property shall be computed at its unimproved capital value and at its capital improved value and at its net annual value and the said respective values shall be set out in the valuation and return and in the rate;

Appeals.

(ii) Any appeal on the ground of unfairness or incorrectness in the valuation of any such rateable property included in any rate or the amount assessed thereon may be made with reference to such valuation on the basis of the unimproved capital value or of the capital improved value or of the net annual value of the rateable property or of all or any of them but so that all the grounds of appeal shall be included in the one appeal;

Provision in case of several occupations in one ownership.

(*b*) where it is necessary to determine the capital improved value and the unimproved capital value of any rateable property in respect of which any

person is liable to be separately rated but which forms portion of a larger rateable property the capital improved value or the unimproved capital value of each such portion shall be as nearly as practicable the sum which bears the same proportion to the capital improved value or the unimproved capital value respectively of the whole property as the net annual value of the portion bears to the net annual value of the whole property;

New valuations to be made at least once in every six years.

(*c*) new valuations shall (notwithstanding anything in any Act) be made of all rateable properties in the municipal district at least once in every six years :

Power to extend the period for valuation by special order approved by Governor in Council.

Provided that, where the council of a municipality is of opinion that no general appreciable change has taken place in the values of rateable property within the municipal district, the council may by special order (confirmed at least three months before the thirtieth day of September occurring within the sixth year after the date of the return of the last valuation of all rateable property in the municipal district) extend the period of six years hereinbefore referred to for such a period from such date as the council thinks fit, such period not to exceed four years:

Provided further that—

(i) at any time before such special order is confirmed the owner of any rateable property in the municipal district may appear before the council and object to such extension, and the council shall hear the objection and consider the same before confirming such order ; and

(ii) such special order shall not have any force or effect unless the same (whether with or without variation with respect to the lessening of the period as hereinafter provided) is approved by the Governor in Council at least one month before the thirtieth day of September occurring within the sixth year after the date of the return of the last valuation of all rateable property in the municipal district ; but the Governor in Council may approve the special order with a variation

providing that the extension is to be for a less period than that set forth in the special order, in which case the special order varied as aforesaid shall have full force and effect.

(2) For the purposes of this Part forms of valuation and return and forms of notices and of rates shall be modified as prescribed. Modification of forms.

333. In the case of any municipality in which this Part or any corresponding previous enactment has been adopted and so long as the adoption remains unrescinded— Amount in the pound of rate under the Act as compared with rate in the pound under other Acts. No. 5203 s. 331; No. 5443 ss. 10 (3), 13 (1).

(*a*) any reference in any Act (other than this Part of this Act) to the amount in the pound of any rate on the basis of the annual value or the net annual value (as the case may be) or rateable property shall be read and construed as referring to the amount in the pound of a rate under this Part adjusted so as to approximate as nearly as practicable in its total revenue-producing capacity to the corresponding rate in the pound on the basis of the annual value or the net annual value (as the case may be) without regard to the fact that the sum leviable in respect of any rateable property under a rate made pursuant to this Part may or may not exceed the sum which would be leviable in respect of that property under a rate made on the basis of the annual value or the net annual value thereof (as the case may be) ;

(*b*) notwithstanding anything in this Part or in any Act relating to local government the minimum amount payable under any rate made upon any person in respect of any rateable property on the basis of the unimproved capital value thereof shall be Five shillings ; Minimum amount payable under rate.

(*c*) save as otherwise expressly provided in this Part where any qualification right endowment power authority privilege duty franchise claim or demand of any kind or any proportionate amount of rating (whether under *The Constitution Act* or any Act amending the same or under any Act relating to local government or under any other Act whatsoever) is dependent upon— Rights &c. dependent on value of properties.

(i) the capital value of property ; or

(ii) the yearly, annual, or net annual value of rateable property or the rateable value of property—

then so far as regards the municipal district of that municipality or any subdivision thereof and notwithstanding anything contained in this or any other Act such values shall be taken to mean and refer respectively to the capital improved value thereof or (as the case may be) the annual value or the net annual value thereof and any reference in any Act to property valued assessed or rated at on or upon any of the first mentioned values or to any person assessed or rated at on upon or in respect of any such property or value or any like reference shall be read and construed as if the valuation assessment or rating were actually at on upon or in respect of the capital improved value of the property or (as the case may be) the annual value or the net annual value thereof ;

Endowment not to be affected.

(*d*) nothing in this Part shall be deemed to affect or prejudice the municipality so far as regards any sum which may be payable from the Consolidated Revenue;

(*e*) (i) notwithstanding anything in this Act (except paragraph (*b*) of this section) the general rate leviable in respect of any farm land may be less in amount than the general rate leviable in respect of other land in the municipal district, and in making the general rate the council of the municipality shall fix the amount in the pound of the rate to be levied in respect of farm land ;

(ii) the onus of proof that any land is farm land for the purposes of this paragraph (*e*) shall lie upon the ratepayer, and the council's decision with regard thereto may be the subject of an appeal by the ratepayer under Division seven of Part X. of this Act ;

(iii) for the purposes of this paragraph (*e*) " farm land " means rateable property which is not less than five acres in area and which is wholly or mainly maintained or used for the time being by the occupier for carrying on one or more of the following businesses or industries, namely, grazing dairying pig-farming poultry-farming bee-keeping viticulture horticulture fruit-growing or the growing of crops of any kind.

Adoption of municipal valuations by certain statutory Authorities. No. 5203 s. 332; No. 5331 s. 2.

334. Except as provided in the *Water Act* 1958 where any public corporation or Authority (other than the municipality concerned) specially constituted under the express provisions of any Act is empowered to make and levy rates in respect of lands or properties in the municipal district of any municipality in which this Part or any corresponding previous enactment has been adopted and is also required to adopt the valuations of such lands or properties in force for the municipality then, so long as the adoption of this Part of the said corresponding previous enactment remains unrescinded, such corporation or Authority shall adopt as such valuations the valuations for the time being in force made by the municipality on the basis of the net annual value of such lands or properties.

Rates from land on which school buildings are erected. No. 5203 s. 333.

335. In the case of every municipality in which this Part or any corresponding previous enactment has been adopted and so long as the adoption remains unrescinded the unimproved capital value of any land being rateable property used exclusively for a school registered under Part III. of the *Education Act* 1958 shall notwithstanding anything in this Part be deemed and taken for the purposes of this Part to be an amount equal to the unimproved capital value of that portion only of the land on which there are buildings used exclusively for the purposes of the school (including any buildings used for the accommodation of pupils or of members of the staff of the school).

Rating or "special rateable properties." No. 5203 s. 334.

336. The following provisions shall have effect with respect to "special rateable properties" within the meaning of this Part :—

(*a*) Such rateable properties shall not be rateable under this Part on the basis of the unimproved capital value thereof ;

(*b*) Valuations thereof shall be made and rates shall be made and levied in respect thereof, and appeals and objections against such rates may be made and shall be dealt with in all respects as if this Part had not been passed :

Amount in the pound of rates in respect of "special rateable properties."

Provided that the amount in the pound of each rate to be made and levied in respect of such rateable properties shall be determined as follows :—

(i) A computation shall be made showing as nearly as practicable the total sum to be produced by the rate proposed to be made at the same time in respect of the other rateable properties in the municipal district on the basis of the unimproved capital value thereof ;

(ii) From the result of that computation there shall be ascertained what amount in the pound on the basis of the net annual value of the last-mentioned rateable properties would be necessary to produce that total sum ; and

(iii) The amount in the pound of the rate to be made and levied in respect of the "special rateable properties" shall be as nearly as practicable the same as the amount in the pound ascertained as aforesaid.

Power to Governor in Council to declare land, works &c. to be "special rateable properties."
No. 5203 s. 335.

337. The Governor in Council by Order published in the *Government Gazette* may—

(*a*) declare any land works or other rateable properties to be "special rateable properties" within the meaning of this Part in any special case where the Governor in Council is satisfied that it is impracticable to make and levy rates in respect of such land works or properties on the basis of the unimproved capital value thereof ; and

(*b*) by like Order rescind revoke amend or vary any Order made under this section.

338. Notwithstanding anything in this Part—

Valuations of lands held under certain licences.
No. 5203 s. 336.

(*a*) the capital improved value and the unimproved capital value respectively of any lands referred to in section two hundred and fifty-two or in sub-section (3) of section two hundred and fifty-four of this Act shall for the purposes of this Part be taken to be twenty times the annual value thereof as ascertained under the said section two hundred and fifty-five; and

(*b*) the capital improved value and the unimproved capital value respectively of unused roads and water frontages licensed under Part XLVIII. or any corresponding prior enactment shall for the purposes of this Part be taken to be twenty times the annual licence-fee payable for the same under the said Part XLVIII.

DIVISION 7.—REGULATIONS.

Regulations.
No. 5203 s. 337.

339. The Governor in Council may make regulations for or with respect to—

(*a*) prescribing any matters authorized or required by this Part to be prescribed ;

(*b*) prescribing forms for use under this Part; and

(*c*) prescribing any matters necessary or convenient to be prescribed for carrying out the purposes of this Part.

Forms. No. 5203 s. 338.

340. (1) Any forms so prescribed or forms to the like effect shall be sufficient in law.

Publication.

(2) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

PART XII.—PAYMENT AND RECOVERY OF RATES AND OTHER MONEYS.

DIVISION 1.—RECOVERY OF RATES BY LEGAL PROCESS.

(1) *From Person Rated.*

Recovery of rates from person rated before justices or by action. No. 5203 s. 339.

341. (1) If any person rated under the provisions of this Act fails to pay any of the rates due from him for the space of fourteen days after demand thereof in writing by the council of the municipality or its collector duly authorized in that behalf to receive such rates, the council may recover such rates from such person so making default before any court of petty sessions or by an action of debt in any court having jurisdiction.

Statement in demand.

(2) Every such demand shall contain a statement of the amount of the valuation of the property and a statement to the effect that such rates are a charge upon the property and also that, unless paid on or before a date specified in the demand and fixed in accordance with sub-section (2) of section three hundred and eighty-six of this Act, they will bear interest from the day on which they became payable at the rate of Six pounds per centum per annum.

Occupier rated may pay rates and recover amount paid or deduct it from rent. No. 5203 s. 340.

342. (1) Any person rated as occupier of any rateable property who pays any rates due in respect thereof shall (unless under any agreement such rates are payable by him) be entitled to recover before any court of petty sessions or by action of debt in any court of competent jurisdiction from the person to whom he is liable to pay rent or to deduct from any rent payable or to become payable by him, the amount so paid by or recovered from him.

(2) The production of the receipts for such rates so paid by or recovered from such occupier shall, on payment of rent, be a good and sufficient discharge for the amount so paid or recovered.

Remedy against person quitting before payment of rates.
No. 5203 s. 341.

343. If any person quits or is about to quit any rateable property before he has paid the rates then payable by him in respect thereof, and does not pay the same to the council of the municipality or their collector on demand, any justice may upon the complaint of any officer of the council, and upon such proof by oath or affidavit as appears satisfactory to such justice *ex parte* or otherwise, make an order directing the same to be paid by such person either forthwith or at such time or times as to such justice may seem fit.

Rates to be apportioned if person rated ceases to be occupier or owner during currency of rate.
No. 5203 s. 342.

344. (1) When the occupier or owner of any rateable property who is rated to any rate ceases to be liable to be rated in respect of such property before the end of the period for which such was made, such occupier or owner shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be liable to be rated as such occupier or owner.

Liability of the person thereafter liable to be rated.

(2) In every such case when any person liable to be rated ceases during the period for which such rate was made to be so liable every person who after the making of such rate shall be the occupier of owner of the property as aforesaid during any subsequent part of the period for which such rate was made and liable to be rated in respect thereof, shall pay a portion of such rate proportionate to the time during which he occupied or owned the property so rated ; and the same shall be recovered from him in the same manner as if he had been originally rated for such property.

All rates may be included in one summons.
No. 5203 s. 343.

345. (1) All rates due by the same person whether under this Act or any Act previously in force relating to local government may be included in one complaint and summons.

Invalidity &c. of rate no defence.

(2) Upon any complaint or action for the recovery of any rate from any person, the invalidity or badness of the rate, as a whole or in respect to any part thereof, shall not avail to prevent such recovery.

(2) *When Person Rated fails to Pay.*

Recovery of rates from owner for the time being or occupier for the time being.
No. 5203 s. 344.

346. (1) When any rate in respect of any rateable property remains unpaid for three months the council or its collector, notwithstanding any judgment or order of any court or justice for the recovery of such rate from any other person may, by notice in writing, or by notice published in the *Government Gazette* and

in some newspaper generally circulating in the neighbourhood, demand the amount of such rate or any part thereof from the occupier for the time being or the owner for the time being of such property, and on nonpayment thereof may after one month from the service or publication of such demand recover the same from such occupier or owner before a court of petty sessions or by an action of debt in any court of competent jurisdiction.

(2) The provisions of the last preceding section shall also apply to all proceedings under this subdivision.

Owner for the time being paying rates payable by occupier may in certain cases recover amount paid as if it were arrears of rent.

(3) When the owner for the time being of any rateable property pays under the provisions of this section any rates in respect thereof which under any agreement are payable by the occupier at the time of such payment or any previous occupier thereof, the said owner may recover the sum so paid, if not paid on demand, from any such occupier as arrears of rent could be recovered.

Occupier for the time being paying rates may recover amount paid or deduct it from rent.

(4) When the occupier for the time being of any rateable property shall under the provisions of this section pay any rates in respect thereof he shall (unless under any agreement such rates are payable by him) be entitled to recover the same before a court of petty sessions or by action of debt in any court of competent jurisdiction from the person to whom he is liable to pay rent or to deduct from any rent payable or to become payable by him the amount so paid by or recovered from him, and the production of the receipts for such rates so paid by or recovered from such occupier shall on payment of rent be a good and sufficient discharge for the amount so paid or recovered.

Amount of rates which occupier for the time being may be required to pay.

(5) No such occupier shall under this section be required to pay any further sum than the amount of rent due from him at the time of the demand made upon him for such rates, or which after such demand and after notice not to pay the same to his landlord at any time has accrued and become payable by him, unless under any agreement such rates are payable by him or he neglects or refuses on application being made to him for that purpose by or on behalf of the council truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable; but the burden of proof that such rates are not under any agreement payable by him, or that the sum demanded of such occupier is greater than the rent due by him at the time of such notice or which has since accrued shall be upon such occupier.

No liability for rates attached to Crown or to certain corporations &c.
No. 5203 s. 345; No. 5387 s. 2.

347. No liability in respect of any rates shall attach to the Crown or to the Minister of Education or to any of the persons or corporations referred to in paragraph (*c*) or paragraph (*d*) of sub-section (1) of section two hundred and fifty-one.

DIVISION 2.—RECOVERY BY LEGAL PROCESS OF MONEYS OTHER THAN RATES.

Moneys payable by owner or occupier how recoverable from him.
No. 5203 s. 346.

348. If the owner or occupier of any building or land made liable by this or any other Act for the payment to any municipality of any moneys in respect thereof other than rates does not as soon as the same became due and payable pay all such moneys, the council may recover the same from such owner or occupier before a court of petty sessions or in an action of debt in any court of competent jurisdiction.

May in certain cases be recovered from owner or occupier for the time being.
No. 5203 s. 347.

349. The council may by way of additional remedy, whether any such action or proceeding has been brought or taken against any such owner or occupier or not, require the payment of all or any part of such moneys from the owner for the time being, or from the occupier for the time being, of any such building or land, and in default of payment thereof by such owner for the time being or occupier for the time being on demand the same may be recovered from him before a court of petty sessions or in an action of debt in any court of competent jurisdiction.

Payment by instalments in certain cases.
No. 5203 s. 348.

350. (1) The council may if it thinks fit, at the request of any owner, allow time for the payment of such moneys other than rates, and receive the same by such instalments as it under the circumstances of the the case considers reasonable, but so that the same be paid by annual instalments of not less than one-seventh part of the whole sum originally due with interest for the principal money from time to time remaining unpaid at the rate of Six pounds per centum per annum during the period of forbearance.

(2) But all such sums remaining due, notwithstanding the council has agreed to allow any time for the payment thereof as aforesaid, shall from time to time, at the expiration of the several times so allowed for payment thereof, be recoverable in like manner as such respective amounts would have been recoverable if no time had been allowed for payment thereof.

(3) If any such instalment or interest thereon is not paid when it becomes due, the council may thereupon recover the full amount of the original sum then unpaid and interest as if such agreement had not been entered into.

But occupier not to be required to pay more than rent due or to become due after notice.
No. 5203 s. 349.

351. (1) No occupier of any building or land shall under the provisions of section three hundred and forty-nine be required to pay any further sum in respect of any such moneys than the amount of rent due from him for the premises in respect of which such moneys are payable at the time of the demand made upon him, or which at any time after such demand and notice not to pay the same to his landlord has accrued and become payable

by him, unless under any agreement such moneys are payable by him or he neglects or refuses upon application made to him for that purpose by or on behalf of the council truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable.

(2) The burden of proof that such moneys are not under any agreement payable by him or that the sum demanded of any such occupier is greater than the rent which was due by him at the time of such demand, or which has since accrued, shall be upon such occupier.

DIVISION 3.—RECOVERY OF RATES AND OTHER MONEYS AGAINST PERSONS APPEARING TO BE OWNERS OF THE LEGAL ESTATE.

Rates and other moneys recoverable from person appearing to be owner of legal estate in the land. No. 5203 s. 350.

352. (1) All rates or other moneys recoverable by the council of any municipality under any Act from the owner of any property in respect thereof may be recovered against any person appearing to be the owner of the legal estate in such property by instruments registered in the Office of Titles or the Office of the Registrar-General irrespective of any trust equity of redemption contract of sale or other equity or of any unregistered interest.

May be recovered before justices or in court having jurisdiction.

(2) Such rates or other moneys may be recovered—

(*a*) by action or proceeding in any court having jurisdiction; or

(*b*) before a court of petty sessions in case such moneys are so recoverable.

Judgment or order against such person as owner of the property.

(3) If such owner of the legal estate does not admit that he is the owner of the property within the meaning of such Act and he is not proved to be such last-mentioned owner to the satisfaction of the court judgment may be given or an order made against him as owner of the property in question describing it so as to identify the same.

Costs.

(4) In such case unless the court otherwise order such owner of the legal estate shall be entitled to his costs as between solicitor and client as against the municipality, and the municipality may add such costs to the judgment or order.

Judgment or order may be enforced by sale.

(5) Such judgment or order may be enforced by sale of such property or a sufficient part thereof but not otherwise.

Proceedings not a bar to other action or proceedings.

(6) The commencement of any such action or proceeding or the recovery of any such judgment or order until the same is satisfied shall not be a bar to any other action or proceeding for the recovery of such moneys.

Power to remove order of inferior tribunal in favour of municipality into the Supreme Court.

No. 5203 s. 351.

353. In any case in which the council of any municipality obtains such judgment or order for the payment of any rates or other moneys due by the owner of any property in respect thereof from a court of petty sessions or from any court other than the Supreme Court such council may remove such judgment or order together with all costs awarded into the Supreme Court and may sign judgment thereon, and upon such final judgment or order execution may issue against the property by reason of the ownership of which the money was due in the same manner as if the same were a judgment or order of the Supreme Court obtained as in this Division mentioned.

Judment how enforced.

No. 5203 s. 352.

354. (1) Subject to any rule of the Supreme Court for the time being in force every such judgment or order shall be enforced by a writ of *fieri facias* which shall resemble the writ ordinarily in use in all respects except that it shall direct the sheriff to cause to be made the amount of the judgment or order costs and interest out of the particular property only, and the procedure upon such writ except as herein otherwise provided shall be the same in all respects as upon an ordinary writ of *fieri facias* according as the property is or is not under the provisions of the *Transfer of Land Act* 1958.

No sale until two years after date of judgment or order.

Notice of sale.

(2) No sale shall be made under any such writ until two years after the date of the judgment or order, and unless the sheriff causes notice of such sale setting forth the time and place of holding it to be posted on the property and at the post office which the sheriff may consider is nearest to the property, one month at least before the sale and to be kept so posted up to the day of sale, but in case any such notice is removed without the consent of the sheriff it shall be sufficient if it is restored in a reasonable time after the sheriff has notice of its removal.

Property under the *Transfer of Land Act.*

(3) In case of property under the provisions of the *Transfer of Land Act* 1958—

(*a*) a writ duly entered in the register-book shall not cease to bind charge or affect the property until fifteen years from the date of the judgment or order ;

(*b*) and upon receipt of a copy of a writ of *fieri facias* issued upon any such judgment or order as aforesaid the Registrar of Titles shall give any person who has lodged a caveat in the form in the Sixteenth Schedule to the *Transfer of Land Act* 1958 referring to the said property the same notice that he would be required to give in case an instrument affecting the property were lodged for registration.

Title of purchaser from sheriff. No. 5203 s. 353.

355. Any purchaser of any such property not being under any personal obligation with respect thereto upon obtaining a transfer or conveyance thereof from the sheriff shall hold the same notwithstanding any knowledge or notice free from any trust equity of redemption contract of sale or other equity and from any unregistered interest.

Application of proceeds of sale. No. 5203 s. 354.

356. The proceeds of the sale shall be applied—

(*a*) first in payment of the costs and expenses thereof;

(*b*) next in satisfaction of the judgment or order—

and the sheriff shall be deemed a trustee of the balance (if any) within the meaning of section sixty-nine of the *Trustee Act* 1958 and shall deal with such balance as trustees are thereby permitted to deal with moneys in their hands belonging to any trust; and any persons claiming to be entitled thereto may make such application to the court as they may be advised.

DIVISION 4.—POWER TO PAY AND RIGHTS OF PERSONS PAYING IN CERTAIN CASES.

Owner of legal estate paying rates or other moneys due by owner. No. 5203 s. 355.

357. (1) The owner of the legal estate in any property not being the owner thereof within the meaning of any Act may if he thinks fit pay to the council of any municipality any rates or other moneys payable by such last-mentioned owner as such under the provisions of any such Act or to the sheriff or other officer having the execution thereof any money required to satisfy any writ in his hands on any such judgment or order.

(2) The person making such payment shall have the same rights as if such money was principal money advanced by way of loan to such last-mentioned owner secured or charged by deed on such property or on the interest of such last-mentioned owner therein payable to the person making such payment according to the terms of the deed forthwith on such payment being made with interest thereon at the rate of Six pounds per centum per annum.

Mortgagee paying rates or other money due by owner. No.5203 s. 356.

358. (1) If the owner of any property within the meaning of any Act holds the same subject to any mortgage the mortgagee of such property may if he thinks fit whether he is legally bound to do so or not pay to the council of any municipality any rates or other moneys payable by such owner of such property under such Act or to the sheriff or other officer having the execution thereof any money required to satisfy any writ in his hands on any such judgment or order.

(2) Such mortgagee shall have such rights in respect of such payment as may be expressed or implied in the mortgage contract and in addition so far as there is nothing inconsistent in the

mortgage contract shall have the same rights as are in this Division conferred upon the owner of the legal estate making any such payment.

(3) Any mortgagee shall be entitled to be recouped in manner aforesaid by his mortgagor any money *bona fide* paid as aforesaid to the council of any municipality demanding the same.

(4) But in case any such money was not properly payable by such mortgagor such mortgagor shall be entitled to recover back the same with interest from the municipality.

Recovery by purchaser of property of rates and other moneys from vendors in certain cases.
No. 5203 s. 357.

359. Every person who pays any sums due for rates or other moneys whether directly to any municipality or to recoup any purchaser from such person shall subject to any agreement to the contrary be entitled to recover in any court of competent jurisdiction from the person (if any) from whom he purchased the said property as money paid for his use the said moneys or so much thereof as was due at the date of the purchase and interest thereon at the rate of Six pounds per centum per annum.

DIVISION 5.—RECOVERY OF RATES AND OTHER MONEYS BY TAKING POSSESSION OF THE LAND.

Power to take possession of and lease property on which arrears of rates or other moneys or interest are due.
No. 5203 s. 358.

360. Where any rateable property in any municipal district is unoccupied and rates or other moneys in respect thereof or interest thereon (if any) accrued under any Act heretofore in force or this Act have been unpaid for five years, the council may in the name of the municipality take possession of such property and may hold the same as against any person interested therein and from time to time grant leases of the same subject to the provisions hereinafter contained.

Notice to be given before taking possession.
No. 5203 s. 359.

361. (1) The council shall not take possession of any such property until twenty-eight clear days after a notice in writing—

(*a*) has been served on every person in Victoria entitled to an estate of freehold in possession in such property or to the possession of such property under any lease whose name and address is known to the council; or

(*b*) has been affixed to some conspicuous place on such property if there is no such person whose name and address is so known.

Contents of notice.

(2) Every such notice shall set forth that rates or other moneys and interest thereon in respect of such property are unpaid and shall demand payment thereof and shall state that in default of such payment the municipality will take possession thereof under the provisions of this Act.

(3) Every such notice shall contain a sufficient description of the property to identify the same.

(4) Every lease granted by the council otherwise in accordance with the provisions of this Act shall be valid notwithstanding the non-compliance with any of the provisions of this section unless all rates and other moneys and interest thereon due in respect of such property are paid and a release demanded from the council within twelve months after the council takes possession. Leases validated.

362. On taking possession of any property as aforesaid the council shall cause to be affixed upon some conspicuous part thereof a notice that such property has been taken possession of by the municipality under the provisions of this Act, and is to let on lease. Notice to be affixed on taking possession. No. 5203 s. 360.

363. Every lease made hereunder shall be for such term not exceeding fifteen years as to the council may seem fit, and shall reserve the best rent which can be reasonably gotten for such property, and shall contain and be subject to such other reservations and such exceptions covenants and conditions as to the council may seem fit. Lease. No. 5203 s. 361.

364. (1) Within three months after demand by any person who but for the provisions of this Act would be entitled to the possession of any such property made within thirty years after the taking possession thereof on the part of the council and after payment of all rates and other moneys and interest thereon due in respect thereof the council shall execute under the common seal of the municipality a release of such property from all such rates and other moneys and interest. Release of property after demand and payment of arrears and interest. No. 5203 s. 362.

(2) If the council makes default in executing such release the Supreme Court may at the suit of any person interested in that behalf compel them so to do. Procedure on default by council in executing release.

(3) Upon the execution of such release subject to any lease theretofore lawfully granted by the council under the provisions of this Act such person or persons shall be entitled to such property and the possession thereof as would have been so entitled if this Act had not passed, and any tenant of such property under any such lease shall attorn to such person or persons accordingly. Effect of release.

365. (1) All rents and other moneys payable under any such lease shall, until the execution of a release as hereinbefore mentioned or the expiration of thirty years from the council's taking possession or the sale of the property in accordance with Application of rents. No. 5203 s. 363.

the provisions of Division six of this Part whichever shall first happen, be received by the council of the municipality and shall be applicable—

(*a*) in defraying the expenses of and incidental to the execution of such lease and the collection of the rents;

(*b*) in payment to the council of all arrears of rates and other moneys and other payments due in respect of such property, together with interest on such arrears, and in payment of all rates and other moneys and interest thereon (if any) and other payments accruing due thereon.

(2) The council shall cause an account to be kept of all moneys so received and paid.

(3) The residue of any such moneys shall belong to such person or persons as would when the same respectively were received have been entitled to receive the rents and profits of such property if it had not been taken possession of by the council.

After thirty years property to vest in municipality.
No. 5203 s. 364.

366. Unless some person entitled in that behalf performs the conditions entitling him to demand a release of any property of which the council of any municipality has taken possession under the foregoing provisions within thirty years after such taking possession, or unless the property has been sold in accordance with the provisions of Division six of this Part (as the case may be) such property and all accumulations of rent and other moneys on account thereof shall on the publication of the order as hereinafter mentioned vest absolutely in the municipality.

Governor in Council may declare the property to be vested in municipality.
No. 5203 s. 365.

367. (1) The Governor in Council upon satisfactory evidence that such property was taken possession of by the council at least thirty years previously and that no person has performed the conditions entitling him to demand a release of such property and that the property has not been sold in accordance with the provisions of Division six of this Part may by order published in the *Government Gazettee* describing such property declare the same to be vested in the municipality.

Publication of order of Governor in Council brings the land under the *Transfer of Land Act*.

(2) The publication of such order shall have the effect of bringing under the operation of the *Transfer of Land Act* 1958 such land if not already under such Act.

Registrar of Titles to register transfers from the municipality.

(3) If an instrument of transfer of such land under the common seal of such municipality shall be presented to the Registrar of Titles accompanied by a copy of such *Gazette* notice the Registrar shall proceed to register such transfer in like manner as if it had been accompanied by a certificate of title in the name of such municipality to the land purporting to be so transferred.

DIVISION 6.—RECOVERY OF RATES AND OTHER MONEYS BY SELLING THE LAND.

Power of council to sell vacant land charged with rate unpaid for not less than seven years. No. 5203 s. 366.

368. Where default has been made in the payment to a municipality (including the city of Melbourne or the city of Geelong) of a rate charged on any land and such default has continued for not less than seven years and the land is and has been for more than five years vacant and unoccupied the council of the municipality shall by virtue of this Division of this Part have the following powers:—

(*a*) A power to sell the land; and

(*b*) A power to convey or transfer the land sold.

Powers included in power of sale. No. 5203 s. 367.

369. The said power of sale shall include a power to sell the land or any part thereof either together or in lots by public auction or by private contract subject to such terms and conditions respecting title or evidence of title or payment of the purchase money or other matter as the council thinks fit with power to vary any contract of sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable for any loss occasioned thereby with power to make such roads streets and passages and grant such easements of right of way or drainage over the same as the circumstances of the case may require and the council thinks fit:

Provided that the land shall not be sold by private contract unless and until the same has been first offered for sale by public auction.

Conditions for exercise of power of sale. No. 5203 s. 368.

370. A council shall not exercise the power of sale conferred by this Division unless and until notice requiring payment of all rates and interest owing in respect of the land has been—

(*a*) in the case of land under the *Transfer of Land Act* 1958—served on the person registered as proprietor thereof by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book; or

in the case of land not under the *Transfer of Land Act* 1958—served on the owner or person appearing by the last memorial of registration relating to the land in the office of the Registrar-General to be the owner thereof by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the said memorial;

(*b*) served on every person appearing by the register book or any memorial of registration in the office of the Registrar-General to have any estate or

interest in the land by being delivered to him or by being sent in a registered letter posted to him at his address (if any) appearing in the register book or memorial of registration;

(*c*) posted on the land for not less than one month; and

(*d*) posted in a conspicuous place at the municipal office of the council for not less than one month:

Provided that if in the case of any person required by this section to be served no address appears in the register book or memorial of registration notice requiring payment shall be served on such person by being advertised once in a newspaper circulating in the neighbourhood of the land and once in a newspaper published in the city of Melbourne.

Notice and contents thereof. No. 5203 s. 369.

371. (1) Every such notice requiring payment shall—

(*a*) be in writing and be dated and signed by the municipal clerk on behalf of the council;

(*b*) specify the total amounts owing in respect of rates and interest thereon respectively of which payment is required;

(*c*) specify the land in respect of which the rates and interest are owing by a sufficient description of such land; and

(*d*) include a statement that in default of payment of the amounts therein specified together with interest on the amount owing in respect of the rates up to the time of payment at the rate of Six pounds per centum per annum the land will be offered for sale by public auction after the expiration of three months from the date of the notice at a time appointed by the council of the municipality.

Form. Twenty-second Schedule.

(2) Every such notice may be in the form or to the effect of the Twenty-second Schedule.

Notice including lands of several owners.

(3) Notwithstanding anything in this Division in any notice under this section which under the proviso to the last preceding section is required to be served by being advertised as provided in the said proviso it shall be competent to include lands within the same municipality belonging to more than one owner; and such notice may be in the form or to the effect of the Twenty-third Schedule.

Twenty-third Schedule.

Time to be fixed for sale. No. 5203 s. 370; No. 5843 s. 15.

372. (1) The council shall appoint a time not less than three months or more than twelve months from the service of the notice on the proprietor or owner at which the land may be offered for sale by public auction.

(2) If any person tenders the amount owing for rates and interest after a notice as required by this Division has been served and after the council has incurred any expenses in connexion with the proposed sale the council may refuse to accept such amount unless the expenses reasonably incurred in connexion with such proposed sale are also paid or tendered by such person.

Power to councils to recover costs incurred preparatory to selling land for rates.

373. The sale shall be advertised—

Advertisement of sale. No. 5203 s. 371.

(*a*) once at least in a newspaper circulating in the neighbourhood of the land;

(*b*) once at least in a newspaper published in the city of Melbourne;

(*c*) by posting a copy of the advertisement in a conspicuous place at the office of the council and keeping the same so posted for not less than twenty-one days;

(*d*) by posting a copy of the advertisement on the land and keeping the same so posted for not less than twenty-one days; and

(*e*) by such further or other means as in the circumstances are reasonable and proper.

In the advertisement of any such sale it shall be competent to include lands within the same municipality belonging to more than one owner.

Contents of advertisement.

374. A council exercising the power of sale conferred by this Division shall in the name of the municipality have power by deed (where the land is not under the *Transfer of Land Act* 1958) and by transfer (where the land is under that Act) to convey or transfer the land sold for such estate and interest therein as are subject to the charge of the municipality freed from all estates interests and rights to which the municipality has priority by virtue of its charge.

Power of the council in the name of the municipality to convey or transfer the land sold. No. 5203 s. 372.

375. Where a conveyance or transfer is made in professed exercise of the power of sale conferred by this Division the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the municipality in whose name the power was exercised.

Title of purchaser. No. 5203 s. 373.

As to land under the *Transfer of Land Act*, 1958 No. 5203 s. 375; No. 5842 s. 2.

376. Where the land sold is under the *Transfer of Land Act* 1958 the following provisions shall apply:—

Execution and form of transfer.

Twenty-fourth Schedule.

(*a*) The instrument of transfer to be executed in exercise of the power of sale conferred by this Division shall be executed under the seal of the municipality and shall be in the form in the Twenty-fourth Schedule;

Power of Registrar to dispense with duplicate grant or certificate.

(*b*) The Registrar of Titles may dispense with the production of the duplicate grant or certificate of title for the purpose of registering any instrument of transfer made in exercise of the power of sale conferred by this Division. In every such case upon the registration of the transfer the Registrar shall notify in the memorial in the register book that no entry of such memorial has been made on the duplicate and such transfer shall be as valid and effectual as if such memorial had been entered thereon;

Cancellation of mortgages and charges.

(*c*) The Registrar shall upon the registration of a transfer in exercise of the power of sale conferred by this Division cancel any mortgages or charges registered as encumbrances on the land by writing or printing on each memorial of registration of each instrument so registered the word "discharged" and the date of cancellation and signing his name thereto; and

Effect of transfer.

(*d*) The registration of such instrument of transfer shall vest in the transferee named therein all the estate and interest in the land therein mentioned of the registered proprietor free from all estates interests and rights to which the municipality has priority by virtue of its charge; and on such registration the transferee shall be deemed thenceforth to be the proprietor of the land for all the said estate and interest free as aforesaid.

Combination of all lands of same owner. No. 5203 s. 376.

377. If rates or other moneys are owing for the period aforesaid in respect of more than one piece of land in the name of the same owner within the same municipality all the said moneys and all the said lands may be set forth in one notice requiring payment and in one advertisement of sale and in one notice under the last preceding section.

Application of purchase money. No. 5203 s. 377 (1); No. 5924 s. 8 (1) (*b*).

378. The money received by the council arising from the sale shall be held by the council in trust to be applied—

firstly, in payment of all costs charges and expenses properly incurred by the council as incidental to the sale or any attempted sale or otherwise;

secondly, in discharge of the rates interest and costs and other moneys (if any) due to the municipality and charged on the land including any moneys and charges ranking *pari passu* therewith and due to any other statutory body;

thirdly, in discharge of any mortgages and charges whether registered or not to which the charge of the municipality has priority according to their respective priorities as far as the same can be ascertained by the council; and

fourthly, in payment of the residue of the money within twelve months after the receipt thereof to the registered proprietor or owner of the land or into the Supreme Court under the provisions so far as they are applicable of section sixty-nine of the *Trustee Act* 1958 and the Rules referred to therein.

Receipt of council discharge. No. 5203 s. 377 (3).

379. The receipt in writing of the council sealed with the seal of the municipality shall be a sufficient discharge for any money arising under the power of sale conferred by this Division and a person paying the same to the council shall not be concerned to inquire whether any money remains due to the council for rates in respect of the land sold.

Extension of powers of sale to case of moneys other than rates. No. 5203 s. 378.

380. The powers conferred on a council by this Division shall extend and apply to all other moneys payable in respect of any land to a municipality which are under this or any other Act made a charge upon the land where—

(*a*) default has been made in payment of such money; and

(*b*) such default has continued for not less than seven years; and

(*c*) the land is and has been for more than five years vacant and unoccupied.

Such moneys when owing in respect of the same land as the rates and interest may be included in the same notice with the rates and the form of notice in the Twenty-second Schedule shall be altered accordingly.

Twenty-second Schedule.

Change in municipal boundaries. No. 5203 s. 379.

381. Where any alteration has been made in the boundaries or the constitution of any municipality wherein the land was situate during the period that the rates or other moneys or part thereof became due the council of the municipality within which such land is situate at the time the provisions of this Division are put into force shall be entitled to exercise all the powers conferred by this Division.

Extension of Part XII. Div. 6 to lands taken possession of by councils under Part XII. Div. 5. No. 5203 s. 380.

382. (1) Subject to this section, the provisions of this Division shall so far as applicable and with such adaptations as are necessary extend and apply with respect to any rateable property which (whether before or after the commencement of this Act) has by the council of any municipality been taken possession of and leased under Division five of this Part or any corresponding previous enactment.

Power to sell subject to any lease.

(2) Such property may be sold and conveyed or transferred by the council under and in accordance with the provisions of this Division but subject to any such lease thereof in force.

Application of Part XII. Div. 6.

(3) For the purposes of this section the provisions of this Division shall extend and apply as aforesaid and in particular shall take effect—

(*a*) as if the property had remained vacant and unoccupied during any period during which it has been held under any lease thereof granted by the council under this Part or any corresponding previous enactment; and

(*b*) as if that period were included in the period of default specified in section three hundred and sixty-eight or section three hundred and eighty (as the case may be) of this Act.

Saving of other remedies.

(4) The powers conferred by this section shall not prejudice or affect any other remedy of a municipality for the recovery of rates and other moneys and the enforcement of charges in respect thereof.

Powers in this Act not to affect other remedies. No. 5203 s. 382.

383. The powers conferred by this Division shall not affect any other remedy of a municipality for the recovery of rates and other moneys and the enforcement of charges in respect thereof.

Validation of order of County Court against land. No. 5203 s. 383 (1).

384. Every order of the County Court made or purporting to have been made before the commencement of the *Municipal Rates Recovery Act* 1916 in exercise of the jurisdiction conferred by section three hundred and forty-two of the *Local Government Act* 1915 or the provisions which it replaces shall not as against a purchaser be invalidated on the ground of want of jurisdiction or want of any concurrence consent notice or service whether the purchaser has notice of any such want or not.

Validation order to be evidence. No. 5203 s. 383 (2).

385. Every such order may be accepted by the Registrar of Titles as sufficient evidence that the court had jurisdiction to make the same and that the same is valid and binding on the owner and every other person having any estate or interest in the land:

Provided that the Registrar of Titles may if he thinks fit refuse to accept such order as sufficient evidence of the matters aforesaid unless and until the municipality which obtained the said order by deed under its seal covenants to indemnify the Registrar of Titles and the Assurance Fund under the *Transfer of Land Act* 1958 against all claims and demands in respect of the acceptance by him of such order as sufficient evidence of the matters aforesaid and against all damages losses costs charges and expenses which the Registrar of Titles or the said Assurance Fund may sustain or be liable to for or in consequence of any such claims or demands. Municipalities are hereby authorized to give such indemnities as aforesaid.

PART XIII.—INTEREST ON RATES AND OTHER MONEYS.

Interest on rates and other moneys due after 24th December, 1903. No. 5203 s. 384.

386. (1) All rates and other moneys which on or after the twenty-fourth day of December One thousand nine hundred and three became or become due under any Act in respect of any property to any municipality by any person whomsoever shall, unless it is otherwise expressly provided, bear interest at the rate of Six pounds per centum per annum from the date when such rates or other moneys respectively become payable until payment or recovery thereof.

No interest if rates and other moneys paid within certain period.

(2) But interest shall not (except where it is otherwise expressly provided) be payable to any municipality in respect of any rates or other moneys if such rates or other moneys are paid within four months after they become payable:

Provided that interest in respect of any rates which become payable after the thirtieth day of September in any year and on or before the tenth day of December next following shall not be payable if such rates are paid before or on the tenth day of April next after the day on which they become payble; but if such rates are not so paid interest in respect thereof (calculated from the day on which such rates became payable) shall become payable immediately after the said tenth day of April.

Recovery of interest.

(3) All interest on rates and other moneys may be recovered by the council of any municipality from the same persons and in the same manner as such rates or other moneys might have been or may be recovered.

Moneys the subject of an order in petty sessions to bear interest from date of order.

(4) When an order is made by any court of petty sessions for the payment to any municipality or the council thereof or any person authorized to take proceedings on behalf of the municipality or the council of any sum of money due for rates or other moneys, such sum shall (without affecting the generality of any other law relating to the payment of interest on debts or moneys recovered in legal proceedings in any court) bear interest at the rate of Six pounds per centum per annum calculated from the date of such order until payment thereof.

PART XIV.—RATES ETC. A CHARGE ON LAND: RESTRICTION ON REGISTRATION OF TRANSFERS OF RESIDENCE AREAS, CLOSER SETTLEMENT AREAS, ETC.

Rates and other moneys with interest a charge on property.
No. 5203 s. 385; No. 5443 s. 14, No. 5924 s. 8 (1) (*d*), No. 6151 s. 8.

387. (1) All rates and other moneys which have become or become due under any Act in respect of any property to any municipality by any person whomsoever, shall with interest thereon as in this Act provided be and until paid remain a charge upon such property.

(2) In any case where under any Act for the time being in force relating to local government any property is chargeable with rates or other moneys and interest to any municipality the municipality shall upon the application in writing of any person addressed to the municipal clerk stating in such application the particulars of the property in respect of which information is required as to the rates and other moneys due or payable thereon, and upon payment of a fee of Five shillings forthwith procure and give to such applicant or send by registered letter by post to the person so applying (whose name and address shall be stated in such application) a certificate in writing signed by the municipal clerk in which certificate it shall be stated what (if any) rates and other moneys and interest are due or payable to such municipality in respect of such property with the particulars of such rates and other moneys and interest, and when the same became due or payable or that no such rates or other moneys are then due or payable (as the case may be). The production of such certificate so signed shall for all purposes whatsoever be deemed conclusive proof that at the date thereof no rates or other moneys were due or payable to such municipality other than those stated in such certificate in respect of such property and no objection shall be taken on the ground that any such certificate so signed does not comply with any requirement of this section.

(3) This section shall apply to the city of Melbourne and city of Geelong.

Supreme Court or County Court may order sale of whole or part of land.
No. 5203 s. 386; No. 5924 s. 8 (1) (*e*).

388. (1) For the purpose of enforcing any such charge proceedings may be had and taken in the Supreme Court or the County Court, and any such court may order the sale of the whole or any part of the land subject to the charge whereupon the following provisions shall have effect:—

Power of council to enforce order.

(*a*) On the making of any such order the council of the municipality shall by virtue of this section have the following powers:—

(i) A power to sell the whole or any part of the land subject to the charge in accordance with the order of the court; and

(ii) A power to convey or transfer the land or part thereof so sold; and

(*b*) For the purposes of this sub-section, the provisions of sections three hundred and sixty-nine, three hundred and seventy-three to three hundred and seventy-nine, three hundred and eighty-one of and the Twenty-fourth Schedule to this Act shall so far as applicable and with such adaptations as are necessary extend and apply and shall be read and construed accordingly; and, in particular, for the purposes hereof, without affecting the generality of the preceding provisions of this paragraph, the said sections and the said Schedule shall be read and construed as if—

(i) any reference therein to Division six of Part XII. were a reference to this sub-section;

(ii) references therein to rates or to other moneys or to interest on rates or other moneys were references to rates or to other moneys or to interest on rates or other moneys charged on the land or part thereof ordered by the court to be sold; and

(iii) in section three hundred and seventy-eight, the words "in one notice requiring payment and" were omitted.

Evidence in proceedings to enforce charge on land.

(2) (*a*) In the statement of claim delivered in any proceedings in the Supreme Court or in the particulars of demand annexed to any plaint summons issued out of the County Court for the purpose of enforcing any such charge there may be set out—

(i) all the relevant facts upon which the plaintiff bases his claim for the enforcement of such charge; and

(ii) an intimation to the defendant that he may within ten days after the service on him of the statement of claim or plaint summons (as the case may be) serve on the plaintiff or his solicitor and file with the prothonotary of the Supreme Court or (as the case may be) the registrar of the County Court out of which the plaint summons is issued notice in writing that the defendant intends to dispute all or any of the said facts and that the defendant shall be deemed to have admitted all the said facts as to which he has not served and filed notice as aforesaid.

(*b*) The defendant may within ten days after the service on him of the statement of claim or plaint summons serve on the plaintiff or his solicitor and file with the said prothonotary or registrar (as the case may be) notice in writing that he intends to dispute all or any of the said facts.

(*c*) The plaintiff shall file with the said prothonotary or registrar (as the case may be) an affidavit by the municipal clerk of the municipality concerned verifying all of the said facts and such affidavit shall be conclusive evidence of such of the said facts which the defendant has not, by notice served and filed as aforesaid, intimated that he intends to dispute; and a copy of such affidavit shall be served on the defendant with such statement of claim or plaint summons (as the case may be).

Application to Melbourne and Geelong.

(3) This section shall extend and apply to the city of Melbourne and the city of Geelong.

Rates &c. not a charge on Crown lands or land vested in Minister of Education or certain corporations. No. 5203 s. 387; No. 5387 s. 2.

389. Notwithstanding anything in this Part contained but subject to the *Local Government* (*Rates*) *Act* 1938 no rates or other moneys or interest shall be a charge upon any land the property of the Crown or vested in the Minister of Education or the persons or corporations referred to in paragraph (*c*) or paragraph (*d*) of sub-section (1) of section two hundred and fifty-one hereof: Provided, however, that—

Payment of rates &c. by incoming licensee or lessee of Crown lands to be deemed payment in respect of compensation.

(1) every incoming licensee or lessee of Crown lands who has agreed to pay, or who under the provisions of any law now or hereafter in force is required to pay, to the outgoing licensee or lessee of such land any sum of money in respect of compensation for the improvements on such lands, or for such outgoing tenant's interest in the unexpired term of his licence or lease, shall before paying compensation pay to the council of the municipality in the municipal district of which such land is situated all rates due in respect of such lands, and the receipts for all rates so paid shall be deemed to be a payment to the outgoing licensee or lessee in respect of such compensation;

Interest in any Crown licence or lease not to be transferred till rates &c. paid.

(2) notwithstanding anything contained in the *Land Act* 1958 or any Act thereby repealed no person who has by purchase or in any other manner acquired the interest of any licensee or lessee in and to the licence or lease of any Crown lands shall be entitled to obtain a transfer of such lease or licence until all rates due to any municipality in respect of the lands comprised in such lease or licence have been paid;

Amount of rates &c. to be deducted from compensation payable to licensee or lessee by Board of Land and Works.

(3) if upon the expiration or determination of a licence or lease of any Crown lands the licensee or lessee thereof is entitled to receive compensation from the Board of Land and Works for his interest in the unexpired term of such licence or lease or for the improvements effected on the said land such licensee or lessee shall produce to the Board a

memorandum from the municipal clerk certifying the amount (if any) due for rates in respect of such lands, and the amount so shown by such certificate to be due to the municipality shall be deducted from the amount payable to the licensee or lessee and be paid to the municipality;

No licence of lease of Crown lands to be surrendered for the purpose of obtaining new title or of selection until rates are paid.

(4) notwithstanding anything contained in the *Land Act* 1958 or any Act thereby repealed no licensee or lessee of Crown lands shall be entitled to surrender the licence or lease of such lands for the purpose of obtaining a new title for the whole or any portion thereof, or for enabling his wife or child to select any portion thereof, unless and until all rates due to any municipality in respect thereof have been paid.

Transfer of residence area &c. not to be registered until rates &c. paid.
No. 5203 s. 388.

390. No sale or transfer of a residence area under the *Land Act* 1958 or improved small holding or closer settlement area or workmen's homes shall be registered until the rates and other moneys due to any municipality in respect of the land comprised therein have been paid.

PART XV.—BORROWING POWERS.

DIVISION 1.—GENERAL PROVISIONS AS TO BORROWING.

(1) *Purposes for which Money may be borrowed.*

Power to borrow.
No. 5203 s. 389.

391. Subject to the provisions of and for the purposes mentioned in this Act and not otherwise, the council of every municipality may borrow money upon the credit of such municipality.

Purposes for which money may be borrowed.
No. 5203 s. 390.

392. (1) Money may be borrowed—

(*a*) for permanent works or undertakings; or

(*b*) to liquidate the principal moneys owing by the municipality on account of any previous loan.

Work partly or wholly performed but not paid for.

(2) When a contract for a permanent work or undertaking has been partially or wholly performed and the contractor has not yet been paid the whole consideration for the performance of such contract the council of the municipality which has entered into such contract may borrow upon the credit of such municipality in the same way as it might have done before the commencement of such permanent work or undertaking.

What deemed permanent works and under.-takings.
No. 5203 s. 391; No. 5443 s. 15.

393. The works and undertakings specified in this section, or elsewhere in this Act for the purposes of this Part shall be deemed permanent works and undertakings within the meaning of this Part:—

(1) The making or opening of streets and roads and the diverting altering or increasing the width of streets and roads;

(2) The raising lowering or altering of the ground or soil of streets and roads;

(3) The construction purchase and establishment of bridges culverts levees ferries and jetties;

(4) The construction enlargement and alteration of sewers and drains and works connected with sewerage and drainage;

(5) The construction and purchase of waterworks and the providing of any sum required by the Melbourne and Metropolitan Board of Works to be paid as a deposit under any agreement for the supply of water entered into under section six hundred and ninety-three of this Act;

(6) The construction and purchase of electric light works;

(7) The construction and purchase of gasworks;

(8) The construction and providing of municipal offices storeyards pounds abattoirs sheep dips market places market houses places for weighing carts and their loadings, and the making convenient approaches to markets;

(9) The works and undertakings authorized by any housing scheme or reclamation scheme under Part XXVIII;

(10) The providing of baths and wash-houses;

(11) The providing of pleasure grounds libraries museums and places of public resort and recreation and the providing of sites for state schools agricultural schools technical schools district high schools and higher elementary schools;

(12) The construction establishment or providing of hospitals asylums and other buildings or places for charitable purposes;

(13) The laying down of any track way or pavement of iron steel wood or stone on any street or road and the construction or maintenance of the same or the purchase of any such track way or pavement so laid down or constructed;

(14) The construction purchase or erection of machinery for the treatment of refuse or for quarrying or crushing stone for roadmaking purposes for tarring or applying binding substances to the surface of roads or machines for making or rolling roads and the providing or purchase of gravel pits or quarries or land for the supply of materials for road construction;

(15) The construction purchase or erection of plant pans and appliances for the removal and treatment of night-soil including the ploughing in or burying of such night-soil or its application to land for the purpose of manuring it;

(16) The purchase of land or any easement term right or privilege in over or affecting land, the purchase of materials, and the making of compensation to the owners of any lands compulsory taken or in respect to which any term right or privilege in over or affecting the same has been compulsorily taken for any of the foregoing purposes;

(17) The manufacture of reinforced concrete pipes for use by any municipality in works or undertaking which the municipality is authorized to carry out;

(18) The construction purchase and installation of traffic control lights;

(19) The erection of public conveniences and comfort stations;

(20) Such other works as the Governor in Council by Order published in the *Government Gazette* from time to time declares to be permanent works and undertakings for the purposes of this Part.

(2) *Extent of Borrowing Powers.*

(*a*) *Ordinary.*

Amount which may be borrowed. No. 5203 s. 392; No. 5843 s. 16 (1).

394. (1) Except as otherwise expressly provided by this Act the amount of money so borrowed for permanent works or undertakings shall not at any one time exceed the net annual value of all rateable property in the municipal district as shown in the audited financial statement for the preceding financial year or, in the case of a newly constituted municipality, such amount as the Governor in Council determines.

(2) In addition to any amount that may be borrowed under the last preceding sub-section a council may borrow for permanent works and undertakings in respect of water electricity and gas supply quarrying and abattoirs an amount which does not at any one time exceed in all one-half of the net annual value of all rateable property in the municipal district as shown in the audited financial statement for the preceding financial year.

(3) For the purpose of making provision to pay off any money borrowed by the council under this section the council may borrow an amount not exceeding the balance of the principal moneys owing on account of the loan notwithstanding that thereby the amount which the council may apart from this sub-section lawfully borrow under this section is temporarily exceeded.

(4) In the case of any municipality where—

(*a*) the municipal district includes any area which was formerly in the municipal district of any other municipality; and

(*b*) the net annual value of rateable property as shown on the audited financial statement of the municipality at the end of the preceding financial year does not include the value of rateable property in such area—

for the purposes of this section there shall be added to the net annual value as shown on such financial statement the net annual value of rateable property in such area as ascertained from the latest valuations made in respect of such property while in the municipal district of such other municipality.

Amount which may be borrowed by a municipality jointly liable in respect of any loan.
No. 5203 s. 393; No. 5843 s. 16 (2)

395. Where any municipality is jointly liable with any other municipality in respect of any loan but as between it and such other municipality is liable in respect of a portion of such loan only, then, for the purpose of determining how much such first-mentioned municipality may borrow, so much only of the balance remaining unpaid of such loan shall be subtracted from the amount which such first-mentioned municipality may under the last preceding section borrow as represents the portion of such balance for which it is liable as between it and such other municipality.

Sinking fund reckoned part payment.
No. 5203 s. 395.

396. When any sinking fund has been formed under the provisions of this Act or under the provisions of any Act previously in force relating to local government to liquidate any loan the amount of such sinking fund, reckoning the value of stock at par, shall for the purpose of estimating the indebtedness of the municipality under the preceding sections be deemed a part payment of such loan.

(*b*) *Extended.*

Extension of borrowing powers.
No. 5203 s. 396.

397. (1) The council of every municipality may, in addition to the borrowing powers hereinbefore conferred, borrow money for permanent works or undertakings on the security of the whole or any part of its income as defined in this section but not upon the credit of the municipality by the issue of debentures or by a mortgage over such income.

(2) The amount of money so borrowed at any time shall not exceed five times the average amount of such income of the municipality for the three years terminating with the yearly balance of accounts next preceding the *Government Gazette* notice of such loan, and shall be repaid within a period of thirty years.

(3) The income in this section referred to shall not include moneys derived from general separate or extra rates, special improvement charges, the sum of money paid out of the licensing fund as provided by the *Licensing Act* 1958 or moneys received by way of endowment out of the Consolidated Revenue.

(4) No holder or such debentures shall have any recourse against the municipal fund or otherwise except on such income and any sinking fund which may be formed to liquidate such debentures.

(5) But if at any time the proceeds of such income are insufficient for the payment of the principal and interest of any debentures issued on the security thereof the council shall advance the amount of the insufficiency of such proceeds out of the municipal fund and pay such principal or interest out of such advance.

(6) The provisions of this Part shall, so far as the same are not inconsistent with this section or altered thereby, apply to money borrowed under the provisions of this section.

Where electric light undertakings sold by council to State Electricity Commission, liability for principal moneys of loans taken over not to be included in ascertaining borrowing power of municipality. No. 5203 s. 397.

398. Notwithstanding anything in this Act or in any other Act, any moneys borrowed by the council of any municipality under the provisions of this Act or any corresponding previous enactment—

(*a*) for the construction or purchase of electric light works; or

(*b*) for or with respect to any works within the meaning of the *Electric Light and Power Act* 1958 or any corresponding previous enactment of any council being an undertaker within the meaning of the said Act or enactment—

which works have been sold to or acquired by the State Electricity Commission of Victoria, shall not, to the extent to which the Commission has agreed to accept liability for the repayment of the principal moneys so borrowed, be thereafter taken into consideration in ascertaining the amount which the municipality may borrow under the provisions of this Act or any other Act.

(3) *Preparation of Plans &c., and Publication of Notices.*

Plans specifications and estimate and statement to be prepared before borrowing. No. 5203 s. 398.

399. (1) Before proceeding to borrow any money for permanent works and undertakings the council of every municipality shall cause to be prepared or otherwise procure—

(*a*) plans and specifications and an estimate of the cost of such works and undertakings;

(*b*) a statement showing the proposed expenditure of the money to be borrowed.

(2) Such plans specifications estimate and statement shall be open to the inspection of the ratepayers for one month after the publication of the notice next hereinafter mentioned at all reasonable times.

Notice to be published before borrowing. No. 5203 s. 399.

400. The council not less than one month nor more than six months before proceeding to make any special order for borrowing money for any of the purposes aforesaid, shall publish in the *Government Gazette,* and twice in some newspaper generally circulating in the neighbourhood, notice of such intention to borrow, stating—

(*a*) the amount of the principal moneys which it is proposed to borrow;

(*b*) the maximum rate of interest that may be paid;

(*c*) the time or times and the place at which the moneys borrowed are to be repayable;

(*d*) the purposes for which the loan is to be applied;

(*e*) the manner in which the loan is to be liquidated; and

(*f*) in case the loan is to be expended in the purchase of any permanent works or undertakings specifying such works or undertakings; or

(*g*) in case the loan is to be expended in the construction of permanent works or undertakings or in paying the cost of such works or undertakings already partially or wholly constructed stating that the plans and specifications and estimate of the cost of such works and the statement hereinbefore mentioned are open for inspection at the office of the council.

(4) *Poll of Ratepayers and Owners.*

Submission of proposal to borrow to poll of ratepayers and owners. No. 5203 s. 400; No. 5843 s. 17 (1), No. 6128 s. 8 (2) (*c*).

401. (1) Within one month after the publication of such notice of intention (hereinafter referred to as the "proposal") to borrow money, not being a notice of intention to borrow money to liquidate any previous loan, not less than five per centum of the persons whose names are inscribed on the municipal roll may by writing under their hands delivered to the chairman or the clerk of the municipality together with the sum of Fifty pounds demand that the proposal be submitted to a poll of ratepayers and owners.

(2) When any such demand has been made such poll of ratepayers and owners shall be taken upon such proposal on a day to be appointed by the chairman of the municipality not less than twenty nor more than twenty-five clear days after the delivery of such demand or in default of such appointment on the thirtieth day after the delivery of such demand.

(3) The municipal clerk shall be the returning officer for the purposes of the poll and shall by writing under his hand appoint a deputy to assist him or to act in his place at any such poll, and may remove any such deputy, and shall appoint another in the place of any deputy who is so removed or who dies retires or becomes incapable of acting; and the deputy may do all or any of the acts or things which the returning officer is authorized or required to do.

(4) The returning officer shall forthwith notify in some newspaper generally circulating in the neighbourhood that on such day a poll will be so taken.

(5) At the taking of such poll ballot-papers in the form of the Twenty-fifth Schedule or to the like effect shall be used and the returning officer or his deputy or such other person as may be appointed to take the poll shall at the request of any person whose name is on the muncipal roll or the owners' roll hereinafter provided for deliver to such person as many of such ballot-papers as the number of votes to which such person appears by such municipal roll and owners' roll to be entitled. Twenty-fifth Schedule.

(6) In any subdivided municipal district a copy of the municipal roll shall be provided at each polling booth and every person whose name is on such roll shall receive at one and the same time all the ballot-papers to which by the several subdivisional rolls comprised in such municipal roll he appears to be entitled.

(7) Every voter shall without leaving the booth strike out from any or all of such ballot-papers—

(*a*) if the voter is in favour of the proposal—the word "No"; and

(*b*) if the voter is against the proposal—the word "Yes"—

and if any voter suffers to remain upon any ballot-paper both such words not struck out or if any voter strikes out both such words from any ballot-paper, such ballot-paper shall be rejected at the close of the poll:

Provided that a ballot-paper shall not be rejected if marked in such a way as to indicate clearly the intention of the voter to record a vote either for or against the proposal.

(8) In case any voter is unable to read or write, the returning officer or his deputy or other person appointed to take the poll if required shall, in view of such one of the scrutineers as such voter may desire, mark such voter's ballot-paper or ballot-papers (as the case may be) in such manner as such voter indicates or shall at the request of such voter permit some other person appointed by such voter to mark such voter's ballot-paper or ballot-papers (as the case may be) for such voter.

(9) After one of such words has been so struck out the ballot-paper or ballot-papers (as the case may be) shall be forthwith deposited in the ballot-box.

Owners' roll. No. 5203 s. 401.

402. (1) The owners' roll shall—

(*a*) be compiled by the municipal clerk from the last rate which by the rate book kept pursuant to this Act appears to have been made for the municipality or from the valuation and return made pursuant to this Act if no rate has been made ; and

(*b*) have enrolled thereon the name of every person who is of the full age of twenty-one years and appears from such rate or valuation and return to be the owner of any rateable property within the municipal district in respect of which some other person is liable to be rated as occupier.

(2) Any person enrolled on the owners' roll shall be entitled to be enrolled for votes according to the following scale :—

(*a*) In a borough—if such property whether consisting of one or more tenements is rated upon a value of less than Fifty pounds he shall have one vote ; upon a value amounting to Fifty pounds and less than One hundred pounds two votes ; upon a value amounting to or exceeding One hundred pounds three votes ;

(*b*) In a shire—if such property whether consisting of one or more tenements is rated upon a value of less than Twenty-five pounds he shall have one vote ; upon a value amounting to Twenty-five pounds and less than Seventy-five pounds two votes ; upon a value amounting to or exceeding Seventy-five pounds three votes :

Provided that—

(i) no person shall be entitled to be so enrolled in respect of property of a less annual rateable value than Five pounds unless there is a house upon such property ;

(ii) no married woman shall by reason of coverture only be disqualified from being so enrolled or be deemed incapable of exercising any rights with respect to voting at such poll ; and

(iii) no person shall be entitled to be so enrolled unless he is a natural born or naturalized subject of Her Majesty :

Provided further that where in the municipality Part XI. of this Act or any corresponding previous enactment has been adopted, and so long as the adoption remains unrescinded, section three hundred and thirty of this Act shall for the purposes of this

section be read and construed as if for any reference therein to section seventy-three of this Act there were substituted a reference to this section.

(3) When a corporation is the owner of any such rateable property as aforesaid in any municipal district such corporation may by writing under its common seal delivered to the municipal clerk within seven days after the delivery of the demand that the proposal be submitted to a poll as aforesaid appoint any person to be enrolled on the owners' roll in place of such corporation; and any such person shall for the purposes of this section be deemed to be the owner of such property.

(4) Where more persons than one are joint owners of any such property as aforesaid for the purposes of this section the person whose name appears first on the rate or valuation and return aforesaid shall be deemed to be the owner of such property.

(5) Subject to the foregoing provisions of this section the owners' roll shall be compiled in such manner and within such time as appears to be necessary for the purposes of the poll and when so compiled shall be signed and certified by the municipal clerk and as so signed and certified shall be the owners' roll used at the poll.

(6) The council of the municipality shall take an account of the reasonable expenses incurred in the preparation and printing of the owners' roll and shall order the same to be paid out of the municipal fund.

Application of deposit. No. 5203 s. 402; No. 5843 s. 17 (2).

403. (1) If one-ninth or more of the number of votes for which voters are inscribed on the municipal roll and enrolled on the owners' roll are recorded against the proposal to borrow money as aforesaid the sum of Fifty pounds directed to be deposited with the writing demanding the poll shall be returned by the chairman or clerk of the municipality to any person named in such writing as the person to receive the same.

(2) In any other case the said sum or so much thereof as may be necessary to defray the cost of taking the poll shall be paid by such chairman or clerk into the municipal fund and the residue (if any) returned by such chairman or clerk to the person so named to receive the same.

Scrutineers. No. 5203 s. 403.

404. One scrutineer to be present in every polling booth may be appointed by the council, and the persons demanding a poll may by writing under their hands or the hands of any three of them appoint one scrutineer to be present in every polling booth.

Result how ascertained. No. 5203 s. 404.

405. (1) Immediately upon the close of the poll the returning officer or deputy or such other person as may be appointed and the poll clerk at each polling booth shall proceed in the presence and subject to the inspection of so many of the scrutineers as please to be present to ascertain the number of votes recorded for and against the said proposal respectively.

(2) The deputy or such other person shall immediately forward to the returning officer a statement in writing made up under the inspection of the said scrutineers of the total number of votes recorded for and against the said proposal respectively.

Declaration of poll.

(3) The returning officer shall ascertain from the said statements of the number of votes so recorded the total number of votes recorded for and against the proposal respectively, and the loan shall be deemed to be forbidden if a majority of the total valid votes polled has been recorded against the proposal:

Provided that the proposed loan shall not be deemed to be forbidden unless the votes recorded against the proposal amount to one-third at least of the total number of votes for which voters are inscribed on the municipal roll and enrolled on the owners' roll.

(4) Such returning officer shall as soon as conveniently may be on or after the day of the poll give public notice of the total number of votes recorded for and against the proposal respectively and declare whether or not the council is forbidden to proceed further with such loan according to the provisions hereinbefore contained.

Proceedings to be had as upon an election of councillors. No. 5203 s. 405.

406. Subject to the foregoing provisions upon the submitting of any such proposal as aforesaid to a poll of the ratepayers and owners all proceedings shall be had and taken as nearly as may be as upon an election of councillors including proceedings under the provisions of any orders or regulations under this Act or any corresponding previous enactment relating to voting by post or to compulsory voting if such provisions apply to elections of councillors for the municipality.

(5) *Further Procedure if no Demand for Poll or if Ratepayers and Owners fail to forbid.*

If no demand made or ratepayers and owners fail to forbid council may proceed. No. 5203 s. 406.

407. If no such demand is made as aforesaid that the said proposal be submitted to a poll of the ratepayers and owners or if on such demand being made the ratepayers and owners fail to forbid the council from proceeding further with such loan, the council may at any time not less than one month nor more than six months after the latest publication of such notice of intention to borrow proceed to make a special order for borrowing money for the purposes mentioned in such notice.

Special order for borrowing. No. 5203 s. 407.

408. (1) No such special order for borrowing money shall be adopted by the council unless at the meeting of the council at which such order is confirmed as in this Act required the resolution for confirmation is carried by a majority of the whole number of members of the council.

(2) In case the money is proposed to be borrowed for permanent works or undertakings for the purpose whereof the compulsory power of taking land or any easement term right or privilege in over or affecting land will be necessary such resolution for confirmation shall not be passed until after the order authorizing the execution thereof has been made and confirmed by the Minister.

(6) *Debentures.*

Loans to be raised on debentures. No. 5203 s. 408.

409. All moneys borrowed by the council of any municipality for the purposes aforesaid shall except as otherwise provided in this Act be raised by the sale of debentures under the provisions of this Part.

How to be offered for sale. No. 5203 s. 409.

410. After any special order for borrowing money has been made as aforesaid the council may at such time and place as it may appoint in that behalf offer or cause to be offered for sale debentures as specified in the *Gazette* notice to the amount therein specified.

Form of debentures. No. 5203 s. 410. Twenty-sixth Schedule. Form "A."

411. Debentures issued by any municipality under the provision of this Act shall—

(*a*) be in the form of the Twenty-sixth Schedule;

(*b*) be numbered consecutively beginning at the number one in an arithmetical progression wherein the common difference is one;

(*c*) have annexed for every payment of interest which becomes payable after the day on which such debenture is sold under the provisions of this Act a coupon bearing the same number as the debenture.

Purport and signature of debentures. No. 5203 s. 411.

412. (1) Every debenture issued under the provisions of this Act shall specify—

(*a*) the principal sum secured thereby; and

(*b*) the rate at which interest is payable thereon; and

(*c*) the times and the place at which such principal and interest are payable; and

(*d*) in case the loan is to be liquidated by the formation of a sinking fund the percentage upon the amount of the loan which will be invested in Victorian Government three per cent. stock to liquidate the same every year; or

(*e*) in case the loan is to be liquidated by periodical repayments of the principal sum, the total amount of the loan and at what times and in what several amounts the same is to be repaid; and

(*f*) the date of the publication of the *Government Gazette* in which the notice of such loan appeared.

(2) Every such debenture shall be under the common seal of the municipality, and shall be signed by the chairman municipal clerk and treasurer thereof, and shall bear date the day it is sealed.

Debentures payable to bearer. No. 5203 s. 412.

413. (1) Every debenture issued under the provisions of this Act shall entitle the bearer thereof to receive payment of the principal sum named therein on presenting such debenture on or after the day on which such debenture becomes payable at the place at which such debenture is payable.

Coupons payable to bearer.

(2) Coupons annexed to debentures issued under the provisions of this Act may be separated from the debentures to which they belong, and every such coupon shall entitle the person presenting the same on or after the day on which the interest mentioned in such coupon is payable at the place at which such interest is payable to receive payment of such interest.

Debentures and coupons to pass by delivery.

(3) Every such debenture and every such coupon whether separated or not from the debenture to which it belongs shall pass by delivery only without any assignment or indorsement.

When debentures are to be made payable.

(4) The principal moneys secured by every debenture issued under this Act shall be made payable on some day not more than forty years after the date of such debenture.

Protection to *bona fide* purchasers of debentures. No. 5203 s. 413.

414. Notwithstanding anything hereinbefore contained if the council of any municipality publishes in the *Government Gazette* a notice of its intention to borrow money, and is not forbidden by the ratepayers from proceeding further with such loan, and not less than two months after the publication of such notice issue debentures signed and sealed as aforesaid as in pursuance of such intention, such debentures shall be good and valid as against such municipality in favour of any purchasers thereof without fraud and *bona fide*.

Priorities of debenture holders. No. 5203 s. 414.

415. If any municipality has incurred more loans than one every sinking fund formed under the provisions hereof shall be applicable in the first instance in liquidation of the debentures and of all interest thereon which such fund was formed to liquidate, and save as aforesaid both as to principal and interest the holders of debentures by the sale of which different loans were raised

shall have priority according to the priority of the *Government Gazette* notices of such loans published as aforesaid, and the holders of debentures by the sale of which the same loan was raised shall rank as between themselves *pari passu.*

General Government and Consolidated Revenue not liable. No. 5203 s. 415.

416. No claim of any holder of debentures issued by or on behalf of any municipality or of any creditor of any municipality shall attach to or upon or be in anywise paid or satisfied out of or by the consolidated or other general revenue of Victoria or by the Government thereof.

Investment by corporations and companies in municipal debentures. No. 5203 s. 416.

417. Any debentures heretofore or hereafter issued under this Act or any corresponding previous enactment by any municipality shall be a lawful investment for any moneys which any body corporate incorporated by any Act of the Parliament of Victoria or any company is authorized or directed to invest in addition to any other investments expressly authorized or directed for the investment of such moneys unless investment in such debentures is expressly forbidden by the Act or instrument under which the body corporate or company acts.

Power of municipality to agree with debenture-holders as to postponement of date for payment of principal of or interest on debentures. No. 5203 s. 417.

418. (1) Notwithstanding anything in any Act, it shall be lawful for any municipality to enter into an agreement or agreements with the holders of any of its debentures which were in existence on the fourteenth day of December One thousand nine hundred and forty-two whereby the terms and conditions of such debentures may be varied by the postponement for a period or for periods in all of not more than ten years of the date for the payment of the principal sum or any part thereof already payable or to become payable or of any interest already payable or which may become payable.

Effect of agreement.

(2) Subject to sub-section (5) hereof, any such agreement shall when made be of the same force and effect as if the terms thereof formed part of and were contained in the debenture to which such agreement relates.

Endorsement on debentures and coupons.

(3) The debentures and coupons affected by any such agreement shall be produced by the holder thereof to the municipality with which such agreement is made at such place as the holder directs and such municipality shall cause to be conspicuously endorsed upon such debentures and coupons in such a manner as to render such endorsement incapable of being deleted or removed without interfering with the text of such debentures and coupons the following words and figures (that is to say) :—" Subject to written agreement dated the day of , 19 under the *Local Government Act* 1958 ".

Power of municipality to pay interest on overdue principal or interest.

(4) If any such agreement is entered into providing for the postponement of the date for the payment of principal or interest as aforesaid, it shall be lawful for the municipality to agree to pay and to pay to the debenture-holder interest on the postponed principal or interest at such rate as is payable under the debenture or debentures affected by such agreement or at such other rate as is agreed upon between the municipality and the debenture-holder not being greater than the rate payable under the debenture or debentures affected by such agreement as reduced by any Act.

Effect on agreement of appointment of receiver at instance of other debenture-holders.

(5) In the event of default occurring in the payment by a municipality of any moneys secured by a debenture concerning which no such agreement as aforesaid has been made and such default results in the appointment of a receiver at the instance of the holder of such debenture, any agreement made pursuant to this section or the corresponding previous enactment by such municipality with any other of its debenture-holders shall from the date of the appointment of such receiver have no further force operation or effect, but the municipality issuing the debentures shall remain liable to pay any interest which has accrued under the said agreement to the date of its ceasing to have any further force operation or effect as aforesaid and such interest shall remain as fully and effectually secured as if the said agreement had remained in full force operation and effect and shall have the same priority as the moneys secured by the debentures the subject-matter of the said agreement.

As to approval of agreement by Governor in Council.

(6) No such agreement as is referred to in the preceding sub-sections of this section shall be valid and binding on the parties unless and until it has received the approval of the Governor in Council.

(7) In this and the next succeeding section unless inconsistent with the context or subject-matter "debenture" means any debenture given by any municipality to secure the repayment of moneys borrowed by it with interest thereon pursuant to Part XV. or Part XIX. of the *Local Government Act* 1928 or any corresponding previous enactment.

Power of municipality to agree with certain owners liable to contribute by periodical instalments to cost of works for which moneys aforesaid were borrowed as to postponement of date of payment of instalments &c.

No. 5203 s. 418.

419. If any such agreement is entered into with reference to any debenture securing moneys borrowed pursuant to the said Part XIX. or any amendment thereof, it shall be lawful for but not obligatory upon the municipality concerned in its absolute discretion and upon such terms and conditions as it thinks fit to agree with owners, who are liable to contribute by periodical instalments, including interest, to the cost of the works for which the moneys were borrowed, to postpone the date for the payment of the whole or any part or reduce the amount of any such instalment.

(7) *Liquidation of Loans.*

When all debentures payable on same day sinking fund to be formed. No. 5203 s. 419.

420. (1) When any municipality incurs a loan and debentures are issued so that the principal moneys secured by the whole of such debentures are payable on the same day—

(*a*) the council of such municipality shall cause a sum (being such percentage of the principal sum secured by the debentures issued to raise such loan as is named in such debentures not being at any time less than One pound and ten shillings per centum of such principal sum) to be in every year after the issue of such debentures and until the complete liquidation of such loan (or until the Auditor General by writing under his hand certifies that the amount of the sinking fund formed hereunder is sufficient to secure the liquidation of such loan), invested in Victorian Government three per cent. stock, which stock shall be placed in the stock ledgers in the names of the Treasurer of Victoria and of the municipality to an account entitled as of such loan;

(*b*) all interest accruing due on any stock for the time being standing to the credit of any account forming any sinking fund shall be invested in Victorian Government three per cent. stock, which shall be placed to the credit of the same account.

When debentures are for different periods how loan to be liquidated.

(2) When any municipality incurs a loan and debentures are issued so that the principal moneys secured by such debentures have not all the same period of currency but are payable in different years—

(*a*) the council before issuing such debentures shall obtain from the Auditor-General a certificate in writing that the amounts proposed to be provided in each year and applied as hereinafter required, will be sufficient to pay all principal moneys secured by such debentures and interest thereon as they fall due;

(*b*) the amounts to be provided by the council out of the municipal fund in each year during the currency of the loan to pay the interest and debentures as they fall due shall be arranged so that the amount to be so provided in any year shall in no case be more than five per centum less than the greatest sum to be so provided in any subsequent year;

(*c*) the amounts so to be provided in each year shall be applied in the payment of the interest and principal moneys payable in such year and any

balance thereafter remaining shall be invested in Victorian Government three per cent. stock, which stock shall be placed in the stock ledgers in the names of the Treasurer of Victoria and of the municipality to an account entitled as of such loan;

(*d*) all interest accruing due on any stock for the time being standing to the credit of any account forming any sinking fund shall be invested in Victorian Government three per cent. stock, which shall be placed to the credit of the same account;

(*e*) if after payment of interest the balance of the amount provided in any year as herein required is not sufficient to pay the debentures payable in such year so much of the stock to the credit of such account as may be necessary shall be sold, and the proceeds thereof paid into a bank as hereinafter provided.

Provisions of debentures in certain cases. No. 5203 s. 420.

421. (1) Where any municipality borrows under this Act any money by the issue of debentures and the loan is to be liquidated by periodical repayments of the principal sum and the amount of the loan has been advanced by one lender—

(*a*) it shall be lawful for the council to provide in any such debenture for the repayment of so much of the principal sum as is specified in the debenture together with interest as specified in the coupon attached to the debenture computed on so much of the total amount of the loan as is unpaid, and to provide that the several amounts of the periodical repayments of principal together with interest from time to time payable, and the due dates thereof, shall be set forth in a schedule indorsed on the debenture;

Twenty-sixth Schedule.

Form of debentures.

(*b*) the debentures shall be in the form of Form C of the Twenty-sixth Schedule and there shall be attached to every such debenture a coupon in the form of Form C as set out in the said Schedule:

Provided that in the case of any money borrowed under this Act or any corresponding previous enactment by the issue of debentures on the security of a separate rate or special improvement charge or of the whole or any part of the income of the municipality as defined in section three hundred and ninety-seven of this Act the form of debenture in Form B in the Twenty-sixth Schedule may be varied so as to comply with the provisions of this section.

Twenty-sixth Schedule.

(2) Save as otherwise provided in this section the other provisions of this Act shall apply with respect to any such loan.

Power to re-purchase debentures by which loan was raised instead of forming sinking fund. No. 5203 s. 421.

422. (1) All moneys directed to be invested in the formation of a sinking fund to liquidate any loan may in lieu thereof be invested in the re-purchase of any debentures by the sale of which the loan was raised: Provided always that any debentures so re-purchased and all coupons belonging thereto shall be forthwith cancelled and forwarded to the Treasurer of Victoria with a memorandum of the moneys expended in their re-purchase, and it shall be the duty of the chairman and clerk of the municipality to see that the same is done.

(2) During the period for which such cancelled debentures would have been current if they had not been so re-purchased a sum equal to Three pounds per centum of the amount thereof shall be annually invested in Victorian Government three per cent. stock and placed to the credit of the sinking fund or shall be invested in the re-purchase of any debentures by the sale of which the loan was raised.

Application of sinking fund to meet debentures. No. 5203 s. 422.

423. (1) When any debentures are about to fall due—

(*a*) the council may sell any stock comprised in any sinking fund formed to liquidate the same and pay the proceeds thereof into such bank to the account of such person or persons as the Treasurer of Victoria and the council of the municipality may determine; or

(*b*) the council may transfer to the Treasurer of Victoria such stock or so much thereof as may be sufficient to provide for the payment of such debentures and on such transfer such Treasurer shall pay into a bank in the manner hereinbefore provided an amount equal to the amount of stock so transferred estimating the value thereof at par for all stock for which the Treasurer was paid par by the council but no other.

(2) The moneys so paid into such bank shall be paid out to the bearers of such debentures on presentation and delivery up of the same.

Power to re-purchase debentures. No. 5203 s. 423.

424. (1) The council of any municipality may at any time re-purchase any debentures issued by the municipality upon the credit of the municipality under the provisions of this or any repealed Act, and the municipal fund shall be applicable for that purpose.

(2) Upon the re-purchase of any such debentures the same and all coupons belonging thereto shall be forthwith cancelled and it shall be the duty of the chairman and clerk of the municipality to see that the same is done.

Power of Treasurer to transfer sinking fund in certain cases.
No. 5203 s. 424.

425. (1) At any time on the presentation on behalf of the municipality of a certificate signed by the Auditor-General stating what amount of stock credited to any such account as aforesaid will be sufficient to secure the holders of all debentures secured by such stock other than any debentures purchased by the council, and upon the cancellation of such last-mentioned debentures and coupons for interest thereon the Treasurer of Victoria may join in transferring any balance of stock credited to such account over and above the amount mentioned in such certificate.

Treasurer not to transfer except as before mentioned or on order of Supreme Court.

(2) Except for the purposes in this Act provided or if ordered so to do by the Supreme Court or a judge thereof the Treasurer of Victoria shall not join in transferring any stock forming part of any such sinking fund as aforesaid.

Power of municipality to transfer stock by attorney.
No. 5203 s. 425.

426. For the purpose of purchasing transferring receiving or otherwise dealing with any Victorian Government stock or any interest accruing thereon or any other purpose connected therewith the council of every municipality may, subject to the provisions as to attorneys contained in any Act or Acts now or hereafter to be in force relating to Victorian Government stock, appoint an attorney or attorneys under the common seal of the municipality and by such attorney or attorneys do all acts matters and things relating to such stock that a private person might do.

Bearer of debenture may inspect sinking fund.
No. 5203 s. 426.

427. The bearer of any debenture secured by any sinking fund may at all reasonable times inspect the account of such fund in the stock ledgers.

Balance of sinking fund how applicable.
No. 5203 s 427.

428. If after the liquidation of any loan there is any balance of stock to the credit of the sinking fund or of the proceeds thereof the same shall be applicable as part of the municipal fund.

(8) *Loan Account.*

Separate account to be kept of every loan.
No. 5203 s. 428.

429. (1) The council of every municipality shall cause a separate account to be kept in some bank for every loan incurred by it.

(2) All money forming part of such loan shall be paid into such account, and shall be applied to the purposes for which the same was borrowed.

Balance how dealt with.

(3) If after all such purposes are performed there is any surplus of such money the council may apply the same in the re-purchase of any debentures by the sale of which such money

was borrowed or in the purchase of Victorian Government three per cent. stock to be credited to the sinking fund formed to liquidate the same, and so long as any part of such loan remains unpaid no part of such money shall except as in the next succeeding sub-section provided be otherwise applied.

Premium on sale of debentures.

(4) After all such purposes are performed the moneys (if any) received by way of premium on the sale of the debentures or the balance of such moneys may be paid into the municipal fund.

Interest on temporary investment of loan funds.

(5) Interest received from the temporary investment of loan funds during the time such funds are being expended shall not be deemed to be part of the loan, but such interest may be paid into the municipal fund.

As to annual payments into sinking fund where money borrowed to pay off loan.

No. 5203 s. 429.

430. Notwithstanding anything in this Act, where pursuant to this Act provision is made by the council of any municipality for the liquidation of any loan by the provision of a sinking fund and the council borrows money to pay off such loan or any part thereof—

(*a*) there shall be ascertained the date when the sinking fund for the original loan would have become sufficient to provide for the full repayment of that loan if the term thereof had been continued for a period ending with that date; and

(*b*) the annual payments into the sinking fund for the new loan shall be of such amounts as will be sufficient to provide for the liquidation of the new loan on the date ascertained as aforesaid.

Power of council by special order to apply unexpended balance of loan to purposes other than those for which loan was raised.

No. 5203 s. 430; No. 6151 s. 9.

431. (1) Where—

(*a*) pursuant to the provisions of this Act or any corresponding previous enactment and in accordance with notice duly advertised in the *Government Gazette*, the council of any municipality by the sale of debentures has borrowed money secured on the credit of the municipality to to be applied for the purposes set out in the notice aforesaid; and

(*b*) any part of such money is unexpended and, in the opinion of the council, should be applied not for the purpose for which it was borrowed but for some other purpose for which money may legally be borrowed by the council—

the council, notwithstanding anything in section four hundred and twenty-nine of this Act or any corresponding previous enactment, may by a resolution carried by a majority of the whole number

of members of the council make an order declaring that all or any specified part of the unexpended money shall be applied for any purposes for which money may legally be borrowed under the provisions of this Part by the council and which are set out in the order.

Consent of debenture-holders necessary.

(2) No such order shall be made until the holders of all debentures sold for the purposes of the original loan have in writing signified their approval of such proposed application of the unexpended amount aforesaid of the proceeds of the loan.

Order to be approved by Governor in Council.

(3) No such order shall have any force or effect until it is approved by the Governor in Council.

(9) *Investment of Sinking Funds.*

Investment of municipal sinking funds.
No. 5203 s. 431.

432. (1) The following provisions shall on from and after the first day of January One thousand nine hundred and twenty-six apply with respect to moneys directed to be invested in the formation of sinking funds to liquidate loans under this Act:—

(*a*) Such moneys may in every year and until the complete liquidation of the loan (or until the Auditor-General by writing under his hand certifies that the amount of the sinking fund formed under this Act is sufficient to secure the liquidation of the loan) be invested—

(i) in Victorian Government five per cent. stock; or

Power of Governor in Council to direct investment in stock at lower rate.

(ii) if the Governor in Council from time to time to time by Order published in the *Government Gazette* so directs, in Victorian Government stock bearing interest at such lower rate not being less than three per centum per annum as is specified in such Order—

which stock shall be placed in the stock ledgers in the names of the Treasurer of Victoria and of the municipality to a special account entitled as of such loan.

Investment of interest accruing due after date of Act on Three per cent., Five per cent., &c. stock.

(*b*) All interest accruing due on any three per cent. stock or any five per cent. stock or any stock bearing interest at any other rate specified pursuant to this section for the time being standing to the credit of any account or special account or accounts together forming any sinking fund formed under this Act may be invested—

(i) in Victorian Government five per cent. stock; or

(ii) if at the date of the said interest accruing due any Order in Council directing investment in Victorian Government stock bearing interest at a lower rate of interest as aforesaid is in operation—in Victorian Government stock bearing interest at such lower rate—

which stock shall be placed to the credit of the said special account or accounts (as the case requires).

Interest during operation of Order.

(*c*) Where under this section the Governor in Council has by Order specified a lower rate of interest than five per centum per annum, then so long as the Order remains in operation interest at the rate payable in accordance with the Order shall from a date specified in the Order be payable on all moneys forming any sinking fund invested as aforesaid and also on all interest invested as aforesaid on from or after the said first day of January.

Modification of this Act accordingly.

(*d*) For the purposes of this section this Act shall with such alterations modifications and substitutions as are necessary be read and construed and have effect accordingly, and in particular, without affecting the generality of this paragraph, paragraphs (*a*) and (*b*) of sub-section (1) of and paragraphs (*c*) and (*d*) of sub-section (2) of section four hundred and twenty, sub-section (2) of section four hundred and twenty-two, sub-section (3) of section four hundred and twenty-nine and section four hundred and forty-four of this Act shall so far as applicable and with such alterations modifications and substitutions as are necessary be read and construed and have effect accordingly.

This section not to affect investments of money or of accrued interest already made.

(2) This section shall not, save as is otherwise in this section expressly provided, affect any investment of moneys (including any investment of interest accrued due) made before the said first day of January.

(10) *Receiver.*

Power to appoint a receiver if municipality makes default.

No. 5203 s. 432.

433. (1) If any municipality makes default in payment of any principal money or interest secured by any debenture or coupon or in forming a sinking fund to liquidate any debentures as hereinbefore directed the Supreme Court may on the petition of the holder or holders of any debenture or debentures of such municipality, appoint some person or persons not exceeding three to be a receiver or receivers of the general rates or income of such municipality (as the case may be).

(2) Every such receiver shall be deemed an officer of and shall act under the direction of the Supreme Court.

Power to remove receiver.

(3) The Supreme Court may from time to time remove any receiver appointed under this Act, and on the death or removal of any such receiver may appoint some other person in his place.

Powers of receiver. No. 5203 s. 433.

434. (1) The receiver or receivers appointed under this Act shall be entitled—

(*a*) in case the debentures are issued in pursuance of the ordinary borrowing powers conferred by subdivision two of Division one of this Part to receive all general rates payable to the council of the municipality, and to make and levy general rates so that the rates so received made or levied do not exceed One shilling and sixpence in the pound upon the annual value of all rateable property in the municipality estimated under the provisions of this Act;

(*b*) in case the debentures are issued in pursuance of the extended borrowing powers conferred by such subdivisions to receive all income on the security of which such debentures were issued.

(2) For the purposes aforesaid such receiver or receivers shall be deemed the council of the municipality and may exercise all the powers thereof.

Commission to receiver.

(3) Every such receiver shall be entitled to such commission as remuneration for his services as the Supreme Court may appoint.

Purposes for which receiver is to hold moneys. No. 5203 s. 434.

435. (1) Such receiver or receivers shall hold all moneys and the proceeds of all stocks forming any sinking fund received by him or them after payment of costs and expenses and of his or their commission for the benefit of all holders of debentures of the municipality according to their respective priorities and subject thereto for the municipality.

Transfer of sinking fund to receiver.

(2) The Supreme Court may order all stock standing in the stock ledgers forming any such sinking fund as aforesaid to be transferred into the name or names of the receiver or receivers.

(11) *Borrowing on Overdraft of Current Account.*

Temporary loans from banks. No. 5203 s. 435; No. 5443 s. 16, No. 5555 s. 2, No. 5843 s. 18.

436. (1) For the temporary accommodation of councils of municipalities it shall be lawful for such councils to obtain advances from banks by overdraft of the current account upon the credit of the municipality; but except where the contrary is expressly enacted no such overdraft or accommodation shall at any time under any circumstances exceed the amount of

all general extra and water rates received by the municipality in the previous year and one-third of all charges received by the municipality in the previous year for the use or consumption of gas and electricity, for the sale of gas residuals and of materials produced from quarrying undertakings of the council and in respect of any abattoirs conducted by the council or, in the case of a newly constituted municipality, such amount as the Governor in Council determines.

Additional overdraft for certain expenditure on roads.

(2) Notwithstanding anything in sub-section (1) of this section, any council (in addition to the amount which it is authorized to obtain by way of overdraft under the said sub-section) may for the temporary accommodation thereof obtain any advances from banks by overdraft of the current account on the credit of the municipality which are necessary to meet any expenditure incurred or to be incurred by the council—

(*a*) under the Federal Aid Roads Acts; or

(*b*) for carrying out any permanent work or maintenance under the *Country Roads Act* 1958; or

(*c*) in the purchase or acquisition of land or payment of compensation in connexion with a planning scheme under the *Town and Country Planning Act* 1958 or a scheme under section six hundred and five of this Act—

but the amount of any overdraft for any purpose referred to in paragraph (*a*) or paragraph (*b*) of this sub-section obtained in any one month under this sub-section shall be liquidated before the expiration of the six next succeeding months and no overdraft for the purpose referred to in paragraph (*c*) of this sub-section shall be obtained except with the consent of the Governor in Council published in the *Government Gazette*, and any overdraft obtained under the said paragraph (*c*) in connexion with the purchase or acquisition of land which the council intends to resell may be secured in whole or in part by a mortgage or charge on such land.

(3) In this section "year" means period of twelve months ending on the thirtieth day of September.

Power to obtain overdrafts to extent of deposit receipts.
No. 5203 s. 436.

437. (1) Any municipality may obtain or have advances from any bank by overdraft of current account to the amount or extent of any deposit receipts for money due to such municipality by such bank.

(2) Such advances shall not be taken into consideration in ascertaining the amount or extent of advances or accommodation which any council may pursuant to sub-section (1) of the last preceding section obtain from any banks.

Advances by overdraft to amount of stock &c. held in Commonwealth loans. No. 5203 s. 437.

438. Any municipality may obtain or have advances from any bank by overdraft of current account to the amount or extent of any moneys invested by such municipality in any stock Treasury bonds or other public securities of the Government of the Commonwealth of Australia issued under the authority of any Commonwealth Act.

Extent of advances under s. 436 (1). No. 5203 s. 438.

439. Such advances shall not be taken into consideration in ascertaining the amount or extent of advances or accommodation which any council may pursuant to sub-section (1) of section four hundred and thirty-six of this Act obtain from any banks.

DIVISION 2.—BORROWING FROM MUNICIPALITY WHOSE DISTRICT ADJOINS.

Power to councils to lend money to councils of adjoining districts for making roads, &c. No. 5203 s. 439.

440. (1) Subject to the approval of the Governor in Council it shall be lawful for the council of any municipality from time to time to lend and advance out of the municipal fund upon such terms and conditions as the council sees fit to any municipality, whose district adjoins, any moneys not exceeding in one year an amount equal to the prior year's income of such last-mentioned municipality that may be required for making or repairing roads leading into the district of such first-mentioned municipality.

(2) Income in this section means income from general rates only.

(3) It shall be lawful for the municipality so borrowing to give as security for the repayment of all such loans a mortgage or first charge over not more than one-fourth of its annual income, which mortgage or first charge shall take precedence over all other mortgages or charges upon such income.

(4) Nothing in this section contained shall increase or extend the amount which may be borrowed by or on behalf of any municipality under this Act.

(5) Any municipality which has heretofore borrowed any money from the council of any municipality for the purpose aforesaid may give the security herein provided in the manner herein provided for the repayment of the same.

DIVISION 3.—BORROWING BY MORTGAGE OVER " INCOME ", SEPARATE RATE, OR SPECIAL IMPROVEMENT CHARGE.

Mortgages to be subject to this division. No. 5203 s. 440.

441. When the council of any municipality in the exercise of the powers given by this Act borrows money by mortgage over any income as defined by the section relating to extended borrowing powers separate rate or special improvement charge such mortgage shall be subject to the provisions contained in this Division and to any other provisions of this Part not inconsistent therewith.

442. Every such mortgage shall be by deed truly stating the date the consideration and the time or times and the place of the repayment and shall be sealed with the common seal of the municipality and may be made in the form contained in the Twenty-seventh Schedule or to the like effect.

Form of mortgage. No. 5203 s. 441.

Twenty-seventh Schedule.

443. Any mortgagee or other person entitled to any mortgage under this Division may transfer his estate and interest therein to any other person by deed truly stating its date and the consideration for the transfer and such transfers may be according to the form contained in the Twenty-eighth Schedule or to the like effect.

Transfer of mortgages. No. 5203 s. 442.

Twenty-eighth Schedule.

444. When any such mortgage does not provide for the liquidation of the loan by periodical repayments of the principal sum a sinking fund shall be formed to liquidate the same by the investment in each year in Victorian Government three per cent. stock of a sum (being such percentage of the principal moneys as may be sufficient) to secure the liquidation of the loan at the time named in such mortgage. Such sinking fund shall be subject to all the provisions of this Part relating to sinking funds so far as they are applicable.

Liquidation of loan secured by mortgage. No. 5203 s. 443.

445. Any money borrowed by mortgage over any such income separate rate or special improvement charge shall be borrowed on the security thereof and not on the credit of the municipality.

Loan secured by mortgage not to be on credit of municipality. No. 5203 s. 444.

446. (1) No mortgagee or person entitled to any such mortgage shall have any recourse against the municipal fund or otherwise except on such income separate rate or special improvement charge respectively and any sinking fund which may be formed to liquidate such mortgage.

Mortgagee &c. not to have recourse against municipal fund. No. 5203 s. 445.

(2) But if at any time the proceeds of such income separate rate or special improvement charge are insufficient for the payment of the principal or interest of any mortgage made on the security thereof such council shall advance the amount of the insufficiency of such proceeds out of the municipal fund of such district and pay such principal and interest out of such advance.

If proceeds of rate &c. insufficient to pay principal and interest, advance to be made out of the municipal fund.

(3) Where any advance is so made out of any municipal fund in the case of a mortgage over any separate rate—

In case of mortgage over separate rate such rate may be continued to repay to municipal fund amount advanced.

(*a*) the rate in respect of which such advance is made shall be continued for such time as may be necessary to enable the council to repay into the municipal fund any amount so advanced out of such fund with interest on any amount so advanced at the rate of Six pounds per centum per annum from the time of the making of the advance until the

repayment thereof, and it shall be the duty of such council to make such repayment with interest accordingly;

In such case amount in the pound of rate may be increased.

(*b*) in order that such repayment with interest may be made as quickly as possible, such council (notwithstanding anything to the contrary in the petition for the rate or in any Act) may increase the amount in the pound of the rate.

Power to appoint receiver if municipality makes default. No. 5203 s. 446.

447. (1) If any municipality makes default in payment of any principal money or interest secured by any mortgage or in forming the sinking fund (if any) to liquidate such mortgage, the Supreme Court on petition of the mortgagee or other person entitled to any such mortgage without prejudice to any other mode of recovery, may appoint some person or persons, not exceeding three, to be a receiver or receivers of the income separate rate or special improvement charge (as the case may be) over which such mortgage is given.

(2) Every such receiver shall be deemed an officer of and shall act under the direction of the Supreme Court.

Power to remove receiver. No. 5203 s. 447.

448. The Supreme Court may from time to time remove any receiver so appointed, and on the death or removal of any receiver so appointed, may appoint some other person in his place.

Powers of receiver. No. 5203 s. 448.

449. The receiver or receivers so appointed shall be entitled to receive such income separate rates or special improvement charge (as the case may be) payable to the council of the municipality, and for the purposes aforesaid such receiver or receivers shall be deemed the council of the municipality and may exercise all the powers thereof.

Commission to receiver. No. 5203 s. 449.

450. Every such receiver shall be entitled to such commission as remuneration for his services as the Supreme Court may appoint.

Transfer of sinking fund to receiver. No. 5203 s. 450.

451. The Supreme Court may order all stock standing in the stock ledgers forming any such sinking fund (if any) as aforesaid to be transferred into the name or names of the receiver or receivers.

Purposes for which receiver is to hold moneys. No. 5203 s. 451.

452. Such receiver or receivers shall hold all moneys and the proceeds of all stock forming any such sinking fund (if any) received by him or them after payment of costs and expenses and of his or their commission for the benefit of the mortgagees or other persons entitled according to their respective priorities and subject thereto for the municipality.

DIVISION 4.—BORROWING BY DEBENTURES SECURED UPON SEPARATE RATE OR SPECIAL IMPROVEMENT CHARGE.

Provisions applicable to money borrowed by issue of debentures secured upon separate rate or special improvement charge.

453. Any money borrowed under this Act by the issue of debentures secured upon any separate rate or special improvement charge shall be borrowed subject to such of the provisions of Division one of this Part as are applicable, but with the following exceptions:—

No. 5203 s. 452.

(1) The money shall be borrowed on the security of the separate rate or special improvement charge (as the case may be), and not on the credit of the municipality.

(2) The provisions of Division one of this Part as to the amount of money which may be borrowed shall not be applicable.

(3) The publication of notice of intention to borrow shall not be necessary.

(4) The principal moneys secured by such debentures shall be made payable on some day not more than sixteen years after the date of such debentures.

(5) The debentures shall be in the form of the Twenty-sixth Schedule omitting where they are inappropriate the words referring to a notice of intention to borrow.

Twenty-sixth Schedule. Form "B"

(6) The provisions as to demanding and taking a poll shall not be applicable.

(7) The money may be borrowed on resolution of the council and without a special order.

(8) When a sinking fund is formed the percentage upon the amount of the loan to be invested every year to form such sinking fund shall be not less than Five pounds per centum.

(9) No receiver who may be appointed at the instance of any holder of a debenture secured on a separate rate or special improvement charge shall be entitled to levy any rate other than the separate rate or levy any moneys other than the special improvement charge or to obtain a transfer of any sinking fund other than a sinking fund formed to liquidate the debentures secured upon such rate or charge.

(10) Every such receiver shall apply the moneys received by him in payment of the costs and expenses of his appointment and of the execution of the powers conferred on him and of his commission and in liquidation of the debentures secured on the separate rate or special improvement charge, and during

the period of maintenance (if any) may apply any of such moneys in maintenance of the works for which the separate rate was made.

Holder of debentures not to have recourse against municipal fund. No. 5203 s. 453.

454. No holder of debentures secured on a separate rate or special improvement charge shall have any recourse against the municipal fund or otherwise except on the separate rate or special improvement charge and any sinking fund which may be formed to liquidate such debentures.

If proceeds of rate &c. insufficient to pay principal and interest advances to be made out of municipal fund. No. 5203 s. 454.

455. If at any time the proceeds of such separate rate or special improvement charge are insufficient for the payment of the principal or interest of any debentures issued on the security thereof the council shall advance the amount of the insufficiency of such proceeds out of the municipal fund and pay such principal or interest out of such advance.

Rate may be continued to repay to municipal fund amount advanced. No. 5203 s. 455.

456. Where any advance is so made out of any municipal fund in the case of debentures secured upon any separate rate the rate in respect of which such advance is made shall be continued for such time as may be necessary to enable the council to repay into the municipal fund any amount so advanced out of such fund with interest on any amount so advanced at the rate of Six pounds per centum per annum from the time of the making of the advance until the repayment thereof, and it shall be the duty of such council to make such repayment with interest accordingly.

Increase of amount of rate. No. 5203 s. 456.

457. In order that such repayment with interest may be made as quickly as possible such council notwithstanding anything to the contrary in the petition for the rate or in any Act may increase the amount in the pound of the rate.

Protection of *bona fide* purchasers of debentures. No. 5203 s. 457.

458. Debentures secured upon any separate rate or special improvement charge and signed and sealed as required by this Act shall be good and valid as against the municipality in favour of any purchasers thereof without fraud and *bona fide*, notwithstanding that any of the preliminaries requisite for the due making of such rate or charge on the issue of such debentures have not been complied with—

(*a*) if the council of such municipality issues such debentures purporting to be charged on such rate at any time after the publication in the *Government Gazette* of the order of the Governor in Council confirming the rate; or

(*b*) if the council of such municipality issues such debenture purporting to be charged on such improvement charge after causing notice of such

improvement charge and of the council's intention to borrow money thereon to be published in the *Government Gazette.*

DIVISION 5.—LIABILITY OF COUNCILLORS.

Councillors concerned in borrowing money in excess of their powers to be personally liable. No. 5203 s. 458.

459. If the council of any municipality borrows any money which the municipality is not legally bound to repay all councillors who have consented to the borrowing of such money shall be jointly and severally liable to repay the same and all interest thereon to the persons from whom the same was borrowed, and the same may be recovered from such councillors or any of them as money lent by such persons to such councillors in any court of competent jurisdiction, but in no case shall such money be recoverable from the municipality.

And to refund. No. 5203 s. 459.

460. If any appropriation of municipal moneys is made for the purpose of liquidating any claim for money so borrowed the councillors of the municipality who have consented to the misappropriation of money for that purpose shall be jointly and severally liable to refund the same and all interest thereon, and the same may be recovered from such councillors of the municipality or any of them as money lent to such councillors in any court of competent jurisdiction and may be sued for by any ratepayer of the municipality on behalf of the municipality; but no such action shall be commenced without the written consent of a law officer.

Councillors borrowing illegally liable to a penalty of £200. No. 5203 s. 460.

461. When the council of any municipality borrows any money which the municipality is not legally bound to repay, or when any such council purports or attempts to bind the municipality to pay any money borrowed which the municipality is not legally bound to pay, every councillor who consents thereto shall for every such offence in addition to any liability to repay such money be liable to a penalty of Two hundred pounds, to be recovered with full costs of action by any person who may sue for the same in any court of competent jurisdiction; but no such action shall be commenced without the written consent of a law officer.

PART XVI.—ACCOUNTS AND AUDIT.

DIVISION 1.—KEEPING AND ORDINARY AUDIT OF ACCOUNTS: CONTINUOUS AUDIT.

Books of account to be kept. No. 5203 s. 461; No. 5443 s. 11 (2).

462. The council shall cause books to be provided and kept in such form (if any) as may from time to time be appointed by the Governor in Council by Order published in the *Government Gazette,* and true and regular accounts to be entered therein of

all sums of money received and paid on account of and for the municipality, and of the several purposes for which such sums of money have been received and paid.

Persons interested may inspect. No. 5203 s. 462.

463. Such books shall at all reasonable times be open to the inspection of any councillor ratepayer or creditor of the municipality without fee or reward.

And take copies. No. 5203 s. 463.

464. Any such person may take copies of or extracts from the said books without paying anything for the same.

Penalty for refusal of inspection. No. 5203 s. 464.

465. Every person having the custody of the said books who does not on any reasonable demand of any such councillor ratepayer or creditor permit him to inspect the said books, or to take copies or extracts as aforesaid, shall be liable to a penalty of not more than Five pounds for every such offence.

Books and accounts to be entered up regularly. No. 5203 s. 465.

466. (1) It shall be the duty of the council to keep the books and accounts of the municipality entered up and ready for the inspection of any auditor appointed to make a continuous audit and the inspectors of municipal accounts at all times during the year.

(2) If upon examination by the auditor appointed to make a continuous audit or any inspector it is found that such books or accounts are incomplete and that the officer whose duty it is to enter up such books and accounts has allowed them or any of them to remain in arrear for a longer period than one month the auditor appointed to make a continuous audit or the inspector shall report the same to the Minister.

Penalty. No. 5203 s. 466.

467. If the Minister after giving the officer charged with such neglect an opportunity of being heard is satisfied that such neglect has taken place without reasonable excuse he shall have power to order such officer to be fined a sum of not more than Twenty-five pounds for every such offence, and such sum shall be deducted by the council from the salary due or from any salary which may thereafter become due to such officer and be paid into the municipal fund.

Annual balance. No. 5203 s. 467.

468. The council shall cause the accounts of the municipality to be balanced to the thirtieth day of September in each year.

Audit. No. 5203 s. 468.

469. After each such balancing the auditor shall audit the said accounts as soon as conveniently may be or in the case of a continuous audit as directed by the Governor in Council.

470. The council shall by the municipal clerk produce and lay before the auditor the accounts so balanced as aforesaid with all vouchers in support of the same, and all books papers and writings in its custody or power relating thereto. Production of accounts. No. 5203 s. 469.

471. If the accounts are found correct, the auditor shall sign the same in token of his allowance thereof; but if he thinks there is just cause to disapprove of any part of the said accounts he may disallow any part of the said accounts so disapproved of. Disallowance of accounts. No. 5203 s. 470.

472. Any person interested in the said accounts, either as a creditor of the municipality or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection in writing, signed by such person or his agent, to any part of such accounts. Person interested may be present. No. 5203 s. 471.

473. (1) An annual statement showing the financial position of the municipality to the end of September shall be prepared. Annual financial statement. No. 5203 s. 472; No. 5443 s. 11 (3).

(2) Such statement shall contain such information and shall be in such form or forms as the Governor in Council by Order published in the *Government Gazette* appoints from time to time, and shall be audited as aforesaid.

474. The council shall cause such audited statement to be printed, and shall allow the same to remain for inspection at the office of the council. Annual statement to be open to inspection. No. 5203 s. 473.

475. Any creditor or ratepayer of the municipality or any person acting on his behalf may at all reasonable times inspect such statement, and compare the same with the books and documents relating thereto in the possession of the council. By creditor or ratepayer. No. 5203 s. 474.

476. The municipal clerk shall on demand give any such person a printed copy of the said statement on payment of a sum of Sixpence therefor. Charge for copy of statement. No. 5203 s. 475.

477. Fourteen days at the least before the meeting for examining and settling the accounts as hereinafter mentioned the council shall give public notice of such meeting stating in such notice that the said statement is printed, and lies at the office of the council ready for the inspection of the parties interested. Notice of meeting for examining and settling accounts. No. 5203 s. 476.

478. (1) The accounts of the council so balanced as aforesaid, and audited and either allowed or disallowed by the auditor as aforesaid, together with the said statement, shall be produced at a meeting of the council held within six weeks after the completion of the audit or at some adjournment thereof. Examination of accounts. No. 5203 s. 477.

Who may be present.

(2) At such meeting all creditors ratepayers and other persons interested as aforesaid may be present.

Settlement of accounts. No. 5203 s. 478.

479. The accounts shall be then finally examined and settled by the council; and if the same are found just and true they shall be allowed by the council, and certified accordingly under the hand of the chairman of such meeting.

Signing of accounts. No. 5203 s. 479.

480. After such accounts have been so allowed and signed by such chairman (except as hereinafter provided with regard to a special audit) they shall be final in regard to all persons whomsoever.

Annual abstract of accounts. No. 5203 s. 480; No. 5843 s. 19.

481. (1) The council shall every year cause to be prepared an abstract of the said accounts certified as aforesaid and containing a statement showing whether the auditor has allowed the accounts or not.

Copies open to inspection.

(2) A copy of such certified abstract and of any such statement of the auditor—

(*a*) shall be kept by the municipal clerk at the office of the council; and

(*b*) shall be open to be inspected by any creditor or ratepayer during office hours.

Power to direct continuous audit of accounts of municipalities. No. 5203 s. 481; No. 5443 s. 17.

482. (1) In addition to the ordinary audit of the accounts of a municipality provided for under this Part, the Governor in Council may direct that in the case of any municipality an audit (*in this Act referred to as a* "*continuous audit*") of such accounts by an auditor appointed by the Governor in Council be made from day to day or at such intervals as the Governor in Council determines.

Application of s. 489 Appointment removal and remuneration of auditor making such audit.

(2) The provisions of section four hundred and eighty-nine of this Act shall with such adaptations as are necessary extend and apply in the case of an auditor appointed or being appointed to make a continuous audit.

DIVISION 2.—DUTIES, ETC., OF COLLECTORS AND OTHER OFFICERS.

Collectors to pay money to the treasurer in the form they receive them. No. 5203 s. 482; No. 5204 s. 2.

483. (1) Every collector appointed or employed by the council by virtue of this Act to collect any rates or other moneys shall in case of a borough within three days and in case of a shire within seven days after he has received any moneys on account of the municipality pay over the same to the treasurer to the account of the municipality.

(2) Every such payment shall include all moneys received by the collector on account of the municipality up to the day of making it.

(3) When payments are made to such collector in cheques he shall hand over to the treasurer the actual cheques received by him, and when payments are made to such collector in coin or bank notes he shall hand over to the treasurer in coin or bank notes the amount received by him after deducting the sums paid away by him in giving change but without any other deduction.

(4) He shall obtain from the treasurer a receipt which the treasurer is hereby required to give for such moneys which shall be a discharge to the collector.

(5) Such receipt shall be exempt from any stamp duty charged upon receipts under the provisions of the *Stamps Act* 1958.

(6) All moneys so received shall be paid into the bank by the treasurer in accordance with the provisions of Part IX.

Collectors to deliver accounts of moneys received &c. when directed by the council. No. 5203 s. 483.

484. (1) Every such collector shall in such time and in such manner as the council directs deliver to the council true and perfect accounts in writing under his hand of all moneys received by him and of all moneys paid by him to the treasurer on account of the municipality and also a list of the names of all persons who have neglected or refused to pay any rate or money owing by them with a statement of the money due from them respectively and in respect of what several periods rates and accounts the same are due respectively.

(2) The council of every municipality shall direct that such list of the names of all persons who have neglected or refused to pay any rate or money owing by them shall be prepared once at least in every year.

Penalty. No. 5203 s. 484.

485. Every collector or treasurer failing to perform any act which he is by the last two preceding sections required to perform shall for every offence be liable to a penalty of not more than Ten pounds.

Officers to deliver accounts and vouchers and make payments. No. 5203 s. 485.

486. (1) Every officer appointed or employed by the council by virtue of this Act shall from time to time, when required by the council, make out and deliver to it, or to any person appointed by it for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the council.

(2) Such account shall state how and to whom and for what purpose such moneys have been disposed of, and together with such account such officer shall deliver the vouchers and receipts for such payments.

(3) Every such officer shall pay to the council or to any person appointed by it to receive the same all moneys which appear to be owing from him upon the balance of such accounts.

Officers failing to render accounts or to pay balance and deliver over property of council.

(4) If any such officer fails to render such accounts as aforesaid or to produce and deliver up the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for five days after being thereunto required any officer of the council fails to deliver up to the council or to any person appointed by it to receive the same all papers and writings property matters and things in his possession or power relating to the execution of this Act or belonging to the council, any two justices may hear and determine the matter in a summary way, and may order such officer to render such accounts or to deliver up such vouchers and receipts as aforesaid or to pay over the balance owing by him, or to deliver up all such papers writings property matters and things.

(5) Every such officer who neglects or refuses to obey such order, may by any justice be committed to gaol for a term of not more than six months.

Proceedings &c. may be taken after officer has ceased to hold office.

(6) All such proceedings against or dealings with any officer may be had and taken and enforced against such officer after he has ceased to hold such office; and no such proceeding against or dealing with any officer shall deprive the council of any remedy which it might otherwise have against any surety of such officer.

DIVISION 3.—QUALIFICATION, APPOINTMENT, REMUNERATION, AND REMOVAL OF AUDITORS AND INSPECTORS OF ACCOUNTS.

Municipal Auditors Board.
No. 5203 s. 486.

487. (1) The Governor in Council may appoint three fit and proper persons to be a Board hereinafter designated the Municipal Auditors Board and may remove every person so appointed.

(2) Such Board shall inquire into the qualifications of such persons as desire to exercise the office of municipal auditor or inspector of municipal accounts under the provisions of this Act and may grant certificates of competency to exercise such offices respectively.

(3) Such Board in granting such certificates whether to exercise the office of auditor or inspector shall inquire into the general conduct and character as well as the abilities of candidates and shall have power after notice to the holder of any such certificate and giving him an opportunity to be heard to cancel such certificate.

Regulations as to the Municipal Auditors Board, and candidates for the office of municipal auditor.
No. 5203 s. 487.

488. The Governor in Council may by order published in the *Government Gazette* make regulations prescribing the place or places at and the manner in which the Municipal Auditors Board is to exercise the duties conferred upon it by this Act and the tests to which candidates must conform for the several certificates respectively which such Board is empowered to grant and the fees payable by such candidates.

Appointment removal and remuneration of municipal auditors.
No. 5203 s. 488; No. 5217 s. 2.

489. (1) The Governor in Council may appoint for each municipality some person holding a certificate of competency from the Municipal Auditors Board to be auditor, and may remove any person so appointed.

(2) The auditor for any municipality shall be paid out of the municipal fund thereof such remuneration as the Governor in Council may fix and may recover the same from the municipality in any court of competent jurisdiction.

(3) If the certificate of any auditor is cancelled he shall cease to hold his office of auditor.

Appointment removal and remuneration of inspectors of municipal accounts.
No. 5203 s. 489; No. 5217 s. 2, No. 5443 s. 18.

490. (1) The Governor in Council may appoint two persons holding certificates of competency from the Municipal Auditors Board to be inspectors of municipal accounts and may remove any person so appointed.

(2) Such inspectors shall—

(*a*) be paid such salaries; and

(*b*) be entitled to allowances (if any) in respect of their expenses in accordance with such scales—

as the Governor in Council from time to time determines; and such salaries and allowances shall, when certified by the Minister or by any person appointed by the Minister in that behalf, be payable out of any moneys for the time being appropriated by Parliament for the purpose.

(3) If the certificate of any inspector is cancelled he shall cease to hold his office of inspector.

Public Service Act not to apply.

(4) Nothing in the *Public Service Act* 1958 shall apply to municipal auditors or inspectors of municipal accounts or their appointment or removal.

DIVISION 4.—POWERS OF AUDITORS AND INSPECTORS OF ACCOUNTS.

General powers of auditors and inspectors.
No. 5203 s. 490.

491. (1) For the purpose of every audit continuous audit special audit or inspection in this Part mentioned, it shall be lawful for any auditor or inspector (as the case may be)—

(*a*) to hear receive and examine evidence upon oath, which oath such auditor or inspector is hereby required to administer; and

(*b*) by summons under his hand to require all such persons as he may think fit to appear personally before him at a time and place to be fixed in and by such summons and to produce to him all such books and papers as may appear necessary for such audit or inspection respectively.

(2) Every person so required as aforesaid who without just excuse neglects or refuses to comply with the tenor of such summons, or who having appeared before the auditor or inspector refuses to be examined on oath or affirmation or having taken such oath or affirmation without just excuse refuses to answer such questions concerning the premises as may be put to him shall and may be dealt with by the said auditor or inspector in all respects as by any Statute in force for the time being relating to justices persons so refusing or neglecting in like cases in which justices have summary jurisdiction may be dealt with.

Powers of auditors and inspectors to demand production of books &c. and of cash in hand for purposes of inspection.
No. 5203 s. 491.

492. (1) Every auditor shall for the purposes of any continuous audit and every inspector of municipal accounts shall for the purpose of any inspection have authority at all reasonable times and without notice to demand from the council of any municipality and the officers thereof the production of all books accounts vouchers papers documents and cash in hand belonging to the municipality in the custody of the council or any of its officers.

Penalty in case of refusal.

(2) Every councillor or officer neglecting or refusing to comply with any such demand shall be liable to a penalty of not more than Fifty pounds and to a further penalty of not more than Ten pounds for every day during which such demand is not complied with.

(3) (*a*) For the purposes of every audit continuous audit special audit or inspection in this Part mentioned, where any officer of the council whose duty it is to keep or have the custody of any books of account or money of the council is also an officer or employé of a waterworks trust or other local governing body with a similar duty, it shall be lawful for any auditor or inspector at all reasonable times and without notice to demand from such waterworks trust or local governing body or from any such officer or employé the production of any books papers and cash in hand belonging to the waterworks trust or local governing body or in the custody of the waterworks trust or local governing body or of any such officer or employé.

(*b*) Any commissioner member officer or employé of a waterworks trust or local governing body who neglects or refuses to comply with any demand under this sub-section shall be liable to a penalty of not more than Fifty pounds and to a further penalty of not more than Ten pounds for every day during which such demand is not complied with.

Officers to furnish statement of moneys.
No. 5203 s. 492.

493. (1) Every officer of any municipality shall from time to time furnish to any auditor making a continuous audit or (as the case may be) to any such inspector as and when he may require the same a statement in writing of all moneys received by such officer on account of such municipality.

(2) Every bank at which any municipality has an account shall from time to time as and when he may require the same furnish to any auditor or inspector full particulars of every such account.

Bank to furnish particulars of account.

DIVISION 5.—SPECIAL AUDIT.

494. (1) The Governor in Council may if he thinks fit, if requested as hereinafter mentioned and upon the deposit of such sum of money not exceeding Fifty pounds as security for costs and expenses as the Minister may require or without such request or deposit by notice in the *Government Gazette*, appoint for any municipality an auditor who shall be called a " special auditor " or he may appoint more than one such special auditor.

Appointment and removal of special auditor. No. 5203 s. 493.

(2) In the case of the appointment of more than one special auditor all the provisions of this Division with respect to a special auditor shall be deemed and construed to apply to such special auditors.

(3) Any such special auditor may at any time be removed by the Governor in Council and another appointed in his stead.

495. (1) Such special auditor shall upon a day to be fixed by him not less than fourteen days from the date of his appointment proceed to hold a special audit of the accounts of the municipality for such period as the Governor in Council may direct.

Special audit. No. 5203 s. 494.

(2) Such special auditor shall forthwith notify in some newspaper circulating in the municipal district the fact of his appointment and the day so fixed, and he shall attend at the office of the council on the day so fixed for such special audit as aforesaid.

496. A special auditor may be appointed for any municipality on the request of not less than twenty ratepayers thereof in writing under their hands.

On whose request special auditor may be appointed. No. 5203 s. 495.

497. (1) When any day has been appointed as aforesaid, the council of the municipality shall forthwith in like manner as in case of ordinary annual audits cause its accounts to be balanced to a day appointed by the Governor in Council, and a full and true statement to be drawn out and to be laid before the special auditor as in the like case required with respect to an audit as hereinbefore provided.

Council to cause accounts to be balanced for special audit. No. 5203 s. 496.

(2) The council shall by the municipal clerk or such other person as the council may appoint in that behalf produce and lay before the special auditor all books accounts vouchers papers and writings whatsoever in its custody or power which may be called for by the special auditor.

And to produce books &c.

Report of special auditor. No. 5203 s. 497.

498. The special auditor shall forthwith after such special audit report to the Minister the result thereof; and if it appears to the satisfaction of such special auditor that any money forming part of the municipal fund or any other fund or account under the control of the council has been wilfully or through culpable negligence misapplied to purposes not authorized by law, and that any councillors have wilfully or by culpable negligence misapplied or connived at or concurred in the misapplication of such money, he shall by writing under his hand certify that such is the case, and the Governor in Council may by order to be published in the *Government Gazette* within three months from the date of such certificate wholly or in part confirm or disallow the same.

May be confirmed or disallowed.

Proceedings on confirmation of certificate. No. 5203 s. 498.

499. (1) Every such order of confirmation of a certificate shall be conclusive evidence in all courts and for all purposes whatsoever of the fact of the misapplication of the moneys therein mentioned, of the amount so misapplied, and of the liability as hereinafter next mentioned of the councillor or councillors named in such order.

Recovery of sum misapplied.

(2) The sum or sums of money mentioned in any such order of confirmation may be recovered in any court of competent jurisdiction, together with full costs of suit, from any one or more of the councillors mentioned in such order, at the suit of a law officer or of any of the ratepayers of the municipality the accounts whereof have been audited, and such sum or sums so recovered shall be paid into the municipal fund or any other fund or account to which the same may belong.

Special auditor to hear explanation No. 5203 s. 499.

500. The special auditor before certifying as aforesaid shall by public notice or otherwise as may seem to him reasonable appoint a time and place for hearing such explanations as may be offered by or on behalf of the council of the municipality or any member thereof.

Costs of special audit. No. 5203 s. 500.

501. (1) The costs and expenses of and connected with every such special audit shall be paid as the Governor in Council may by order direct either wholly or partly out of—

(*a*) any moneys which may be appropriated by Parliament for that purpose; or

(*b*) the money deposited as security as aforesaid; or

(*c*) the municipal fund.

(2) Every order directing payment to be made out of the municipal fund shall when published in the *Government Gazette* be conclusive evidence of the right of the person or persons named therein to be paid out of such fund the sum therein mentioned; and such sum may be recovered by such person or persons from the council before a court of petty sessions as a civil debt recoverable summarily.

(3) The Governor in Council may direct that the whole or any portion of the money deposited as security as aforesaid be returned to the person depositing the same.

PART XVII.—CONTRACTS.

Mode in which council may enter into contracts and effect thereof. No. 5203 s. 501.

502. (1) The council of every municipality may in the name and on behalf of the municipality enter into contracts for the purposes of this Act and every such contract may be made varied or discharged as follows (that is to say):—

(*a*) Any contract which if made between private persons would be by law required to be in writing and under seal the council may make in writing and under the common seal of the body corporate and in the same manner may vary or discharge the same.

(*b*) Any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith the council may make in writing signed by the councillors or any two of their number acting by the direction and on behalf of the council and in the same manner may vary or discharge the same.

(*c*) Any contract which if made between private persons would be by law valid although made by parol only and not reduced into writing the councillors or any two of them acting by the direction and on behalf of the council may make by parol only without writing and in the same manner may vary or discharge the same.

(2) And all contracts made according to the provisions herein contained shall be effectual in law and shall be binding on the municipality and all other parties thereto their successors heirs executors or administrators (as the case may be) and in case of default in the execution of any such contract either by the council on behalf of the municipality or by any other party thereto such actions or suits may be maintained thereon and damages and costs recovered by or against the municipality or the other parties failing in the execution thereof as might have been maintained and recovered had the same contracts been made between private persons only.

Notice calling for proposals in certain cases. No. 5203 s. 502; No. 5443 s. 19.

503. (1) Except in cases of emergency before any contract for the execution of any work or the furnishing of any goods to the amount of Five hundred pounds or upwards is entered into by the council, five clear days' notice at the least shall be given in some newspaper generally circulating in the neighbourhood, expressing the purpose of such contract and inviting any person willing to undertake the same to make proposals for that purpose to the council.

(2) The council shall accept the proposal which on a view of all the circumstances appears to the council to be most advantageous, and shall take security for the due and faithful performance of every such contract or the council may decline to accept any such proposal.

Preference to certain goods &c. No. 5203 s. 503.

504. (1) In purchasing or obtaining any goods machinery or material for any municipality the council thereof shall give effective and substantial preference to goods machinery or material manufactured or produced in the Commonwealth.

(2) If goods machinery or material manufactured or produced in the Commonwealth cannot be purchased or can only be purchased in insufficient quantities or of a quality unsuitable for the work the council shall give substantial and effective preference to goods machinery or material produced and manufactured in the United Kingdom as against those of foreign manufacture.

Composition for breaches of contract &c. No. 5203 s. 504; No. 5843 s. 20.

505. (1) The council may compound with any party who has entered into any contract, or by or against whom any action or suit has been brought against or on behalf of the municipality for any cause whatsoever for such sums of money or other recompense as the council thinks proper.

Power for municipalities to contract with other municipalities and public bodies.

(2) Subject to the approval of the Governor in Council it shall be lawful for the council of any municipality in the name and on behalf of the municipality from time to time to contract upon such terms and conditions as the council sees fit with any other body corporate or public body (including any other municipality) for or with respect to the doing and the control and management by either or both of the contracting parties of any matter or thing which such contracting parties are or either of them is by law empowered to do control and manage and to carry out every such contract according to the tenor thereof.

Power to municipalities to sell road-making materials, machinery &c. to other municipalities and authorities.

Without limiting the generality of the foregoing provisions of this sub-section, it shall be lawful for the council of any municipality to enter into any contract with the State Rivers and Water Supply Commission or any other Authority within the meaning of the *Water Act* 1958 or the Country Roads Board or the State Electricity Commission of Victoria or the Geelong Waterworks and Sewerage Trust or any Sewerage Authority within the meaning of the *Sewerage Districts Act* 1958 or the council of any other municipality for or with respect to—

(*a*) the sale and supply by either of the contracting parties to the other and the purchase by either of the contracting parties from the other of any road-making materials obtained from land or produced by any plant of the contracting party selling and supplying the same under the contract; and

(*b*) the use by either of the contracting parties of any machinery plant machines or appliances of the other contracting party.

Power to certain municipalities to sell materials produced from quarries to certain owners or occupiers of property.

(3) The council of any municipality may in the name and on behalf of the municipality sell to any owner or occupier of property any crushed rock metal screenings or other materials produced from any gravel pit or quarry of the council for use on or in relation to such property.

Powers to municipalities to contract for use of land for public purposes. No. 5203 s. 505.

506. The council of any municipality may in the name and on behalf of the municipality enter into any contract relating to the use for public purposes of any land vested in or controlled by any body or person and the council may apply the municipal fund towards the payment of all expenses necessarily incurred by the council in carrying such contract into effect:

Provided that no such contract relating to the use of any Crown land reserved under the *Land Act* 1958 shall be entered into without the consent of the Commissioner or Crown Lands and Survey.

Power to the council to pay workmen's wages in certain cases. No. 5203 s. 506.

507. (1) Where the council of any municipality enters into a contract with any person (hereinafter called the contractor) for the execution of any work such council before at any time making any progress or final payment in respect of such contract may require the contractor or some other person on his behalf approved of by the council to make a statutory declaration showing whether all workmen and labourers of every kind employed on the work have or have not been paid their wages in full in money to the latest practicable date at which such wages are due.

(2) If such declaration does not clearly and explicitly state that all workmen and labourers of every kind employed on the work up to the date of the declaration have been paid their wages in full in money to the latest practicable date at which such wages are due there shall be set forth in such declaration the names of the workmen and labourers who have not been so paid and the amounts owing to each respectively.

(3) Until such declaration has been made and furnished to the council the council may withhold the payment of any money that may be due or may become due by such council in respect of the contract.

(4) If such declaration shows that the contractor has failed or omitted so to pay the wages of any such workman or labourer to the latest practicable date at which wages were due at the time of the making of such declaration, such council may out of any money payable in respect of the contract pay such workman or labourer the amount appearing by such declaration to be due to him and may deduct the same from any money then payable or thereafter to become payable in respect of the contract; and such wages if necessary as between workmen and labourers to whom

wages appear as aforesaid to be due shall abate proportionately. Any money so paid by the council to any such workman or labourer and deducted from the moneys in respect of the contract shall for all purposes be deemed and taken to have been duly paid to the contractor, and the council shall be discharged in respect thereof accordingly.

PART XVIII.—POWER TO PURCHASE, TAKE ON LEASE, OR TAKE LANDS COMPULSORILY.

DIVISION 1.—INTERPRETATION.

Meaning of "land" in this Part.
No. 5203 s. 507.

508. In this Part the word "land" includes any land or any easement right term or privilege in over or affecting land.

DIVISION 2.—PURCHASING OR TAKING ON LEASE LAND FROM PERSONS WILLING TO SELL OR LEASE THE SAME.

Power to councils to purchase or lease land.
No. 5203 s. 508.

509. (1) The council of any municipality for the purpose of executing any of the works and undertakings which it is authorized to execute may in the name and on behalf of the municipality—

(*a*) purchase land from any person who is willing to sell the same, and may pay the purchase money out of the municipal fund or any other moneys applicable for the execution of such works and undertakings; and

(*b*) take on lease for any term and subject to any such covenants and conditions as the council thinks reasonable any land and may pay the rent with or without any fine as may be agreed upon out of the municipal fund or any other moneys applicable.

Application to cities of Melbourne and Geelong.

(2) This section shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 3.—PURCHASING OR TAKING COMPULSORILY LANDS LESS THAN A PRESCRIBED MINIMUM AREA.

Power to council to purchase and to use or re-sell certain lands less than minimum area &c. prescribed for building thereon and also adjoining lands.
No. 5203 s. 509; No. 5331 s. 2, No. 5924 s. 8 (1) (*f*).

510. (1) Where any allotment of land has less than the minimum area or the minimum depth or width of frontage prescribed by any regulation in force in the municipality or by any by-law of the municipality as the minimum area or the minimum depth or width of frontage (as the case may be) of land upon which any dwelling-house or any shop or any dwelling-house and shop combined may be erected, the council of the municipality may purchase by agreement or compulsorily take such land and (with the consent of the Governor in Council) any other land adjoining the same which in the opinion of the council

it is desirable to acquire in order to improve the locality by providing an allotment or allotments having not less than the minimum area or the minimum depth or width of frontage as aforesaid, and may—

(i) sell or remove or demolish the buildings or erections (if any) on any land so purchased or taken and sell the materials of any such buildings or erections so removed or demolished; or

(ii) use the land so purchased or taken or any portion thereof for the purposes of any works and undertakings which it is authorized to execute; or

(iii) notwithstanding anything in this Act, in the name and on behalf of the municipality sell the whole or any portion of the land so purchased or taken on such terms and subject to such covenants conditions exceptions and reservations as it thinks fit.

(2) This section shall extend and apply to the city of Melbourne and the city of Geelong. Application to cities of Melbourne and Geelong.

DIVISION 4.—TAKING LAND COMPULSORILY.

511. (1) Subject to the provisions of this Act or of any other Act providing for the compulsory taking of land by the council of any municipality (including the city of Melbourne and the city of Geelong), the council of such municipality may within the municipal district, or with the consent of the Governor in Council in any other part of Victoria, take land compulsorily for the purpose of executing any works or undertakings which it is by or under this or any other Act authorized to execute. Power to take land compulsorily. No. 5203 s. 510.

(2) Unless in any such other Act express provison is made with respect to the compulsory taking of land by any such municipality and compensation therefor, the provisions of Divisions one and two of this Part and of this Division and the provisions of Part XLIV. shall with all necessary adaptations take effect with regard thereto.

512. (1) Whenever any council deems it expedient to execute any work or undertaking for the purposes whereof the exercise of any such compulsory power of taking land will in its Plans &c. of works &c. to be prepared. No. 5203 s. 511.

opinion be necessary or desirable the council shall cause to be prepared such specifications maps plans sections and elevations as may be necessary, showing—

(*a*) the nature and extent of such work or undertaking and the exact site and admeasurements thereof;

(*b*) on and through what lands the same is proposed to be placed or to be extended;

(*c*) the names of the owners or reputed owners lessees or reputed lessees and the occupiers thereof as far as such names can be ascertained by the council.

(2) Such specifications maps plans sections and elevations when so prepared and approved by the council shall be deposited at the office of the council, and shall be open for inspection by all persons interested at all reasonable hours for the space of forty clear days after notice has been given by advertisement in the *Government Gazette* as next hereinafter provided.

(3) Any clerk or other person having the custody of the said specifications maps or other papers who shall refuse to permit such inspection shall for every such offence be liable to a penalty of not more than Five pounds.

Publication of notice. No. 5203 s. 512.

513. (1) The council shall forthwith after the said specifications maps plans sections and elevations have been deposited cause to be published in the *Government Gazette* and twice in some newspaper generally circulated in the neighbourhood a notice—

(*a*) describing shortly the purport of the said specifications maps and other papers;

(*b*) stating that the same are deposited for inspection and the place where they are so deposited;

(*c*) calling upon all persons affected by the proposed work or undertaking to set forth in writing addressed to the council or the municipal clerk within forty clear days from the publication of such notice in the *Government Gazette* all objections which they may have to the work or undertaking.

(2) The council shall further within seven days after such publication in the *Government Gazette* serve a notice in manner hereinafter mentioned on every owner or reputed owner on every lessee or reputed lessee and on every occupier of such lands

defining in each case the land intended to be taken, and requiring an answer stating whether the particular person so served assents dissents or is neutral in respect of the taking thereof.

(3) Such notice shall be served— Service of notice

(*a*) by delivery of the same personally to the person required to be served, or if such person is absent from Victoria to his agent; or

(*b*) by leaving the same at the usual or last-known place of abode of such person as aforesaid; or

(*c*) by forwarding the same by post in a registered letter addressed to the usual or last-known place of abode of such person; or

(*d*) where it is impracticable to serve such notice on such person in any manner provided by the foregoing provisions of this sub-section, by posting the notice in a conspicuous position on the land and keeping the same so posted for a period of not less than forty days.

(4) At the next ordinary meeting of the council after the expiration of forty clear days from the publication of such notice in the *Government Gazette* any person affected by the proposed work or undertaking or his agent or manager for the property in respect of which he is so affected who has set forth in writing his objections to the said work or undertaking within the time hereby limited for the purpose may appear before the council in support of such objections. Objections

(5) The council shall touching all such objections have authority to hear receive and take evidence and by summons under the hand of the person who acts as chairman at the meeting of the council to require all such persons as the council thinks fit to appear personally before the council at its office at a time to be fixed in and by such summons and to produce to such council all such books and papers in their possession or under their control as may appear necessary for the purpose of their examination; and the person who acts as chairman at the meeting shall administer and take for the council all necessary oaths affirmations and declarations. Power to receive evidence

514. (1) If after the expiration of such term of forty clear days and hearing all objections (if any) so set forth as aforesaid and such evidence as the council may require it appears to the council expedient to proceed with the work or undertaking the council may make an order directing the work or undertaking to be executed according to the specifications maps plans sections and elevations deposited as aforesaid. Order for execution of work. No. 5203 s. 513.

(2) If it is found to be necessary for the purposes of any such work or undertaking to take any land compulsorily the council shall cause such order together with true copies of all such specifications maps plans sections and elevations and with the written objections (if any) set forth as aforesaid to be transmitted to the Minister.

(3) The said Minister shall consider the same respectively and shall for the purpose of such consideration have the like powers as are by the last preceding section vested in the council and may confirm the said order with or without variation or may disallow such order.

Confirmation of order when it is required to take land compulsorily.

(4) Notice of the confirmation or variation of any such order shall be forthwith published in the *Government Gazette*.

After confirmation work may be executed.

No. 5203 s. 514.

515. (1) Upon the confirmation of such order as aforesaid and not before, the council shall be authorized to take and use, subject to the provisions hereinafter contained, for the purpose of such work or undertaking all such land as is described in and by the said specifications maps plans and sections as being required for the said work or undertaking.

(2) The council shall make to the owners of and all persons interested in any lands taken or used for the purposes of such work or undertaking or injuriously affected by the execution thereof full compensation for the value of the lands so taken or used, and for all damage sustained by such owners occupiers and other persons by reason of the exercise of the powers vested in the council by this Act.

(3) The amount of such compensation shall be ascertained and determined in manner hereafter in this Act provided.

Order when confirmed to be valid.

(4) After the confirmation by the Minister of any such order as aforesaid the same shall be deemed valid and effectual notwithstanding any non-compliance with any matter or thing required as preliminary thereto.

Application of this Part to the case of municipalities acting in conjunction with one another or the Board of Land and Works.

No. 5203 s. 515.

516. When any municipality has contracted as hereinbefore provided with any other municipality or municipalities or with the Board of Land and Works touching the execution of any works or undertakings such one of the contracting parties as may be mentioned in that behalf in such contract shall for the purpose of carrying out the same be deemed the council of the municipality which is a party to such contract or of a municipality having a municipal district which is the aggregate of the municipal districts of the municipalities parties to such contract (as the case may be); and any persons appointed in that behalf by such contracting party shall be deemed the surveyor and clerk thereof.

DIVISION 5.—POWER OF PRIVATE PERSONS TO PURCHASE NARROW STRIPS OF LAND ABUTTING ON OR CONTINUOUS WITH STREETS, ETC.

Interpretation. No. 5203 s. 516.

517. (1) In this section unless inconsistent with the context or subject-matter—

"Reserve" means any land not exceeding in width four feet wholly or in part abutting on or continuous with or along any public or private street lane or passage and not being land reasonably necessary for drainage purposes of or for access to any other land of the same owner and not being land over which any easement of way or drainage has been *bona fide* created by the owner in favour of any other person and is still subsisting.

"Owner" means any person who under the *Lands Compensation Act* 1958 is enabled to sell convey grant or release land and any corporation.

"Purchaser" means the owner in fee simple of any land abutting on a reserve.

Right of purchaser to acquire reserves abutting on his land.

(2) In any municipal district where a reserve consists of land abutting on land which belongs or at any time belonged to the owner of such reserve the purchaser shall be entitled to acquire from the owner of the reserve so much thereof as abuts on the land of the purchaser and separates it from any such street lane or passage.

Incorporation.

(3) (*a*) Except so far as it is inconsistent with this section Part XLIV. (except section eight hundred and thirty-five) and the *Lands Compensation Act* 1958 are hereby respectively incorporated and shall all be construed together as one.

(*b*) For the purposes of this section the following expressions in the laws so incorporated shall have the respective meanings hereby assigned to them save where the context is inconsistent therewith, that is to say—

in the said Part XLIV. "Municipality" and "Council" shall mean the "purchaser."

in the said *Lands Compensation Act* 1958 "the Board of Land and Works" and "the Board" shall mean "the purchaser". "The special Act" shall mean this section.

Regard to be had to prior charges in respect of road construction.

(4) In estimating the purchase money or compensation to be paid under the last preceding sub-section to any owner for or in respect of any reserve sought to be acquired regard shall be had to all moneys paid or due by the owner or his predecessor in title in respect of any road construction or other municipal work charged against such reserve.

PART XIX.—STREETS ROADS BRIDGES FERRIES CULVERTS LEVEES AND JETTIES.

DIVISION 1.—DEDICATION AND PROCLAMATION OF PUBLIC HIGHWAYS.

Absolute property in roads &c. to vest in Crown. No. 5203 s. 517.

518. It is hereby declared and enacted that notwithstanding any presumption of law to the contrary the absolute property in the land heretofore or hereafter reserved or proclaimed under the *Land Act* 1958 or any corresponding previous enactment as a road street or highway is and shall be vested in the Crown.

Proclamation of highway. No. 5203 s. 518.

519. (1) It shall be lawful for the Governor in Council at any time and from time to time upon the request of the council of any municipality (including the city of Melbourne and the city of Geelong) by notice in the *Government Gazette* to proclaim any land reserved used or by purchase or exchange acquired for a street road highway thoroughfare bridge square court alley or right-of-way to be a public highway.

(2) Such land shall thereupon and thenceforth from the date of such proclamation become and be absolutely dedicated to the public as a public highway within the meaning of any law now or hereafter in force.

Revocation &c. of proclamation.

(3) Notwithstanding anything in any Act when in regard to any proclamation made by the Governor in Council pursuant to this section or any corresponding previous enactment the Minister is satisfied that an error or misdescription has been made the Governor in Council may rescind revoke amend or vary such proclamation in whole or in part as the case requires.

Declaring breadth of carriage and foot ways. No. 5203 s. 519; No. 5331 s. 2.

520. (1) It shall be lawful for the Governor in Council at any time and from time to time upon the request of the council of any municipality to fix and by notice in the *Government Gazette* declare the breadth of the carriage or foot ways of any public highway or to alter the breadth of any such carriage or foot ways as theretofore fixed and declared and to fix and by like notice declare the same accordingly.

Non-application of s. 601 (2) (3) as to cost of kerbing &c. foot ways to increased portion of altered foot way.

(2) When pursuant to this section any foot way has been increased in breadth by reason of the alteration of breadth of a carriage way the provisions of sub-sections (2) and (3) of section six hundred and one of this Act shall not apply to the portion added to such foot way by such alteration.

Effect of declarations already published. No. 5203 s. 520; No. 5331 s. 2.

521. All notices heretofore published in the *Government Gazette* whereby the Governor has purported to fix and declare the breadth of the carriage or foot ways of any street or public place shall from the date of such publication as aforesaid be deemed to have operated as a dedication to the public of the land referred to in such notice as a public street and highway.

522. (1) The council of any municipality may by order direct that any land taken purchased or acquired by the council shall be a public highway. Council may order that new street be public highway. No. 5203 s. 521.

(2) Every such order shall be published in the *Government Gazette,* and thereupon such land shall become and be a public highway, and be deemed to be dedicated to the public accordingly.

DIVISION 2.—OPENING OF NEW STREET OR ROAD. WIDENING AND DIVERSION OF STREET OR ROAD: DISPOSAL OF OLD STREET OR ROAD.

523. (1) Subject to the provisions of this Act, the council of every municipality may within the municipal district or with the consent of the Governor in Council in any part of Victoria from time to time open new streets or roads divert any street or road or alter or increase the width of any street or road. Opening diverting widening roads &c. No. 5203 s. 522.

(2) No new street or road shall be opened by the council of any municipality so as to be less in any place than one chain wide including footpaths without the consent of the Minister. Width of new roads &c.

(3) Where by the exercise by the council of any municipality of any of the powers contained in this section it is necessary to take any land from the owner thereof the council may require such owner to take portion of any street or road adjoining the land of such owner which in the opinion of the Governor in Council it will be no longer necessary to continue as a street or road, and the value thereof shall be deducted from any sum to be paid to such owner by the council by way of compensation; and if such value cannot be agreed upon between the council and such owner the same shall be settled in the same manner and at the same time as the compensation to be paid to such owner. Owner of adjoining land from whom land is taken may be required to take portion of former street or road. Value thereof to be deducted from compensation.

(4) But if such former street or road leads to any land house or place which cannot in the opinion of the Governor in Council be conveniently approached by the new street or road substituted therefor then and in such case every owner of adjoining land who is required to take any portion of such former street or road shall take such portion subject to the right of way and passage to and from such house and land or place. Right of way to be preserved in certain cases.

(5) The provisions of this section shall so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply to the city of Melbourne and the city of Geelong and for the purpose of carrying into effect the said provisions as so extended and applied the provisions of Divisions Extension to cities of Melbourne and Geelong.

one, two and four of Part XVIII. and the provisions of Part XLIV. of this Act shall also so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply to the city of Melbourne and the city of Geelong.

Deviation of roads.
No. 5203 s. 523; No. 5331 s. 2.

524. (1) If the council of any municipality proves to the satisfaction of the Minister that it is desirable that any road should be deviated and that such deviation can be conveniently made through Crown land or land held by licensees under the *Land Act* 1958, the Minister may cause such road to be deviated accordingly at the cost of the municipality.

(2) Upon the publication in the *Government Gazette* of an order of the Governor in Council declaring the new road a public highway any portion of the old road mentioned in that behalf in such order shall cease to be a public highway, but shall remain subject to the right of way and passage to and from any premises which cannot in the opinion of the Governor in Council be as conveniently approached from the new road.

(3) Subject as aforesaid such old road or so much thereof as adjoins the allotments or areas of the licensees (if any) through whose areas the new road has been carried shall be added to their allotments or areas in proportion to the amount of land taken from each, and shall be accepted by them as full compensation for any loss or damage suffered through the deviation of the road and the Minister shall make the distribution accordingly.

New roads to be fenced.
No. 5203 s. 524.

525. In all cases in which the council of any municipality diverts or alters any street or road or opens any new street or road through any fenced land or takes away any fence for the purpose of widening any street or road, the council shall cause to be made substantial fences on both sides of such new street or road, or upon the side upon which any fences may be so removed as aforesaid, and shall keep such fences in repair for a period of three years.

Old road how disposed of where owner of adjoining land has not been required to take same.
No. 5203 s. 525; No. 5842 s. 2; No. 5924 s. 8 (1) (g).

526. (1) Any order made by the council of any municipality directing that any land taken purchased or acquired by it shall be a public highway may declare that any land dedicated thereby to the public shall be in lieu of any existing street or road named in such order, and the Governor in Council may confirm the same, and in such case on the publication of such order together with the confirmation thereof in the *Government Gazette* such street or road shall be discontinued accordingly and such publication shall have the effect of bringing under the operation of the *Transfer of Land Act* 1958 any existing street or road named in such order and not already under that Act.

(2) The land and soil of any such street or road so discontinued shall vest in the municipality and may be sold by the municipality for such sum as is agreed upon, or in accordance with this sub-section is ascertained, and with respect thereto the following provisions shall have effect:—

(*a*) The council shall first offer the land for sale to the person or to the several persons whose lands immediately adjoin the land so proposed to be sold, such persons being capable of entering into a contract for the purchase of such land;

(*b*) Where more than one such persons is entitled to such right of pre-emption the offer shall be made to such persons in succession one after another in such order as the council thinks fit;

(*c*) If any such persons are desirous of purchasing such land within three months after such offer of sale they shall signify their desire in that behalf to the council;

(*d*) If they decline such offer or if within three months they neglect to signify their desire to purchase such land the right of pre-emption of every such person declining or neglecting in respect of the land included in such offer shall cease;

(*e*) A declaration in writing made before a justice by some person not interested in the matter in question stating that such offer was made and was refused or not accepted within three months from the time of making the same or that the person or all the persons entitled to the right of pre-emption were out of Victoria or could not after diligent inquiry be found or were not capable of entering into a contract for the purchase of such land shall in all courts be sufficient evidence of the facts therein stated;

(*f*) If any person entitled to such pre-emption is desirous of purchasing any such land and such person and the municipality do not agree as to the price thereof then such price shall be ascertained by arbitration under the *Arbitration Act* 1958.

Upon payment or tender to the municipality of the purchase money so agreed or ascertained the municipality shall transfer such land to the purchaser thereof and if an instrument of transfer thereof is lodged with the Registrar of Titles together with the relevant extract from the *Government Gazette* the Registrar shall register the transfer in like manner as if it had been accompanied by a certificate of title in the name of the municipality as proprietor (and in the certificate of title the land shall be limited as to the depth to which it was limited by the Crown grant thereof or if the land has not previously been alienated by

the Crown shall be limited to the surface of the land down to a depth of fifty feet below the surface) and where the land was before the transfer subject to any easement or other right in favour or affecting any other land under the said Act the Registrar—

shall make any requisite alteration in the Register Book or any plan of subdivision and also in the duplicate certificate of title or Crown grant when brought to him for that purpose or when the same is lodged in or brought to the Office of Titles for the purpose of any dealing with the land comprised therein; and

may detain the duplicate until the rectification thereof is completed; and

may refuse to register any dealing with the said land or any estate or interest therein until the duplicate has been brought in for rectification.

Upon the rectification of the original of any certificate or Crown grant as hereinbefore mentioned, the Registrar of Titles shall give notice in writing to the proprietor of the land comprised in the certificate or Crown grant and to the registered proprietor of any registered mortgage or charge thereon informing him or them of the rectification and that, on the duplicate certificate or Crown grant being brought into the Office of Titles, the same will be amended to conform with the alteration in the original thereof; and on the said duplicate being brought in the requisite alteration shall be made accordingly and the amended duplicate returned to the said proprietor.

(3) But if such former street or road leads to any land house or place which cannot in the opinion of the Governor in Council be conveniently approached by the new street or road, then and in such case such former street or road shall be sold subject to the right of way and passage to and from such land house or place.

(4) The moneys arising from every such sale shall be carried to the credit of the municipal fund.

Amendment of certificate of title on purchase of old road &c.
No. 5203 s. 526.

527. (1) Where in consequence of the exercise by the council of any municipality of any of the powers conferred by any Act the registered proprietor of an estate in fee simple in the land described in any certificate of title or Crown grant registered under the *Transfer of Land Act* 1958 or of a lease of any Crown land or the mortgagee in possession of any such land—

(*a*) has agreed to purchase or is required to take any portion of a street or road which in the opinion of the Governor in Council it is no longer necessary should continue as a street or road; or

(*b*) has agreed to transfer to the municipality any portion of the land described in such certificate of title Crown grant or Crown lease—

such registered proprietor or mortgagee in possession may apply to the Registrar of Titles to have the certificate of title Crown grant or Crown lease amended so that the same as amended shall include in the description of the land comprised therein such portion of such street or road and shall exclude from such description any land to be transferred to the municipality.

Form of application. Twenty-ninth Schedule.

(2) Every such application shall be in the form of the Twenty-ninth Schedule or as near thereto as the circumstances of the case will permit.

Registrar to amend certificate of title &c.

(3) If such application is presented to the Registrar of Titles sealed with the common seal of the municipality and approved by the Governor in Council and accompanied by—

(*a*) a copy of the *Government Gazette* containing the publication of the confirmation by the Governor in Council of the order made by the council declaring that land directed to be a public highway shall be a public highway in lieu of the whole or any portion of such existing street or road; and

(*b*) the existing certificate of title (if any) in the name of the municipality for such portion of such street or road or any part thereof; and

(*c*) the written consent to such application of every person having any registered interest in the land so proclaimed; and

(*d*) such survey plans and field notes and other information in regard to surveys and like matters as are or is required by the Registrar of Titles—

the Registrar of Titles shall subject so far as they are applicable to the provisions of the *Transfer of Land Act* 1958 with regard to rectification of certificates amend the affected certificate of title Crown grant or Crown lease so as to include in the description of the land comprised therein such portion of such street or road and so as to exclude from such description the land so proclaimed as aforesaid:

Provided that where such application is presented by a mortgagee in possession the written consent to the application of the registered proprietor shall not be required.

Production of extract from *Government Gazette* on amendment of Crown grant &c. on purchase of old road.

(4) For the purposes of amendments under this section or under this section as extended or applied by any other Act of certificates of title or Crown grants or Crown leases, production to the Registrar of Titles of a document purporting to be an extract from the *Government Gazette* and having the name of the Government Printer printed at the foot of such extract may be

accepted by the Registrar of Titles as sufficient compliance with the provisions of the said section relative to production of a copy of the *Government Gazette*.

(5) Every such amendment when made by the Registrar of Titles—

(*a*) shall have the effect of bringing under the operation of the *Transfer of Land Act* 1958 such portion of such street or road if not already under that Act; and

Effect of amendment.

(*b*) shall have the effect of including in the certificate of title Crown grant or Crown lease such portion of such street or road as if the same had been included in the said certificate of title Crown grant or Crown lease when such certificate of title Crown grant or Crown lease issued; and such portion of such street or road shall be held by such registered proprietor or mortgagee in possession for the same estate as and subject to terms and conditions similar to those under which the land immediately abutting on such portion of such street or road is held by him; and

(*c*) with respect to the portion of land which such registered proprietor or mortagee in possession had agreed to transfer to the municipality shall be deemed to be and shall have the same force and effect as a transfer thereof to the municipality of the fee-simple of such land; and the Registrar of Titles shall if desired and on payment of the proper fee therefor issue to the municipality a certificate of title for an estate in fee-simple in such land free from encumbrance:

Provided that the Registrar of Titles may in lieu of amending any certificate of title Crown grant or Crown lease require a new certificate or certificates to be taken out in respect of the land comprised therein and such portion of such street or road and excepting the land so proclaimed as aforesaid.

Provision where title is subject to registered mortgage charge lease or sub-lease.

(6) If the title to be amended is subject to any registered mortgage charge lease or sub-lease the consent to the application of the person appearing by the register to be the proprietor of such mortgage charge lease or sub-lease shall on the granting of such application have the effect of freeing and discharging from the same the land to be excised from the certificate of title Crown grant or Crown lease; and every such amendment when made by the Registrar of Titles shall, if such portion of such street or road to be included in the description of the land comprised in such certificate of title Crown grant or Crown lease adjoins any part of the land remaining subject to such mortgage charge lease or sub-lease, have the effect of making such portion of such street or road subject to such mortgage charge lease or sub-lease in all respects as nearly as possible as if such portion of such street or

road had been expressly included in the land subject to such mortgage charge lease or sub-lease in lieu of the land so excised as aforesaid and the registered proprietor of such mortgage charge lease or sub-lease may deal with such portion of such street or road accordingly.

Application of this Division to boundary roads.

(7) The provisions of this Division shall apply to boundary roads in which case the council of any one of the adjoining municipalities may with the consent of the council of the other municipality exercise any of the powers conferred by this Division.

DIVISION 3.—SALE OF UNNECESSARY STREET ETC.

Sale of road required for access to purchased lands only and not for public use.

No. 5203 s. 527; No. 5843 s. 22, No. 5924 s. 8 (1) (*b*).

528. (1) Where a road adjoins any purchased lands and is required for access to such lands only and not otherwise for public use and convenience if the owner of such land makes application to close such road and the Governor in Council approves thereof, and if an adequate money consideration according to the determination of an appraiser appointed by the Board of Land and Works is paid for the same, the Governor in Council may order such road to be closed; and the Governor in Council may grant in fee the soil of the road so closed to the owner of such adjoining lands, and in every such grant there shall be inserted such covenants conditions reservations exceptions and provisions as to the Governor in Council seem fit. The moneys arising from such sale shall be paid into the Consolidated Revenue.

Sale of unnecessary road.

(2) (*a*) Where a road (whether or not a public highway but not being a road set out on land of the Crown) or any part thereof is not required for public use the Governor in Council on the request of the council, made not less than one month after publishing in a newspaper generally circulating in the district and posting to the registered proprietor (if any) of the land and any person known to have an interest in the land notice of intention to make such a request, may by Order published in the *Government Gazette* direct that such road or part shall be discontinued and thereupon such road or part shall be discontinued accordingly and the land and soil thereof shall vest in the municipality and may subject to this sub-section be sold by the council by public auction or in such other manner as the Governor in Council in the circumstances directs.

(*b*) The publication of such Order shall have the effect of bringing such land under the *Transfer of Land Act* 1958 if not already under such Act.

(*c*) The provisions of sub-section (2) of section five hundred and twenty-six of this Act other than paragraphs (*a*) to (*f*) thereof shall with such adaptations as are necessary extend and apply to and in relation to any such sale.

(*d*) The money received by the council from any such sale shall be applied firstly in payment of all costs charges and expenses incurred by the council as incidental to the sale or any attempted sale or otherwise, and thereafter in payment of the residue within twelve months of the receipt thereof to the registered proprietor or owner of the land or into the Supreme Court under the provisions so far as they are applicable of section sixty-nine of the *Trustee Act* 1958 and the rules referred to therein.

(3) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 4.—OPENING PRIVATE ROADS IN SHIRES.

Private road. No. 5203 s. 528.

529. Where in any shire any land has been alienated from the Crown and there is no road to any part of such land from the nearest highway, if the owners or occupiers of such land or one or more of them desire to have a private road communicating with such land from such highway, such owners or occupiers may make application to that effect in writing to the council setting forth distinctly therein the situation of such land and the direction and line of the proposed road and through what other land the same may be required to pass and the names of the owners and occupiers of such last-mentioned land.

Security by persons requiring private road. No. 5203 s. 529.

530. (1) Before the matter of any such application is proceeded with by the council of the shire the person making such application shall give security to the council by a bond with two sufficient sureties conditioned for the payment to the council of all charges and expenses of or occasioned by such application or any proceedings thereon.

(2) Upon such bond having been given the council shall entertain the application.

(3) The like proceedings shall be had with reference to the matter of such application as are herein provided to be had in the case of a work or undertaking which the council deems it expedient to execute.

(4) The council shall after order duly confirmed purchase or take the land set forth in such notice or so much thereof as the council deems necessary accordingly making compensation as herein provided.

Opening of private road No. 5203 s. 530.

531. (1) Every such road shall be not less than thirty-three feet wide in the clear, and after the council has taken or purchased the land for such road under the provisions herein contained, and

after the condition of such bond as aforesaid has been fully satisfied, the council shall forthwith open the said road, and the same shall be from thenceforth a private road for the use of the persons having applied for the same.

(2) Before any such road is opened it shall be fenced with a substantial fence in all parts in which if the same was a public highway opened by the council it would require to be fenced.

(3) Nothing herein contained shall authorize the several owners or occupiers of lands originally comprised in a single grant from the Crown but subsequently divided to claim the right of more than one common road through the land of any person.

DIVISION 5.—REDUCING WIDTH OF STREET OR ROAD.

Power for municipality and Board of Land and Works and three-fourths of the owners of the frontages to reduce the width of a street or road. No. 5203 s. 531.

532. Where any street or road in any municipal district exceeds one chain in width, such street or road may for any length thereof be reduced in width to any width not less than one chain in manner hereinafter appearing (that is to say):—

(1) A scheme for so reducing the width of any such street or road for the length mentioned therein may be agreed upon in writing by the council of the municipality, the Board of Land and Works, and the owners of land as hereinafter required under the common seals of the said council and Board, and under the hands and seals of such owners:

Provided that where the council by a notice served personally or by post on any such owner at his last known place of residence or business requests such owner to agree as aforesaid to such scheme or (in the event of his refusal to agree as aforesaid) to give reasons for such refusal and such owner—

(*a*) fails to reply to such notice within thirty days after such service; or

(*b*) in his reply, fails or refuses to agree as aforesaid and fails to give reasons therefor or gives reasons therefor which, in the opinion of the Minister after considering the report of any persons appointed by the Minister to inquire into the matter, are frivolous or not good and sufficient or not *bona fide*—

such owner shall be deemed to have agreed in writing under his hand and seal to such scheme.

(2) Such owners shall be not less than three-fourths of the owners of land having a frontage to the portion of the street or road within the length mentioned in the said scheme, and shall own land comprising not less than three-fourths of such frontage:

In boroughs &c. consent of all owners of certain properties required.

Provided always that in case the street or road to be reduced in width is in a borough or in a portion of a shire which has been at any time a borough or in which Part I. of the *Police Offences Act* 1958 is in force the consents required shall include the consent under his hand and seal of every owner of land which fulfils the following conditions:—

(*a*) Has substantial buildings erected on the line of the frontage thereof, or not more than thirty-three feet back therefrom; and

(*b*) Fronts the same side of the street or road as the portion thereof which is to cease to be a street or road whether such land actually abuts on such portion or is within three chains from either end of the length of such portion as mentioned in the said scheme.

What the scheme is to provide for.

(3) Such scheme shall provide—

(*a*) for the disposal of the surplus land taken from such street or road including (where the case so requires) the dealing with any such land under the *Land Act* 1958 as unalienated land of the Crown;

(*b*) for the purchase money to be paid by any owner who may be allowed to purchase any of the surplus land;

(*c*) that every owner of land having a frontage to such street or road in any place where it is reduced in width who does not consent to the scheme shall have the option of purchasing the land (if any) between such frontage and the street or road as reduced in width and a line or lines perpendicular to such frontage at the same price per acre or other unit of area as is paid by other owners having the right to purchase;

(*d*) for the compensation (if any) to be paid in respect of the lands (if any) injuriously affected by the reduction of the width of the street or road in accordance with such scheme; but such compensation shall

not in the whole exceed the total amount of the purchase money to be received for surplus land.

Confirmation of scheme.

(4) The Governor in Council may by order published in the *Government Gazette* confirm such scheme, and thereupon any land mentioned in such scheme in that behalf shall cease to be a street or road and all rights of way over the same shall cease and determine.

Grant of surplus land in accordance with scheme.

(5) The Governor in Council on payment to the Treasurer of Victoria of the purchase money for any such surplus land and on the same (less the cost of collection and less the amount necessary for payment of expenses) having been paid into the Consolidated Revenue may in the name and on behalf of Her Majesty grant such land in accordance with the provisions of any such scheme and in every such grant there shall be inserted such covenants conditions reservations exemptions and provisions as to the Governor in Council seem fit.

Provision for amendment of scheme.

(6) A scheme under this section may before and after publication in the *Government Gazette* of the order confirming the same be amended by Order in Council so as to correct any errors therein or supply any omissions therefrom; and a memorandum setting out such amendments sealed with the common seal of the municipality and of the Board of Land and Works shall be attached to the scheme and lodged therewith in the Office of Titles.

Trusts &c. upon which surplus land is to be granted.

533. When by any such scheme as aforesaid any owner of any land fronting such road is allowed to purchase any land taken from such road the same shall be granted to the persons in whom the land fronting such road of which such person is owner is vested for the like estates and to and upon the like uses and trusts.

No. 5203 s. 532.

Compensation to whom payable.

534. (1) Any compensation payable under any such scheme as aforesaid shall be payable out of the Country Roads Board Fund to the like persons and applicable in the like manner as compensation payable under the *Lands Compensation Act* 1958.

No. 5203 s. 533.

Meaning of "owner."

(2) The word "owner" in this Division shall have the same meaning as in such last-mentioned Act.

Main roads

(3) The powers contained in this Division shall not be exercised in the case of any road which is a main road within the meaning of the *Country Roads Act* 1958 without the consent in writing of the Country Roads Board.

DIVISION 6.—MAKING MAINTENANCE AND MANAGEMENT OF STREETS ROADS BRIDGES FERRIES CULVERTS LEVEES AND JETTIES.

Council to manage roads bridges &c.
No. 5203 s. 534.

535. (1) The council of every municipality shall have the care and management of all public highways streets roads bridges culverts ferries and jetties within the municipal district and of all levees constructed or acquired by the municipality within such district.

Power to council to make roads bridges &c.

(2) Subject to the provisions of this Act, the council of every municipality may within the municipal district or with the consent of the Governor in Council in any part of Victoria from time to time make improve and maintain public highways streets roads bridges ferries levees or jetties, and may cause to be raised or lowered the ground or soil of any street or road.

Establishment of standard survey marks and alignment of streets.
No. 5203 s. 535.

536. (1) Every council—

(*a*) may cause standard survey marks to be established in any street or road (whether a public highway or not) in the municipal district; and

(*b*) shall when constructing any new street or road (whether a public highway or not)—

(i) cause standard survey marks to be established in such street or road;

(ii) cause the alignment of such street or road to be fixed by a licensed surveyor in accordance with the regulations made under this section and with the approval of—

(in the case of any street or road vested in the Crown or in any authority representing the Crown) the Surveyor-General after consultation with the Registrar of Titles; and

(in the case of any other street or road) the Registrar of Titles; and

(iii) cause such alignment to be connected to such standard survey marks by a licensed surveyor.

(2) (*a*) Where a council acts under paragraph (*a*) of subsection (1) of this section the council shall cause to be prepared a plan, certified under the hand of the surveyor who established the standard survey marks, showing the position of such marks.

(*b*) Where a council acts under paragraph (*b*) of sub-section (1) of this section the council shall cause to be prepared a plan, certified under the hand of the licensed surveyor who connected the alignment of the street or road to the standard survey marks, showing the position of such marks in relation to such alignment.

(3) The council shall keep every such plan or a copy thereof certified as aforesaid open for inspection at the office of the council upon the payment of a fee of One shilling.

Penalty for destruction &c. of survey marks.

(4) Any person who destroys removes mutilates or defaces or directly or indirectly causes any alteration in the position of any standard survey mark established pursuant to this section or any corresponding previous enactment shall be liable to a penalty of not less than Five pounds and not more than Fifty pounds, and upon a conviction for any such offence the court may in addition to any penalty imposed order the payment of a reasonable amount of damages (including any expense incurred in replacing or re-establishing such mark) to the council:

Provided that the removal or alteration of any standard survey mark for the purpose of any building reconstruction or other work in accordance with such provisions as to notice supervision re-establishment and report to the council and the Surveyor-General as are required by the Surveyor-General or as are prescribed by regulations under the *Survey Co-ordination Act* 1958 shall not be deemed an offence against this sub-section.

Regulations.

(5) The Governor in Council may make regulations for or with respect to prescribing any matter which by this section is required or permitted to be prescribed or which is necessary or expedient to be prescribed to give effect to the provisions of this section.

Interpretation.

(6) In this section unless inconsistent with the context or subject matter—

"Licensed surveyor."

"Licensed surveyor" means a licensed surveyor under the *Land Surveyors Act* 1958.

"Standard survey mark."

"Standard survey mark" means mark of a kind prescribed as a permanent mark under the *Survey Co-ordination Act* 1958 or approved by the Surveyor-General for the purposes of this section.

"Surveyor."

"Surveyor" includes—

(*a*) any licensed surveyor; and

(*b*) any person who carries out or superintends any survey on behalf of any municipality.

"Surveyor-General."

"Surveyor-General" includes any person acting for the time being as professional head of the Survey Branch of the Department of Crown Lands and Survey.

Construction.

(7) This section shall be read as in aid of and not in derogation from the provisions of the *Survey Co-ordination Act* 1958.

Application to Melbourne and Geelong.

(8) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Roads &c. under management of council. No. 5203 s. 536.

537. Every highway street road bridge levee ferry or jetty of which the council of any municipality has the management or control shall be deemed to be within the municipal district of such municipality.

Municipalities not to be answerable for accidents on parts of streets &c. not made by them. No. 5203 s. 537.

538. (1) No person shall be entitled to recover damages against any municipality in respect of any loss or injury sustained either to himself or any other person or any property by reason of any accident upon or while using any portion of a highway street or road in the municipal district or under the control of the council which portion has not been interfered with by the council merely because some other portion of such highway street or road whether distant laterally or longitudinally has been taken over or improved by the council.

(2) Nothing in this section shall relieve any municipality from any liability where such accident is caused by the negligence of the council in the execution of works then in progress or which have been completed by such council in any highway street or road within such municipal district.

Power to stop all or certain kinds of traffic on streets roads or bridges. No. 5203 s. 538.

539. (1) For such time as may be necessary for the purpose of raising or lowering the ground or soil of any street or road or of making improving maintaining altering or increasing the width of any street road bridge or culvert within the municipal district and for such further time after the completion of any of such works as may be necessary to prevent injury thereto, the council of any municipality may close in whole or in part such street road bridge or culvert and stop all traffic thereon or may without closing the same stop certain kinds of traffic thereon.

Temporary road during repairs &c.

(2) The council of every municipality may through any grounds adjoining to any ruinous part of any public street or road or any bridge or ferry which such council is making or repairing not being the site or curtilage of any house or a garden lawn yard court park plantation planted walk avenue or nursery for trees make a temporary road bridge or ford to be made use of as a public highway whilst the old street or road bridge or ferry is being made or repaired, making compensation to the owners and occupiers of such grounds for any damages which they may thereby sustain.

540. (1) Notwithstanding anything in any Act where it appears to the council of any municipality that a street or road or any part of a street or road is likely to be seriously injured by traffic during a particular portion of any year the council may for such portion of that year without closing the same stop certain kinds of traffic thereon unless with the written consent of the council or some officer duly authorized by the council in that behalf.

Power to councils to stop certain kinds of traffic on roads during portion of year.
No. 5203 s. 539.

(2) The council shall—

Notice.

(*a*) seven days at least before so stopping such traffic publish in some newspaper generally circulating in the neighbourhood a notice setting forth—

(i) a description of the street or road or part thereof affected;

(ii) the kinds of traffic to be stopped; and

(iii) the portion of the year for which such traffic is to be stopped; and

(*b*) cause to be posted up in conspicuous places on or near such street or road or part thereof affected a notification (in such form as the council determines so that the same may be generally known) of the effect of such notice.

(3) (*a*) Where the council has not exercised the powers conferred by this section in relation to any street or road or part thereof which in the opinion of the Governor in Council is likely to be seriously injured as aforesaid the Governor in Council may by Order published in the *Government Gazette* exercise any of such powers.

Power of Governor in Council to act where municipal council fails to put this section into operation.

(*b*) The council shall forthwith publish a copy of such Order in Council in some newspaper generally circulating in the neighbourhood and shall cause to be posted up in conspicuous places on or near the street or road or part thereof affected a notification (in such form as the council determines so that the same may be generally known) of the effect of such Order in Council.

(*c*) While such Order in Council remains in force the council shall not exercise any of such powers so far as they relate to the matters dealt with in the Order in Council.

Council not to exercise powers.

(4) The driver of any vehicle which is used without the written consent aforesaid on any such street or road or part thereof and any person (including the owner of any such vehicle) by whose act or by or in consequence of whose order such traffic has passed along such street or road or part thereof in contravention of any provision of any such notice or Order in Council shall be severally guilty of an offence and liable to a penalty of not more than Twenty pounds:

Penalty on driver and owner for contravention of council's notice or Order in Council.

Defence.

Provided that it shall be a good defence in any prosecution under this sub-section against the driver, if the driver satisfies the court that he had reason to believe and did believe that the written consent aforesaid to the use of the vehicle on such street or road or part thereof had been given to the owner of the vehicle.

Ascertainment of weight carried on road on which certain traffic stopped by notice or Order in Council.

(5) Where in any such notice or Order in Council any kind of traffic to be stopped is described by reference to weight, any weight driven drawn or carried in or on the street or road or part thereof affected may be ascertained by any officer of the municipality or by any member of the police force in the same manner as the weight of any vehicle or load is ascertained under Part XXIII. relating to the regulation of the weight of loads.

Power to councils to close roads or bridges unsafe for traffic.

No. 5203 s. 540.

541. (1) Where by a certificate of their surveyor or engineer it appears to the council of any municipality that any street or road or any portion thereof or any bridge or culvert is unsafe for public traffic, the council may cause the same to be closed for such time as the council considers necessary, and may cause to be erected any fence erection or obstruction to stop all traffic thereon.

Power to Governor in Council to direct re-opening thereof.

(2) At any time after any such street or road or portion thereof or any such bridge or culvert has been so closed the Governor in Council may by order publish in the *Government Gazette* direct that the same be re-opened by the council for public traffic, and thereupon it shall be the duty of the council to re-open the same according to the tenor of such order.

Expenses of repairing damage caused to roads by excessive load may be recovered.

No. 5203 s. 541.

542. (1) Where by a certificate of their surveyor or engineer it appears to the council of any municipality that having regard to the average expense of repairing streets or roads in the neighbourhood extraordinary expenses have been incurred by such council in repairing any street or road by reason of the damage caused by an excessive weight passing along the same or extraordinary traffic thereon, such council may recover before a court of petty sessions or in any court of competent jurisdiction from any person by whose act or by or in consequence of whose order such weight or traffic has passed along such street or road the amount of such expenses as may be proved to the satisfaction of such court to have been incurred by such council by reason of the damage arising from such weight or traffic.

Person liable for expenses may enter into agreement with council for payment thereof.

(2) But any person against whom expenses are or may be recoverable under this section may enter into an agreement with such council for the payment to it of a composition in respect of such weight or traffic; and thereupon such person so paying the same shall not be subject to any proceedings under this section.

Power to council by special order to restrict extraordinary or heavy traffic on certain roads No. 5203 s. 542.

543. (1) Where the council of any municipality has (whether before or after the commencement of this Act) constructed any road in the municipal district designed for carrying extraordinary or heavy traffic and by a certificate of the surveyor or engineer it appears to the council that any street or road or part thereof not so designed is likely to be seriously injured by such traffic the council may by special order prohibit extraordinary or heavy traffic on any such last-mentioned street or road unless with the written consent of the council or some officer duly authorized by the council in that behalf.

Particulars in special order.

(2) Every such special order shall set forth—

(*a*) a description of the street or road or part thereof to which the special order applies; and

(*b*) the kinds of extraordinary or heavy traffic prohibited.

Approval by Governor in Council.

(3) No such special order shall have any force or effect unless and until it is approved by the Governor in Council.

Notice of effect of special order to be given.

(4) The council shall cause notice of the effect of any such special order to be given in such manner as the council determines so that the same may be generally known.

Penalty on driver and owner for contravention of special order.

(5) The driver of any vehicle which is used without the written consent aforesaid on any such last-mentioned street or road or part thereof and any person (including the owner of any such vehicle) by whose act or by or in consequence of whose order such traffic has passed along such street or road or part thereof in contravention of any provision of any such special order shall be severally guilty of an offence and liable to a penalty of not more than Twenty pounds:

Defence.

Provided that it shall be a good defence in any prosecution under this sub-section against the driver, if the driver satisfies the court that he had reason to believe and did believe that the written consent aforesaid to the use of the vehicle on such street or road or part thereof had been given to the owner of the vehicle.

Ascertainment of weight carried on road on which such traffic prohibited by special order.

(6) Where in any such special order any kind of extraordinary or heavy traffic prohibited is described by reference to weight, any weight driven drawn or carried in or on the street or road or part thereof to which the special order applies may be ascertained by any officer of the municipality or by any member of the police force in the same manner as the weight of any vehicle or load is ascertained under Part XXIII. relating to the regulation of the weight of loads.

Application to cities of Melbourne and Geelong.

(7) This section shall extend and apply to the city of Melbourne and the city of Geelong.

Council may fix weight to be carried over any bridge or culvert.

Conspicuous notice to be put up.

No. 5203 s. 543.

544. (1) The council of any municipality after obtaining a report from its surveyor or engineer as to the weight which any bridge or culvert in its municipal district is capable of carrying without injury thereto may if the council thinks fit cause to be placed on or near to such bridge or culvert a conspicuous notice that it is not capable of carrying a greater weight than that fixed by the council and that it is not lawful for any person, unless with the consent in writing of the surveyor or engineer of the municipality or any officer thereof duly authorized in that behalf, to drive draw or carry or to cause to be driven drawn or carried over such bridge or culvert any weight greater than that stated in any such notice.

Penalty for carrying excessive weight over bridge or culvert.

(2) Every person who without such consent drives draws or carries or causes to be driven drawn or carried over any such bridge or culvert a greater weight than that stated in any such notice shall be liable to a penalty of not more than Twenty pounds and the council may recover from him before a court of petty sessions or any court of competent jurisdiction damages for any injury caused by such excessive weight having passed over such bridge or culvert.

Ascertaining weight carried over bridge or culvert.

(3) The weight so driven drawn or carried over any such bridge or culvert may be ascertained by any officer of the municipality or by any member of the police force in the same manner as the weight of any vehicle or load is ascertained under Part XXIII. relating to the regulation of the weight of loads.

Application to cities of Melbourne and Geelong.

(4) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Power to council to fix maximum rate of speed at which vehicles &c. may be drawn over bridges and culverts.

No. 5203 s. 544.

545. (1) The council of any municipality after obtaining a report from its surveyor or engineer as to the maximum rate of speed at which any vehicle may be driven or drawn over any bridge or culvert without injury thereto may if the council thinks fit cause to be placed on or near to such bridge or culvert a conspicuous notice stating the maximum rate of speed fixed by the council at which any vehicle may be driven or drawn over such bridge or culvert and that it is not lawful for any person to drive or draw or to cause to be driven or drawn over such bridge or culvert any vehicle at any rate of speed greater than that stated in such notice.

Penalty.

(2) Every person who drives or draws or causes to be driven or drawn over any such bridge or culvert any vehicle at any rate of speed greater than that stated in such notice shall be liable to a penalty of not more than Twenty pounds; and the council may recover from him in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction damages for any injury caused thereby.

Application to cities of Melbourne and Geelong.

(3) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Council may impound cattle.

546. (1) For the purpose of any law now or hereafter to be in force relating to the impounding of cattle every municipality shall be deemed the owner and occupier of all public highways public or private streets roads bridges and ferries within its municipal district. No. 5203 s. 545.

Power to impound cattle put to graze upon a street or road.

(2) Any cattle driven along or on to any street or road for the purpose of grazing without the consent of the council of the municipality shall be deemed to be trespassing on such street or road, and may be impounded by the council under any law for the time being in force relating to the impounding of cattle :

Provided that—

(*a*) the council of any municipality shall not, except with the permission in writing of the Country Roads Boards, give any such consent to the driving of any cattle along or on to any State highway within the meaning of the *Country Roads Act* 1958 for the purpose of grazing ; and

(*b*) such consent shall be subject to a condition that the cattle are not to be left grazing on a State highway without some person in attendance.

Power to sell timber removed during road-making operations.

547. The council of any municipality (including the city of Melbourne and the city of Geelong) may sell any timber which has been cut or removed in the course of the construction of any street or road by the council. No. 5203 s. 546.

Provision of horse troughs.

548. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may place and maintain horse troughs in any street or road within the municipal district of the municipality. No. 5203 s. 547.

Penalty for injuring &c. horse troughs.

(2) Any person who destroys removes injures or interferes with any such trough or pollutes or wastes the water therein or otherwise misuses or abuses any such trough shall be liable to a penalty of not more than Ten pounds.

Bee hives not to be placed on roads.

549. (1) No person shall without the consent of the council of a municipality place or cause or permit to be placed any bee hives on or within ten feet of any street or road within the municipal district of the municipality. No. 5203 s. 548.

Penalty.

(2) Any person who contravenes the provisions of the last preceding sub-section shall be liable to a penalty of not more than Five pounds.

Removal and disposal of hives.

(3) The council may cause any bee hive placed on or within ten feet of any street or road in contravention of the provisions of sub-section (1) of this section and the contents of such hive to be removed and disposed of, and the net proceeds of any such disposal shall be paid into the municipal fund.

Right of making roads &c. reserved to Government. No. 5203 s. 549.

550. Notwithstanding anything herein contained it shall be lawful for the Minister, if the Governor in Council so orders, to make contruct maintain and repair within any borough or shire all such roads and bridges as may be described in such Order in Council, and it shall also be lawful for the said Minister to construct in or through any borough or shire any railway canal or any other work whatsoever which shall be authorized by any Act of Parliament ; and for all such purposes as aforesaid the said Minister shall have all the powers which are hereby vested in the council of such borough or shire in the like behalf for the construction maintaince or repair of roads or bridges or for the execution of any work or undertaking.

DIVISION 7.—MATERIALS OF STREETS ETC. VESTED IN MUNICIPALITY.

Materials of roads bridges &c. to belong to municipality. No. 5203 s. 550.

551. (*a*) The materials of all public highway streets roads bridges culverts ferries and jetties and also of any levees constructed or acquired by the municipality and all matters and things appurtenant thereto; and

(*b*) All buildings fences gates posts boards stones and erections placed upon such public highways streets roads bridges culverts ferries levees or jetties by any person or persons or body corporate for the time being having the management thereof ; and

(*c*) All materials tools and implements provided for constructing repairing or maintaining such public highways streets roads bridges culverts ferries levees and jetties; and

(*d*) The scrapings of all streets roads and the sand on public highways streets and roads—

shall belong to the municipality of the district within which the same respectively are.

DIVISION 8.—OBSTRUCTIONS ETC. TO STREETS AND ROADS.

Displacement &c. of materials of street. No. 5203 s. 551.

552. Every person who displaces takes up or makes any alteration in the soil pavement flags sods or other materials of any street or road under the management of the council of any municipality or any fence on such street or road or removes any scrapings thereof or sand thereon without the consent in writing of such council or without other lawful authority shall be liable to a penalty of not more than Five pounds, and also a further penalty of not more than Five shillings for every square foot of pavement flags sod or other materials of the street exceeding one square foot so displaced taken up or altered.

Obstructions in roads and streets. No. 5203 s. 552

553. (1) It shall be the duty of the council of every municipality except as by this or any other Act of Parliament now or hereafter to be in force provided, to open and to keep open for public use and free from obstruction every surveyed and reserved road street or public highway within the municipal district required for public traffic and proclaimed under this or any other Act.

(2) Every such road street or public highway shall be considered to be required for public traffic unless the council and the Minister otherwise decide, and every such decision the Governor in Council may revoke ; and every such decision and the revocation thereof shall be published in the *Government Gazette* and take effect thereon.

Temporary closing of roads with provision for swing gates cattle pits &c. No. 5203 s. 553.

554. (1) Wherever the temporary closing of any road street or highway by means of unlocked swing gates will not be injurious to the public, or where the traffic is so slight that the temporary closing of such road street or highway would not create any inconvenience, the Governor in Council may on the application of the council of the municipality from time to time grant to the owner the lessee or the licensee from the Crown or adjoining lands to such road street or highway a licence to close it subject to the provision of unlocked swing gates cattle pits ramps or other suitable means of passage specified in such licence for a time limited in such licence and may at any time revoke such order or licence.

(2) Before any such road street or highway is closed as aforesaid notice of the application for a licence to allow such road street or highway to be closed and the reasons for making the same shall be published in the *Government Gazette* and in a newspaper circulating in the district once in each week for four consecutive weeks stating the situation of the road street or highway and the period for which it is proposed to close the same ; and in every case the period for which such road street or highway is to be closed shall be published by a notice in the *Government Gazette*.

Power to councils to plant trees and erect tree-guards statues seats posts places of refuge cabmen's shelters &c. in or upon streets. No. 5203 s. 554; No. 5443 s. 20, No. 5745 s. 7, No. 5843 s. 23.

555. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may in or upon any street or road in the municipal district without unduly obstructing the thoroughfares—

(*a*) plant trees and erect tree-guards to protect the same;

(*b*) erect statues, monuments, fountains, or seats;

(*c*) erect, either permanently or temporarily, as it may think fit, traffic buttons roundabouts posts fences raised pavings safety zones places of refuge and other works and structures for protecting passengers or regulating traffic along the street or road or on the footways, or for making the crossing of any street less dangerous to passengers ;

(*d*) provide suitable buildings for the use convenience and shelter of cabmen and such other persons as the council may permit to use the same ;

(*e*) construct or place racks or stands for bicycles;

(*f*) erect parking meters, that is to say mechanical appliances designed for automatically gauging and indicating the time for which a vehicle is or may be parked in the space in connexion with which the meter is installed ;

(*g*) erect or permit any person to erect shelters for bus passengers.

Power to councils to provide closets urinals &c. in under or upon any street.

(2) The council may in under or upon any such street or road in proper and convenient situations and without unduly obstructing the thoroughfares provide closets privies urinals and other similar conveniences for public accommodation.

Power to maintain and remove.

(3) The council may maintain and from time to time remove the same.

Establishment of garden plots in pathways &c. No. 5203 s. 555.

556. (1) The council of any municipality may make garden plots in or upon any pathway or footway in the municipal district without unduly obstructing the thoroughfare or interfering with reasonable facilities for access to ingress into or egress from any land or building.

(2) The council may maintain or remove such garden plots.

(3) The cost of so making and maintaining such garden plots shall be defrayed out of separate rates (made pursuant to the provisions of Division five of Part X.) and not otherwise.

(4) This section shall extend and apply to the city of Melbourne and the city of Geelong and as so extended and applied " separate rates " shall mean " town rates."

Power to make tree reserves in streets or roads. No. 5203 s. 556.

557. (1) The Governor in Council at the request of the council of any municipality (including the city of Melbourne and the city of Geelong) may by order to be published in the *Government Gazette* direct that any portion of a street or road in the municipal district shall be a tree reserve so that the portion of such street or road remaining available for traffic excluding any such tree reserve but including footpaths shall in no place be reduced by any such tree reserve to less than forty-six feet.

(2) The Governor in Council may at the request of the council revoke any such order.

(3) The council of the municipality shall have charge of such reserve and may improve fence and plant the same with trees and tend and cultivate the same.

558. (1) Every person who makes or causes to be made any building hedge ditch fence hole heap drain or obstruction on across or in any street or road within any municipal district shall for every such offence be liable to a penalty of not more than Twenty pounds, and a further penalty of not more than Five pounds for every day while the same is so continued.

Obstructions &c. on across or in streets.
No. 5203 s. 557; No. 5843 s. 24.

(2) The council may cause such building hedge ditch fence hole heap drain or obstruction to be taken down or filled up or otherwise made good at the expense of any person by whom the same has been made or to whom it belongs, and such expenses may in default of payment be recovered before any court of petty sessions.

(3) (*a*) The council of any municipality (including the city of Melbourne and the city of Geelong) may require or authorize the owner or occupier of any land on which building operations are being carried on and which fronts a street or road to construct such a temporary vehicular crossing over the footpath or channel outside such land as the council considers necessary in view of the vehicular traffic which passes or may pass across such footpath or channel onto such land and may prohibit the passing of vehicles across such footpath or channel until such crossing has been constructed.

Temporary vehicular crossings over footpaths &c.

(*b*) In default of compliance with any such requirement or prohibition after a copy thereof has been served on such owner or occupier, such owner or occupier (as the case may be) shall be liable to a penalty of not more than Five pounds and the council may cause the crossing to be constructed and any repairs to the footpath or channel to be made and may recover the cost of any such construction or repairs from such owner or occupier in any court of competent jurisdiction as a civil debt recoverable summarily.

559. (1) The owner or occupier of any land upon which there is a hedge or live fence—

Owner or occupier to keep hedges trees shrubs from overhanging over streets or roads.
No. 5203 s. 558.

(*a*) shall keep all streets or roads clear from all seedlings suckers and other off-sets from such hedge or live fence ; and

(*b*) shall not permit any branch thereof to overhang any street or road so as to be likely to cause inconvenience or annoyance to any person using such street or road.

(2) In the event of seedlings suckers or off-sets from any such hedge or live fence growing upon or of any branch thereof overhanging any street or road the council of the municipality may cause a written notice to be served on the owner or occupier requiring him to remove the same within fourteen days, and in

default the council may cause the same to be removed, and the owner or occupier shall forthwith on demand pay to the council the expenses of removing the same.

(3) The owner or occupier of any land on which there is a tree or shrub shall not permit any part thereof to overhang any street or road at a height less than ten feet from the surface of such street or road; and the council of the municipality may cause written notice to be served on the owner or occupier, requiring him to remove such part of the tree or shrub within fourteen days and in default the council may cause the same to be removed and the owner or occupier shall on demand pay to the council the expenses of removing the same.

(4) The occupier shall be entitled to deduct such expenses or any cost necessarily incurred by him under this section from any rent then due or thereafter becoming due by him to the owner.

Trees obstructing or injuring roads. No. 5203 s. 559.

560. (1) If the council of any municipality is of opinion that any street or road within the municipal district or under its management or control is in any manner prejudiced or obstructed by any tree growing or being on land adjoining thereto it shall be lawful for any court of petty sessions, on the application of the council and after summons duly served on the owner and occupier or upon the occupier only if the owner cannot be found of the land on which such tree is, to make an order for the removal of such tree or any part thereof by such owner or occupier as such court may see fit.

(2) In default of compliance with such order within eight days after a copy thereof has been served on such owner or occupier, such owner or occupier (as the case may be) shall be liable to a penalty of not more than Five pounds, and the said council or its surveyor may remove such tree or such part thereof so ordered to be removed doing no unnecessary damage.

(3) The occupier shall be entitled to deduct such expenses or any cost necessarily incurred by him under this section from any rent then due or thereafter becoming due by him to the owner.

Removal of encroachments made before the passing of certain repealed Acts. No. 5203 s. 560.

561. (1) If previously to the coming into operation of *The Municipal Corporations Act* 1863 or the Act No. 176, any erection or building or any hedge or other fence or any drain or water-course on or at the sides of any road marked out and used as a public road has been built constructed or made in such manner as to reduce the breadth or confine the limits of or in any way enroach on any such road or to obstruct the free use thereof in any way, the council of the municipality may in every such case if it sees fit cause notice to be placed upon or on the land immediately adjoining such encroachment or obstruction, and also to be published in the *Government Gazette* and twice in

some newspaper circulating in the neighbourhood, requiring that such erection building hedge fence or other encroachment or obstruction be removed within sixty days after the date of such notice.

(2) If such encroachment or obstruction is not effectually removed within the time limited by such notice, the council may cause such encroachment or obstruction to be removed, and may do all the acts required by such notice.

Compensation.

(3) If such encroachment or obstruction is removed, whether by the person who has occasioned the same or by any one on his behalf or by any one who has a lawful interest therein, or by the council in default of such person, the council shall pay out of the municipal fund to the person who has so occasioned such encroachment or obstruction or to the person who has so removed the same on his behalf and to any person who has a lawful interest therein such compensation as may, after the notice aforesaid is placed upon or on the land aforesaid but before the encroachment or obstruction is actually removed, be assessed by the justices sitting at the nearest court of petty sessions, who are hereby empowered and required to assess a reasonable amount of compensation, and to make an order or orders for enforcing payment of the same out of the municipal fund :

On withdrawal of notice of removal by council liability for compensation to cease but council to pay costs of assessment of compensation.

Provided that the council within sixty days from and after the date on which the compensation is assessed as aforesaid may (if the encroachment or obstruction is not removed) by a notice placed upon or on the land and published as aforesaid withdraw the first-mentioned notice, and upon the placing of such notice of withdrawal upon or on the land all claims or rights of any persons in respect of any compensation assessed as aforesaid shall be void and of no effect, but the council shall pay out of the municipal fund all costs of such persons incurred in connexion with any proceedings for the assessment of such compensation and certified by the justices who made the assessment to be reasonable.

DIVISION 9.—FIXING THE LEVELS OF STREETS AND LAYING OUT STREETS ON PRIVATE PROPERTY.

(1) *General.*

Application of Division. No. 5203 s. 561; No. 5843 s. 25.

562. (1) The provisions of this Division shall apply to all boroughs and to all parts of shires which have been at any time boroughs, and to all parts of shires to which the same have by any by-law in force in such shire been declared applicable.

Application of subdivision (3) in shires.

(2) In any part of a shire to which the provisions of this Division have not by by-law in force in such shire been declared applicable the provisions of subdivision (3) thereof as to the making or laying out of new streets roads lanes or passages on

private property and the sub-division of land (excepting so far as they relate to the fixing of the levels of streets and roads or to any matter or thing connected therewith) shall with all such alterations substitutions or modifications as may be necessary apply.

Power to fix different levels for street or road.

(3) Where the council of any municipality whether before or after the commencement of this Act has fixed or fixes the level of a street or road—

Retrospective operation of sub-section.

(*a*) it shall be deemed to have had and shall have power to fix one or more levels as the case requires for the whole or any portion of the length of such street or road ; and

(*b*) where two or more levels have been or are fixed as aforesaid—

(i) any reference to the level of the street or road in relation to any land abutting thereon shall be read and construed as referring to the level of that portion of the street or road on which such land abuts ; and

(ii) any reference to the owner or occupier of any such land or to any person having an interest therein or erecting any house or building thereon shall be read and construed accordingly.

Provision for access and fencing.

(4) Where two or more levels are so fixed the council shall—

(*a*) make provision for giving access from any higher to any lower road at intervals of not less than five chains for pedestrians and not less than ten chains for vehicles ; and

(*b*) fence every higher road and keep the same securely fenced to insure the safety of the public.

(2) *Fixing Levels of Streets.*

Meaning of "street" in this subdivision. No. 5203 s. 562.

563. (1) In this subdivision the word "street" shall be deemed to include any portion not being less than ten chains of the length of such street.

Level how fixed.

(2) The level of every street not already fixed shall be fixed under the direction of the surveyor of the council, subject to such right of appeal as hereinafter mentioned; and the level so fixed if not altered on appeal shall be kept thereafter by every person erecting any house or other building in such street.

(3) One month at the least before fixing the level of any street which has not theretofore been levelled or paved the council shall give notice by advertisement to be twice inserted in some newspaper generally circulating in the neighbourhood of its intention to fix the level thereof which notice shall set forth the name and situation of the street the level whereof is to be fixed and shall refer to plans of such intended work and shall specify a place where such plans may be seen and a time when and place where all persons interested in such intended work may be heard thereupon. Notice by council of intention to fix level.

(4) The council shall meet at the time and place mentioned in such notice and consider any objections made against such intended work. Hearing and determining objections.

(5) All persons interested therein or likely to be aggrieved thereby shall be entitled to be heard before the council at such meeting.

(6) Thereupon the council in its discretion may adopt or abandon or make such alterations in the said intended work as it judges fit.

564. (1) Any person aggrieved by any order of the council as aforesaid relating to the level of any street may at any time within fourteen days next after the making of any such order give notice to the council that he intends to appeal against such order to a stipendiary magistrate sitting in a court of petty sessions holden nearest to the street to which such order relates and within one month after the service of such notice. Appeal against order determining level. No. 5203 s. 563.

(2) If within eight days after giving such notice the party enters into a recognisance before some justice with two sufficient sureties conditioned to try the appeal and abide the order of the court and to pay such costs as may be awarded by the court thereon, the order so appealed against shall not take effect until after the judgment on such appeal.

(3) Such court shall hear and determine the matter of the appeal and shall make such order thereon either confirming quashing or varying the order of the council as to it may seem fit.

565. (1) When the level of any street has been formally fixed under any law for the time being in force relating to local government in altering the level of the ground in such street to conform to the level of such street as so fixed the council of the municipality shall not be compelled at any one time to raise or lower the level of the ground to the full extent that may be required in order to conform to such level as fixed but may raise or lower the level of the ground to a less extent than is necessary Power to council to raise or lower by successive steps the soil of a street so as to conform to the level as fixed. No. 5203 s. 564.

in order to conform to such level and so on from time to time, and the municipality shall not be compelled to make compensation to any one in consequence of so proceeding, provided that the level of such street as so fixed is not exceeded either upwards or downwards.

Municipality altering level once fixed to make compensation.

(2) If after the fixing of the level of any street under the provisions of any law for the time being in force relating to local government, the council of any municipality alters the level of the ground in such street, save to conform to the level so fixed, the municipality shall make full compensation to all persons interested in any property injuriously affected by such alteration.

Alteration of water or gas pipes on notice from council.
No. 5203 s. 565.

566. (1) If after the fixing of the level of any street under the provisions of any Act for the time being in force relating to local government the council deems it necessary to raise sink or otherwise alter the level of any street in which any waterpipe or gaspipe or other waterworks or gasworks are laid the council shall from time to time by notice in writing require the person to whom such pipes or works belong to cause forthwith, or as soon as conveniently may be, such pipes or works to be raised sunk or otherwise altered in position in accordance with the altered level of such street, provided that such alteration be not such as permanently to injure such works.

(2) The expenses attending such raising sinking or altering, and full compensation for every damage done thereby, shall be paid by the council, as well to the person to whom such pipes belong as to all other persons injuriously affected thereby.

Council may act on default.
No. 5203 s. 566.

567. If the person to whom any such pipes or works belong does not proceed forthwith, or as soon as conveniently may be after the receipt of such notice, to cause the same to be raised sunk or altered in such manner as the council requires, the council may itself cause such pipes or works to be raised sunk or altered as the council thinks fit, provided that such works be not permanently injured thereby.

Provision as to certain Authorities.
No. 5203 s. 567.

Fixing levels of streets &c.

568. (1) If any statutory Authority (including the State Electricity Commission of Victoria, the Melbourne and Metropolitan Board of Works, any Authority within the meaning of the *Water Act* 1958, the Geelong Waterworks and Sewerage Trust or any Sewerage Authority within the meaning of the *Sewerage Districts Act* 1958) gives notice in writing to the council of any municipality that it proposes in any street or road under the care and management of the council or shown on a plan of subdivision sealed by the council and lodged in the Office of Titles to erect construct or lay any mains pipes conduits or works for the supply of electricity or any mains or pipes for the supply of water or any

sewers or drains (as the case may be) the council (whether, in the case of a shire, any by-law referred to in section five hundred and sixty-two of this Act is in force or not) shall forthwith in accordance with the provisions of sections five hundred and sixty-two to five hundred and sixty-seven of this Act fix the levels of such street or road so far as necessary and to the extent to which such levels have not already been fixed.

As to right of Authority to be heard, to appeal &c.

(2) In any case where the council of any municipality proceeds to fix the levels of any street or road (whether such a notice as aforesaid has been given or not) any such Authority shall if interested or aggrieved have the like right to be heard or to appeal or to be compensated as is conferred under the said sections upon other persons interested or aggrieved.

Application to cities of Melbourne and Geelong.

(3) This section shall extend and apply to the city of Melbourne and the city of Geelong.

(3) *Laying out Streets, Roads, &c., on Private Property.*

Notice by person proposing to lay out street &c. on or to subdivide private property.

No. 5203 s. 568; No. 5443 s. 21, No. 5843 s. 26 (1), No. 5924 s. 3, No. 6048 s. 3, No. 6151 s. 10.

569. (1) Where in the case of any land to which this subdivision applies any person intends—

(*a*) to make or lay out on such land any new street road lane or passage whether the same respectively is to be dedicated to the public as a highway or not; or

(*b*) to subdivide such land into two or more parts—

such person shall—

(*c*) give notice of his intention to the council in writing in the form of the Thirtieth Schedule; and

Thirtieth Schedule.

(*d*) submit to the council a plan and a copy thereof which copy shall be retained by the council and also as many additional copies thereof as for the purposes of reference to statutory Authorities the council thinks necessary.

Plan.

For the purposes of this section intention to subdivide shall be deemed to include any case where a person intends to make any separate disposition in fee simple of any part of such land notwithstanding that such part is or has at any time previously been leased or held for any estate or interest or occupied separately from the remainder of such land, but such a case shall not be deemed to be included if it is one in respect of which—

(*a*) a disposition in fee simple was made; or

(*b*) a plan of subdivision was lodged at the Office of Titles—

before the commencement of the *Local Government (Amendment) Act* 1954.

Particulars to be set out on plan.

(2) The said plan—

(*a*) shall show distinctly delineated thereon—

(i) all allotments into which the land is to be subdivided marked with distinct numbers or symbols ;

(ii) all streets roads lanes or passages made or laid out on such land or abutting thereon and the names of such streets or roads ;

(iii) all new streets roads lanes or passages proposed to be made or laid out on such land together with the extent (if any) to which it is proposed to round off the several corners at the junction or inter-section of such streets roads lanes and passages to facilitate the traffic ;

(iv) the method of drainage proposed for such land and for such new streets roads lanes or passages ;

(v) all reserves set apart for the use of purchasers or for any other purpose ;

(vi) the means of access from all new streets roads lanes and passages shown on the plan and all lands over which there are easements of drainage or sewerage to streets roads lanes and passages and lands over which there are easements of drainage or sewerage abutting on the land comprised in the plan ; and

(*b*) shall set out all such levels and particulars as the council require in order to enable them—

(i) to fix the level of every new street or road ;

(ii) to ascertain whether or not such land when it is subdivided in accordance with such plan and is occupied for the purpose for which it is likely to be used when so subdivided and occupied and whether or not every such new street road lane or passage can be sufficiently drained into a public drain or existing street or road or some place at or along which all drainage from such land or any such new street road lane or passage may lawfully be discharged or caused to flow and whether or not the same will comply with the requirements of the *Health Act* 1958 or this Act or any by-law or regulation under the said Acts;

(iii) to ascertain whether every such new street road lane or passage is connected at each end with another street road lane or passage; and

(iv) to ascertain whether there will be on such land any reserve or allotment abutting on or continuous with or along any portion of the length of any street road lane or passage whatsoever (other than a reserve set apart for the use of purchasers).

(3) The council shall— Duty of council.

(*a*) refer such notice plans levels and particulars to their surveyor or engineer for report;

(*b*) demand and receive from the person giving the notice such fees as they think reasonable; and

(*c*) pay the said fees or so much thereof (if any) as the council determines to their surveyor or engineer for any report inspection or other service made or performed by him under this section.

(4) The council after receiving the report of their surveyor or engineer shall proceed forthwith to consider the matter of the said notice and plan and the report thereon and (subject to the provisions of this Act) may fix the level of every street or road proposed to be made or laid out on such land and cause the said plan to be sealed with the seal of the municipality. Consideration by council.

(5) (*a*) The council shall not cause the plan to be sealed unless they are satisfied that the said land and every such new street road lane or passage can be sufficiently drained as hereinbefore provided and that all the provisions of the *Health Act* 1958 or this Act or any by-law or regulation under the said Acts are complied with and that every allotment into which such land is to be subdivided is capable of being used for a purpose permitted by any such by-law or regulation or any planning scheme under the *Town and Country Planning Act* 1958.

(*b*) Where it appears from the plan that any allotment abuts on or any new street road lane or passage connects directly with a State highway main road or tourists' road within the meaning of the *Country Roads Act* 1958 or a main road as shown in a planning scheme approved by the Governor in Council under the *Town and Country Planning Act* 1958 the council shall not cause the plan to be sealed without the consent of the Country Roads Board or, in any case where the Country Roads Board has failed or refused so to consent, of the Governor in Council.

(6) If in the opinion of the council but having regard to the scheme of subdivision—

(*a*) any such new street road lane or passage will not be connected at each end with another street road lane or passage or the several corners at the junction or intersection of any of such streets roads lanes and passages will not be sufficiently rounded off to facilitate the traffic where in the opinion of the council such rounding off is necessary; or

(*b*) there is any reserve or any allotment on such land abutting on or continuous with or along any portion of the length of any street road lane or passage whatsoever; or

(*c*) the intended position direction or termination of any such new street road lane or passage ought to be varied for the purpose of securing easier more direct or more convenient means of communication with any other street road lane or passage; or

(*d*) the allotments into which such land is to be subdivided (or any of them) will be subject to inundation by floods and are not marked distinctly on such plan as being subject to inundation; or

(*e*) the width of any such new street or road will be less than sixty-six feet; or

(*f*) direct vehicular access from any allotment street road lane or passage in the proposed subdivision to any street or road should not be permitted and alternative means of access from such allotment street road lane or passage has not been but can be provided; or

(*g*) the land to be subdivided is the site of a building comprising two or more attached dwellings and the area depth or width of frontage of the land is less than that prescribed for such building by any regulation or by-law under this Act; or

(*h*) for any sufficient reason to be stated by it in writing it is not in the public interest that the plan should be sealed—

the council may refuse to cause the plan to be sealed.

Special provisions as to land in the metropolis.

(7) Where any such land is situate in the metropolis as defined in section three of the *Melbourne and Metropolitan Board of Works Act* 1958 the following provisions shall also apply:—

(*a*) The plan shall set out all such levels and particulars as the council requires in order to enable it to ascertain—

(i) whether all the allotments can be advantageously and economically sewered; and

(ii) whether the several new streets roads lanes and passages can be advantageously and economically provided with sewers by the said Board.

(*b*) The council shall unless it is of opinion that in the circumstances such a course is unnecessary refer the plan levels and particulars to the Melbourne and Metropolitan Board of Works for report; and shall take into consideration the report of the Board thereon.

(*c*) If in the opinion of the council but having regard to the scheme of subdivision—

(i) the intended position direction and termination of any such new street road lane or passage ought to be altered or varied for the purpose of more advantageously or economically providing sewers therein or sewering all or any of the allotments into which such land is to be subdivided; or

(ii) any of the allotments into which such land is to be subdivided cannot be advantageously and economically sewered; or

(iii) any of such new streets roads lanes or passages cannot be advantageously and economically provided with sewers—

the council may refuse to cause the plan to be sealed.

In the case of any land situate in the drainage area of the Geelong Waterworks and Sewerage Trust or in the sewerage district of any Sewerage Authority (other than the said Board or the said Trust) the provisions of this sub-section with such substitutions and modifications as are necessary shall extend and apply with respect to such land and to the said Trust or Sewerage Authority (as the case may require).

Fixing level of street by council.

(8) (*a*) The council when it causes any plan as aforesaid to be sealed shall at the same time or within three months thereafter fix the level of every new street or road as aforesaid.

(*b*) In the case of an appeal as hereinafter provided, if any such plan is confirmed by the court, the council shall within three months thereafter fix such level accordingly.

Penalties.

(9) Every person as aforesaid who—

(*a*) neglects or omits to give the notice required as aforesaid;

(*b*) neglects or omits to submit the plan and any particulars required as aforesaid;

(*c*) save as hereinafter expressly provided makes or lays out any such new street road lane or passage before such plan is sealed;

(*d*) conveys or transfers such land or any part thereof in allotments before such plan is sealed; or

(*e*) after the plan is sealed sets apart without the consent in writing of the council any reserve or allotment on such land other than a reserve or allotment shown on the sealed plan—

shall be liable to a penalty of not more than Fifty pounds.

Reserves.

(10) (*a*) The council may refuse to cause the plan to be sealed unless the owner of such land, on being so requested by the council, executes an agreement under seal to transfer any reserve shown on the plan to the council before any allotment shown on the plan is sold conveyed or transferred.

(*b*) Where any such reserve has pursuant to any such agreement been transferred to the council but no new street road lane or passage has been made or laid out on such land and no allotment of such land has been sold conveyed or transferred the council may at the request of the owner of such land cancel the sealing of the plan, and thereupon the plan shall be deemed never to have been sealed and the council may with the consent of the Governor in Council and at the expense of the owner re-transfer the reserve to the owner.

(*c*) The council may refuse to cause the plan to be sealed unless the owner of such land, on being so requested by the council and in accordance with plans and specifications approved by the council, causes any new street road lane or passage shown on the plan to be formed to permanent levels approved by the council and drained to the satisfaction of the council, and any levels so approved shall be deemed to be the levels fixed for the purposes of subdivision (2) of this division.

(*d*) The council may refuse to cause the plan to be sealed unless the owner of such land on being so requested by the council and in accordance with plans and specifications approved by the council, causes a crossing to be constructed over any foot ways and channels at the entrance to any street road lane or passage set out on such plan from any existing street road lane or passage which has been wholly or partly constructed.

Construction of roads &c. before subdivision of land into allotments.

(*e*) The council may at any time within the period of ten years after the commencement of the *Local Government (Amendment) Act* 1955 refuse to cause any such plan to be sealed unless the owner of such land—

(i) causes—

any new street road lane or passage shown on the plan to be fully constructed (within the meaning of Division ten of this Part); or

any works specified by the council by notice in writing (which notice shall be referred to on the plan lodged at the Office of Titles and a copy thereof shall be kept available for inspection at the office of the council) for the partial construction thereof to be carried out—

in accordance with plans and specifications approved by the council (and for the purposes of this paragraph (*e*) partial construction includes not only the works referred to in this sub-paragraph (i) but also the works referred to in paragraphs (*c*) and (*d*) of this sub-section or any one or more of such works to the exclusion of others of them in the council's discretion); or

(ii) if so requested in writing by the council, pays to the council or gives to the council security to the satisfaction of the council for an amount equivalent to the cost as estimated by the council of such construction or partial construction subject to an adjusted payment to be made (on completion of the works) by the owner to the council or by the council to the owner so that the actual amount (as so adjusted) to be paid by the owner equals the actual cost of construction or partial construction as certified by the municipal engineer, in which case the council shall complete the work of construction or partial construction within three years, or such longer period as the Minister from time to time in writing directs, after the payment to it of or the giving of security to it for the estimated amount aforesaid, and if the council fails to complete the work within such time then (without prejudice to any other remedy available to any owner of premises fronting, within the meaning of the said Division ten, on any such street road lane or passage) the council shall remit one-half of any general rates thereafter made in respect of any such premises before such work is completed; or

(iii) if so requested in writing by the council, undertakes to cause any new street road lane or passage shown on the plan to be fully constructed (within the meaning of the said Division ten) or to cause any works specified as aforesaid for the partial construction thereof to be carried out in accordance with plans and specifications approved by the council within such period (being not less than twelve months) from the sealing of the plan as the council by such writing nominates, and gives to the council security to the satisfaction of the council for the performance of such undertaking, or for the indemnification of the council (in the event of the owner defaulting in the due performance of such undertaking) against liability for the cost of such construction or partial construction or for the recoupment to the council of so much of the said cost as is incurred by it—

but in any of the cases aforesaid the council shall not at any time be entitled to recover from any owner of premises fronting (within the meaning of the said Division ten) on any such street road lane or passage the cost of constructing or reconstructing any work carried out or paid for pursuant to this paragraph. Without affecting the operation of the next succeeding section, where an owner is aggrieved by any matter arising under this paragraph precedent to the sealing of a plan he may appeal therefrom to the Minister who may make such order in relation thereto as he thinks fit and every such order shall be given effect to by the council.

Plan to be lodged with Registrar of Titles.

(11) Forthwith after the plan has been sealed or (in the case of appeal) confirmed, the person who submitted the plan shall lodge such plan with the Registrar of Titles but any plan which is not lodged within three months after such plan has been sealed or confirmed (as the case may be) shall be deemed to have been cancelled and the Registrar of Titles shall refuse to accept the lodgment thereof.

(12) Without affecting the generality of this section—

Plans of subdivision to show portions of land set apart for reticulating for water gas electricity sewerage and telephones.

(*a*) every plan of subdivision under this section submitted to the council of the municipality shall show distinctly delineated thereon the portions of the land included in the plan which are proposed to be appropriated or set apart for the purpose of enabling the said lands to be reticulated with mains for the supply of water gas and electricity and for sewerage services and for underground telephone plant;

(*b*) the council shall unless it is of opinion that in the circumstances such a course is unnecessary refer the said plan or a copy thereof to every statutory Authority supplying water gas or electricity or providing for sewerage services or telephone services in the vicinity of the land (including the Postmaster-General of the Commonwealth of Australia, the Melbourne and Metropolitan Board of Works, every Authority within the meaning of section three of the *Water Act* 1958, the Geelong Waterworks and Sewerage Trust, every Sewerage Authority under the *Sewerage Districts Act* 1958, the State Electricity Commission of Victoria, and every corporation company firm or person making or supplying by or under any enactment gas or electricity for lighting heating motive power or other purposes and disposing of the same for reward) for report; and shall take into consideration the report of every such statutory Authority thereon received by the council before the plan has been sealed by it; and

Reference of plan to statutory Authorities for water gas electricity sewerage and telephone services for report.

(*c*) the council may if it thinks proper refuse to cause any such plan of subdivision to be sealed unless and until the council is satisfied that proper provision has been made for the appropriation or setting apart of specific portions of the said lands for the purpose of enabling the said lands to be reticulated with mains for the supply of water gas and electricity and for sewerage services and for underground telephone plant and that such portions are shown on the plan as so appropriated or set apart.

Power to refuse to cause plan of subdivision to be sealed unless council satisfied as to provision for setting apart land for reticulation &c.

(13) Every agreement for sale of any such land or any part thereof in allotments entered into before the plan is sealed shall be a valid agreement but shall notwithstanding anything to the contrary contained in the agreement be deemed to be subject to a condition that if the plan is not sealed within a period of ninety days after the date of the execution of the agreement the agreement shall become absolutely void and of no effect, and any person who has paid any money under such agreement shall be entitled to recover the same.

570. (1) If any person having given notice as aforesaid is aggrieved by—

Appeal from refusal or neglect of council to seal plan. No. 5203 s. 569.

(*a*) the refusal of the council to seal such plan; or

(*b*) the neglect of the council to seal the same within three months after it is submitted—

he may within fourteen days from the date of such refusal or the expiry of the said period of three months (as the case may be) give notice to the council of his intention to appeal within one month after the date of the notice to the court of petty sessions held nearest to the land or to such other court of petty sessions as the parties agree upon.

(2) Such court—

(*a*) shall consist of a stipendiary magistrate;

(*b*) shall hear and determine the matter of the appeal;

(*c*) may dismiss the same or may make an order confirming the plan with or without alteration in which case a copy of the order of confirmation shall be inscribed thereon and signed by the clerk of such court and shall have the like effect as if the plan had beeen sealed by the council; and

(*d*) may make such order as to costs as it thinks fit.

Proceeding on default of council in fixing level. No. 5203 s. 570.

571. (1) When any such plan has been sealed by the council or confirmed by the court on appeal therefrom then if the council does not within three months fix the level of any street or road the person giving the notice may proceed to make or lay out the street or road at any level which will allow of compliance with the other provisions of this Act as if such level had been fixed by the council.

(2) In such case every change of the level which the council afterwards thinks requisite and the works consequent thereon shall be made by the council and the expense thereof and any damage which any person sustains in consequence of such alteration shall be defrayed by them.

Laying out streets before notice or sealing of plans. No. 5203 s. 571.

572. (1) Every person who makes or lays out any such new street road lane or passage as aforesaid without giving notice to the council or before the plan is sealed except as in the last preceding section provided shall in addition to any penalty hereinbefore provided be liable also to defray all the expenses consequent upon any change of the level of such street road lane or passage deemed requisite by the council.

(2) Every person who in building any house or other building in such street or road does not keep the level fixed by the council shall be liable to defray all the expenses consequent upon any change of the level of that part of the street or road on which such house or building abuts which the council deems requisite.

Formation of right-of-ways through private premises. No. 5203 s. 572.

573. (1) In case it is necessary for the formation completion or continuance through any private premises from one street to another of any lane right-of-way or passage or to form a lane right-of-way or passage through any private premises in such a manner as to form a means of back access to or drainage from property adjacent to any street or road the council may make an order on the owner of such premises requiring such owner to permit of the formation completion or continuance of such lane right-of-way or passage and after the expiration of one month from the making of such order the council may form complete or continue such lane right-of-way or passage through such premises.

(2) Where the council has under the powers conferred by this section formed completed or continued any lane right-of-way or passage through private premises there shall be paid by the council to the owner of such premises such equitable compensation as is agreed upon between the owner and the council or as in default of agreement is determined in accordance with Part XLIV.

Recovery of compensation costs &c.

(3) The amount of compensation so paid and all costs and expenses incurred by the council in connexion with the same together with the cost of forming completing or continuing such lane right-of-way or passage shall be repaid to the council by the owners of the premises benefited by such lane right-of-way or passage in such proportions as are fixed by the council. When any such lane right-of-way or passage or any part thereof has been so formed completed or continued the right to use the same for the purposes for which the same has been so formed completed or continued shall be appurtenant to the land of every such owner liable to contribute to such repayment.

Authority to municipal councils to add a limited sum to actual cost of forming &c. lanes &c.

(4) The council of any municipality may notwithstanding anything in this Act add to the actual cost of forming completing or continuing any lane right-of-way or passage under the provisions of this section such a sum (not exceeding seven and one half per centum of such actual cost of such work) as the council thinks proper in respect of—

(*a*) the making of searches and the preparation of specifications maps plans sections and elevations in connexion with such work;

(*b*) the preparation of any estimate or scheme of distribution relating to such work;

(*c*) the supervision and inspection of such work during construction; and

(*d*) printing and posting in connexion with such work—

and any sum so added shall be deemed for the purposes of this Act to be part of the cost of so forming completing or continuing such lane right-of-way or passage.

Application to cities of Melbourne and Geelong. No. 5203 s. 573.

574. This Division shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 10.—CONSTRUCTION OF PRIVATE STREETS.

Interpretation. No. 5203 s. 574; No. 5443 s. 22 (1) (a) (b).

575. (1) In this Division unless inconsistent with the context or subject-matter—

"Construct." "Construct", in connexion with any private street, means form level drain pave flag macadamize or otherwise make good such private street to the satisfaction of the council and, without affecting the generality of the foregoing, includes—

(*a*) make any bridge or culvert in such private street;

(*b*) plant trees and erect treeguards in such private street;

(*c*) where such private street meets at an angle any public street or road—make a crossing across the footway and channel of such public street or road;

(*d*) make provision by conduits for the more efficient or easy laying repairing or replacing of water and gas services to premises fronting on such private street;

(*e*) provide and lay drains between the property line and the channel of or any drain in such private street; and

(*f*) execute any works rendered necessary in such private street by or arising out of the raising or lowering of the level of the street in any case where the level of the street has not been previously fixed by the council or in any case where such raising or lowering is necessary to conform to the level of the street as previously fixed by the council—

"Construction." and "Construction" has a corresponding interpretation.

"Premises fronting." "Premises fronting" on a street means premises fronting on adjoining abutting on or (though not actually so fronting adjoining or abutting) adjacent or accessible to such street where—

(*a*) the owner of such premises by himself or any tenant has the right to use or commonly does use such street as a means of access to or drainage from such premises; and

(*b*) in the opinion of the council such use or right to use is for the advantage or benefit of such premises.

"Private street" means— "Private street."

(*a*) any street road lane yard or passage formed or set out on private property; and

(*b*) any street road lane or passage formed or set out on land of the Crown or of any public body in such manner as to form means of back access to or drainage from property adjacent to such street road lane or passage—

or any part thereof, whether it is or is not a public highway.

"Scheme" means scheme under this Division for the construction of a private street. "Scheme."

(2) Where any land wholly or partly abutting on or continuous with or along any private street has been or is acquired by a council for the purpose of increasing the width of such private street such land shall be deemed to form part of such private street. Increased width of private streets.

(3) A street road lane yard or passage shall (without affecting the generality of the meaning of the expression "set out") be deemed to be set out on private property if the same is shown, on any plan of subdivision comprising such property which has been or is sealed by a council under Division nine of this Part or any corresponding previous enactment or lodged in the Office of Titles, as made or laid out or proposed to be made or laid out on such land. Streets set out in sealed plans of subdivision.

(4) This Division shall extend and apply to the city of Melbourne and the city of Geelong. Application to cities of Melbourne and Geelong.

576. Where any private street has not previously been constructed under this Division or Part XLII. or any corresponding previous enactment the council may subject to this Division construct such street and recover the cost or any part of the cost of such construction from the owners of the premises fronting on such street. Power to council to construct certain private streets at expense of frontagers. No. 5203 s. 575.

577. (1) Where a council intends so to construct any such private street it shall cause to be prepared a scheme for the construction of such street. Scheme of street construction to be prepared. No. 5203 s. 576; No. 5443 s. 22 (1) (*c*), No. 5843 s. 27, No. 6151 s. 11.

(2) One scheme may be so prepared for the construction of two or more private streets.

(3) Every such scheme shall consist of—

(*a*) a description of the works together with such specifications maps plans sections and elevations as the council thinks necessary;

(*b*) an estimate of the cost of the execution of the scheme;

(*c*) a list of the premises fronting on the street to be constructed containing a description of each of such premises sufficient to identify the same;

(*d*) a statement of the portion (whether the whole or part) of the cost of the execution of the scheme which is to be recovered from the owners of such premises and the estimated amount thereof, and the respective estimated amounts which are to be recovered from each such owner as his share of the cost of the scheme; and

(*e*) such other particulars as the council considers necessary or expedient.

(4) In determining the portion of the cost of the execution of the scheme which is to be recovered from the owners of such premises—

(*a*) where any land fronting on the street to be constructed is Crown land—the council shall not, unless for reasons set out in the scheme it otherwise determines, include in such portion of such cost any amount of such cost which would have been recoverable from the owner of such land if such land were not Crown land;

(*b*) where any footway or portion thereof of the street has previously been kerbed flagged paved or asphalted and any owner has under Division eleven of this Part or any corresponding previous enactment contributed to the expense thereof—the council shall not include in such portion of such cost of the execution of the scheme any expense incurred in or in connexion with the construction of such footway or portion thereof under the scheme;

(*c*) subject to the other provisions of this sub-section, where any land wholly or partly abutting on or continuous with or along any private street has been or is acquired by a council for the purpose of increasing the width of such private street—the council shall not include in such portion of such cost any expense which is properly applicable to the construction of such portion of the street as is in excess of a width of fifty feet or of the width of such street before it was widened

(whichever is the greater width) nor any additional expense incurred by reason of the construction of such street to a standard in excess of that which would normally be adopted by the council for the construction of such street for the purposes of a private street;

(*d*) the council shall taken into consideration any other matters which in the opinion of the council are relevant and proper to be considered.

(5) In determining the respective amounts to be recovered from each such owner the council shall take into consideration the frontage or area of the respective premises, the benefit to be derived by the respective premises from the construction of the street, and any other matters which in the opinion of the council are relevant and proper to be considered.

Inclusion of incidental expenses in cost of scheme.

(6) The council may include in the estimate of the cost of the execution of the scheme—

(*a*) the cost (computed according to any usual method of costing) of the provision by the council of any materials plant and labour, including a reasonable amount for the use and depreciation of any plant so provided; and

(*b*) such sum (not exceeding seven and one-half per centum of the estimated cost of the works) as the council thinks proper in respect of—

(i) the making of searches and the preparation of specifications maps plans sections and elevations in connexion with the works;

(ii) the preparation of the scheme;

(iii) the supervision and inspection of the works during construction; and

(iv) printing and posting in connexion with the scheme.

Crossings to private premises.

(7) (*a*) The council may with the consent in writing of the owner concerned include in the scheme the making, at the expense of such owner, of any crossing for the passage of vehicles over any footway or channel to any premises fronting on the private street.

(*b*) Any expense incurred in or in connexion with making any such crossing shall be charged to the owner of the premises concerned, in addition to his share of the cost of the scheme, and no part of such expense shall be included in the portion of the cost of the execution of the scheme to be recovered from the owners as aforesaid.

Additional works and expenses.

(8) (*a*) The council may include in the scheme any additional works not being works for the construction of the private street, and may include the cost thereof and any other additional expenses in the estimate of the cost of the scheme.

(*b*) No part of the cost of such works or of any such additional expenses shall be included in the portion of the cost of the execution of the scheme to be recovered from the owners as aforesaid or, unless he consents in writing thereto, be charged to any of such owners.

(*c*) The actual and estimated cost of any such additional works and additional expenses shall be deemed to be such respective amounts as the municipal engineer certifies to be properly referable thereto.

Notice of preparation of scheme &c. No. 5203 s. 577; No. 5924 s. 4.

578. (1) When the scheme has been prepared the council shall—

(*a*) cause a copy of the scheme so prepared to be kept at the office of the council open for inspection by any person interested in or affected by the scheme until the scheme is finally settled or abandoned; and

(*b*) cause to be served on every owner intended to be made liable under the scheme notice in writing stating—

(i) that the scheme has been prepared and may be inspected at the office of the council;

(ii) the estimated amount which is to be recovered from such owner as his share of the cost of the scheme;

(iii) that within fourteen days from the service of such notice such owner may by notice in writing to the council object to such scheme or any part thereof; and

(iv) the grounds on which any such objection may be made.

Objections by owners.

(2) Within fourteen days after the service of such notice any such owner may in writing delivered to the council object to the scheme on any of the following grounds:—

(*a*) That the street proposed to be constructed is not a private street or is not a street which may be constructed pursuant to this Division;

(*b*) That there has been some material informality defect or error in respect of the scheme or the preparation thereof, or that for any reason the scheme is invalid;

(*c*) That the amount of liability apportioned to him is erroneous;

(*d*) That any owner intended to be made liable under the scheme should not be so liable or that any owner not intended to be made liable under the scheme should be so liable;

(*e*) That it is intended to make owners or any owners liable under the scheme for any costs or expenses for which they should not be so liable;

(*f*) That the proposed works or any of them are unnecessary insufficient too costly or unreasonable having regard to the locality and the probable use of the street to be constructed;

(*g*) That the portion of the cost of the execution of the scheme which is to be recovered from owners is excessive or unreasonable;

(*h*) That the apportionment of liablility among owners is unfair or that in the circumstances an excessive share of the cost of the scheme is to be recovered from any owner.

Adoption &c. of scheme.

(3) The council, not earlier than fourteen days after the serving of the last of such notices—

(*a*) shall consider the scheme and all objections made thereto as aforesaid; and

(*b*) may adopt the scheme with or without modification or alteration, or decide not to adopt the scheme.

Adoption &c. where no objection made to scheme.

(4) Where no objection has been made to the scheme as aforesaid the council may adopt the scheme without modification or alteration or decide not to adopt the scheme.

Withdrawal of objection to preliminary scheme of street construction.

(5) Any owner who has objected as aforesaid may in writing delivered to the council withdraw his objection and thereupon such objection shall be deemed never to have been made.

Notice of adoption of scheme where proposed scheme objected to or adopted with alterations. No. 5203 s. 578; No. 5443 s. 22 (1) (*d*), No. 5843 s. 30, No. 6151 s. 12.

579. (1) Except in any case where no objection is made to the scheme pursuant to the last preceding section and the council adopts the scheme without modification or alteration, the council shall—

(*a*) cause a copy of the scheme as adopted to be kept open for inspection at the office of the council by any person interested in or affected by the scheme until the scheme is finally settled or abandoned; and

(*b*) cause to be served on every owner intended to be made liable under the scheme (where the scheme has been adopted with modification or alteration) or on every owner who objected to the scheme or

any part thereof (where the scheme has been adopted without modification or alteration) a notice in writing stating—

(i) that the scheme has been adopted by the council and may be inspected at the office of the council;

(ii) the estimated amount which is to be recovered from such owner as his share of the cost of the scheme;

Objections by owners.

(iii) that within fourteen days after the serving of such notice such owner may by notice in writing to the council object to the scheme as adopted; and

(iv) the grounds on which any such objection may be made.

Hearing of objections.

(2) Within fourteen days after the serving of such notice any owner to whom notice is by the last preceding sub-section required to be sent may in writing delivered to the council object to the scheme—

(*a*) on any of the grounds referred to in paragraphs (*a*), (*b*), (*c*), (*d*), and (*e*) of sub-section (2) of the last preceding section; or

(*b*) on the ground that there has been some material informality or error in respect of the adoption of the scheme.

(3) Forthwith after the expiration of the period of fourteen days after the serving of the last of such notices the council shall refer all objections made to the scheme pursuant to this section to the nearest or most convenient court of petty sessions consisting of a stipendiary magistrate sitting alone and the clerk of the court shall send to the council and the owners who have objected as aforesaid due notice by post of the date fixed for the hearing of the objections.

(4) The court, after hearing representations of the council and of all owners who have objected as aforesaid and who wish to be heard, shall consider the objections made as aforesaid to the scheme and may uphold any such objection in whole or in part or overrule any such objection and shall approve the scheme with or without modification or alteration or quash the scheme accordingly:

Provided that in the consideration of any objection on a ground mentioned in paragraph (*d*) of sub-section (2) of the last preceding section the opinion of the council as to whether the use of or right to use a street is for the advantage or benefit of any premises shall be deemed to be conclusive.

(5) The court may if it thinks fit hear any person, as well as the council and objectors, who may be affected by the determination of the court and may direct notices to be sent to any such person informing him accordingly.

(6) The costs of the hearing before the court shall be in the discretion of the court.

(7) Any owner who has objected as aforesaid may in writing delivered to the council withdraw his objection and thereupon such objection shall be deemed never to have been made.

(8) Notwithstanding anything in the last preceding sub-section, if any person who has objected as aforesaid does not appear at the hearing of the objection then, unless he has in writing delivered to the council not less than seven days before the date set down for the hearing withdrawn his objection, the court on the application of the council may determine that the objector shall pay to the council any reasonable costs incurred by the council in relation to the objection.

Scheme as finally settled. No. 5203 s. 579.

580. (1) (*a*) In any case where notice is not (by the last preceding section) required to be given of the adoption of the scheme by the council, on such adoption the scheme as so adopted shall be the scheme as finally settled.

(*b*) In any case where notice is (by the last preceding section) required to be given of the adoption of the scheme by the council—

(i) if no objection in writing to the scheme as adopted by the council is received by the council within the period of fourteen days after the serving by the council of the last of such notices, then on the expiration of such period the scheme as so adopted shall be the scheme as finally settled;

(ii) if any objection in writing to the scheme as adopted by the council is received by the council within the period of fourteen days after the serving by the council of the last of such notices, and the court approves the scheme with or without modification or alteration, then on such approval the scheme shall be the scheme as finally settled.

Validity of scheme.

(2) The scheme as finally settled shall be the scheme to be observed for the construction of the private street and, notwithstanding any defect error or apparent invalidity in the scheme or in its preparation adoption or approval or in any procedure or matter relating thereto, shall be valid and shall not be challenged in any court whatever and every owner intended to be made liable under the scheme shall be liable accordingly.

Execution of works.

(3) When the scheme is finally settled the council may proceed to construct the private street in accordance with the scheme.

(4) In the construction of the street minor variations from the specifications of the scheme (including the making of any crossing pursuant to sub-section (7) of section five hundred and seventy-seven of this Act) shall be permissible, but no extra expense incurred as the result of any such variation (which shall be deemed to be such amount as the municipal engineer certifies to be properly referable thereto) shall be included in the portion of the cost of the execution of the scheme to be recovered from the owners of premises fronting the street or, unless he consents in writing thereto, be charged to any of such owners.

Engineer's certificate on completion of works.

(5) On the completion of the works for the construction of the street the municipal engineer shall submit to the council a certificate stating—

(*a*) the date of the commencement of the works *in situ;*

(*b*) the date of the completion of the works;

(*c*) the actual cost of the execution of the scheme: and

(*d*) the actual amount of the portion of such cost which by the scheme is to be recovered from the owners of the premises fronting on the private street constructed.

Notice to owners of liabilities under scheme as finally settled.
No. 5203 s. 580; No. 5843 ss. 31 (1), 32 (1).

581. (1) When the scheme is finally settled the council shall serve on every owner of premises fronting on the street to be constructed notice in writing—

(*a*) requiring payment of the sum for which he is liable under the scheme as finally settled, showing separately—

(i) the amount which by the scheme is to be recovered from such owner as his share of the cost of the scheme; and

(ii) the amount of any additional costs and expenses charged to such owner under the scheme with his consent in writing as aforesaid; and

(*b*) containing a copy of the next succeeding section or a statement (in a form prescribed by regulations of the Governor in Council) of the effect thereof.

Payments by owners.

(2) Subject to the next succeeding section every such owner shall within one month after the date of the commencement of the works *in situ* pay to the council the sum aforesaid for which he is liable under the scheme, and if such sum is not paid within one month after the commencement of the works *in situ* any amount outstanding shall bear interest at the rate of Six pounds per centum per annum calculated from the expiration of one month after the date of the commencement of the works *in situ* to the date of payment.

(3) If the actual amount (as certified by the municipal engineer) of the portion of the cost of the execution of the scheme which by the scheme is to be recovered from the owners of the premises fronting on the private street constructed is less than the estimated amount as set out in the scheme as finally settled, the council shall return to each owner for the time being of premises fronting on the street in respect of which the liabilities under the scheme have been paid and allow in account with each owner for the time being of such premises in respect of which such liabilities have not been paid a sum equal to such part of the difference between the actual amount and the estimated amount as is proportionate to the portion of the estimated amount which under the scheme is to be recovered from the owner of the premises as his share of the cost of the scheme.

Where cost of works below estimate.

(4) (*a*) If the actual amount (as certified by the municipal engineer) of the portion of the cost of the execution of the scheme which by the scheme is to be recovered from the owners of premises fronting on the private street constructed is more than the estimated amount as set out in the scheme as finally settled, the council may apportion the whole or part of the excess of the actual amount over the estimated amount (but in no case a sum greater than twenty per centum of the estimated amount) among the persons who are the owners of premises fronting on the street rateably in the same proportions in which the estimated amount was apportioned.

Where cost of works above estimate.

(*b*) Upon notice in writing being given to each such person of the amount so apportioned to him he shall forthwith pay such amount to the council and in default the council may recover such amount from any such person, and in case such amount is not paid or recovered within one month from the day on which such notice is given to such person such amount shall bear interest at the rate of Six pounds per centum per annum calculated from the day on which such notice is given to such person.

582. (1) The council shall if so requested accept payment of the sum for which any person is liable under the scheme by forty or, if the council so directs, sixty or eighty quarterly instalments bearing interest (as from one month after the date of the commencement of the works *in situ*) on such portion as from time to time remains unpaid at such rate (not being more than one per centum higher than the rate at which the council obtained the advance or borrowed the money) as the council determines and, so far as relates to rate of interest, the council may from time to time amend its determination and vary the rate but so as not at any time to exceed by more than one per centum the rate of interest being paid for the time being by the council in respect of the advance or loan.

Payment by instalments. No. 5203 s. 581; No. 5843 s. 31 (2), No. 6151 s. 14.

(2) Such request shall—

(*a*) be made in writing and signed by the person liable for the said sum; and

(*b*) be lodged with the council before the expiration of one month after the serving on such person of the notice requiring payment of the sum for which he is liable under the scheme.

(3) The first quarterly instalment shall be payable immediately on the expiration of one month after the date of the commencement of the works *in situ;* and notwithstanding anything in this section the person liable may at any time pay to the council such portion of the said amount as then remains unpaid together with interest thereon at the appropriate rate referred to in sub-section (1) of this section to the date of payment.

Failure to pay instalment.

(4) In the event of any of the instalments or interest not being paid within fourteen days after the due date thereof the whole amount then unpaid shall if the council so determines become forthwith due payable and recoverable with interest at the appropriate rate referred to in sub-section (1) of this section calculated from the date of the default in payment to the date of payment.

Power to council to obtain bank overdraft.

No. 5203 s. 582 (1), (2).

583. (1) A council may subject to this section obtain advances from a bank by overdraft of current account for the purpose of defraying the cost of the execution of any scheme.

(2) All such advances—

(*a*) shall be obtained upon the credit of the municipality;

(*b*) shall be kept in a separate account; and

(*c*) shall be in addition to any other moneys which the council is authorized to borrow by overdraft of current account:

Provided that advances by overdraft shall not at any time exceed the difference between the cost of the execution of schemes under this Division and the sum of the amounts which have been paid by owners and the council under such schemes and the amount of money borrowed by the council under the next succeeding section for the purpose of liquidating any such advances.

Advances from municipal fund.

No. 5203 s. 582 (3).

584. If at any time the receipts of moneys payable under schemes under this Division are insufficient for the payment of the principal and interest of any advances by overdraft the council may advance the amount of such insufficiency out of the municipal fund and pay such principal and interest out of such last-mentioned advance.

Power to council to borrow moneys by issue of debentures. No. 5203 s. 583; No. 5843 s. 31 (3).

585. (1) A council may subject to this section—

(*a*) instead of obtaining advances by overdraft of current account under the powers conferred by the last preceding section, borrow money by the issue of debentures upon the credit of the municipality for the purpose of defraying the cost of the execution of any scheme;

(*b*) borrow money by the issue of debentures upon the credit of the municipality for the purpose of liquidating the whole or any part of the amount due to any bank from which it has obtained any advance under the last preceding section by overdraft of current account;

(*c*) borrow money by the issue of debentures upon the credit of the municipality for the purpose of redeeming at maturity any debentures issued under paragraph (*a*) or paragraph (*b*) of this sub-section.

Non-application of ss. 399-408, 413 (4), 414, 429.

(2) The provisions of sections three hundred and ninety-nine to four hundred and eight, sub-section (4) of section four hundred and thirteen, and sections four hundred and fourteen and four hundred and twenty-nine of this Act shall not apply with respect to the issue of debentures and debentures issued under this section, but subject to this section the other provisions of Division one of Part XV. relating to the issue of debentures and debentures issued under this Act shall with such adaptations as are necessary extend and apply to the issue of debentures and debentures issued under this section.

Moneys to be borrowed by special order.

(3) (*a*) All moneys borrowed under this section shall be borrowed by special order of the council which special order and the advertisement of the resolution therefor shall specify—

(i) the amount of the principal moneys which it is proposed to borrow;

(ii) the rate of interest to be paid;

(iii) any time and place at which the moneys borrowed are to be repayable;

(iv) the purposes for which the loan is to be applied; and

(v) the manner in which the loan is to be liquidated.

(*b*) A copy of every such special order shall be forthwith published in the *Government Gazette.*

Period for payment of debentures.

(4) The principal moneys secured by every debenture issued under this section shall be made payable on some day or days not more than twenty years after the date of such debenture.

Protection to *bona fide* purchasers of debentures.

(5) When the council of any municipality publishes pursuant to this section a copy of the special order authorizing the borrowing of moneys under this section and issues debentures signed and sealed as required in accordance with this section in pursuance of such special order, such debentures shall be good and valid as against such municipality in favour of any purchasers thereof without fraud and *bona fide*.

Extent of borrowing power.

(6) Any moneys borrowed under this section shall be in addition to any other moneys which the council is authorized to borrow by the issue of debentures.

Advances from municipal fund.

(7) If at any time the receipts of money payable under schemes under this Division are insufficient for the payment of the principal and interest of any moneys borrowed pursuant to this section the council may advance the amount of the insufficiency of such proceeds out of the municipal fund and pay such principal and interest out of such advance.

Separate records to to be kept.
No. 5203 s. 584.

586. (1) Every council shall keep in its books a separate record of each scheme.

Application by council of moneys paid by owners.

(2) Where a council has under this Division obtained an advance by overdraft or borrowed moneys by the issue of debentures all moneys received by the council under the scheme shall be applied primarily—

(*a*) in repayment of moneys so borrowed or advanced together with interest, and in sinking fund payments in respect of moneys so borrowed;

(*b*) in repayment of any advance from the municipal fund under this Division in respect of the scheme;

(*c*) in meeting any expenses incurred by the council under the last preceding section in respect of the scheme;

(*d*) in meeting any expenses incurred by the council in recovering moneys payable under the scheme—

and any balance of the moneys so received shall be paid into the municipal fund.

Street when constructed to be a public highway &c.
No. 5203 s. 585.

587. (1) When any private street is constructed under this Division—

(*a*) the right to use such street for the purposes for which such street has been constructed shall be appurtenant to all premises fronting thereon; and

(*b*) such street shall be deemed to be dedicated to the public as a public highway and shall be under the care and management of the council which (subject to the provisions of the next succeeding sub-section) shall be liable for the cost of any maintenance repair alteration or reconstruction thereof.

Power to council to reconstruct certain lanes &c. at expense of frontagers.

(2) Where any private street, being a lane or passage of not more than fifteen feet in width, has been constructed under this Division or Part XLII. or any corresponding previous enactment the council may—

(*a*) keep in repair such parts thereof as may require to be repaired; and

(*b*) notwithstanding that such street has been so constructed, from time to time in the manner provided in this Division again construct such street and recover the cost or any part of the cost of such reconstruction from the owners of the premises fronting on such street.

Certain private streets made good by owners &c. to be public highways.

(3) If any private street being more than fifteen feet in width is constructed to the satisfaction of the council but was not constructed pursuant to this Division or Part XLII. or any corresponding previous enactment—

(*a*) on the application of the owners of so many of the premises fronting on such street as in rateable value are the greater part of all the premises so fronting, the council shall by writing under the common seal of the municipality declare the same to be dedicated to the public as a public highway; and

(*b*) upon the publication of such declaration in the *Government Gazette* the said street shall become dedicated to the public as a public highway and shall thereafter be under the care and management of the council which shall, notwithstanding anything in this Division, be liable for the cost of any reconstruction thereof.

Necessary works. No. 5203 s. 586; No. 5443 s. 22 (1) (*e*), No. 5843 s. 33, No. 6151 s. 15.

588. Notwithstanding anything in this Division, if any council determines that the execution of any works for the construction of a private street is necessary then, whether or not other works for the construction of such street have previously been executed pursuant to this section—

(*a*) the council may subject to this Division execute such works for the construction of such street (whether by a separate scheme under this Division or as part of a general scheme of construction under this Division) and recover the cost or any part of the cost thereof from the owners of the premises fronting thereon, and may postpone the execution of other works for the construction of such street;

(*b*) upon the completion of the execution of such first-mentioned works the council shall thenceforth be liable for any cost of maintenance repair alteration or reconstruction thereof; and

(*c*) the council subject to this Division may subsequently execute the remaining works for the construction of such street (whether by a separate scheme under the Division or as part of a general scheme of construction under this Division) and recover the cost or any part of the cost thereof from the owners of the premises fronting thereon.

Abandonment of schemes. No. 5203 s. 587: No. 5443 s. 22 (1) (*f*), No. 5843 s. 32 (2).

589. (1) A council may by resolution abandon any scheme or any portion of any scheme whether before or after the scheme has been finally settled.

(2) If within three years after a scheme has been finally settled the works (to the extent to which the scheme has not been abandoned pursuant to this section) are not completed such scheme shall, unless the Minister in writing otherwise directs, by virtue of this Act be deemed to be abandoned.

(3) Where pursuant to this section a scheme is abandoned—

(*a*) the council shall forthwith return to each owner for the time being of premises fronting on the street in respect of which any moneys have been paid to the council under the scheme the moneys so paid;

(*b*) no further moneys shall be recoverable by the council under the scheme.

(4) Where pursuant to this section portion of a scheme is abandoned—

(*a*) the council shall forthwith return to each owner for the time being of premises fronting on the street in respect of which any moneys have been paid to the council under the scheme in respect of the portion of the scheme that has been so abandoned the moneys so paid;

(*b*) no further moneys shall be recoverable by the council in respect of the portion of the scheme that has been so abandoned;

(*c*) completion of the works of so much of the scheme as has not been so abandoned shall for the purposes of sub-section (5) of section five hundred and eighty of this Act be deemed to be completion of the works for the construction of the street, and the said sub-section shall with such adaptations as are necessary extend and apply accordingly, and in his certificate the municipal engineer shall also state the estimated cost of the execution of the works of the portion of the scheme that has been so abandoned.

(5) Notwithstanding that a scheme for the construction of a private street—

(*a*) after being prepared is not adopted by the council;

(*b*) after being adopted by the council is quashed by the court; or

(*c*) is abandoned in whole or in part pursuant to this section or any corresponding previous enactment—

the council may subject to this Division prepare adopt and, when finally settled, execute another scheme for the construction of such street or of any part of such street.

Notices to owners. No. 5203 s. 588.

590. (1) Where by this Division any notice is required to be served on the owner of any premises, such notice shall be deemed to have been sufficiently served if it is served on—

(*a*) the person described in the rate-book at the time of the service as the owner of the premises; or

(*b*) any person who appears from any memorial of registration of any deed conveyance or other instrument to be the owner of the premises or any person whose name appears in any register book kept under the *Transfer of Land Act* 1958 as owner of the premises.

(2) The provisions of section eight hundred and seventy-six of this Act shall apply with respect to the service of notice under this Division.

(3) If any such notice is served by post it shall be deemed to have been served at the expiration of twenty-four hours after it has been posted.

What owners may object to schemes.

(4) Where under this Division any objection may be made by the owner of any premises, such objection may be made by the owner for the time being of the premises whether or not he is the person on whom any relevant notice has been served.

Remitted interest not recoverable. No. 5203 s. 589 (2).

591. In any case where the payment of any interest has been remitted or excused pursuant to sub-section (1) of section five hundred and eighty-nine of the *Local Government Act* 1946 or any corresponding previous enactment it shall cease to be recoverable by the council from any person and shall cease to be a charge on any land.

Power to Governor in Council in certain cases to vary specifications &c. for works of private street construction. No. 5221 s. 2; No. 5443 s. 22 (2).

592. (1) Where the Governor in Council is satisfied that, owing to shortages in supplies of cement or other required materials or for any other reason whatsoever, any works provided for in any scheme of private street construction under this Division or any corresponding previous enactment cannot be satisfactorily executed in accordance with the specifications maps plans sections and elevations in the scheme, the Governor in Council may by Order published in the *Government Gazette*

authorize the council to execute the works with such variations of the said specifications maps plans sections and elevations as, in his opinion, are expedient in the circumstances.

Effect of variations of specifications &c.

(2) The execution of the works by the council in accordance with the said specifications maps plans sections and elevations as so varied shall be deemed to be a due and proper execution of the works for the purposes of this Division or of that enactment, and the rights powers privileges obligations and liabilities of the council or any owner of premises shall not be affected or abated by reason of such variation:

Provided that a certificate of the municipal engineer given on the completion of the works in accordance with the said specifications maps plans sections and elevations as so varied shall be treated as a certificate given on the completion of works provided for in the scheme and the said Division or enactment shall apply accordingly.

Temporary construction of private street at cost of adjoining owners without prejudice to subsequent construction at their cost. No. 5843 s. 44.

593. Subject to the next six succeeding sections of this Act any council (including the councils of the cities of Melbourne and Geelong) may temporarily construct any private street which has not previously been constructed under this Division or Part XXXVIII. of the *Local Government Act* 1928 or any corresponding previous enactment (whether or not it has previously been temporarily constructed under this section and the next six succeeding sections of this Act or under any corresponding previous enactment) and recover the cost or any part of the cost from the owners of premises fronting on the street.

Preliminary petition. No. 5843 s. 45.

594. (1) No such temporary construction shall be undertaken unless a petition as hereinafter provided praying the council to temporarily construct the street as aforesaid has previously been presented to the council.

(2) Every such petition shall—

(*a*) be signed by a majority of the persons described in the rate book as the occupiers of premises fronting on the private street concerned and by one-third at least of the persons described in the rate book as the owners of such premises (and every such signature shall be verified by the statutory declaration of some person in the form or to the effect of the form in the Third Schedule to this Act);

Third Schedule.

(*b*) specify a maximum amount per foot of frontage which shall be chargeable to any owner of such premises.

Preparation of scheme of street construction. No. 5843 s. 46.

595. (1) If a council on receiving such a petition proposes to temporarily construct the private street as aforesaid it shall cause to be prepared a scheme containing *inter alia*—

(*a*) a short description of the works;

(*b*) an estimate of the cost of the execution of the scheme;

(*c*) a list of the premises fronting on the street;

(*d*) a statement of the portion (whether the whole or part) of the cost of the execution of the scheme which is to be recovered from the owners of such premises and the estimated amount thereof and the respective estimated amounts which are to be recovered from each such owner as his share of the cost of the scheme.

(2) One such scheme may be prepared for the temporary construction of two or more private streets.

(3) The council shall—

(*a*) cause a copy of the scheme to be kept at the office of the council open for inspection by any interested person until the scheme is adopted or abandoned; and

(*b*) cause to be served on every owner intended to be made liable under the scheme notice in writing stating—

(i) that the scheme has been prepared and may be inspected at the office of the council;

(ii) the estimated amount to be recovered from such owner as his share of the cost of the scheme;

(iii) that within fourteen days from the service of such notice such owner may by notice in writing to the council object to such scheme or any part thereof.

(4) Within fourteen days after the service of such notice any such owner may in writing delivered to the council object to the scheme.

(5) The council not earlier than fourteen days after the service of the last of such notices—

(*a*) shall consider the scheme and all objections made thereto as aforesaid;

(*b*) may adopt the scheme with or without modification or alteration or decide to abandon the scheme.

(6) The provisions of paragraphs (*a*), (*b*) and (*d*) of sub-section (4) and sub-sections (5), (6) and (7) of section five hundred and seventy-seven and section five hundred and ninety of this Act shall with such adaptations as are necessary extend and apply for the purposes of this section.

Execution of works. No. 5843 s. 47.

596. (1) When the scheme is adopted the council may proceed to construct the private street in accordance with the scheme.

(2) In the construction of the street minor variations from the scheme (including the making of any crossing with the consent of the owner concerned) shall be permissible, but no extra expense incurred as the result of any such variation (which extra expense shall be deemed to be such amount as the municipal engineer certifies to be properly referable to such variation) shall be included in the portion of the cost of the scheme to be recovered from owners of premises fronting the street or, unless he consents in writing thereto, be charged to any of such owners.

(3) On completion of the works the municipal engineer shall submit to the council a certificate stating—

(*a*) the date of the completion of the works;

(*b*) the actual cost of the execution of the scheme; and

(*c*) the actual amount of the portion of such cost which is to be recovered from each owner of premises fronting on the street, but the amount to be recovered from any such owner shall not in any case exceed the amount which would be obtained by a charge at the maximum amount per foot of frontage specified in the petition.

Payment by owners. No. 5843 s. 48.

597. (1) After the receipt of such certificate the council shall serve on every owner of premises fronting on the street notice in writing requiring payment of the sum for which he is liable under the scheme.

(2) Every such owner shall within one month after the service of such notice pay to the council the sum aforesaid together with the amount of any additional costs and expenses charged to such owner with his consent in writing as aforesaid, and if such sum and any such additional amount are not paid within such period of one month any amount outstanding shall bear interest at the rate of Six pounds per centum per annum calculated from the expiration of such period of one month.

Overdraft. No. 5843 s. 49.

598. (1) A council may obtain advances from a bank by overdraft of current account for the purpose of defraying the cost of the execution of any such scheme of temporary street construction.

(2) All such advances shall be obtained upon the credit of the municipality and shall be kept in a separate account and shall be in addition to any other moneys which the council is authorized to borrow by overdraft of current account.

(3) If at any time the receipts of moneys payable under the scheme are insufficient for the payment of the principal and and interest of any such advance by overdraft, the council may advance the amount of such insufficiency out of the municipal fund.

Effect of temporarily constructing street. No. 5843 s. 50.

599. Notwithstanding anything in this Act—

(*a*) any such temporary construction of a private street shall not be a construction of a private street under this Division, and the council shall not be liable for the cost or any maintenance repair alteration or reconstruction thereof and may proceed in relation thereto under this Division as if the street had not been so temporarily constructed;

(*b*) no such temporary construction of a private street shall constitute a fixing of the level of the street, and in particular the level of the street shall not be thereby fixed for the purposes of sub-section (2) of section five hundred and sixty-five of this Act.

Provision in case of subdivision of lands in street construction scheme. No. 6151 s. 13.

600. Notwithstanding anything to the contrary in this Act, where any premises fronting on a private street in respect of which the owner is liable or intended to be made liable under a scheme under this Division is subdivided into two or more parts, the council shall forthwith after sealing the plan of subdivision apportion the amount for which such owner is liable or intended to be made liable among the owners of the several parts, or such parts as to the council seems just, as if such parts were separately owned, and the said premises fronting and the amount apportioned to the owner in respect thereof shall be omitted from the scheme and the description of the parts in respect of which the liability has been apportioned and the respective amounts thereof shall be inserted in lieu thereof and this Part shall thereafter take effect accordingly.

DIVISION 11.—KERBING FLAGGING PAVING AND ASPHALTING FOOTWAYS ETC.

Footway may be kerbed flagged paved or asphalted. No. 5203 s. 590; No. 6151 s. 16.

601. (1) The council of any municipality in such manner as the council thinks fit may cause to be kerbed flagged paved or asphalted the whole or from time to time any portion of the footway or pathway in front of any land along any street or private street within the municipal district.

One half of expense to be borne by owner if footway not previously paved &c. or (where not previously contributed to) if previously paved &c.

(2) Half the amount of the expense thereof in respect of any portion of such footway or pathway—

(*a*) not previously kerbed flagged paved or asphalted by the council; or

(*b*) previously kerbed flagged paved or asphalted by the council, if neither the owner nor any previous owner of such land has contributed pursuant to

Division ten of this Part or this Division or any corresponding previous enactment towards the expense of the previous kerbing flagging paving and asphalting by the council or of any of them—

shall be borne and paid by the owner of such land and the council shall if so requested accept payment thereof by twenty quarterly instalments bearing interest, in which case the provisions of section five hundred and eighty-two of this Act shall with such adaptations as are necessary extend and apply accordingly.

Proceedings for recovery.

(3) No proceeding for the recovery of such amount shall be taken until at least one month after a requisition for payment of the amount hereinbefore mentioned together with an account of the total expenditure signed by the municipal clerk has been sent or delivered to such owner.

Evidence as to non-contribution previously.

(4) In any proceeding for the recovery of such amount in respect of any matter referred to in paragraph (*b*) of sub-section (2) hereof, the certificate of the municipal clerk stating that so far as is ascertainable no contribution has been made pursuant to Division ten of this Part or this Division or any corresponding previous enactment by the owner or by any previous owner of the land towards the expense of any previous kerbing flagging paving and asphalting by the council or of any of them shall be *prima facie* evidence that no such contribution has been so made.

DIVISION 12.—SECURING DANGEROUS PLACES NEAR STREETS: FILLING UP LOW GROUND: PROVIDING ACCESS TO LAND BY BRIDGE OR CROSSING.

Power to compel owner to fence or make secure dangerous places. No. 5203 s. 591.

602. (1) Where lands in any municipality are in the opinion of the council dangerous by reason of holes or excavations therein or other like cause the owner of such lands shall upon being thereunto required by notice from the council fill up such holes or excavations or remove such other cause of danger or erect or effect such repairs to such of the fences mentioned in the *Fences Act* 1958 as the council thinks necessary and specifies in such notice between such lands and the streets or roads on which they abut or around such holes or excavations or other cause of danger.

In the event of the owner failing to comply with such notice for thirty days the council may enter upon such lands and execute the works specified in such notice and recover the expense from such owner.

Low ground to be filled up.

(2) The council of any municipality may by notice signed by the municipal clerk and delivered to the owner or left at his last-known place of abode or at the residence of any agent or person receiving such owner's rents or transacting other business within the municipal district for such owner call upon the owner of any

ground lying alongside of any street private street road or pathway and being of a lower level than such street or private street road or pathway forthwith to have such low ground filled up to such level.

In case such owner refuses or neglects to fill up such ground for the space of one month after the delivery of such notice the council may proceed to fill up such ground at the expense of such owner and the amount of such expense not exceeding one-fourth of the then value of such ground may be recovered from the owner.

Power to council to require owner of land fronting &c. footway to provide bridge or crossing. No. 5203 s. 592. Fifteenth Schedule.

603. (1) If any land fronts to adjoins or abuts upon the footway of any street or road and if access with horses or other animals or with vehicles from such street or road to such land or to some sufficient way appurtenant thereto cannot be had without riding driving or leading horses or other animals or wheeling or driving vehicles upon or across the said footway or the channel (if any) lying along the outer edge thereof and if the council is of opinion that such footway or channel is damaged by the passage of horses or other animals or vehicles across the same and no bridge or crossing over or across the same has been made as provided under subdivision (4) of Part I. of the Fifteenth Schedule the council may give notice in writing to the owner of such land requiring him to make a bridge or crossing as specified in the notice, such specification being in accordance with the provisions of the said subdivision and with any regulation in force in that behalf.

(2) If within thirty days after the service of the notice the owner has not complied with the requirements of such notice the council may construct such bridge or crossing at the cost of the owner and recover such cost from the owner.

(3) The provisions of the said subdivision shall so far as applicable and with such modifications as are necessary extend and apply with respect to any bridge or crossing made or to be made under this section.

Power of councils to contract with owner of land abutting on footway to make crossing or bridge required or desired to be made &c. No. 5203 s. 593. Fifteenth Schedule.

604. (1) Where any person who is the owner of land fronting to adjoining or abutting upon the footway of any street or road—

(*a*) is required by the council by notice under the provisions of the last preceding section to make a bridge or crossing as specified in the notice ; or

(*b*) in any municipal district where the provisions of subdivision (4) of Part I. of the Fifteenth Schedule are in force—

(i) desires that a crossing be made over the footway and the channel (if any) lying along the outer edge thereof or that a bridge be made over such channel (as the case may be) and in accordance with

the provisions of the said subdivision (4) gives the requisite notice in writing of his desire to the council ; or

(ii) is required by or under the said subdivision (4) to repair any such crossing or bridge or both—

the council may contract and agree with such person that any bridge or crossing referred to in paragraph (*a*) hereof which is required to be made or any crossing or bridge referred to in paragraph (*b*) hereof which is desired to be made or required to be repaired will be made or repaired (as the case may be) by the council.

Power of council to make &c. such bridge or crossing and to recover cost from owner.

(2) The council may—

(*a*) make or repair any such bridge or any such crossing to the satisfaction of the council accordingly ; and

(*b*) either before or after so doing recover the cost of so doing from such person—

and the amount of such cost shall with interest thereon as in this Act provided be and until paid remain a charge upon the land fronting to adjoining or abutting upon the footway, and channel, (if any) over which footway or channel or both (as the case may be) the bridge or crossing or repaired bridge or crossing is made.

DIVISION 13.— PURCHASING OR TAKING LANDS OTHER THAN THOSE REQUIRED FOR OPENING ETC., STREETS OR ROADS.

Power to councils to purchase or take compulsorily surplus land on making or widening road &c.

No. 5203 s. 594; No. 5443 s. 23.

605. (1) Where the council of any municipality passes a resolution that it is desirable to open any new street or road or to divert any street or road or to alter or increase the width of any street or road within the municipal district and that, in addition to purchasing or compulsorily taking any land required for the purposes of such opening diverting altering or increasing, it is also desirable that other land (hereinafter referred to as " surplus land ") situate in the neighbourhood though not actually required for those purposes, should also be purchased or be compulsorily taken, the provisions of this section shall have effect.

Scheme to be prepared.

(2) The council shall prepare for submission to the Minister for the approval of the Governor in Council a scheme with all necessary information including maps plans and particulars, and showing—

(*a*) the whole of the works and undertakings proposed to be carried out ;

(*b*) the surplus land proposed to be purchased or compulsorily taken ;

(*c*) any streets roads lanes or ways on or abutting on any of the surplus land which it is proposed to close ;

(*d*) any new streets roads lanes or passages proposed to be set out on or abutting on the surplus land ;

(*e*) the manner in which and the terms and conditions on which it proposed to subdivide any of the surplus land for the purpose of sale or letting on lease ;

(*f*) an estimate of the cost of carrying out the scheme ;

(*g*) whether or not it is proposed to impose a betterment charge in respect of any lands for the purposes of the scheme ;

(*h*) if it proposed to impose such a charge—the area within which such charge will be imposed on such lands ; and

(*i*) any other mode in which it is proposed to obtain funds for the purposes of the scheme.

Preliminary proceedings.

(3) Before the scheme is submitted to the Minister—

(*a*) a copy thereof so prepared shall be deposited at the office of the council and shall be open for inspection during office hours by any person free of charge ;

Notices to be published.

(*b*) the council forthwith after the said copy has been so deposited shall cause to be published in the *Government Gazette* and twice in some newspaper generally circulating in the municipal district a notice—

(i) describing shortly the purport of the scheme ;

(ii) stating that a copy of the scheme is deposited for inspection as aforesaid ;

(iii) calling upon all persons affected by the scheme to set forth in writing addressed to the municipal clerk within forty clear days from the publication of such notice in the *Government Gazette* all objections which they may have to the scheme ; and

(iv) stating that at the next ordinary meeting of the council after the expiration of the said forty clear days the council will consider any objections to the scheme ;

Objections.

(*c*) at the next ordinary meeting of the council after the expiration of the said forty clear days any person affected by the scheme or any person acting on his behalf may appear before the council in support of any written objections or may submit any other objections to the scheme; and

Consideration of objections.

(*d*) the council shall take into consideration all objections made under this sub-section.

Objections to be transmitted to the Minister.

(4) (*a*) The council shall in submitting the scheme to the Minister transmit therewith copies of any written objections to the scheme, together with a statement of any other objections made as aforesaid.

Reference to Town and Country Planning Board.

(*b*) Upon receiving any scheme submitted to him for the approval of the Governor in Council the Minister shall refer such scheme to the Town and Country Planning Board constituted under the *Town and Country Planning Act* 1958 for report.

Powers to refer for reconsideration.

(5) The Minister before the scheme is submitted to the Governor in Council may refer the same to the council for reconsideration.

Approval &c. of scheme.

(6) The Governor in Council may approve of the scheme with or without modifications or may refuse to approve of the same.

Surplus land not be to purchased or taken until scheme approved.

(7) The council shall not purchase or compulsorily take any of the surplus land unless and until the scheme has been approved as aforesaid.

Powers of council under approved scheme.

(8) The council in accordance with the scheme approved as aforesaid may purchase or compulsorily take the surplus land included in the scheme.

Power of dealing with surplus land.

(9) Where any such surplus land has been purchased or has been compulsorily taken—

(*a*) the council may carry out all or any of the following works or undertakings in connexion therewith, namely :—

(i) Removing or demolishing any buildings or erections on the surplus land ;

(ii) Making opening forming or setting out any new streets roads lanes or passages on or abutting on any of the surplus land ; and constructing forming levelling draining paving macadamizing and making good all such new streets roads lanes and passages ;

(iii) Altering the levels of the surplus land ;

(iv) Altering existing drains and stormwater sewers and constructing new drains and stormwater sewers on the surplus land; and

(v) Laying out planting and beautifying the surplus land or any portion thereof or otherwise making the same suitable for recreation purposes ;

(*b*) the council may—

(i) notwithstanding anything to the contrary in this Act in the name and on behalf of the municipality sell so much of the surplus land as it thinks fit in one or more lots by public auction or private sale and at such price and on such terms and subject to such exceptions reservations covenants and conditions as the council thinks fit, including power to take such securities for the payment of any balance of purchase money and interest thereon or to allow such period for the payment of the same as the council thinks fit;

(ii) subject to and in accordance with the provisions of Part VIII. of this Act to let on lease so much of the surplus land as it thinks fit; and

(iii) sell any buildings or erections on the surplus land or any of the materials of such buildings or erections;

(*c*) before any lot is sold as aforesaid the council shall where practicable afford the owner of any land which or any portion of which—

(i) had a frontage to a business street before the scheme was approved ; and

(ii) has been purchased or compulsorily taken ; and

(iii) forms the whole or part of any such lot—

an opportunity of purchasing such lot by private sale from the council at a price fixed by agreement between such owner and the council or in default of agreement by arbitration under the *Arbitration Act* 1958.

Closing of streets &c.

(10) If the council is of opinion that it is expedient that in accordance with the scheme approved as aforesaid any street road lane or way or any part thereof on or abutting on any of the surplus land so purchased or taken should be closed—

(*a*) the council may apply to the Minister accordingly ; and

(*b*) the provisions of sections seven hundred and eighteen to seven hundred and twenty-two of this Act and of any regulations made under the powers conferred by paragraphs

(*c*) (*d*) (*e*) (*g*) (*h*) or (*i*) of sub-section (1) of section seven hundred and fifty-five thereof shall so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply for the purposes of this sub-section ; and

(*c*) where any land which was comprised in any such street road lane or way or part thereof is in pursuance of this sub-section granted to the municipality such land shall be deemed to be part of the surplus land.

Works and undertakings in connexion with surplus land to be deemed works and undertakings under Part XVIII. and permanent works and undertakings under Part XV.

(11) Any works and undertakings authorized by this section in connexion with the surplus land—

(*a*) shall be deemed to be works and undertakings authorized by this Act within the meaning of Part XVIII. thereof ; and

(*b*) together with the purchase or compulsory taking of the surplus land or any easement term right or privilege in over or affecting the same and the purchase of materials and the making of any compensation arising from the operation of the provisions of this section relating to the surplus land, shall be deemed to be permanent works and undertakings within the meaning of Part XV. of of this Act.

Additional borrowing powers.

(12) The council over and above any amount which it is authorized to borrow under this Act may borrow in manner provided by the said Part XV. any sum or sums required for the purposes of the last preceding sub-section.

New streets &c. on or abutting on surplus land to be constructed &c. and maintained by council.

(13) Notwithstanding anything in Division ten of Part XIX. of this Act—

(*a*) the cost and expense of constructing forming levelling draining paving flagging macadamizing and otherwise making good all new streets roads lanes or passages formed or set out on or abutting on any of the surplus land in accordance with the scheme approved as aforesaid and the future maintenance thereof shall be borne and paid by the council except that, notwithstanding anything in paragraph (*c*) of this sub-section, where any such surplus land abutting on any such street road lane or passage is sold before the commencement *in situ* of the works for making good such street road lane or passage the council may in accordance with the provisions of Division ten of this Part construct such street road lane or passage as if it were a private street within the

meaning of the said Division ten and recover the appropriate portion of the cost thereof from the owner of such surplus land ;

(*b*) the council shall have the care and management of of the said new streets roads lanes and passages ; and

(*c*) no owner for the time being of any of such land shall as such be under any liability in respect of any of the matters mentioned in this sub-section.

Works &c affecting other public corporations.

(14) The provisions of section seven hundred and fifty-four of this Act so far as applicable and with such alterations modifications and substitutions as are necessary shall extend and apply with respect to any works and undertakings under any scheme authorized as aforesaid.

Extension of provisions to Melbourne and Geelong.

(15) The provisions of this section so far as applicable and with such alterations modifications and substitutions as are necessary shall extend and apply to the city of Melbourne and the city of Geelong ; and for the purposes of this section the corporation of either of the said cities—

(*a*) may subject to and in the manner provided by the Acts applicable to the said cities respectively borrow money ; and

(*b*) without prejudice to any other powers under any Acts applicable to the said cities respectively, may, in manner provided by Divisions one two and four of Part XVIII. or by Part XLIV. of this Act, purchase or take compulsorily surplus land and make any compensation.

(16) The provisions of sections seven hundred and twenty-four to seven hundred and forty-three shall so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply for the purposes of this section.

DIVISION 14.—ALIGNMENT WIDENING AND OPENING OF STREETS.

Interpretation. No. 5289 s. 3.

606. (1) In this Division unless inconsistent with the context or subject-matter—

"Council." "Council", in relation to the alignment of or widening on either side of a street, means the council of the municipality in the municipal district of which that side of the street is situated.

"Municipality." "Municipality" includes the city of Melbourne and the city of Geelong.

"Street." "Street" means any street road lane or passage formed or set out on any land (whether unalienated Crown land or not) whether such street road lane or passage is or is not a public highway or otherwise dedicated to the public, and includes any part of any such street road lane or passage.

Application of *Survey Co-ordination Act* and regulations thereunder to permanent marks.

(2) The provisions of the *Survey Co-ordination Act* 1958 and the regulations thereunder shall so far as applicable and with such adaptations as are necessary apply to and with respect to permanent marks established under this Division and to the establishment of those marks in all respects as if they were permanent marks established under that Act.

(1) *Declaration of Alignment of Streets.*

Interpretation. No. 5289 s. 4.

607. In this subdivision unless inconsistent with the context or subject-matter—

"Alignment." "Alignment", in relation to either side of a street, means the line or lines forming the boundary between the street and the lands abutting on that side of the street.

"Person concerned." "Person concerned", in relation to the alignment of either side of a street, includes any person having any right title or interest in the land forming the street or in any land abutting on that side of the street and also includes any corporation or other body which is authorized by law to construct works in over or under the street.

"Proper authority." "Proper authority" means—

(*a*) in the case of the alignment of any street formed or set out on unalienated Crown land or vested in any authority representing the Crown—the Surveyor-General; and

(*b*) in the case of the alignment of any other street—the Registrar of Titles.

"Surveyor-General." "Surveyor-General" includes any person acting for the time being as professional head of the survey branch of the Department of Crown Lands and Survey.

Power to proper authority to declare alignment. No. 5289 s. 5.

608. Where the original alignment of either side of any street is unknown or in doubt, whether by reason of faulty original survey or the removal or disappearance of the original survey marks or otherwise, the proper authority may, at any time of his own motion or upon the application in the prescribed manner and form of the council or of any person concerned, determine and declare an alignment for that side of the street as provided in this subdivision.

609. (1) Every application for the declaration of an alignment under this subdivision shall be accompanied by— Matters to accompany application for declaration of alignment. No. 5289 s. 6.

(*a*) a plan prepared and certified by a licensed surveyor showing the position of walls fences buildings and other permanent structures along the side of the street in question and such other particulars as the proper authority thinks necessary;

(*b*) the field notes, certified by that licensed surveyor, of the survey made in relation to the preparation of the plan; and

(*c*) such other information as to the circumstances as the proper authority thinks necessary.

(2) The proper authority shall not of his own motion proceed to determine or declare any alignment under this subdivision unless he has first obtained such a plan field notes and other information as is referred to in the last preceding sub-section. Matters to be obtained where authority proceeds of own motion.

610. (1) Before the declaration of any alignment under this subdivision the proper authority— Notice of intention to declare alignment. No. 5289 s. 7.

(*a*) shall by notice published in the *Government Gazette* and in some newspaper circulating in the district in which the street is situated give notice of his intention to declare the alignment, including—

(i) a statement of the extent of the proposed alignment and where it is proposed to depart from the original alignment, so far as there is evidence of that original alignment, a statement of the reasons for that proposed departure;

(ii) a statement that a plan of the proposed alignment can be inspected at the municipal offices of the municipality; and

(iii) a statement that the council or any person concerned may within thirty days after the publication of the notice as aforesaid make to the proper authority in writing such objections to or representations with respect to the proposed alignment as the council or such person thinks fit; and

(*b*) shall before such publication send to the council a plan certified by the proper authority showing the position of the proposed alignment in relation to the walls fences buildings and other permanent structures along the side of the street in question.

Plan to be kept at municipal offices.

(2) The said plan shall be kept at the municipal offices of the municipality and shall be open to inspection by any person without fee at any time at which such offices are open for business during the period in which objections or representations may be made.

Consideration of objections and representations. No. 5289 s. 8.

611. Before the declaration of any alignment under this subdivision the proper authority shall give due consideration to any objections or representations duly made within the period referred to in the notice published as aforesaid and shall if so required by writing grant to the council or person making the same or to the agent or representative of such council or person a reasonable opportunity to be heard by him personally in relation to such objections or representations.

Manner of determining alignment. No. 5289 s. 9.

612. (1) In the determination of any alignment for the purpose of the publication of notice as aforesaid and also in the final determination of the alignment for the purpose of declaring it as hereinafter provided, the proper authority shall endeavour to fix the alignment as nearly as possible in the position of the original alignment, so far as there is evidence of that original alignment, but may depart from that original alignment if it appears expedient in the circumstances to do so and, in particular, if it appears that the re-establishment of that original alignment would give rise to undue disturbance of any permanent carriage-way footway or other permanent works in the street or of the occupation of any considerable number of the allotments of land abutting on the street.

Surveyor-General to consult with Registrar of Titles.

(2) No alignment shall be determined by the Surveyor-General for the purpose of the publication of notice as aforesaid or finally determined by him for the purpose of declaring it as hereinafter provided except after consultation by the Surveyor-General with the Registrar of Titles.

Notices, &c., to be given of intended variation from proposed alignment. No. 5289 s. 10.

613. If, after consideration of the objections and representations made as aforesaid, the proper authority proposes to declare an alignment which comprises any substantial variation from the proposed alignment of which notice was given as aforesaid, he shall before publishing the declaration give further notice in writing of the proposed variation and of the reasons for the proposed variation to the council and to such of the persons concerned as will in his opinion be adversely affected by the variation and, if so required by writing within thirty days after the giving of such further notice, give to the council and to any such person a further reasonable opportunity to submit, and to be heard in relation to, such objections or representations with respect to the variation as the council or such person thinks fit.

Declaration of alignment. No. 5289 s. 11.

614. (1) Upon compliance with the foregoing provisions of this subdivision the proper authority may declare the alignment of the side of the street in question by declaration in the prescribed form published in the *Government Gazette*.

Declaration to refer to plan of alignment.

(2) Every declaration so published shall refer to a plan in the possession of the proper authority showing the position of the declared alignment by reference to—

(*a*) permanent marks indicating the position of the alignment; and

(*b*) such other features of a permanent nature as the proper authority thinks fit—

so as to make the position of the alignment on the ground permanently and readily ascertainable by survey; and every such plan shall thereafter be kept at the offices of the proper authority and open to inspection by any person without fee at any time at which the said offices are open for business.

Establishment of permanent marks.

(3) Where for the purpose of marking an alignment under this subdivision it is necessary to establish permanent marks as aforesaid, those permanent marks shall be established, before the declaration of the alignment is published, by a licensed surveyor acting under the direction of the proper authority.

Alignment to be final and conclusive.

(4) The publication of the declaration shall be conclusive evidence of due compliance with all matters preliminary thereto, and any alignment so declared shall be final and conclusive and shall not be called in question in any manner before any court or person acting judicially.

Effect of declaration of alignment. No. 5289 s. 12.

615. (1) Subject to this subdivision upon the publication of the declaration of an alignment of either side of any street—

(*a*) the declared alignment shall for all purposes be and become the boundary between the street and the lands abutting on that side of the street;

(*b*) all rights titles and interests in any lands adjacent to the said alignment in existence immediately before the said publication shall, to the extent to which they are inconsistent with the said alignment forming the said boundary, be extinguished;

(*c*) all rights titles and interests in the soil of the street as a street and all easements and dedications thereover in existence immediately before the said publication shall extend to the said alignment and no further; and

(*d*) all rights titles and interests in the lands abutting on that side of the street in existence immediately before the said publication shall extend to the

said alignment and no further, and for the purposes of such extension the boundaries between allotments of the said land shall, where necessary, also be extended, each in its own proper line, so as to meet the said alignment.

Extinguishment of possessory titles, &c.

(2) Without affecting the generality of the foregoing provisions of this section and notwithstanding anything to the contrary in any Act or law—

(*a*) upon the publication of the declaration of an alignment of either side of a street under this subdivision every right title or interest in any land forming part of the street as defined by the said alignment which arose before the said publication by possession or by continuous and adverse occupation or by the encroachment of buildings thereon shall be extinguished ; and

(*b*) no such right title or interest shall at any time thereafter arise by reason of any such possession occupation or encroachment during any period (whether before or after or partly before and partly after such publication).

Authority and direction to make necessary entries, &c.
No. 5289 s.13.

616. (1) The Registrar of Titles is hereby authorized and directed to make all such entries upon or alterations of any lodged plan or other plan in the Office of Titles and upon any Crown grant or certificate of title and upon the duplicate of any Crown grant or certificate of title and upon any other instrument or document as may be necessary or expedient in consequence of the declaration of any alignment under this subdivision, and the holder of any such duplicate Crown grant or certificate of title or of any such instrument or document shall, when so required by writing by the Registrar of Titles, produce the same to the Registrar of Titles for that purpose.

(2) The Registrar-General is hereby authorized and directed to make all such entries upon or alterations of the record of enrolment of any Crown grant and all such memorials and all such entries upon or alterations of any memorial as may be necessary or expedient in consequence of the declaration of an alignment under this subdivision.

As to effect of declaration of alignment on provisions of this Act and other provisions relating to obstruction of streets.
No. 5289 s. 14.

617. (1) The declaration of any alignment under this subdivision shall not be used in evidence against any person in any prosecution for any offence against sub-section (1) of section five hundred and fifty-eight of this Act or any similar provision in or under any Act relating to local government in relation to any building hedge ditch fence hole heap drain or obstruction made before the publication of the said declaration, nor shall any action

by the council pursuant to sub-section (2) of the said section or any similar provision in or under any such Act be deemed valid by reason only of any such declaration.

(2) Without affecting the generality of the foregoing provisions of this subdivision in respect of any building hedge ditch fence hole heap drain or obstruction made after the publication of any such declaration the declared alignment shall be the boundary between the street and the lands abutting thereon, and the provisions of the said section five hundred and fifty-eight and every similar provision in or under any Act relating to local government shall apply accordingly.

No liability to attach to Crown, &c. No. 5289 s. 15.

618. No person shall be entitled to receive or shall receive from the Crown, the Registrar of Titles, the Surveyor-General or the council or out of the assurance fund referred to in Division one of Part VI. of the *Transfer of Land Act* 1958 any money or compensation or consideration whatsoever in respect of or in any manner whatsoever arising out of the declaration of any alignment or any other act matter or thing done pursuant to this subdivision.

Regulations. No. 5289 s. 16.

619. (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorized or required to be prescribed or necessary or expedient to be prescribed for the purposes of this subdivision.

Publication.

(2) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament; and a copy of all such regulations shall be posted to each Member of Parliament.

(2) *Widening of Streets.*

Interpretation. No. 5289 s. 17.

620. In this subdivision unless inconsistent with the context or subject-matter—

"New alignment."

"New alignment", in relation to either side of a street, means the line or lines intended to form the new boundary between the street and the lands abutting on that side of the street as fixed by the council pursuant to this subdivision.

"Old alignment."

"Old alignment", in relation to either side of the street, means the line or lines forming the boundary between the street and the lands abutting on that side of the street (whether such old alignment is or is not a declared alignment under subdivision (1) of this Division) immediately before the publication of notice of the fixing of the new alignment.

"Owner."

"Owner" of any land includes every person to whom notice is required to be given under section nine of the *Lands Compensation Act* 1958 in respect of the acquisition of the land.

Power to council to fix new alignment and acquire lands to widen street.
No. 5289 s. 18.

621. Without limiting any other power of a council to widen streets, a council may pursuant and subject to this subdivision for the purpose of widening any street—

(*a*) fix a new alignment for either or each side of the street; and

(*b*) acquire from the owners thereof (either by agreement or compulsorily) the lands on either or each side of the street (as the case requires) between the old alignment and the new alignment.

Plan of new alignment to be kept at municipal offices.
No. 5289 s. 19.

622. (1) A plan of the new alignment of either side of a street—

(*a*) prepared and certified by a licensed surveyor; and

(*b*) showing the position of the new alignment by reference to permanent marks and the old alignment and the position of walls fences buildings and other permanent structures and features—

shall be kept at the municipal offices of the municipality and shall be open to inspection by any person without fee at any time at which such offices are open for business.

Copies of plan to be lodged at Office of Titles and Registrar-General's office.

(2) Copies of the said plan certified by the said surveyor shall be lodged by the council in the office of the Registrar of Titles and in the office of the Registrar-General respectively.

(3) Each such copy shall be open for inspection by any person without fee at any time at which the office of the Registrar of Titles or of the Registrar-General (as the case may be) is open for business.

Notice of fixing of new alignment to be published and given to owners of lands affected.
No. 5289 s. 20.

623. (1) The council shall cause notice of the fixing of the new alignment—

(*a*) to be published in the *Government Gazette* and in two newspapers (at least one of which is a daily newspaper) generally circulating in the locality in which the street is situated; and

(*b*) to be given to the owners of all land affected thereby or to such of them as after diligent inquiry are known to the council and to every corporation or other body which is authorized by law to construct works in over or under the street.

(2) Any notice required by this section to be given to any owner of land may be given in the same manner in all respects as the notice referred to in section nine of the *Lands Compensation Act* 1958 may be given under section ten or section eleven (as the case may be) of that Act, but the failure to give such notice in any case shall not invalidate the fixing of the new alignment for the purposes of this subdivision. Mode of giving notice.

624. After the date of the last publication as aforesaid of notice of the fixing of any new alignment no person shall construct build place reconstruct rebuild replace or repair any building or other substantial improvement or portion of a building or other substantial improvement in or upon any land between the old alignment and the new alignment : Prohibition of building and rebuilding on land between old and new alignments. No. 5289 s. 21.

Provided that with the consent of the council minor and not substantial repairs and alterations may be effected to any such building or improvement in order to permit of its reasonable preservation and temporary use but not so as thereby to increase the council's liability to pay compensation.

625. The owner of any land between the old alignment and the new alignment upon which at the date of the last publication of the notice aforesaid there is any building or other substantial improvement shall forthwith after the said land is next cleared of buildings and other substantial improvements give notice in writing to the council to that effect. Owners to notify council when required land is cleared of buildings. No. 5289 s. 22.

626. The council may proceed to acquire any land between the old alignment and the new alignment at any time it thinks fit except that if, at any time when the land is clear of buildings and other substantial improvements, the owner of any such land so requests the council shall with due despatch proceed to acquire such land. Acquisition of land for widening streets. No. 5289 s. 23; No. 5843 s. 28 (1).

627. (1) Any land acquired pursuant to this subdivision may be acquired subject to a reservation in favour of the owner from whom it is acquired of such of the following rights as the council at or before the time of acquisition determines (that is to say) :— Acquisition subject to certain reservations. No. 5289 s. 24.

(*a*) A right to the ownership possession occupation and use of any existing building room basement or cellar—

(i) so far as the same is at not less than a specified height or depth above or below the level of the existing or proposed footway ; and

(ii) so far as the same does not extend horizontally more than a specified distance beyond the new alignment ; and

(*b*) A right to construct or erect and to own possess occupy and use any building room basement or cellar—

(i) at not less than a specified height or depth above or below the level of the existing or proposed footway ; and

(ii) not extending horizontally beyond a specified distance from the new alignment.

(2) A council shall not acquire any land subject to any such reservation as aforesaid unless the council—

(*a*) has first given reasonable notice of its intention to do so to every corporation or other body which is authorized by law to construct works in over or under the street in question ; and

(*b*) has given due consideration to any representations made to the council by any such corporation or body in respect of the proposed reservation.

(3) Nothing in sub-section (1) of this section shall be deemed to require the council to acquire any land subject to any such reservation.

(4) In assessing the amount of compensation payable in respect of the acquisition of any land pursuant to this subdivision the value of any right reserved to the owner pursuant to sub-section (1) of this section shall be taken into account together with all other matters required to be taken into account.

Power to lease land acquired. No. 5289 s. 25.

628. (1) The council may lease the whole or any part of any land acquired pursuant to this subdivision to the person from whom the land was acquired, or to his successor in title to any adjoining land, for not more than ten years at any one one time and subject to such conditions and reservations as the council determines and at an annual rental not exceeding ten per centum of the purchase price or compensation paid or payable by the council in respect of the acquition of such land.

(2) The lessee of any such land may erect thereon at his own expense a building not exceeding one storey in height or other improvements of such materials and of such design as the council approves.

(3) The council shall not be bound to require such building to be erected of brick stone concrete or other like materials of a permanent nature, notwithstanding the provisions of any Act regulation rule or by-law for the time being in force.

(4) All buildings or other improvements so erected by the lessee shall during the term of the lease remain the property of the lessee and may be removed by him immediately upon or prior to the expiration or determination of the lease.

(5) No compensation shall be paid in respect of any injury damage or disturbance arising from the entry by the council into possession of the land upon the expiration or determination of the lease.

Power to council to acquire other adjacent lands in certain cases. No. 5289 s. 26; No. 5843 s. 29.

629. (1) Where in the opinion of the council the fixing of a new alignment or the acquisition of the land between the new alignment and the old alignment pursuant to this subdivision renders economically unuseable or unsaleable any land which is not between the said alignments, the council may (either by agreement or compulsorily) at any time and from time to time acquire any such land or such other land contiguous to any such land as the council considers necessary to obtain an economically useable and saleable allotment of land, and the council may at any time sell or otherwise dispose of any land so acquired in such manner as the council thinks fit.

(2) (*a*) Any sale or transfer of land pursuant to the last preceding sub-section may with the consent of the Governor in Council be subject to any restrictive covenant entered into by the purchaser with the municipality.

(*b*) Any such restrictive covenant contained in the transfer of the land if expressed to bind the assigns of the purchaser shall run with the land and a transfer subject to such a covenant may be registered under the *Transfer of Land Act* 1958, and the covenant shall bind the assigns of the purchaser and be enforceable by the municipality notwithstanding that it is not expressed to be for the benefit of any land of the municipality.

(3) If the council—

(*a*) is of opinion that for the effective re-subdivision of any area or any part thereof it is expedient that any street should be closed or that any easement or restrictive covenant should be extinguished;

(*b*) has served on the owner of any property which the council, after making inquiry into the matter, considers is likely to be substantially affected by such closing of a street or extinguishment of an easement or restrictive covenant notice of such proposed closing or extinguishment and has given to all such owners an opportunity of setting forth their objections to such closing or extinguishment ; and

(*c*) has made provision—

(i) with respect to pipes wires apparatus sewers drains tunnels conduits poles posts and fixtures lawfully upon over across or under any such street ;

(ii) for access to any land likely to be prejudicially affected by any such closing or extinguishment ;

(iii) for the payment of compensation to any person in whom the land comprised in any such street is vested and to any owner of property which in the opinion of the council is likely to be substantially affected by any such closing or extinguishment ; and

(iv) for the rectification or other alteration of documents of title to lands the descriptions of which are likely to be affected by any such closing or extinguishment—

the council may, after considering all objections made pursuant to paragraph (*b*) of this sub-section and if of opinion that such closing or extinguishment will not substantially injure the public or any person so objecting, recommend to the Governor in Council that such street should be closed or such easement or restrictive covenant extinguished ; and the Governor in Council by Order published in the *Government Gazette* may close such street or extinguish such easement or restrictive covenant accordingly

(4) For the purpose of sub-paragraph (iii) of paragraph (*c*) of the last preceding sub-section—

(*a*) if the Minister certifies that, having regard to the extent to which any person (whether a person in whom the street is vested or the owner of property likely to be substantially affected) is or is likely to be affected by the closing of the street or extinguishment of the easement or covenant, the compensation payable to such person should not exceed an amount stated in the certificate (not being more than Twenty pounds) the amount so stated in respect of such person shall be the full amount payable to him by the council by way of compensation ;

(*b*) if the Minister is satisfied that any person who might be entitled to compensation cannot be found after notice has pursuant to this section has been served in any manner specified in section eight hundred and seventy-six of this Act the Minister may direct that no provision or such provision as the Minister specifies shall be made for payment of compensation to such person ;

(*c*) subject to the foregoing compensation shall be payable as agreed between the council and the person concerned or in default of agreement as is determined pursuant to Part XLIV. of this Act.

(5) (*a*) In any case where—

(i) by reason of the acquisition of any land by a council under this section it is desirable that an easement of way or of drainage or for the supply of water gas or electricity or for sewerage services or for underground telephone services should be created appurtenant to any land not acquired by the council (which land is hereinafter called the "dominant tenement") whether or not such easement would be in substitution for any express or implied easement which is extinguished; and

(ii) the council certifies that provision exists or will be made for means of way or of drainage or for any such supply or services as aforesaid (as the case requires) on over or under any land which is vested in the council and in respect of which a plan of subdivision is lodged with the Registrar of Titles—

then without any further or other authority than this section an easement of way or of drainage or for such supply or services as aforesaid (as the case requires) so far as is necessary for the reasonable enjoyment of the dominant tenement shall on and from the deposit of the council's certificate with the Registrar of Titles be deemed to exist in favour of and appurtenant to the dominant tenement on over or under the land appropriated or set apart for the appropriate purpose on the said plan of subdivision.

(*b*) Where any dominant tenement referred to in paragraph (*a*) of this sub-section lies within or abuts on the boundaries of the subdivision to which the said plan relates that dominant tenement may be numbered consecutively with the allotments in that subdivision as though it were included therein and for the purposes of the *Transfer of Land Act* 1958 shall be deemed an allotment in that subdivision.

(*c*) The Registrar of Titles shall make all such endorsements or entries upon any Crown grant or certificate of title or upon any plan of subdivision or duplicate or other instrument or document as are necessary or expedient by reason of the operation of this sub-section and the holder of any such duplicate or instrument or document when so required in writing shall produce it to the Registrar for the purpose.

(6) Where the land comprised in any street closed under this section or any part thereof is not, apart from this sub-section, land which is under the operation of the *Transfer of Land Act* 1958

the publication of the Order aforesaid closing such street or part thereof shall have the effect of bringing such land under the operation of the *Transfer of Land Act* 1958.

Application of Part XLIV. No. 5289 s. 27.

630. The provisions of Part XLIV. of this Act and of the *Lands Compensation Act* 1958 as modified for the purposes of the said Part XLIV. shall, so far as not inconsistent with the provisions of this subdivision, apply to and with respect to the acquisition of land pursuant to this subdivision.

Power to council to make by-laws. No. 5289 s. 28.

631. Any council may with the approval of the Governor in Council make by-laws (applicable either to streets in the municipal district generally or to any specified street or streets) for or with respect to—

(*a*) requiring or permitting buildings erected on land abutting on a new alignment fixed pursuant to this subdivision to be cantilevered so that the face of the same as from a prescribed height or a prescribed minimum height above the ground shall project to a prescribed distance or to a prescribed maximum distance beyond the new alignment and, generally, with respect to such cantilevering and the erection and construction of such buildings ;

(*b*) requiring the pulling down of buildings or works erected or constructed contrary to the provisions of this subdivision or the by-laws of the council made thereunder ; and

(*c*) empowering the council or any person authorized by the council to pull down remove or alter any buildings or works erected or constructed or being in breach of this subdivision or the by-laws of the council made thereunder, and to sell the materials and apply the proceeds thereof in reimbursing the expenses of such pulling down removal or alteration, or otherwise to recover from the owners the expenses occasioned by such pulling down removal or alteration.

(3) *Opening of New Streets.*

Power to council to fix alignments for new street and acquire land between alignments. No. 5289 s. 29.

632. Without limiting any other power of a council to open up new streets a council may pursuant and subject to this subdivision for the purpose of opening up any new street—

(*a*) fix an alignment for each side of the proposed street ; and

(*b*) acquire from the owners thereof (either by agreement or compulsorily) the lands between the two alignments so fixed.

Application of subdivision (2). No. 5289 s. 30.

633. The provisions of subdivision (2) of this Division shall extend and apply to and with respect to the fixing of the said alignments, the acquisition of the lands between those alignments and of other lands adjacent thereto, and the making of by-laws, with such modifications as are necessary and in particular with the modification that any reference in the said subdivision (2) to the land between the old alignment and the new alignment shall for the purposes of this subdivision be read and construed as a reference to the land between the two alignments so fixed as aforesaid.

PART XX.—MAKING AND MAINTENANCE OF STREETS ROADS BRIDGES CULVERTS AND FERRIES ON THE BOUNDARIES OF MUNICIPAL DISTRICTS.

DIVISION 1.—WHERE ONE SIDE OF BOUNDARY ROAD OR RIVER ETC. IS IN AN OUTLYING DISTRICT.

Council may form street or road at boundary of municipal district and outlying district. No. 5203 s. 595.

634. (1) If a portion of the breadth of any public street or road lying along the boundary of any municipal district is outside such municipal district and is not within or adjoining to any other municipal district including the city of Melbourne and the city of Geelong the council of the municipality shall have the like powers over such public street or road as over any street or road within the municipal district.

Bridges and ferries at boundary of municipal districts and outlying district.

(2) If at any place one bank of any river creek or water-course lies within any municipal district or is at the common boundary of two or more municipal districts and the opposite bank is outside such municipal district or districts and not within any other municipal district including the city of Melbourne and the city of Geelong the council of the municipality or the councils of the municipalities (as the case may be), with the approval of the Governor in Council, may for the purpose of constructing establishing or repairing at such place any bridge culvert or ferry and any approaches thereto exercise the like powers over such river creek or water-course and both banks thereof as though the whole breadth and both banks were within such municipal district or districts.

DIVISION 2.—WHERE ROAD RIVER ETC. IS ON THE BOUNDARY OF TWO OR MORE MUNICIPAL DISTRICTS.

Municipalities bound to unite in making or repairing a road on their common boundary. No. 5203 s. 596.

635. (1) Where any street or road following the common boundary between two municipal districts, including the city of Melbourne and the city of Geelong, lies as to part of its breadth in one such district and as to part of its breadth in the other, or as to the whole of its breadth in either such district, the municipalities of such district shall be bound and may be compelled to unite in making or repairing such street or road so far as the same follows such boundary.

Bridges culverts and ferries at boundary of two or more municipal districts.
Ib. s. 595.

(2) Where at any place one bank of any river creek or water-course lies within one municipal district or is at the common boundary of two or more municipal districts including in either case the city of Melbourne and the city of Geelong and the opposite bank thereof is within some other municipal district or is at the common boundary of two or more municipal districts, including in either case the city of Melbourne and the city of Geelong, the Governor in Council may with the consent of the councils of such districts by order published in the *Government Gazette* appoint to all or any of such councils—

(*a*) the control of any bridge culvert or ferry across such river creek or water-course at such place and the approaches thereto ; or

(*b*) the control of so much of either bank at such place as may be necessary for the convenient construction and use of a bridge culvert or ferry and proper approaches thereto respectively thereat.

(3) The Governor in Council may in like manner vary or revoke every such order.

Municipalities bound to unite in building or maintaining bridge &c. across river &c. on their common boundary.

(4) Where at any place one bank of any river creek or water-course lies within any municipal district or is at the common boundary of two or more municipal districts, including in either case the city of Melbourne and the city of Geelong, and the opposite bank thereof is within the municipal district of some other municipality or is at the common boundary of two or more municipal districts, including in either case the city of Melbourne and the city of Geelong, the municipalities of such districts shall be bound and may be compelled to unite in building and maintaining a bridge culvert or ferry over such river stream or water-course in the manner hereinafter appearing.

Power to two or more municipalities to construct bridge in certain cases at place not on common boundary &c.
No. 5203 s. 597.

636. Where any river creek or water-course—

(*a*) is at any place the common boundary of two or more municipal districts ; or

(*b*) crosses the common boundary of two or more municipal districts (such boundary being a public highway)—

and the place at which the boundary lines of such municipal districts meet or (as the case may be) the place at which the river creek or water-course crosses the common boundary is not suitable for the construction of a bridge culvert or ferry thereat the nearest and most accessible suitable place on such river creek or water-course although outside any one or more of such municipal districts shall for the purposes of this Division be deemed to be on the common boundary thereof and all the provisions hereof shall be construed accordingly.

Council of any municipality may failing agreement serve notice to treat. No. 5203 s. 598.

637. (1) Unless the councils of the municipalities concerned by agreement under seal unite for carrying out the purposes aforesaid the council of any such municipality may cause to be given to the other council or councils concerned a notice stating the desire of the council giving the notice that such part of such public street or road as aforesaid and described in such notice may be made or repaired, or that a bridge culvert or ferry over such river stream or water-course may be made at the place named in such notice or repaired and containing a proposal for carrying out such work and offering to treat and agree with the council or councils receiving the notice with respect to the performance and the future maintenance and repair by any one or all of the parties of the whole or parts thereof, and such agreement may be made accordingly

(2) Every such council giving or receiving such notice shall, for the purpose of carrying out any such agreement, have power to perform maintain and repair any such work or any part thereof.

Disputes as to boundary roads &c. to be referred to to the Minister. No. 5203 s. 599.

638. If for the space of one month after the receipt of any such notice the councils concerned fail to agree as to the subject-matter thereof any of such councils may refer the matter in question to the Minister for his decision.

Powers of the Minister in disputes as to boundary roads. No. 5203 s. 600.

639. (1) The Minister is hereby authorized and empowered to entertain inquire into and decide the matter in question so referred to him and by Order under his hand may—

(*a*) decide the same ;

(*b*) determine whether or not such work is to be done and what is to be the nature and extent thereof ;

(*c*) apportion such work between the municipalities or direct any municipality to execute the whole work and the other municipality or municipalities to pay any portion of the cost thereof ; and

(*d*) in like manner provide for the future maintenance and repair thereof.

(2) Any matter in question so referred to the Minister shall be deemed to be a difference arising between the municipalities concerned which the Minister is by section eight hundred and ninety-five of this Act authorized and empowered to entertain inquire into and decide upon and the provisions of that section and of section eight hundred and ninety-six of this Act shall with all necessary adaptations extend and apply with respect to the matter in question and to any decision or order of the Minister relating thereto accordingly.

On omission by others any party may execute and recover expense. No. 5203 s. 601.

640. If any such party as aforesaid has performed its part of any such agreement or of any such order of the Minister or has performed the same in part only having been prevented from completing by the non-performance of some work to be performed by any other party as hereinbefore provided or by the omission of such other party to comply with so much of any such order as applies to such last-named party, the first-named party from time to time, after one month's notice to the party so omitting of its intention so to do may execute the whole or any part of the matters or things comprised in such agreement or enjoined by such order to be performed by the party so omitting and recover the expense of so doing from the party so omitting in any court of competent jurisdiction.

Recovery of money payment. No. 5203 s. 602.

641. If any party as aforesaid omits to make any money payment which such party has agreed or been ordered to make by any such agreement or order, any other party having performed its part of such agreement or order may recover the same in any court of competent jurisdiction.

PART XXI.—SEWERS DRAINS WATER-COURSES ETC.

DIVISION 1.—SEWERS ETC. VESTED IN MUNICIPALITY.

Sewers &c. vested in municipality. No. 5203 s. 603.

642. (1) All public sewers and drains within any municipal district and all sewers and drains in and under the streets thereof, with all the works and materials thereunto belonging whether made before the commencement of this Act or any time thereafter and whether made at the cost of the council or otherwise, shall vest in and belong to the municipality, and the council shall have the management and control of the same.

(2) Every public sewer or drain of which such council has the management or control shall be deemed to be within the municipal district of such municipality.

(3) This section shall not apply to any sewers and drains vested in any other municipality or in the Board of Land and Works or in the Melbourne and Metropolitan Board of Works or in the Geelong Waterworks and Sewerage Trust.

Improvement &c. of sewers &c. No. 5203 s. 604.

643. The council may from time to time as it sees fit enlarge alter or arch over or otherwise improve all or any of the sewers or drains vested in the municipality.

DIVISION 2.—UNDERGROUND SEWERAGE.

Construction &c. of main underground sewers &c. No. 5203 s. 605.

644. (1) The council of every municipality may from time to time cause to be made under the streets thereof such main and other sewers as are necessary for the effectual draining of the municipal district and also all such reservoirs sluices engines and other works as are necessary for cleansing such sewers and if

needful may carry such sewers through and across all underground cellars and vaults under any of the streets or roads doing as little damage as may be.

(2) If for completing any of the aforesaid works it is found necessary to carry them into or through any lands in the municipal district other than the streets or roads thereof or any lands without the municipal district whether streets or roads or not the council may subject to the provisions of this Act relating to the compulsory taking of land or any easement term right or privilege in over or affecting land for works and undertakings carry the same into or through such lands accordingly.

(3) The council may also where practicable cause such sewers to communicate with and empty themselves into the sea or may cause the refuse from such sewers to be conveyed by a proper channel to the most convenient site for its collection and sale for agricultural or other purposes as is deemed most expedient but so that the same shall in no case become a nuisance.

DIVISION 3.—DRAINS WATER-COURSES ETC.

Power to make &c. water-courses &c. No. 5203 s. 606.

645. (1) The council of every municipality may in or through any lands within the municipal district make and open such ditches gutters tunnels drains and water-courses as to such council may seem fit and, with the consent of the owner, the council may carry out and maintain on any land within the municipal district work for the control of erosion of such land in any case where in the opinion of the council such control is necessary for the protection of any works or undertakings of the council.

(2) Such council may make scour cleanse and keep open all ditches creeks gutters tunnels drains or water-courses within or adjoining to the municipal district.

(3) Such council for any of the purposes aforesaid may enter upon any lands and shall make compensation to the owners and occupiers of such lands for any damage which they sustain through the exercise of any of the powers conferred by this section.

Council before executing works which will concentrate or divert drainage may have plans &c. prepared. No. 5203 s. 607.

646. Whenever the council of any municipality deems it expedient to execute in or upon any street or road any work which will concentrate or divert the drainage flowing thereon and after so concentrating or diverting it will discharge it or permit it to flow on into or through any land the council may if it thinks fit proceed as follows:—

(1) Cause to be prepared such specifications maps plans sections and elevations as may be necessary showing—

(*a*) the site and admeasurement of all formations excavations embankments channels drains culverts and bridges

proposed to be made or constructed in connexion with such work on any street road or private lands;

(*b*) all private lands likely to be affected by such concentration or diversion of the drainage;

(*c*) the names of the owners lessees and occupiers of such lands so far as they can be ascertained by the council.

After plans &c. are approved notice to be given to owners &c.

(2) After the specifications maps plans sections and elevations have been approved of by the council, notice in writing shall be given to every such owner lessee and occupier stating—

(*a*) the locality of the proposed work;

(*b*) that such work will concentrate or divert drainage;

(*c*) that such specifications maps plans sections and elevations are open for inspection at the office of the council during office hours;

(*d*) that any owner lessee or occupier of land who considers that by reason of the concentration or diversion of drainage any land owned leased or occupied by him will be injuriously affected must within forty clear days from the service of such notice upon him state in writing the amount of compensation claimed by him in respect thereof.

Claims to be made within forty days.

(3) No owner lessee or occupier who has been served with notice as aforesaid nor his heirs executors administrators transferees or assigns shall be entitled to compensation unless a claim therefor be made within the time aforesaid.

Service of notice.

(4) The notice to be given hereunder by the council may be served—

(*a*) by delivering the same personally to the person required to be served; or

(*b*) by forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such person; or

(*c*) if such person is absent from Victoria or his address is not known, by leaving it with the agent or occupier of the land affected by the proposed work, or if there is no agent or occupier by putting it up in a conspicuous place on such land.

(5) The council may commence such work at any time after the expiration of forty clear days from the date of service of notice upon all persons whose lands are likely to be affected thereby or at any earlier date if all such persons have agreed in writing either to waive all claim to compensation or to accept in full satisfaction of all claims the amount offered by the council and any such agreement shall be binding equally upon the person with whom it is made and his heirs executors administrators transferees and assigns. Commencement of work.

(6) It shall be lawful for the council at any time before proceeding with the execution of the proposed work instead of paying the compensation claimed or awarded to give notice to the persons who have claimed or have been awarded such compensation that it does not intend to proceed with the execution of the proposed work; but where proceedings for fixing the amount of compensation have been commenced or completed the council shall pay such costs of such proceedings as have been or may be awarded by the stipendiary magistrate arbitrator or judge by whom such claim has been or is being determined. Council may give notice that it does not intend to proceed with work.

647. (1) No action shall be brought against any municipality in respect of any works made or constructed without negligence by such municipality under or by virtue of this Division or any corresponding previous enactment or in respect to any damage or injury arising out of the making or constructing of any such works by reason only that the municipality made or constructed the same or caused the same to be made or constructed without exercising any powers created or conferred by this Division or any corresponding previous enactment. Limitation of actions. No. 5203 s. 608.

(2) Such works shall be deemed to have been made and constructed without negligence if no claim for compensation on account thereof is made within two years from the date of the completion of such works.

DIVISION 4.—POWER TO REMOVE OBSTRUCTIONS IN RIVER ETC. WHEN ROAD BRIDGE ETC. IS IN DANGER FROM FLOODS.

648. (1) When any road bridge or other public work in any municipal district or under the control of the council is in danger from floods upon any river creek or water-way the council may remove any obstructions from such river creek or water-way or with the consent of the Governor in Council make any change Floods. No. 5203 s. 609.

in the water-course thereof which will have the effect of protecting such road bridge or public work and for that purpose may enter upon the lands of any person.

(2) Such council shall pay to the owners and occupiers of such lands compensation for the damage sustained by them respectively.

DIVISION 5.—DRAINAGE OF HOUSES BUILDINGS OR LANDS.

Laying drain &c. from private tenements. No. 5203 s. 610.

649. (1) If any house or building within any municipal district is at any time not drained by some sufficient drain or pipe communicating with some public sewer or with the sea to the satisfaction of the council the council may give notice to the owner thereof requiring him to cause such house or building to be so drained, and upon his failing to do so may construct or lay from such house or building a drain or pipe of such materials of such size at such level and with such fall as the council thinks necessary for the drainage of such house or building its areas water-closets privies and offices.

(2) The cost of executing such work shall not without the written consent of the owner exceed one year's rack-rent of such house or building.

(3) The expenses incurred by the council shall be repaid to the council by the owner of such house or building.

Council may drain land in certain cases. No. 5203 s. 611.

650. (1) If any land within a municipal district is not as to the drainage of surface and storm water drained by some sufficient drain or channel communicating with some public sewer drain or channel used for the discharge of surface and storm water the council of the municipality doing as little damage as may be may construct or lay at and along the natural outfall of the water as shaped by the intervention of any houses buildings or other like structures and through any land lying between such first-mentioned lands and the nearest public sewer drain or channel used as aforesaid a drain or channel paved or otherwise secured and suited for draining therefrom and from the intermediate tenements such surface and storm water as aforesaid.

(2) Such drain or channel shall not pass through or under any house building or other like structure.

(3) Such drain or channel shall at the desire and request of any owner of land through which it passes descend and fall into any drain or channel already upon such land and available for the like drainage of the same and lying along the natural outfall aforesaid.

(4) All expenses incurred by the council in respect of any such drain or channel or any part thereof made through the land of any separate owners shall be repaid to the council by such owners in such proportions as may be fixed by the council.

Further powers of municipalities to construct drains and channels at expense of certain owners. No. 5203 s. 612.

651. (1) In any case where (whether before or after the commencement of the *Local Government Act* 1921)—

(*a*) any land is vested in any municipality for drainage purposes; or

(*b*) any municipality has a right specifically acquired or an easement of drainage over any land; or

(*c*) the owner of any land has reserved the same for drainage purposes—

and in the opinion of the council it is necessary that a drain or channel be made or constructed on any such land as aforesaid for the proper drainage of any lands or premises—

(i) which front adjoin or abut upon any such land as aforesaid or which being adjacent to any such land as aforesaid are benefited by the making or construction of such drain or channel; or

(ii) in which any such land as aforesaid is included in the same ownership—

the council may as hereinafter provided make or construct such drain or channel or any part thereof at the cost of the owners of the said lands or premises.

(2) The owners of the said lands or premises shall be liable to pay for or contribute towards the cost of making or constructing such drain or channel or part thereof in such proportions as are fixed by the council in accordance with this section.

(3) The provisions of sections five hundred and seventy-seven to five hundred and eighty-six, five hundred and eighty-nine and five hundred and ninety shall so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply for the purposes of this section.

(4) When any drain or channel or any part thereof has been made or constructed as aforesaid the right to use the same for the purposes for which the same has been so made or constructed shall be appurtenant to the land or premises of any owner liable as aforesaid to contribute to the cost thereof.

(5) Upon the completion of any such drain or channel or part thereof the council shall be thenceforth liable for any cost of maintenance repair alteration or reconstruction thereof.

Application of Division 5 to Melbourne and Geelong. No. 5203 s. 613.

652. This Division shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 6.—INTERFERENCE WITH OR OBSTRUCTION OF SEWERS, DRAINS, WATER-COURSES, FLOW OF SURFACE WATER, ETC.

Unlawfully making branch drains &c. No. 5203 s. 614.

653. (1) Every person not being authorized for that purpose by the council who without the consent of the council makes any drain into any sewer or drain vested in the municipality or who without such consent stops or obstructs any such last-mentioned sewer or drain shall for every such offence be liable to a penalty of not more than Twenty pounds.

(2) The council may cause such branch drain to be re-made as it thinks fit and all the expense incurred thereby shall be repaid to the council by the person making such branch drain and may be recovered before a court of petty sessions.

Obstruction &c. of water-courses &c. No. 5203 s. 615.

654. (1) Every person who alters or obstructs or in any manner interferes with any ditches creeks gutters drains water-courses tunnels bridges levees culverts or fences after they have been made by or taken under the charge of the council of any municipality without the authority of such council shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered obstructed or interfered with to be recovered in default of payment before a court of petty sessions and shall also for every such offence be liable to a penalty of not more than Twenty pounds.

Obstruction to water-courses by trees, logs &c.

(2) Every person who wilfully or negligently causes or permits any loose trees logs timber or brushwood growing or which may have been growing on any land within his occupation to fall into and remain in any stream river or water-course shall be guilty of an offence against this Act and shall be liable to a penalty of not more than Five pounds for the first and of not more than Twenty pounds for every subsequent offence.

Owner or occupier of any land to prevent wire netting causing obstruction to water-courses &c.

(3) The owner or occupier of any land on to which any water-course drain or gutter discharges from any road or from which any water-course drain or gutter discharges on to any road across which water-course drain or gutter wire netting has been placed shall take all reasonable precautions to prevent such wire netting causing or forming any obstruction to such water-course drain or gutter and the occupier shall be entitled to deduct any cost necessarily incurred by him in preventing such obstruction from any rent due or becoming due by him to the owner.

Penalty.

(4) Every such owner who contravenes or fails to observe any of the provisions of the last preceding sub-section shall be liable to a penalty of not more than Twenty pounds and to reimburse all charges and expenses occasioned to the council in

making good any damage caused by any such obstruction; and the said charges and expenses may be recovered from him in a court of petty sessions as a civil debt recoverable summarily or in any court of competent jurisdiction.

Obstruction &c. of flow of surface water so as to affect road &c. injuriously. No. 5203 s. 616.

655. (1) The owner or occupier of any land in any municipal district shall not alter obstruct or in any manner interfere with the natural flow of surface water on through or across any land street or road in such manner as to cause any street or road to be injuriously affected by water.

Penalty &c.

(2) Any person who commits any contravention of any of the foregoing provisions of this section shall be guilty of an offence and be liable for every such offence to a penalty of not more than Ten pounds and shall also be liable to reimburse all costs charges and expenses which may be occasioned by reinstating repairing or making good such street or road and by the removal of anything causing any such alteration to, obstruction of, or interference with the natural flow of surface water as aforesaid to be recovered in default of payment before a court of petty sessions.

Power to enter land and remove obstruction &c.

(3) The council of any municipality may by its officers employés or agents enter into and remain on any such land for the purpose of removing and may remove anything causing any such alteration to, obstruction of, or interference with the natural flow of surface water as aforesaid, and any person who obstructs or hinders any such officer employé or agent in the execution of his duty hereunder shall be guilty of an offence and for every such offence be liable to a penalty of not more than Five pounds.

DIVISION 7.—POWER TO SCOUR CLEANSE AND KEEP OPEN CERTAIN DRAINS CONSTRUCTED BY OWNERS OF LANDS.

Power to councils to scour cleanse and keep open certain drains constructed by owners of lands. No. 5203 s. 617.

656. (1) Where an owner of land has constructed at his own cost drains for the drainage of such land and such land has subsequently been subdivided amongst two or more owners in such manner that the said drains or some or one of them are situated upon lands belonging to two or more owners; or where two or more owners of lands have jointly constructed at their own cost drains for the drainage thereof the council of the municipality in whose municipal district the lands are situate may subject to such conditions as it thinks fit scour cleanse and keep open such drains.

Request by owners.

(2) The council shall not scour cleanse and keep open such drains unless a request in writing has been made to it for that purpose by a majority of the owners of such lands at the date of the request or by one-half of the number of such owners owning a greater value of such lands than the owners neglecting or refusing to sign such request.

(3) If the municipal clerk in writing under his hand indorses upon any such request a certificate that the request has been made by a majority of such owners or by one-half of the number of such owners owning a greater value of such lands than the owners neglecting or refusing to sign such request such certificate shall be *prima facie* evidence that the request was so made.

(4) Such council for any of the purposes aforesaid may enter upon any lands.

Apportionment of expenditure.

(5) The council shall apportion the expenditure in connexion with the scouring cleansing and keeping open the drains among the several owners for the time being of the lands in such amounts as it thinks fit; and the amount so apportioned to each of the owners for the time being shall be a debt due and payable by him to the municipality in respect of the land of which he is such owner.

Payment.

Lands to which this section does not apply.

(6) This section shall not apply to any land situate within a drainage area under the *Drainage Areas Act* 1958 or within a district in which an Authority under the *Water Act* 1958 is empowered to construct works nor to any Crown lands.

PART XXII.—GENERAL POWERS WITH RESPECT TO WORKS.

DIVISION 1.—PROTECTION OF WORKS.

Precautions to be taken in cases of work in progress. No. 5203 s. 618.

657. (1) The council of every municipality shall during the construction alteration or repair of any of the streets roads sewers drains culverts bridges or works vested in or carried on by it take proper precaution for guarding against accident by shoring up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the streets or roads to prevent the passage of persons carriages and animals while such works are carried on as to the council seem proper.

(2) The council shall cause any sewer drain culvert bridge or other works during the construction alteration or repair thereof by it to be lighted and guarded during during the night so as to prevent accidents.

(3) Every person who takes down alters or removes any of the said bars or chains or extinguishes any light without the authority or consent of the council shall for every such offence be liable to a penalty of not more than Five pounds.

DIVISION 2.—PROCURING MATERIALS.

Right to procure materials for streets &c. No. 5203 s. 619.

658. (1) The council of every municipality by its surveyor or any person authorized by it or him in writing may enter and search for dig raise gather take and carry away on and from any land within or with the consent of the Minister without the municipal district, not being the site or curtilage of any house or a garden lawn yard court park plantation planted walk avenue or

nursery for trees, and in and from any river creek or water-course and in and from any Crown lands specially set apart for the purpose by the Minister any materials necessary for making or maintaining any matter or thing which the council is by this Act authorized to make or maintain, but nevertheless so as not to damage any building street road bridge or ford or to divert or interrupt the course of any river or creek, and so as not to search for dig raise gather or take any such materials within fifty yards of any bridge dam jetty or other structure and, for the purpose of carrying away any such materials from any land from which they are by this section authorized to be carried away, may enter into and upon and pass and repass over such or any other land not excepted from the operation of this section and make construct and use any permanent or temporary road or tramway upon over or through the same.

(2) The council shall make compensation to the owners and occupiers of any lands for any damages which they may sustain through the exercise of any of the powers conferred by this section. Compensation.

659. (1) If the council or its surveyor or such other person as aforesaid by reason of the exercise of the powers hereinbefore conferred makes or causes to be made any pit or hole in any land river or creek, it or he shall forthwith cause the same to be sufficiently fenced off and such fence to be supported and repaired during such time as the pit or hole continues open and not sloped down or filled up as herein provided, and shall within three days after such pit or hole is opened or made where no materials suitable for making or repairing the road or bridge are found, cause the same to be filled up with the earth or soil taken therefrom and levelled, and shall where any such materials are found within fourteen days after having procured sufficient materials in such pit or hole cause the same to be filled up sloped down or fenced off and so continued. Place from which materials are taken shall be fenced &c. No. 5203 s. 620.

(2) If this section is not complied with the surveyor of the council or such other person (as the case may be) shall for every instance of non-compliance be liable to a penalty of not more than Five pounds. Penalty.

DIVISION 3.—STACKING, ETC., OF STONE.

660. (1) The council of every municipality by its surveyor or any person authorized by it or him in writing may in connexion with any works which it is authorized to execute enter upon any land within or with the consent of the Minister without the municipal district, not being the site or curtilage of any house or a garden lawn yard court park plantation planted walk avenue or nursery for trees, and occupy the same during the progress of such work for the purpose of stacking breaking or crushing stone on such land. Right to council to occupy land temporarily for stacking &c. stone thereon. No. 5203 s. 621.

Compensation.

(2) The council shall make compensation to the owners and occupiers of any lands for any damages which they sustain through the exercise of the powers conferred by this section.

How determined.

(3) If the amount of compensation is not agreed upon by the council and any person claiming the same it shall be determined in accordance with the provisions of Part XLIV.

PART XXIII.—WEIGHT TO BE CARRIED ON VEHICLES.

DIVISION 1.—GENERAL.

Use of vehicles with heavy loads restricted. No. 5203 s. 622.

661. (1) No person shall in any municipal district use on a public highway any vehicle the weight of which and the load carried thereon together exceed ten tons without having first obtained permission in writing to do so from the council of the municipality.

(2) Nothing in this section shall apply to—

(*a*) any traction engine within the meaning of section six hundred and seventy-two or anything carried drawn or impelled thereby; or

(*b*) engines or vehicles used on tram or rail lines or anything carried drawn or impelled thereby; or

(*c*) the conveyance of any piece of heavy machinery which cannot be taken apart without great loss or expense.

DIVISION 2.—DETERMINATION OF WEIGHT BY WIDTH OF TIRES.

This Division may be applied to any municipal district or portion thereof by proclamation. No. 5203 s. 623.

662. (1) The Governor in Council may by proclamation published in the *Government Gazette* declare that the provisions of this Division shall apply to and be of full force and effect in any municipal district from and after a date to be specified in such proclamation, not being within six months from the date of such proclamation.

(2) Except in pursuance of a proclamation under this section or under the corresponding section of any Act hereby repealed this Division shall not have any force or effect in any municipal district.

Meaning of "vehicle."

(3) In this Division the expression "vehicle" means and includes any engine waggon dray cart carriage or other means for carrying passengers or goods by land whether having two or more wheels and whether drawn or propelled by animal steam electric or other power and any traction engine as defined by this Act.

Weights to be carried. No. 5203 s. 624.

663. (1) No person shall in or by means of a vehicle carry on any public road a greater weight than the next mentioned (that is to say): For each wheel of any two-wheeled vehicle a total weight of four hundredweight avoirdupois and for each wheel

of any four-wheeled vehicle a total weight of four and one-half hundredweight avoirdupois for each half-inch of width of bearing surface of the tire or felloe. The weight of the vehicle shall in all cases be reckoned as part of the weight which may be so carried.

Governor in Council may by regulation reduce weight in special circumstances.

(2) But the Governor in Council on the application of the council of any municipality and upon being satisfied that the special circumstances of the case require it may make regulations to be published in the *Government Gazette* declaring that the weight to be so carried on any public road in the district of such municipality or in the portion of such district which is mentioned in such regulation shall be less than the weight in this section prescribed.

Meaning of "width of bearing surface."

(3) In this section the words " width of bearing surface " mean the actual width of the bearing surface of the tire or felloe that would actually come in contact with or bear upon a hard smooth level surface when the wheels are attached to the axle and ready for use; and when the tires or felloes of any vehicle are not of uniform width the width of the narrowest tire or felloe shall be deemed to be the width of each of the tires or felloes.

Heavy machinery.

(4) Nothing in this section shall be deemed to apply to the conveyance of any piece of heavy machinery which cannot be taken apart without great loss or expense.

Penalty on overweight.

(5) Every person who in on or by means of a vehicle carries on any public road a greater weight than that allowed by this Act or any regulations made thereunder by the Governor in Council shall for each offence be liable on conviction to a penalty of not more than Forty shillings for each hundredweight or part of a hundredweight carried in excess of the quantity allowed by this Act or such regulation.

Regulations for declaring weight by measurement. No. 5203 s. 625; No. 5602 s. 2.

664. (1) For the purposes of this Part the Governor in Council may make regulations for declaring the weight of any specified descriptions or classes of goods by measurement.

(2) Such regulations shall be published in the *Government Gazette* and shall come into operation one month after the date of such publication, and shall then be of the same effect as if they were contained in this Act, and shall be judicially noticed.

Persons carrying goods &c. on request of officer to allow same to be measured. No. 5203 s. 626; No. 6151 s. 17.

665. (1) Every person in charge of any vehicle carrying goods on any public road upon being so requested by any inspector of weights and measures member of the police force or officer of or person acting by or under the authority of any municipality shall—

(*a*) allow such inspector member or officer or other person to measure such goods with a view of ascertaining the weight thereof in accordance with any such regulation made as aforesaid; or

(*b*) allow such inspector member or officer or other person to weigh such vehicle and goods by means of a portable mechanical device pursuant to by-laws in that behalf or, if so requested, take such vehicle and goods to the nearest weighbridge or weighing machine on the route towards the place to which such vehicle and goods are being taken or to any weighbridge or weighing machine within two miles in any direction from the place at which the request is made.

(2) If the weight of such goods is ascertained by such inspector member of the police force officer or other person by measurement only then the result of such measurement shall be taken to be the actual weight of such goods for the purposes of this Division, unless the owner or driver of the vehicle at the time gives notice of his intention of having the same weighed and forthwith at his own expense proceeds to have the same weighed at the nearest or most convenient weighbridge or weighing machine.

Penalty for refusing to allow measurement or weighing.

(3) Every person who when requested as aforesaid refuses to allow a vehicle and goods to be weighed or goods so carried to be measured as aforesaid shall be liable to a penalty of not more than Ten pounds.

Examination of wheels. No. 5203 s. 627.

666. (1) Any council or its surveyor or engineer or any person acting by or under its authority or any officer of the council of any municipal district or any member of the police force may measure and examine or cause to be measured and examined the wheels of every vehicle on any public road in such district.

Penalty for an unauthorized person measuring wheels &c. without consent.

(2) If without the consent of the person in charge of any vehicle any person purporting to act under the authority of this Division who is not authorized by this Division so to do measures or attempts to measure any goods carried in any such vehicle or measures and examines or attempts to measure and examine or causes to be measured and examined the wheels of any such vehicle or makes any request that such vehicle and goods shall be taken to any weighbridge or weighing machine to be weighed then such last-mentioned person shall be guilty of an offence and shall be liable to a penalty of not more than Ten pounds.

Vehicles to have weight painted on conspicuous part. No. 5203 s. 628.

667. (1) Every vehicle carrying or constructed to carry goods of any kind whatever and every vehicle carrying passengers for hire shall have the weight of such vehicle legibly painted on some conspicuous part of the off side thereof in white letters or figures such letters or figures not being less than one inch in length and of a breadth in proportion.

Penalty.

(2) Every owner of any such vehicle who neglects to have such weight painted as aforesaid or has the same painted incorrectly shall for each offence be liable to a penalty of not more than Two pounds.

(3) Nothing in this section shall apply to any private passenger vehicle not plying for hire and ordinarily used for private passenger purposes only even if on any particular occasion goods are carried in such private passenger vehicle.

Private passenger vehicles not required to have weight painted.

668. For carrying this Division into effect it shall be lawful for any municipality to make by-laws not inconsistent with this Act or with any regulation made by the Governor in Council as hereinbefore provided including, without limiting the generality of the foregoing, by-laws prescribing portable mechanical devices for determining the gross weight carried by any one or more tires or axles on any vehicle and in particular for or with respect to—

Municipalities may make by-laws. No. 5203 s. 629; No. 6151 s. 18.

(*a*) prescribing what such devices may be used;

(*b*) the testing of such devices for the purpose of ascertaining the accuracy and efficiency thereof;

(*c*) the limits of error to be allowed in such devices when testing and re-testing; and

(*d*) the method of use of such devices.

669. (1) The provisions of this Division shall not apply to any vehicle belonging to a person who resides in any adjacent State whilst being used either for bringing goods or passengers from such State to the railway station in Victoria nearest to the point at which such vehicle last crossed the boundary of Victoria in coming from such adjacent State or to any place within two miles of such railway station, or in taking goods or passengers to such adjacent State from such railway station or any place within two miles thereof to such point.

Act not to apply to vehicles from other States travelling to nearest railway station. No. 5203 s. 630.

(2) The onus of proof that any vehicle is being so used shall in all cases lie on the person alleging such use.

670. Nothing in this Division contained shall apply to any vehicle running exclusively over or along any tramway constructed under the provisions of the *Melbourne and Metropolitan Tramways Act* 1958 or the *Tramways Act* 1958 or under any corresponding previous enactment or any Act for the time being in force relating to tramways.

Not to apply to tramways. No. 5203 s. 631.

671. Nothing in this Division shall be deemed to repeal any of the provisions of the *Carriers and Innkeepers Act* 1958 or the *Police Offences Act* 1958.

Saving of certain Acts. No. 5203 s. 632.

PART XXIV.—REGULATING TRAFFIC OF TRACTION ENGINES.

672. In this Part the words " traction engine " shall mean any ordinary road oil or steam engine used for agricultural purposes and in connexion with agricultural implements and machinery or

Definition. No. 5203 s. 653.

for haulage purposes, and shall not apply to motors used on tram or rail lines or motor cars or cycles driven by gas oil or electricity or other force.

Use of certain traction engines not authorized. No. 5203 s. 634.

673. Nothing in this Act contained shall authorize any person to use a traction engine which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he has sustained in consequence of the use of such traction engine.

Name and address of owner of traction engine. No. 5203 s. 635.

674. It shall not be lawful for any person to drive a traction engine on any public street road or highway without having the name and address of the owner painted in legible letters not less than one inch long on a plate attached to such engine or painted in legible letters in a conspicuous place on such engine.

Warning of approach of traction engine at night. No. 5203 s. 636.

675. It shall not be lawful for any person to drive a traction engine over any street road or highway at night herein defined as between sunset and sunrise without a man going at least one hundred yards in front of the engine to give the travelling public notice that such engine is travelling on the road.

State of stuffing-boxes and safety-valves spark arresters brakes and escape of steam. No. 5203 s. 637.

676. (1) It shall not be lawful for any person to drive a traction engine on any street road or highway—

(*a*) with badly packed stuffing-boxes or leaky safety-valves; or

(*b*) without sufficient brakes being attached to such engine and to every vehicle drawn or propelled thereby; or

(*c*) without a spark arrester attached thereto to prevent dangerous sparks from being scattered on the roadway or adjoining land.

(2) It shall not be lawful for any person to allow steam to escape or blow off from any traction engine in any street road or highway unless through unavoidable accident to the engine.

Examination of spark arresters for traction engines.

(3) The owner of any traction engine shall cause the spark arrester required to be attached to such traction engine as provided in this section to be examined by the engineer for the municipality in the municipal district of which such owner resides.

Certificate of efficiency.

(4) If such engineer is satisfied that the spark arrester is efficient he shall issue to the owner a certificate to that effect which shall remain in force for six months and no longer.

Offence.

(5) The owner of any traction engine who drives or causes or permits to be driven such traction engine on any street road or highway (unless there is attached thereto a spark arrester as required by this section and in respect of which such a certificate has been issued and is in force) shall be guilty of an offence against this Part.

677. It shall not be lawful for any person to drive a steam traction engine on any street road or highway with less than two men accompanying it, one to steer the engine and render assistance to vehicles passing when necessary, the other to drive and be in charge having a licence so to do. How traction engines must be manned. No. 5203 s. 638.

678. (1) Traction engines may travel through any city town borough or shire between the hours of sunrise and sunset. Conditions under which traction engine may travel. No. 5203 s. 639.

(2) But before driving a traction engine through any city town borough or populous part of a shire as defined by the shire council (which the council is hereby authorized to do) the owner or driver shall give not less than twenty-four hours' notice to the town clerk or shire secretary thereof of his intention so to do, stating the direction in which he intends to drive the engine, provided that written notice addressed to the said town clerk or shire secretary at the municipal office and delivered there by post or otherwise within the time aforesaid shall be deemed sufficient notice for the purposes of this section.

(3) On receiving such notice the town clerk or shire secretary may direct the owner or driver to drive the engine along or through any practicable street or road in the direction indicated by the town clerk or shire secretary in writing and the driver and owner shall obey all such reasonable directions. Route.

(4) In no case shall the traction engine be driven through any city town or borough at a greater pace than two and a half miles per hour. Pace.

(5) Every driver of a traction engine who omits to give the notice required by this section, or who permits such engine to travel or drives such engine by any other route than that directed, if any direction is given, or otherwise in contravention of the provisions of this section, shall be guilty of an offence against this Part. Penalty.

679. Should the owner or driver of any traction engine which breaks down or becomes bogged in any street road or highway or any person for him dig or otherwise make holes in order to extricate such engine such owner driver or person shall be compelled to properly and completely fill them up again or pay for the work being done, and shall not leave the road in a dangerous state for vehicular or passenger traffic, and it shall be lawful for any officer of a municipality or member of the police force to detain such engine within the boundaries of the municipal district of such municipality until such work is done or paid for unless some responsible person living within such district undertakes in writing to pay for the work being done and law costs (if any) properly incurred. Damage to road by traction engines. No. 5203 s. 640.

680. In the event of any traction engine or anything carried drawn or impelled thereby breaking the decking or otherwise damaging any bridge or culvert the person in charge or owner of Damage to bridges or culverts by traction engine. No. 5203 s. 641.

such engine shall before leaving the bridge or culvert so damaged place an obstruction or a conspicuous warning mark on or near the portion damaged, and shall send notice forthwith to the municipal clerk or surveyor or engineer of the municipality in whose district such bridge or culvert is situated that such bridge or culvert was so damaged.

Municipality not to be liable for damage to engine &c. No. 5203 s. 642.

681. No municipality shall be liable for any damage done to any traction engine or anything carried drawn or impelled thereby by reason of the same falling through or from any bridge or culvert or by reason of any defect in any road.

Licence for driver in charge of traction engine. No. 5203 s. 643.

682. (1) No person shall take charge of or drive a traction engine on any street road or highway without having a licence authorizing him to so act, and any such licence may be issued by the council of any municipality wherein the applicant resides to such person as the council thinks proper on payment of a fee of Five shillings which shall be and is hereby appropriated to the municipal fund of such municipality.

(2) Such licence shall remain in force for a period exceeding one year.

(3) Such licence may subject to the provisions of this Act be renewed from year to year.

(4) But notwithstanding anything contained in this section a duly certificated engine-driver may drive such traction engine without the licence referred to.

Driver of traction engine to stop until conveyance has passed. No. 5203 s. 644.

683. The driver of every traction engine when travelling on any public road shall when requested so to do by any person driving a horse or horses in any conveyance stop until such conveyance has passed such traction engine.

Offences. No. 5203 s. 645.

684. Every person who contravenes or does not comply with any of the provisions of this Part shall be guilty of an offence against this Part.

Penalty. No. 5203 s. 646.

685. (1) Every person who is guilty of an offence against this Part shall be liable to the following penalty:—

(*a*) For the first offence a penalty of not more than Three pounds;

(*b*) For the second offence a penalty of not more than Five pounds;

(*c*) For any subsequent offence a penalty of not more than Ten pounds.

(2) On a third conviction the licence of any offender if he has any shall be forfeited, and he shall not be qualified to hold another licence for two years from the date of forfeiture.

686. It shall be lawful for any municipality to make by-laws not inconsistent with the provisions of this Part for regulating the hours during which and conditions on which traction engines may proceed over any street or road. By-laws. No. 5203 s. 647.

PART XXV.—LIGHTING ETC: WATER SUPPLY: AGREEMENTS WITH AUTHORITIES PROVIDING FOR GAS ELECTRICITY WATER AND SEWERAGE.

687. (1) The council of every municipality for the supply of light heat or motive power for public or private purposes within the municipal district or any part or parts thereof or with the consent of the Governor in Council without the municipal district may— Powers as to lighting &c. No. 5203 s. 648.

(*a*) construct any gasworks, works for the purpose of supplying electricity or works for the purpose of supplying light heat or motive power by any other means; or

(*b*) purchase any gasworks, works for the purpose of supplying electricity or works for the purpose of supplying light heat or motive power by any other means; or

(*c*) contract for any period not exceeding fourteen years at one time with the owner of any gasworks, electric lighting works, or with any other person for the supply of gas or electricity for lighting or oil or other means of lighting; and

(*d*) in addition to the exercise of the powers of the council under the foregoing paragraphs or any of them— Power to sell residual products from gasworks and to lay and provide pipes &c.

(i) sell the residual products arising directly or indirectly from the manufacture of gas by the council;

(ii) carry out (either in the first instance or on the occasion of any renewal) any works for the laying fixing repair or removal of—

any gas pipes from the mains of the council to and on the premises of any consumer; and

any gas fittings on the premises of any consumer—

and provide all pipes fittings materials and work necessary or proper in that behalf at such charges as are agreed upon or as in default of agreement are certified by the person managing the gasworks or

the engineer of the council as being the costs and expenses of carrying out the works;

Powers as to supply &c. of gas appliances &c.

(iii) sell let for hire fix repair and remove gas stoves water heaters and other gas appliances and fittings for lighting and heating motive power ventilating cooking or any other purposes provide all materials and work necessary and proper in that behalf and with respect thereto take such remuneration or rents and charges and make such terms and conditions as are agreed upon and repossess any such appliance which has been let for hire and in respect of which any payment is in arrear;

(iv) require consumers to keep the pipes and fittings on their premises in proper repair; and

(v) cut off and discontinue the supply of gas to any premises in consequence of any default on the part of the occupier of such premises.

(2) The council may provide and erect such lamps lamp-posts poles for erecting or connecting electric wires and fittings as the council think necessary; or may when it contracts with any such owner or person permit the same to be provided and erected by such owner or person; and in the last-mentioned case may also provide that all such lamps lamp-posts poles for erecting or connecting electric wires and fittings shall during such period be vested in the municipality.

(3) The council may make a charge to be paid by all persons using or consuming gas electricity or other means supplied by the council for light heat or motive power and may make charges for any residual products aforesaid sold by the council.

Modification in cases of sales of such residual products and providing pipes &c. of s. 502 as to contracts and non-application of s. 503 as to tenders.

(4) So far as relates to sales of residual products and the providing of pipes fittings materials and work pursuant to this section—

(*a*) section five hundred and two of this Act shall be read and construed and have effect as if for the words " the councillors or any two of them acting by the direction and on behalf of the council " there were substituted the words " the person managing the gasworks of the council or the municipal clerk "; and

(*b*) section five hundred and three of this Act shall not apply.

(5) This section shall be read and construed subject to the *Electric Light and Power Act* 1958.

Drainage of lakes &c. to the public injury prohibited. No. 5203 s. 649.

688. When in any municipal district the public have right of access to the water in any lake pool or pond, it shall be unlawful to draw or let off the water from such lake pool or pond so as to injure immediately or prospectively the enjoyment by the public of the water; and the council of the municipality may take all proceedings that may be necessary in any court having jurisdiction to restrain any one from offending against this section as well as to recover the penalties imposed by this Act.

Power to council to construct and maintain tanks dams and reservoirs. No. 5203 s. 650.

689. (1) The council of every municipality may construct and maintain tanks dams and reservoirs within the municipal district, and such reservoirs and the water therein shall be the property of the municipality, and the council may from time to time make and repeal by-laws regulating the use thereof: Provided that no tank dam or reservoir may be constructed at a cost of more than Five hundred pounds without the consent of the Governor in Council.

Power to municipal councils to make dams on roadsides.

(2) The council of every municipality may, with the approval of the Governor in Council, on any lands forming portion of a street or road within the municipal district, make such embankments dams or reservoirs for the purpose of conserving water, with all necessary culverts drains channels and water-courses as such council thinks fit, and may from time to time make and repeal by-laws regulating the use of such embankments dams and reservoirs, but such council shall not be deemed or taken to be hereby authorized to close such street or road or to stop the traffic thereon.

Compensation to persons injuriously affected.

(3) Any council making embankments dams or reservoirs culverts drains channels or water-courses as aforesaid shall make compensation to the owners and occupiers of any lands for any damage which they sustain through the exercise of any powers conferred by this section.

Maintenance of existing works for gratuitous supply of water. No. 5203 s. 651.

690. (1) The council of every municipality shall cause all existing public reservoirs tanks cisterns weirs dams pumps wells conduits and other waterworks used for the gratuitous supply of water to the inhabitants within the municipal district to be continued maintained and supplied with water, or shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water or may enlarge or improve any such waterworks and cause them to be maintained and supplied with water for the supply of water to the inhabitants on payment or otherwise.

Management and construction of new waterworks.

(2) The council may accept and have the management and control within the municipal district, or if the Governor in Council consents without the municipal district of any new waterworks, and may with the like consent within or without the municipal district construct any new waterworks for water supply for any purposes whatsoever and may supply with water any public baths or wash-houses.

Management of Crown lands reservoirs &c.

(3) The council may also under any law now or hereafter in force providing for the management of mining interests, and also under any other law now or hereafter in force authorizing works for supplying water to any districts or places in Victoria, and subject to all the provisions of any such laws and to any regulations in force under and by virtue thereof, and to conditions to be fixed by the Governor in Council, accept the management and control or become lessees of any Crown lands and any reservoirs or other waterworks for the use upon payment or otherwise by the public, and whether within or without the municipal district which by grant lease or otherwise are vested in made over or demised to such municipality.

Maintenance and repairs.

(4) The council may maintain and repair the same and make by-laws for the resort thereto and the use thereof.

Governor in Council may withhold consent.

(5) The Governor in Council shall withhold his consent to the construction of any new waterworks if he is satisfied that an equally good cheap and abundant supply of water for such public purposes can be procured without the construction of such new works.

Water rate may be levied. No. 5203 s. 652.

691. (1) In addition to the rates hereinbefore in this Act mentioned, and subject to the laws regulations and conditions in the last preceding section referred to, the council of every municipality may by special order make and levy a water rate in respect of all or any part of the rateable property within such municipal district, for water supplied by the council to all or some of the inhabitants of such municipal district or for the purpose of constructing waterworks or paying the interest on any loan contracted by the council for such purpose.

Upon whom levied.

(2) Every such rate shall in the first year be made upon the persons who would be liable to be rated in respect of the properties included therein if such rate was a general rate.

Currency of rate.

(3) Every such rate shall continue to be payable in every subsequent year without any further order and the rate for each successive year shall be deemed to be made on the persons who on the first day of each of such successive periods of one year would be liable to be rated in respect of such properties if such rate was a general rate.

(4) Every such rate shall in each year be levied upon and recoverable from the same persons as if such rate was a series of general rates made for successive periods of one year, commencing from the day on which such rate was made. Recovery.

(5) Such rate may be assessed in respect of such property according to such valuation or any other scale which the council may by such order determine: Provided however that the council may in such special order fix a minimum sum of not less than Ten shillings to be paid in each year in respect of any property at which water is supplied. Amount. Minimum.

(6) Save when it is herein or in any law regulation or condition, aforesaid otherwise expressly provided, or there is something in the context repugnant thereto, all the provisions of this Act relating to rates shall apply to every such water rate. General.

692. The council may contract for any period not exceeding ten years at one time with the owners of any waterworks or any other person for such supply of water as the council thinks necessary for the purposes of this Act, or with the consent of the Governor in Council may purchase any waterworks. Council may contract for water supply. No. 5203 s. 653.

693. (1) Where it appears to the council of any municipality that it will be of special benefit to the owners of property in any particular area in the municipal district that the council should enter into an agreement with any authority or corporation which is duly authorized to supply gas electricity or water or to provide for the carrying off of sewerage for the extension of its undertaking works mains or sewers for the service of that area the council may enter into such an agreement. Power to council to enter into agreement for extension of works for water gas electricity and sewerage purposes for service of particular area. No. 5203 s. 654.

(2) No such agreement shall be entered into unless and until— Conditions precedent to entering into agreement.

(*a*) a petition signed by a majority of the owners of property in the area is presented to the council; and

(*b*) a scheme as hereinafter provided is adopted.

(3) For the purposes of this section " owner " shall have the same meaning as in the *Lands Compensation Act* 1958. Meaning of " owner."

(4) The council shall cause to be prepared a scheme setting forth— Scheme to be prepared.

(*a*) the boundaries of the said area;

(*b*) the names of the owners of property therein;

(*c*) the terms and conditions of the proposed agreement;

(*d*) the amount of the council's liability under the proposed agreement;

(*e*) the basis of distribution of that amount among the said owners of property;

(*f*) the sum to be charged to each owner and whether the same is to be paid in one amount or in instalments;

(*g*) the time when such sum or any instalment thereof shall be paid to the council; and

(*h*) such other particulars as the council considers necessary or expedient.

To be open for inspection.

(5) The scheme shall—

be kept at the office of the council; and

be open for inspection by any person during office hours without charge.

Notice of scheme to be served on owners.

(6) The council shall cause notice in writing to be served on every owner intended to be made liable under the scheme stating—

(*a*) the sum proposed to be charged to such owner under the scheme;

(*b*) that the scheme has been prepared and is open for inspection as aforesaid;

(*c*) that on a day mentioned in the notice and being not less than fourteen days after the service of the notice the council will proceed to consider the scheme and the liability of such owner under the scheme;

(*d*) that such owner may appear on that date before the council to raise any objections to the scheme; and

(*e*) that if none of the owners intended to be made liable so object the scheme will be adopted and all such owners will be considered as having admitted that the council has complied with all the requirements of this section and also their respective liabilities as appearing in the scheme and will be in all respects then finally bound and concluded thereby.

Right of person interested to appear and make objections.

(7) (*a*) Any person interested in or affected by the scheme may—

(i) appear before the council on the said date or any date to which the consideration of the matter is adjourned; and

(ii) object to the scheme or anything therein.

(*b*) It shall not be necessary for the council to give notice to any person of any such adjournment.

Consideration by council.

(8) (*a*) On the date so fixed or the date to which the consideration of the matter has been adjourned the council—

(i) if no person so objects may adopt the scheme;

(ii) if any person makes any such objection shall thereupon or at a future date inquire into and consider the matter in the presence of such person if he attends;

(iii) after hearing and considering the objections (if any) may if it thinks fit adopt the scheme. Adoption of scheme.

(*b*) If at any time before adopting the scheme the council considers it necessary to add the name of any other owner to the scheme or to make any variation therein— Variations in scheme.

(i) the council may do so but shall give to every owner affected by such addition variation or alteration a like notice at least fourteen days before the adoption; and

(ii) every such owner shall be in all respects in the same position as if his name had been originally included in the scheme and as if such variation had been part of the original scheme.

(9) Upon the adoption of the scheme every owner upon whom notice has been served and whose name is included in the scheme shall be considered as having admitted that the council has complied with all the requirements of this section and also his liability to contribute under the scheme and be finally bound and concluded by all the matters aforesaid. Effect of adoption of scheme.

(10) (*a*) Every owner so liable shall pay to the council at the time or times appointed the sum or any instalment thereof charged to him under the scheme. Liability of owners.

(*b*) If any such sum or instalment is not paid or recovered within one month after the time so appointed it shall bear interest at the rate of Six pounds per centum per annum calculated from the time so appointed.

(11) (*a*) If the total liability of the council exceeds that set out in the scheme— Provision where council's liability is more or less than as stated in scheme.

(i) the excess shall be apportioned among the several owners in the same proportions as the sums charged to them under the scheme;

(ii) the council shall give to every such owner notice of the amount so apportioned to him; and

(iii) every such owner shall forthwith pay to the council the amount so apportioned to him; and if the same is not paid or recovered within one month from the date on which the notice is given it shall bear interest at the rate of Six pounds per centum per annum calculated from that date.

(*b*) If the total liability of the council is less than that set out in the scheme the council shall return to each owner who has paid and allow in account with any owner who has not paid a rateable amount of the sum chargeable to him.

Advances on overdraft.

(12) (*a*) Notwithstanding anything in any Act the council of a municipality may in connexion with an agreement entered into consequent upon a scheme adopted pursuant to this section obtain advances from a bank by overdraft of current account for the purpose of defraying the amount of the council's liability under the agreement.

(*b*) Such advances—

(i) shall be obtained upon the credit of the municipality;

(ii) shall be kept in a separate account;

(iii) shall not be subject to the restrictions mentioned in sub-section (1) of section four hundred and thirty-six of this Act; and

(iv) shall not at any one time exceed the total amount for which the council is liable under the said agreement.

Part XXVI.—Prevention of Fire.

Works for supply of water in case of fire. No. 5203 s. 655.

694. The council of every municipality may cause all necessary works machinery and assistance for securing an efficient supply of water in cases of fire to be provided and maintained, and for this purpose may enter into any agreement with any water company or other party; and the council shall paint or mark on the buildings and walls within the streets words or marks near any fire-plugs so provided to denote the situation thereof, and do such other things for the purposes aforesaid as the council from time to time deems expedient.

Remuneration &c. of persons for extinguishing fires.

It shall be lawful for the council to agree with any persons or associations for or with respect to providing the necessary labour and assistance for extinguishing such fires as may take place within the municipal district, and for the payment to such persons or associations out of the municipal fund of reasonable remuneration for the same, and also to contribute from the said fund such sum as may be reasonable in general aid of any persons who shall be associated together for the purpose aforesaid.

Application of section. No. 5203 s. 656.

695. (1) This section shall apply in the Metropolitan Fire District under the *Metropolitan Fire Brigades Act* 1958.

Power to councils to order removal of fire hazard &c.

(2) For the purpose of preventing fires or minimizing the possibility of the spread of fires, the owner or occupier of any land may by notice in writing be directed by the council of the municipality within the municipal district of which such land is situated to remove from such land in the manner and subject to the conditions specified in the notice and within the time specified in the notice all undergrowth scrub bracken fern weeds and grass

(whether alive or dead and whether standing or not standing) and any other material (whether of a nature similar to the foregoing or not) which in the opinion of the council constitute a fire menace to neighbouring property.

(3) Any notice for the purposes of the last preceding sub-section—

(*a*) may be served personally on the owner or occupier to whom it is directed;

(*b*) may be sent by post to such owner or occupier at his last-known place of abode; or

(*c*) where service as aforesaid is for any reason impracticable—may be posted in some conspicuous position on the land to which it relates.

Penalty for failure to remove fire hazards &c.

(4) If within the time specified in any such notice any owner or occupier to whom such notice is directed fails neglects or refuses to remove in accordance with the notice such undergrowth scrub bracken fern weeds grass and material or does not request the council in writing to so remove such undergrowth scrub bracken fern weeds grass and material he shall be guilty of an offence against this Act and liable to a penalty of not more than Twenty pounds.

Power to council to remove fire hazards &c. at expense of owner or occupier.

(5) Without affecting the liability of such owner or occupier for any contravention of or failure to comply with this section, the council by its officers employés and workmen or by any other persons or body of persons duly authorized in writing by the council in that behalf may upon such failure neglect or refusal or request enter upon the land and remove such undergrowth scrub bracken fern weeds grass or material and such owner or occupier shall pay to such council on demand all costs incurred by such council in about or in connexion with such removal and if such costs are not so paid the council may recover such costs from such owner or occupier in any court of petty sessions as a civil debt recoverable summarily.

Power to council to remove fire hazards on roads &c.

(6) Any council may for the like purpose remove or abate any fire hazard which exists on any highway, road, street, lane, or footway within its municipal district or make or burn any firebreak thereon.

Savings as to loss or injury &c.

(7) (*a*) No municipality or council shall be liable in respect of any loss or injury sustained by any person as the result of the carrying out of a direction given by the council under this section if such direction was given in good faith.

(*b*) No person (including any municipality or council) shall be liable in respect of any loss or injury sustained by any other person in connexion with or arising out of any act or thing done

by under or pursuant to this section unless such loss or injury was caused by the negligence or wilful default of such first-mentioned person:

Provided that nothing in this paragraph shall be deemed to limit or affect any right of any person in respect of personal injury by accident arising out of or in the course of the employment of that person.

(*c*) No person shall be liable to any penalty under any other Act or under any rule regulation or proclamation made thereunder in respect of any act or thing done in pursuance of this section or any direction thereunder.

Provision with respect to insurance policies.

(8) Any damage caused by or arising out of any fire which has been lit in pursuance of this section or any direction thereunder shall be deemed to be damage by fire within the meaning of any policy of insurance against fire covering the property so damaged notwithstanding any clause or condition in any such policy.

Section not to affect power to make by-laws &c.

(9) Nothing in this section shall be construed as limiting or prejudicing in any way—

(*a*) any power of the council of any municipality to make by-laws for the prevention of fire under the powers conferred in that behalf by this Act; or

(*b*) the operation of any by-law so made.

PART XXVII.—STORAGE OF PETROLEUM, ETC.

Governor in Council empowered to make regulations for storage of petroleum &c. No. 5203 s. 657.

696. (1) The Governor in Council may make regulations applicable to the whole of Victoria or to such municipal districts (including the city of Melbourne and the city of Geelong) as are specified therein or to any specified part or parts of any such municipal district for or with respect to regulating the keeping or storage of petroleum or any product of petroleum (including kerosene) turpentine or other volatile or inflammable fluids and carbide or other combustible substances or the control care and maintenance of tanks or other containers in which such inflammable fluids or combustible substances are or have been kept or stored.

(2) Any such regulations may prescribe penalties not exceeding Twenty pounds for any contravention of or any failure to comply with any of the provisions of such regulations.

(3) All such regulations shall be published in the *Government Gazette* and shall take effect from the date of publication or from such later date as is specified in such regulations and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting, and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

PART XXVIII.—HOUSING AND RECLAMATION.

DIVISION 1.—INTERPRETATION.

697. In this Part unless inconsistent with the context or subject-matter— Interpretation. No. 5203 s. 658; No. 5843 s. 34 (*a*).

"Capital cost" of a dwelling-house together with the land on which it is constructed includes the price paid for the land, the expenditure for purchase or erection (as the case may be) of the dwelling-house, together with a sufficient sum to cover the cost (if any) of survey or subdivision and the price of so much of the land acquired as is set apart on subdivision for roads streets and reserves and the cost of clearing draining fencing erecting buildings on or otherwise improving the land by any council and any other costs incidental to the acquisition and disposal of any such land together with the interest on all expenditure up to the time of sale by any council. "Capital cost."

"Contract of sale" means a contract for the sale by any council of a dwelling-house and land. "Contract of sale."

"Division" means Division of this Part. "Division."

"Dwelling-house" includes a house and its appurtenances necessary outbuildings fences and permanent provision for lighting water supply drainage and sewerage, but does not include any land. "Dwelling-house."

"Eligible person" means a person who is not the owner of a dwelling-house in Victoria or elsewhere and is not in receipt of an income of more than Seven hundred and fifty pounds a year at the time of the entering into a contract of sale or of the making of an advance under this Part. "Eligible person."

"Housing scheme" means a housing scheme under this Part approved by the Governor in Council or any amendment of such a scheme also approved by the Governor in Council. "Housing scheme."

"Municipality" and "municipal district" respectively include the city of Melbourne and the city of Geelong. "Municipality." "Municipal district."

"Prescribed" means prescribed by this Part or by regulations by-laws orders or rules hereunder. "Prescribed."

"Purchaser" means a person who pursuant to this Part purchases from any council a dwelling-house and land. "Purchaser."

"Reclamation scheme" means a reclamation scheme under this Part approved by the Governor in Council or any amendment of such a scheme also approved by the Governor in Council. "Reclamation scheme."

DIVISION 2.—HOUSING SCHEMES TO PROVIDE DWELLINGS FOR PERSONS OF SMALL MEANS.

Powers of municipalities to provide dwelling-houses. No. 5203 s. 659; No. 5843 s. 35 (a).

698. (1) Subject to this Part and in accordance with a housing scheme the council of any municipality may within its municipal district provide dwelling-houses for eligible persons.

Power to purchase or take land &c.

(2) For the purposes of any housing scheme the council may purchase or take compulsorily any land in the municipal district or may use or dispose of any lands vested in the municipality not being lands used as pleasure grounds public schools libraries museums gymnasiums gardens or places of public resort or recreation or for any public purpose (whether of a like kind to the foregoing or not) or lands granted to the municipality by the Crown:

Provided that if any land proposed to be taken compulsorily as aforesaid comprises portion only of land forming one contiguous area the owner thereof shall have the right to require that the whole of the area shall be taken.

Borrowing powers.

(3) For the purposes of housing schemes the council may with the approval of the Governor in Council borrow any sum or sums (not exceeding in all such amount as the Governor in Council determines) over and above the amount which it is otherwise authorized to borrow under this or any other Act.

How land and buildings taken or purchased may be dealt with. No. 5203 s. 660.

699. The council may in accordance with any housing scheme—

(*a*) demolish repair or reconstruct any buildings or erections on any such land;
(*b*) erect buildings or dwelling-houses thereon;
(*c*) construct and open any new street thereon;
(*d*) alter the levels of the land;
(*e*) alter existing drains and storm-water sewers and construct new drains and storm-water sewers thereon;
(*f*) lay out plant and beautify any part of the land or otherwise make the same suitable for gardens or for recreation purposes;
(*g*) maintain in good repair any buildings dwelling-houses or erections on the land; and
(*h*) generally, alter re-model and improve the land or any part thereof and any dwelling-houses buildings or erections thereon.

Power to sell or let dwelling-houses. No. 5203 s. 661.

700. (1) Subject to this Division the council may sell or let to any eligible person a dwelling-house (together with the land on which the same is constructed) in any area included in any housing scheme.

(2) The council may let such dwelling-house for such period and subject to such covenants and conditions and upon such terms as the council thinks fit. Letting of houses.

(3) In fixing the rent the council shall take into account the cost of interest depreciation maintenance repairs rates and insurance.

(4) No tenant shall be permitted to sub-let any such dwelling-house without the written consent of the council.

701. The total capital cost to the council of any dwelling-house which pursuant to this Division is sold or let by the council to any eligible person together with the cost of the land on which the dwelling-house is erected shall not exceed the maximum amount for the time being prescribed in that behalf by Order of the Governor in Council published in the *Government Gazette* and applicable to such house, and the Governor in Council may so prescribe different maximum amounts in respect of different classes of houses according to size materials used in construction and methods of construction. Cost of dwelling-houses. No. 5203 s. 662; No. 5843 s. 34 (*b*).

702. The following provisions shall apply to the sale pursuant to this Division of any dwelling-house together with the land on which it is constructed:— Sale of dwelling-houses. No. 5203 s. 663; No. 5843 s. 34 (*c*).

(1) The sale may be upon such terms and subject to such covenants and conditions and the payment of such cash deposit (if any) as are prescribed or are fixed by the council. Covenant conditions and deposits.

(2) The price shall not exceed the capital cost to the municipality of the dwelling-house and land. Price.

(3) The purchaser shall be permitted to occupy the dwelling-house and land as a weekly tenant and shall pay therefor a rental at such rate per centum per annum on the capital cost thereof or (where the council has required the payment of a deposit) on the difference between the capital cost and the amount of the deposit paid as may be determined by the council and approved by the Governor in Council; and shall also pay all rates and taxes and the cost of insurance repairs and maintenance. Occupation by purchaser. Payments.

(4) The council shall appropriate a sum from the rental to cover interest at such rate per centum per annum as may be determined by the council and approved by the Governor in Council on the amount of the capital cost from time to time outstanding and shall allot the remainder of the rental towards the payment of the capital cost. Appropriation of payments.

Power to obtain mortgage for balance.

(5) At any time after the purchaser—

(*a*) has paid in reduction of the purchase money a sum amounting to not less than Twenty pounds per centum of the purchase money;

(*b*) has paid to the council the amount due by him up to that time by way of instalments; and

(*c*) has complied to the satisfaction of the council with the covenants and conditions contained in the contract of sale—

he may if he so desires upon giving to the council the prescribed notice in writing of his intention so to do execute in favour of the municipality a mortgage, in such form as the council requires, for the balance of the purchase money and thereupon he shall be entitled to obtain from the municipality a transfer of the land; but except as in this sub-section provided he shall not be entitled to obtain from the municipality a transfer of the land unless and until he has paid the full amount of the purchase money and has complied to the satisfaction of the council with the covenants and conditions contained in the contract of sale.

Cost of transfer or mortgage.

(6) The cost and expenses of any transfer or mortgage executed in pursuance of this section shall be borne by the purchaser.

Power to make additions renovations &c. to dwelling-houses.

(7) So long as any land and dwelling-house is subject to a contract of sale mortgage or other security in accordance with this Division the council may at any time make additions or improvements to such dwelling-house or may repair renovate alter or enlarge the same and the amount expended thereon with interest shall together with the unpaid balance of the purchase money of such land and dwelling-house be and until paid remain a first charge thereon; and in order to provide for the repayment of such expenditure and interest the weekly rental may (without prejudice to any remedy or proceeding for the recovery or enforcement of the repayment of any amount so expended and interest) be increased by such amount as is determined by the council:

Provided that the unpaid balance together with the amount expended pursuant to this sub-section shall not exceed the maximum amount for the time being prescribed under the last preceding section and applicable to such house.

Payments to be in accordance with agreement &c. No. 5203 s. 664.

703. (1) Payments in respect of purchase money of any dwelling-house and land and of interest thereon shall be made in equal weekly fortnightly or monthly instalments in accordance with the contract of sale or mortgage entered into with respect to the dwelling-house and land but so that the period over which such instalments are payable shall not exceed twenty-eight years.

(2) Any purchaser who is not in arrear with any payment may at any time deposit with the council any sum to be held by the council and applied towards any future payments and the council shall deposit the same in the State Savings Bank of Victoria and allow interest thereon to the purchaser at the rate allowed to the council by the Commissioners.

Action in cases of hardship. No. 5203 s. 665.

704. (1) In cases of hardship the council may extend for such period and on such terms and conditions as it thinks fit the time for making any payment required by this Division.

(2) Where the time for making any payment has been so extended the payment shall bear interest for the time so extended at the same annual rate as that which is payable on the purchase money.

Power to compound where breach of contract &c. occurs. No. 5203 s. 666.

705. The council may compound and agree with any person who has entered into any contract in pursuance of or under the authority of this Division or against whom any action or suit is brought for any penalty contained in the contract or in any bond or other security for the performance thereof or for or on account of any breach or performance of the contract bond or security for such sum of money or other consideration as the council thinks proper.

Conditions operative so long as money owing. No. 5203 s. 667.

706. (1) As between the municipality and the purchaser with respect to the land and dwelling-house forming the subject of a contract of sale mortgage or other security the following conditions shall be imposed so long as any money due to the municipality under the contract of sale mortgage or other security remains unpaid, namely:—

(*a*) The land and dwelling-house shall not be let sub-let or mortgaged by the purchaser without the consent in writing of the council; and

(*b*) Every lease sub-lease mortgage or agreement entered into or made in contravention of the provisions of this section shall be void and of no effect.

(2) If the purchaser lets sub-lets or mortgages the land and dwelling-house or any part thereof in contravention of the provisions of this section the council may cancel the contract of sale and in its discretion forfeit the instalments previously paid by the purchaser.

Sale where purchaser insolvent. No. 5203 s. 668.

707. When the purchaser's title to any land and dwelling-house over which the municipality holds a mortgage in pursuance of this Part is divested from him under any law relating to bankruptcy or insolvency the council may cause his estate and interest in the land and dwelling-house to be sold at such time and place and in such manner and on such terms and conditions as it thinks fit.

Land &c. not to be transferred &c. while subject to contract of sale mortgage &c. No. 5203 s. 669.

708. (1) So long as any land and dwelling-house is subject to a contract of sale mortgage or other security in accordance with this Division a transfer of that land and dwelling-house or of any estate or interest therein shall not have any force or effect unless it—

(*a*) arises through the operation of any law relating to bankruptcy or insolvency;

(*b*) is made to a devisee by a person acting in the capacity of executor or administrator of the purchaser; or

(*c*) is made with the consent in writing of the council.

"Transfer."

(2) In this section " transfer " includes conveyance assignment and surrender.

General powers of council as to housing schemes. No. 5203 s. 670.

709. For the purposes of any housing scheme the council of any municipality—

(*a*) may out of the municipal fund from time to time advance any moneys required;

(*b*) may increase if necessary the amount in the pound of the general rate to an extent not exceeding Sixpence in the pound notwithstanding any statutory limit for such rate;

(*c*) shall once in every year prepare a separate balance-sheet and statement of accounts setting out full particulars of the operations of the scheme.

Power to council to sell or let buildings on land other than dwelling-houses. No. 5203 s. 671.

710. (1) The council may sell or let to any person any building (other than a dwelling-house) on any land included in any housing scheme for such period and subject to such exceptions reservations covenants and conditions and on such terms as the council thinks fit.

(2) In fixing the rent of any building so let the council shall take into account the cost of interest depreciation maintenance repairs rates and insurance.

(3) No tenant of any such building shall be permitted to sub-let any such building without the written consent of the council.

(4) On the sale of any such building the council may take such securities for the payment of any balance of purchase money and interest thereon or allow such period for the payment of the same as the council thinks fit.

Provision of houses for farm labourers. No. 5203 s. 672.

711. The council of any municipality may agree with any farmer (whether or not such farmer is an " eligible person " within the meaning of section six hundred and ninety-seven of this Act) to provide under the provisions of this Division a dwelling-house within its municipal district for the accommodation of farm labourers employed by him.

Construction of Part VIII. No. 5203 s. 673.

712. The provisions of Part VIII. as to the sale or demise of lands vested in the municipality shall be read and construed so as not to limit or affect any powers of sale or letting conferred on the council of a municipality under this Division.

DIVISION 3.—RECLAMATION SCHEMES FOR THE IMPROVEMENT OF INSANITARY LOW-LYING OR OVERCROWDED AREAS.

Power to municipality to borrow for reclamation schemes. No. 5203 s. 674; No. 5843 s. 35 (*b*).

713. For the purposes of reclamation schemes the council of any municipality may with the approval of the Governor in Council borrow any sum or sums (not exceeding in all such amount as the Governor in Council determines) over and above any amount which it is otherwise authorized to borrow under this or any other Act.

Reclamation &c. of insanitary areas &c. No. 5203 s. 675.

714. (1) The council of any municipality in accordance with a reclamation scheme may carry out—

(*a*) the reclamation and improvement of any insanitary or low-lying or overcrowded area in its municipal district; or

(*b*) the improvement of any particular area in its municipal district where any land abuts upon any street or way less than thirty feet wide in such areas.

Lands subdivided before No. 2557.

(2) Where before the commencement of the *Local Government Acts Amendment Act* 1914 land in any municipal district has been subdivided for the purpose of being sold conveyed or transferred in allotments and it appears to the council of the municipality that the land is subdivided in such a manner that it is likely to become an insanitary or overcrowded area such land may be included in any reclamation scheme under this Part.

Powers of councils as to lands. No. 5203 s. 676.

715. The council of any municipality may in accordance with a reclamation scheme—

(*a*) purchase or take compulsorily any land in any area aforesaid included in any scheme or any land adjacent to although not within such area;

(*b*) demolish or repair any buildings or erections on such land;

(*c*) erect buildings upon any part of such land;

(*d*) construct and open any new street thereon;

(*e*) alter the levels of such land;

(*f*) alter existing drains and storm-water sewers and construct new drains and storm-water sewers thereon;

(*g*) lay out plant and beautify any land or any part thereof or otherwise make the same suitable for recreation purposes;

(*h*) generally, alter re-model and improve any such land and any buildings or erections thereon; and

(*i*) maintain in good repair any buildings or erections on such land.

Power to sell demise &c. and to erect dwelling-houses for sale or letting. No. 5203 s. 677.

716. In the case of land purchased or taken for the purposes of any reclamation scheme the council in accordance with the scheme may—

(*a*) sell the whole or any portion of the land in one or more lots by public auction or private sale and on such terms and subject to such conditions covenants and restriction as the council thinks fit including power to take such securities for the payment of any balance of purchase money and interest thereon or to allow such period for the payment of the same as the council thinks fit;

(*b*) demise the whole or any portion of the land or any buildings thereon for such periods and on such terms and subject to such covenants and conditions as are prescribed or as the council thinks fit;

(*c*) construct dwelling-houses thereon for sale or letting as provided in Division two of this Part and under and pursuant to that Division sell or let any such dwelling-house and the land on which it is constructed and make additions or improvements to any such dwelling-house or repair renovate alter or enlarge the same as provided in that Division; or

(*d*) sell the whole or any portion of the land to the Commissioners of the State Savings Bank of Victoria for the purposes of Division four of Part III. of the *State Savings Bank Act* 1958.

DIVISION 4.—CLOSING OF STREETS, ETC.

Closing of certain streets &c. in area under scheme. No. 5203 s. 679; No. 5443 s. 24.

717. A council if of opinion that for the effectual carrying out of any housing scheme or reclamation scheme it is expedient that any street or way or any part of such street or way should be closed may apply to the Minister accordingly.

Power of Governor in Council on recommendation of Minister to close such streets &c. No. 5203 s. 680.

718. The Minister if satisfied—

(*a*) that the closing of such street or way or part thereof is expedient;

(*b*) that all persons likely to be substantially affected by the closing thereof have received notice of the application and have had an opportunity of setting forth their objections to the closing thereof; and

(*c*) that due provision has been made—

(i) with respect to pipes wires apparatus railways tramways sewers drains tunnels conduits poles posts and fixtures lawfully upon over across or under such street or way or part thereof;

(ii) for access to any land likely to be prejudically affected by the closing thereof;

(iii) for the payment of compensation pursuant to this Division to any person (including the Crown) in whom the land comprised in such street or way or part thereof (as the case may be) is vested and to any person entitled to any easement or right over the same; and

(iv) for the rectification or other alteration of documents of title to lands the descriptions of which are likely to be affected by the closing of such street or way or part thereof—

may, after considering all objections to the closing thereof and if of opinion that such closing will not substantially injure the public or any person so objecting and that all requirements imposed on the council by the Minister have been complied with, recommend the Governor in Council to close such street or way or part thereof; and the Governor in Council by Order published in the *Government Gazette* may close such street or way or part thereof accordingly.

Compensation to the Crown. No. 5203 s. 681.

719. Where the land comprised in any such street or way or part thereof (as the case may be) is the property of the Crown the Attorney-General is hereby empowered to make claim for compensation and settle with the council or sue for and receive the amount of such compensation on behalf of the Crown.

Effect of closing. No. 5203 s. 682.

720. On the publication as aforesaid of such Order in Council in the *Government Gazette* such street or way or part thereof (whether it is the property of the Crown or not) shall cease to be a street or way and thereupon all rights easements or privileges existing or claimed as regards the land comprised therein either in or by the public or any person or body of persons whomsoever or whatsoever as incident to any past dedication or supposed

dedication thereof or by express grant or by any past user thereof or by any fiction of law shall cease and determine and the land comprised therein shall be re-vested in Her Majesty her heirs and successors freed and discharged from all trusts obligations estates interests contracts charges rates limitations or restrictions whatsoever and shall be and be deemed to be and may be dealt with as unalienated land of the Crown.

Power to grant land comprised in closed streets &c. to municipality. No. 5203 s. 683.

721. The Governor in Council may subject to such covenants conditions reservations and exceptions as the Governor in Council thinks fit grant to the municipality for the purposes of this Division the land which was comprised in the street or way or part thereof.

Cancellation of existing Crown grant &c. when land is under *Transfer of Land Act.* No. 5203 s. 684.

722. (1) Where the land comprised in any street or way so closed as aforesaid or any part thereof is land under the operation of the *Transfer of Land Act* 1958, the Registrar of Titles is hereby empowered to cancel the existing Crown grant or certificate of title therefor and any instrument entry or memorial in the register-book altogether or to such extent as is necessary to give effect to such Order.

Memorandum of cancellation.

(2) In cancelling any Crown grant certificate of title instrument or any memorial or entry in the register-book in pursuance of the power hereby conferred on him in that behalf the Registrar of Titles shall indorse thereon a memorandum stating the circumstances and authority under which the cancellation is made.

Where Order closing street &c. affects other lands &c.

(3) If an Order for the closing of a street or way or part thereof affects the right estate or interest of the registered proprietor of land under the operation of the *Transfer of Land Act* 1958 included in any certificate of title in respect of any registered easement appearing thereon appurtenant to such land the Registrar of Titles may cancel such easement to the extent to which it has been determined or extinguished upon the original of such certificate and also upon the duplicate certificate of title when brought to him for that purpose or when the same is lodged in the Office of Titles for the purpose of any dealing with the land comprised therein.

Calling in duplicate certificate.

(4) The Registrar of Titles may call in such duplicate certificate of title for the purpose of such cancellation and may detain the duplicate until such cancellation is effected and refuse to register any dealing with the land comprised therein or any part thereof until the duplicate has been so brought in and lodged.

Amendments of description of land under *Transfer of Land Act.*

(5) Where the description of land under the operation of the *Transfer of Land Act* 1958 is or may be affected by any Order made hereunder closing a street or way or part thereof the Registrar of Titles is hereby empowered to make any amendment in such description which is in his opinion necessary or desirable

DIVISION 5.—BETTERMENT CHARGE IN CONNEXION WITH RECLAMATION SCHEME.

Application of this Division to reclamation schemes. No. 5203 s. 685.

723. The provisions of this Division shall take effect only with respect to a reclamation scheme.

Interpretation. No. 5203 s. 686.

724. In this Division unless inconsistent with the context or subject-matter—

"Betterment area." "Betterment area" means the area shown and specified in the general plan and description provided for in Division six of any approved reclamation scheme as the area within which the council proposes to impose a betterment charge.

"Land." "Land" means any land which is rateable property as defined in Division one of Part X., but does not include—

(*a*) any land forming part of a street or road in or under which any main or pipe of any company supplying gas under or pursuant to the powers of any Act is laid, or in or under which any culvert main pipe tube apparatus or wire of any electric lighting or hydraulic company authorized under or pursuant to any Act to supply electric light or power or water power is constructed laid or placed; or

(*b*) any tramway undertaking within the meaning of the *Melbourne and Metropolitan Tramways Act* 1958 or the *Tramways Act* 1958.

Power to impose betterment charge. No. 5203 s. 687.

725. (1) The council may in accordance with this Division impose in respect of all or any lands within the betterment area (which are not purchased or taken by the council under its powers with respect to reclamation schemes) a betterment charge in respect or in consideration of any substantial and permanent increase in value which it is clearly shown has been derived from the reclamation effected under the reclamation scheme.

Amount of betterment charge.

(2) The betterment charge in respect of any such lands shall be the amount assessed or awarded as hereinafter provided being one-half of the amount of the enhanced market value derived by such lands from the reclamation after making all fair and proper deductions for rates taxes assessments and impositions on or in respect of such lands according to such increased value.

Annual payment of five per cent.

(3) Unless the betterment charge has been redeemed or satisfied there shall, in accordance with but subject to the provisions of this Division, be payable to the council an annual charge equal to five per centum upon the amount of the betterment charge.

Notices of initial valuation of lands. No. 5203 s. 688.

726. (1) At least two months before commencing any work under a reclamation scheme the council shall give notice by registered letter addressed to each owner lessee or occupier of the several lands within the betterment area that it is proposed to have an " initial valuation " of such lands made as hereinafter provided.

Appointment of valuer.

(2) The council shall within one month after the service of such notices apply to the Minister to appoint and the Minister shall appoint some independent person to make a valuation of the several lands within the betterment area; and if any such valuer dies or resigns or becomes incapable of acting (previous to completing the valuation) the council shall in like manner apply to the Minister and the Minister shall from time to time appoint another valuer in his stead.

Valuer to make initial valuation.

(3) The valuer so appointed shall forthwith after giving such notice or notices as the Minister may direct and hearing any parties interested and applying to be heard proceed to make a valuation of such lands which valuation is in this Part referred to as the " initial valuation."

Costs of valuation.

(4) The proper cost of making the initial valuation including the reasonable costs charges and expenses of all or any of the parties interested (to be fixed in case of difference by the Minister) shall be paid by the council.

Initial valuation, how to be made. No. 5203 s. 689.

727. (1) In making such initial valuation—

(*a*) the valuer—

(i) shall separately distinguish and assess in each case the value of the land apart from that of any existing buildings thereon and shall also value the land and buildings as a whole; and

(ii) shall not take into consideration any increased value accruing or supposed to accrue to such land or buildings from or in consequence of the reclamation but shall only take into consideration the value independently of the reclamation and as if the reclamation had not been contemplated;

(*b*) the valuer—

(i) shall also separately value the interest of the owner of any such lands and the interest of every lessee of any such lands for a term having not less than five years unexpired at the date of the valuation (excluding from each such valuation any trade interest); and

(ii) shall not take into consideration any increased value accruing or supposed to accrue to such lands from or in consequence of the reclamation but shall only take into consideration the value of the said lands independently of the reclamation and as if the reclamation had not been contemplated.

Valuations to be deposited and be open for inspection at municipal offices.

(2) The initial valuation when made shall be deposited with the municipal clerk and shall be kept deposited at the municipal offices and shall be open to inspection (without payment) at all reasonable times by any persons or their duly authorized agents interested in any lands comprised in the said valuation.

Assessment of lands. No. 5203 s. 690.

728. (1) The council shall not sooner than twelve months or later than three years after the issue by it of a certificate of the completion of the works authorized by the reclamation scheme cause to be framed an assessment describing the lands situate within the betterment area and comprised in the said valuation in respect of which the council alleges that the said betterment charge ought to be imposed and the council shall in such assessment state and specify—

(*a*) the names of the owners lessees and occupiers of the lands described in the said assessment respectively so far as they can be ascertained; and

(*b*) the amounts by way of betterment charge which the council alleges ought to be imposed in respect of such lands respectively.

(2) The assessment shall contain a statement of the amount which the council alleges is the enhanced market value derived by the lands respectively from the reclamation.

Amount of annual charge.

(3) The amount proposed in the assessment as the annual charge to be imposed under the provisions of this Division in respect of any lands shall be equal to five per centum upon one-half of the amount which the council alleges is the enhanced market value derived by the said lands from the reclamation after making all fair and proper deductions for rates taxes assessments and impositions on the said lands according to such increased value.

Assessment to be approved by council.

(4) The assessment shall be submitted to and considered by the council; and the council may by resolution approve the same either with or without modification or addition as it thinks fit.

Copies of resolution to be published and to be served on owners lessees and occupiers.

(5) The resolution approving the assessment shall be published once in each of two successive weeks in two or more daily newspapers circulating generally in the municipal district with an interval of at least six clear days between the two publications and copies of the resolution shall be publicly posted on the site of the

reclamation; and within seven days of the date of the first publication of the resolution copies thereof shall also be served on the owners lessees and occupiers of the lands described in the assessment.

Contents of notices.

(6) The notices served on the owners lessees and occupiers shall state shortly the effect of the resolution and assessment upon the lands in respect of which they are served and also of the provisions of this Division with respect to the time and mode of objecting to the assessment, the grounds on which the assessment may be objected to, claims for decrease in value, and the right to have matters determined by arbitration, and the payment of costs.

Assessment to be open for inspection.

(7) From and after the date of the first publication of the resolution and until the expiration of three months from the date of the last publication thereof the assessment or copies thereof certified by the municipal clerk or some other officer of the council shall be kept deposited at the municipal offices and shall be open to inspection (without payment) at all reasonable times by any person interested.

Objections by owners lessees or occupiers. No. 5203 s. 691.

729. (1) At any time during the said period of three months after the last publication of the assessment the owner or lessee of any lands described in the assessment or the occupier thereof for the time being may by written notice served on the council object to the assessment on all or any of the following grounds:—

(*a*) That any lands in which he is interested included in the assessment should not be included by reason that it has not been or cannot be clearly shown that the market value of the lands to which the notice relates is substantially and permanently increased by the reclamation;

(*b*) That the amount of any charge proposed to be imposed in respect of any lands in which he is interested should be varied; or

(*c*) That the assessment is incorrect in respect of some matter of fact (to be specified in the objection).

(2) The council may take any such objection into consideration and may if it thinks fit settle the same by agreement with the objector, and in any such case shall amend the assessment accordingly; but in any case where any such objection is not so considered or settled the matter shall be determined by arbitration as hereinafter provided.

Claim by owners or lessees for decrease in value of lands. No. 5203 s. 692.

730. (1) At any time during the said period of three months after the last publication of the assessment the owner or lessee of any lands within the betterment area may give written notice to the council claiming that substantial and permanent decrease in the value of such lands to an amount to be stated in the notice has been caused by the reclamation.

(2) The council may take any such claim into consideration and may if it thinks fit settle the same by agreement with the claimant, and in any such case shall if necessary amend the assessment accordingly; but in any case where any such claim is not so considered or settled the matter shall be determined by arbitration as hereinafter provided.

(3) If in any such arbitration it is clearly shown that any substantial and permanent decrease in the value of such lands has been caused by the reclamation the arbitrator shall determine the amount thereof.

(4) (*a*) Where the owner or lessee has no lands comprised in the assessment or no lands comprised in the assessment other than those the subject of the claim the amount of the decrease agreed upon or determined as aforesaid in the value of the lands the subject of the claim shall be paid to the owner or lessee by the council.

(*b*) Where the owner or lessee has lands comprised in the assessment other than those the subject of the claim the amount of such decrease shall be deducted from the increased value of such other lands, and in any case where the amount of such decrease exceeds such increase the difference shall be paid to the owner or lessee by the council.

Provision as to joint tenants and tenants in common. No. 5203 s. 693.

731. For the purposes of this Division joint tenants or tenants in common may give any such notice as aforesaid through one of their number authorized in writing under the hands of the majority of the joint tenants or tenants in common and any lessees may combine in any notice.

If no notice of objection or claim assessment to be fixed. No. 5203 s. 694.

732. If at the expiration of the said period of three months no notice of objection or alleged decrease in value has been served on the council the council may publish notice to that effect in the *Government Gazette* and as from the date of such notice such assessment shall become final.

Procedure on receipt of notice of objection or claim. No. 5203 s. 695.

733. (1) If any such notice of objection or alleged decrease in value as aforesaid is served on the council within the said period of three months and if in any case any such objection or claim is not settled as aforesaid the council shall apply to the Minister to appoint an arbitrator for the purposes of this Division and the Minister shall appoint an arbitrator accordingly and if any such arbitrator dies or resigns or becomes incapable of acting (previous to making an award as hereinafter provided) the council shall in like manner apply to the Minister and the Minister shall from time to time appoint another arbitrator in his stead.

(2) Every such arbitrator shall be entitled to such fees and remuneration as are fixed by the Minister.

Amendment of assessment by council. No. 5203 s. 696.

734. (1) The council may at any time before the appointment of the arbitrator but subject to the provisions of this Division by resolution amend the assessment so as to include in the assessment as amended any lands by this Division made liable to have a betterment charge imposed in respect thereof and comprised in the initial valuation but not in the original assessment and may fix the sums proposed to be imposed by way of betterment charge in respect of such lands.

(2) Any such resolution shall be published and copies thereof shall be served and copies of the amended assessment deposited for public inspection in the manner hereinbefore prescribed with respect to the original resolution and assessment and notices of objection and of alleged decrease of value in respect of the amended assessment may be given in like manner and if given shall be dealt with and determined in like manner as objections to or claims in respect of the original assessment.

Powers and duties of arbitrator. No. 5203 s. 697.

735. (1) The council at any time after the appointment of the arbitrator may apply to the arbitrator to appoint a time and place for determining the matter of all objections and alleged decreases in value made as in this Division mentioned and not settled as aforesaid and for making an award.

(2) The council shall publish a notice of the time and place appointed; and copies of such notice shall be served upon the objectors and claimants and also upon the owners lessees and occupiers of all lands inserted or which it may be proposed to insert in the award (being in all cases lands by this Division made liable to have a betterment charge imposed in respect thereof and comprised in the initial valuation).

(3) At the time and place so appointed the arbitrator may proceed to hear and determine the matter of all such objections and allegations.

(4) The arbitrator may amend any assessment on the application of any such objector or claimant or of the council.

(5) If the arbitrator inserts in the award any lands or the name of any person not included in such assessment or if he increases the amount of the charge to be imposed in respect of any lands such notice as the arbitrator thinks sufficient shall be given to the persons affected to enable them to object to such insertion or increase.

(6) The arbitrator may also if he thinks fit adjourn the hearing and direct any further notices to be given.

Assessments and awards to be final. No. 5203 s. 698.

736. No objection to any assessment or award which could be made under this Division shall be afterwards made or allowed in any court proceeding or manner whatsoever.

Costs of arbitration. No. 5203 s. 699.

737. (1) All the reasonable and proper costs of any such arbitration and incident thereto shall be borne by the council unless the arbitrator awards the same amount of betterment charge as has been proposed in the assessment or for a greater amount or (in the case of an alleged decrease in value) for a less amount than the amount claimed, in which case each party shall bear his own costs incident to the inquiry or arbitration and the costs of the arbitrator shall be borne in equal proportions:

Provided that if it appears to the arbitrator that any objection or claim was frivolous or vexatious the arbitrator may make such order concerning costs as to him seems fit.

(2) Where such costs are ordered to be paid or become payable by an objector or objectors the arbitrator may if he thinks fit add such costs to the betterment charge apportioned on the estate or interest of the objector or objectors.

Final award. No. 5203 s. 700.

738. (1) When and as soon as the assessment and any amendments thereof and all objections thereto and all such allegations as aforesaid (if any) have been disposed of as by this Division directed the arbitrator shall issue an award under his hand which shall be final and conclusive for all purposes.

Publication and service.

(2) A copy of the award shall be published in the *Government Gazette* and notice of such award shall be served upon the owners or reputed owners lessees or reputed lessees and occupiers of the lands affected thereby.

Betterment charge and arrears of annual charge charged on land. No. 5203 s. 701.

739. (1) If no objection as hereinbefore provided is made to the assessment and if a settlement or an award is made as hereinbefore provided then the amount payable pursuant to this Division as a betterment charge under the assessment or any amended assessment or the award in respect of any lands and any arrears of the annual charge shall be and until paid redeemed or satisfied remain a charge upon such lands.

Annual charge payable in quarterly payments.

(2) Save as otherwise expressly provided in this Division any annual charge hereunder shall be payable in four equal quarterly payments on the first day of January April July and October in each year until the betterment charge is redeemed or satisfied.

All interests to be considered. No. 5203 s. 702.

740. (1) The council in making any settlement as hereinbefore provided and the arbitrator in making the award shall take into consideration all the circumstances of the case and in particular shall consider the several interests in such lands and the times at which they severally expire and may make the commencement of any betterment charge dependent upon the expiration of any term of years or other period or on the happening of any event as it or he deems fair and equitable.

Apportionment of charge.

(2) The betterment charge charged upon any lands shall be apportioned between the several parties having any estate or interest in such lands as such parties agree or as (in the event of no agreement being made or so far as any such agreement does not extend) shall be determined by the arbitrator who may apportion the incidence of the betterment charge as between the freehold and any other estate or any other interest in the lands during the period of any existing term of years for which the same is held at the date of the award.

Collection and enforcement of betterment charge and annual charge. No. 5203 s. 703.

741. (1) The betterment charge and any annual charge (including any quarterly payment thereof) due in respect of any lands shall be payable to the council after demand and may be collected on behalf of the council by such person as it appoints for the purpose; and the betterment charge may be redeemed as provided in sub-section (4) of this section.

(2) Where any lands in respect of which a betterment charge is payable are occupied by any person the council may collect the quarterly payments due in respect of the annual charge from such person; but if he is not the person for the time being liable to the payment of the betterment charge or any part thereof he may deduct from any rent payable by him the annual charge or any part thereof payable by any other person, and any person receiving such rent (if he is not the person liable to pay the betterment charge or any part thereof) may in like manner deduct from any rent payable by him the annual charge or such part thereof as is payable by any other person so that the proper deduction may in each case be made from the rent paid to the person or persons by whom the betterment charge or any part thereof is payable.

(3) In case of default being made in any payment due to the council in respect of the betterment charge or the annual charge the amount of the betterment charge or the annual charge (as the case may be) may be recovered in any court of competent jurisdiction, but no interest shall be payable or recoverable in respect thereof; and save as aforesaid the council shall have and may exercise such remedies for enforcing the charge on the land as are conferred upon councils with respect to the enforcement of charges on land under this Act.

Redemption of betterment charge.

(4) Any owner lessee or occupier of any lands subject to a betterment charge or any other person interested therein—

(*a*) may from time to time redeem the same by agreement with the council and any such agreement may provide for the payment of one or more sums or for the payment of an annual amount in addition to the annual charge; and

(*b*) shall be entitled to redeem the betterment charge on payment to the council of any arrears then due of the annual charge (if any) in respect thereof without interest thereon; and

(i) of a sum equal to eighteen times the amount of the annual charge; or

(ii) of ten quarterly payments each equal to one-tenth of the betterment charge without further annual charge.

(5) From and after the completion of such redemption the betterment charge shall be deemed to be satisfied and shall be no longer payable in respect of the said lands and the council shall give a certificate under the common seal of the municipality that the said charge is redeemed and satisfied, which shall be sufficient evidence thereof.

Effect of contracts and covenants affecting the land. No. 5203 s. 704.

742. Where the incidence of the betterment charge as between any persons interested in the lands is regulated or affected by contract or covenant the council and the arbitrator shall have regard to such contract or covenant and the provisions of this Division shall not be deemed to alter the effect of such contract or covenant.

Application of *Arbitration Act.* No. 5203 s. 705.

743. The *Arbitration Act* 1958 shall subject to the provisions of this Division apply to the arbitrator and procedure before him except that the award shall be final and binding upon all parties.

DIVISION 6.—GENERAL.

Procedure. No 5203 s. 706.

744. (1) Where the council of any municipality desires to carry out any housing scheme or reclamation scheme it shall cause to be prepared a general plan and description of the proposed scheme.

(2) The general plan shall show—

(*a*) the character and extent of the works proposed; and

(*b*) if in the case of any proposed reclamation scheme the council wishes to impose a betterment charge in respect of lands within any area (in this Part referred to as a "betterment area")—the said betterment area.

(3) The description shall clearly set forth—

(*a*) the object and purposes of the proposed scheme and the works to be carried out in accordance therewith;

(*b*) the mode in which it is proposed to obtain funds for the scheme;

(*c*) an estimate of the cost;

(*d*) the area in which the works are proposed to be carried out; and

(*e*) a description of the betterment area (if any).

(4) (*a*) The council shall forward such general plan and description to the Minister with an application for submission to the Governor in Council for the approval of the Governor in Council to the scheme.

Reference to Town and Country Planning Board.

(*b*) Before the Governor in Council approves of any scheme the Minister shall refer such scheme to the Town and Country Planning Board constituted under the *Town and Country Planning Act* 1958 for report.

Details required.

(5) The council shall if required by the Minister furnish details of the works proposed to be carried out with the levels thereof and details of all proposed interferences with any street road bridge culvert tramway sewers drains mains or pipes or with any private property and also any lands which the council proposes to acquire, and such other information as the Minister requires.

Entry on lands for preparation of plan and description. No. 5203 s. 707.

745. (1) For any of the purposes aforesaid the council may by its surveyor engineer or any other officer agent or servant enter at reasonable times in the daytime into any land within the municipal district and make surveys and take levels without being liable to any legal proceedings on account of such entry.

Expenses.

(2) Any expenses incurred for the said purposes may be paid out of the municipal fund.

Notification. No. 5203 s. 708.

746. A notice stating that the application and general plan and description have been forwarded to the Minister and stating in what place copies of the general plan and description have been deposited for inspection shall be published by the council at least once in every week for three weeks in the *Government Gazette* and in some newspaper generally circulating in the municipal district.

Copies of notices to be forwarded to Minister. No. 5203 s. 709.

747. The council shall forward to the Minister before he submits any application to the Governor in Council a copy of all notices given as aforesaid and of every newspaper and of the *Government Gazette* containing any publication of such notice

Petitions respecting scheme. No. 5203 s. 710.

748. (1) Within one month after the last publication of any such notice in the *Government Gazette* any corporation or person having any property or interest therein likely to be injuriously affected by the proposed scheme may forward to the Minister a petition to the Governor in Council to refuse the application or to amend or alter the plan thereof or to make such other Order in reference thereto as the petitioner may pray.

(2) Every signature to any petition other than the common seal of a corporation shall be verified by the statutory declaration of some person signing the petition; and no petition shall be received by the Minister unless the same is accompanied by such declaration.

Verification of signatures to petitions.

749. A true copy of the application and of the general plan and description forwarded to the Minister shall be deposited for the inspection (without payment) of any person who desires to inspect the same at the municipal offices of the municipality and also at the office of the Minister.

Inspection of plan. No. 5203 s. 711.

750. After the expiration of two months after the notice of any application has last been advertised in the *Government Gazette* the Minister (if satisfied that the provisions of this Part with respect to the scheme have been substantially complied with) shall submit such application and the general plan and description accompanying the same and all petitions which have been received in respect of such application to the Governor in Council together with any recommendations as to the approval of the scheme or as to any alterations or additions the Minister thinks desirable in the proposed scheme or as to the refusal of such approval.

Application and plan to be submitted to Governor in Council. No. 5203 s. 712.

751. The Governor in Council may by Order approve of the scheme with or without alterations or additions in the general plan and the description or with or without any conditions or may disapprove of the scheme.

Approval or otherwise by Order in Council. No. 5203 s. 713.

752. Any approved housing scheme or reclamation scheme may be amended by the Governor in Council; and the provisions of this Part as to housing or reclamation schemes or proposed housing or reclamation schemes and the procedure in relation thereto shall so far as applicable and with such alterations and substitutions as are necessary extend and apply with respect to any amendment of a scheme and to any such scheme as amended:

Provided that any such amendment shall not be taken to authorize the expenditure of any moneys in excess of the total amount authorized by the original scheme.

Amendment of schemes. No. 5203 s. 714.

753. For the purposes of any housing scheme or reclamation scheme the provisions of Divisions one two and four of Part XVIII. and Part XLIV. shall extend and apply.

Acquisition of land and compensation. No. 5203 s. 715.

754. (1) Where any works authorized to be carried out by any municipality under any housing scheme or reclamation scheme may interfere with any land property undertakings or works vested in or under the management or control of the Board of Land and Works, the Victorian Railways Commissioners, the State Rivers and Water Supply Commission or any other Authority under the *Water Act* 1958 the State Electricity Commission of Victoria, the

Provision for cases of interference with land property or undertakings of other public Authorities. No. 5203 s. 716.

Country Roards Board, the Melbourne and Metropolitan Board of Works or any Sewerage Authority under the *Sewerage Districts Act* 1958 the Melbourne Harbor Trust Commissioners, the Geelong Harbor Trust Commissioners, the Melbourne and Metropolitan Tramways Board, or the promoters of any tramway under the *Tramways Act* 1958, or any municipality other than the municipality authorized to carry out the works (hereinafter in this section included in the term "corporation") such works shall not be proceeded with by the first-mentioned municipality unless and until every such corporation concerned has agreed thereto or a determination has been made by the Governor in Council as hereinafter provided.

(2) In default of agreement between the first-mentioned municipality and such corporation all matters in difference between them shall be determined by the Governor in Council whose decision shall be final and binding upon the parties.

(3) Any such agreement or determination may provide for all or any of the following matters:—

(*a*) Any new altered or substituted works to be made or executed by the first-mentioned municipality and to be vested in such corporation and being works reasonably necessary for preventing interference with or protecting any such land property undertakings or works vested in or under the management and control of such corporation;

(*b*) The payment or apportionment of the payment of the cost of such new altered or substituted works; and the supervision of the making and execution of the same and the payment or apportionment of the expenses of such supervision; and

(*c*) Any other matters necessary or convenient to be provided.

(4) Where any new altered or substituted works as aforesaid are made or executed by the first-mentioned municipality and are finally completed such new altered or substituted works shall thereafter be vested in and under the control and management of such corporation.

(5) The provisions of this section shall apply *mutatis mutandis* to any case where any works authorized to be carried out by any such corporation may interfere with any land property undertakings or works in connexion with any housing scheme or reclamation scheme authorized to be carried out by the first-mentioned municipality.

755. (1) The Governor in Council may make regulations for or with respect to— Power to make regulations. No. 5203 s. 718.

(*a*) applications for the approval or amendment by the Governor in Council of housing schemes or reclamation schemes; petitions in connexion therewith; and the carrying of such schemes into effect;

(*b*) the terms covenants and conditions of and cash deposits (if any) to be made under contracts of sale under housing schemes of dwelling-houses together with the land on which they are constructed;

(*c*) forms and particulars of applications by councils with respect to the closing of streets or ways or parts thereof under this Part;

(*d*) the requirements with respect to notices to persons affected by such closing;

(*e*) the manner and times for hearing objections to such closing and the forms of such objections;

(*f*) the imposition of betterment charges and valuations assessments objections arbitrations and appeals in connexion therewith;

(*g*) forms to be used for the purposes of this Part;

(*h*) any matters required or permitted by or under this Part to be prescribed by regulations; and

(*i*) generally, all matters necessary or convenient to be prescribed for carrying into effect the provisions of this Part.

(2) All such regulations shall be published in the *Government Gazette* and shall be laid before both houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament. Publication of regulations.

PART XXIX.—BATHS AND WASH-HOUSES.

756. (1) The council may from time to time by or in pursuance of a special order purchase erect rent or otherwise provide, either within the limits of the municipal district or at a reasonable distance therefrom, suitable and convenient land and buildings in a situation and according to plans to be approved of by the Minister to be used for public baths and wash-houses, and may fit up the same respectively with all requisite and proper conveniences and from time to time enlarge renew and repair the same respectively, and afford the use thereof respectively to the inhabitants of the municipal district, under and subject to such by-laws as the council may make in that behalf, and either without charge or at such reasonable charges as the council may order by any such by-law. Council may provide baths &c. No. 5203 s. 719.

Copy of by-law to be posted.

(2) A printed copy or sufficient abstract of the by-laws made by the council relating to the use of such baths or wash-houses, so far as regards every such bath or wash-house, shall be put up in such bath and wash-house.

PART XXX.—MARKETS AND WEIGHBRIDGES.

Interpretations in this Part. No. 5203 s. 720.

757. In this Part unless inconsistent with the context or subject-matter:—

"The market." "The market" means a market and the works connected therewith provided by the council of the municipality.

"Cart." "Cart" includes waggon, and also any carriage used wholly or chiefly for the conveyance of goods.

"Driver." "Driver" includes the carter or other person having the care of any cart.

"The collector." "The collector" means the person appointed by the council to collect the stallages rents or tolls authorized by this Act, and includes the assistants of the collector.

Power of council to provide markets. No. 5203 s. 721.

758. (1) The council of any municipality shall have the power to do the following things or any of them within the municipal district:—

(*a*) Provide market-places and construct market-houses and other conveniences for the purpose of holding markets;

(*b*) Make convenient approaches to such markets;

(*c*) Provide all such matters and things as may be necessary for the convenient use of such markets.

(2) But nothing herein contained shall affect existing rights or interests or authorize the establishment of a market for the sale of any neat cattle or any sheep lamb pig or goat within the limits described in the last Schedule to the Act 21 Vict. No. 11, or within one mile of the boundary of the city of Geelong as set forth in Schedule A to the Act 21 Vict. No. 54.

Power to take land on lease for market purposes. No. 5203 s. 722.

759. The council of any municipality shall have power in the name of the municipality to take on lease for any term and subject to any such covenants and conditions as the council thinks reasonable any land for the purposes contained in the last preceding section or any of them.

Power to discontinue markets. No. 5203 s. 723.

760. The council of any municipality may by special order published in the *Government Gazette* direct that any market provided by such council shall cease to be a market and such market shall cease to be a market from the date of the publication of such order in the *Government Gazette* or from any subsequent date mentioned in such order in that behalf unless any lease of the stallages rents tolls and dues payable in respect of such market

or of any stall or standing therein is then in existence in which case such market shall cease to be a market so soon as every such lease then in existence has expired.

Power for municipal councils to provide or license weighbridges and weighing machines and charge for use of same. No. 5203 s. 724; No. 5602 s. 2.

761. The council of any municipality shall have power to provide weighbridges or weighing machines within or without the district of such municipality and may on such terms and conditions as the council thinks fit authorize by permit the use of any weighbridges or weighing machines built or erected within such district by private persons and may authorize the holders of such permits to charge sums of money for the use thereof not exceeding such sums as the council is under this Act empowered to fix for the use of any weighbridge or weighing machine provided by the council.

Market &c. tolls. No. 5203 s. 725; No. 5843 s. 36, No. 6151 s. 19.

762. It shall be lawful for the council of every municipality to demand receive and have such sums of money as and for stallages rents tolls and dues not exceeding such amounts as are authorized by the Governor in Council by general regulations to be from time to time made for the purpose as are for the time being appointed by special order of the council in that behalf of and from—

(*a*) every person exposing or offering for sale or selling any corn grain hay straw meat poultry eggs milk butter vegetables or other provisions or firewood or any goods or cattle in any market provided by the council; and

(*b*) every person who rents or uses any stall or standing place in such market; and

(*c*) every person who uses any building place or machine provided by the council for weighing; and

(*d*) every person who at any time uses for the sale of cattle any yards or premises within the municipal district and outside any market provided by the council; and

(*e*) every company firm or person who conducts or arranges the sale by auction of any goods or cattle in any market provided by the council.

Letting of tolls. No. 5203 s. 726.

763. It shall be lawful for the council of every municipality to demise or let to farm for any term not exceeding seven years all or any of the stallages rents tolls and dues from time to time payable in respect of any market provided by the council, and also to demise or let for any term not exceeding twelve months any stall or standing in such market.

Before the market shall be opened notice to be given by the council. No. 5203 s. 727.

764. Before any market is opened for public use the council of the municipality shall give not less than ten days' notice of the time when the same will be opened; and such notice shall be given by the publication thereof in some newspaper generally circulating in the neighbourhood and by printed handbills posted on some conspicuous place within the municipal district.

Sales elsewhere than in markets prohibited under a penalty not exceeding Forty shillings. No. 5203 s. 728.

765. After the market is opened for public use every person who personally or by an agent or auctioneer sells offers or exposes for sale in any place within the municipal district except in his own dwelling-place shop place of business or private property or except in the market or in yards or premises licensed by the council under a market by-law, any articles or any cattle in respect of which tolls are by this Act authorized to be taken in the market, shall for every such offence be liable to a penalty of not more than Forty shillings.

Licensed hawkers not exempted from paying tolls. No. 5203 s. 729.

766. Nothing in this Part contained shall exempt any licensed hawker from paying the dues and tolls to be paid by virtue of this Act by all persons selling offering or exposing for sale any articles in the market and every lease of any stall or standing in the market shall as to the lessee thereof be deemed within the municipal district to be a hawker's and pedler's licence of every description issuable under any law now or hereafter to be in force relating to hawkers and pedlers.

Market days. No. 5203 s. 730.

767. After the market is opened for public use the council shall hold markets therein on such days as may be for the time being appointed by the council by any by-law.

The council to provide proper weights and measures for weighing commodities sold at markets. No. 5203 s. 731; No. 5602 s. 2.

768. (1) The council shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market and shall keep in them proper weights measures weighing instruments and measuring instruments according to the standard weights and measures for the time being for weighing or measuring such commodities as aforesaid.

(2) This and the next two succeeding sections shall not apply in the case of markets where only cattle are sold.

Article to be weighed if requested by the buyer. No. 5203 s. 732; No. 5602 s. 2.

769. Every person selling or offering for sale any articles in the market shall if required so to do by the buyer cause the same to be weighed or measured by the weights measures weighing instruments or measuring instruments provided by the council; and every such person who refuses on demand to cause such articles to be weighed or measured in manner aforesaid shall for every such offence be liable to a penalty of not more than Forty shillings.

Penalty for refusal.

The council to keep proper machines for weighing carts laden with goods. No. 5203 s. 733; No. 5602 s. 2.

770. The council shall provide sufficient and proper buildings or places for weighing carts (including motor vehicles) in which goods are brought for sale within the market and shall keep therein weighing instruments and weights proper for that purpose and shall from time to time appoint a weighman licensed under the *Weights and Measures Act* 1958 in every such building or place to afford the use of such weighing instruments to the public by weighing such carts with or without their loading as may be required.

771. The council shall not demand or receive any stallage rent or toll until the market-place in respect of the use of which the same is demanded is completed and fit for the use of the persons resorting thereunto.

Tolls &c. not demandable until market completed. No. 5203 s. 740.

772. A certificate under the hand of any two justices one of whom is a stipendiary magistrate shall be evidence that any market-place is completed and fit for public use as aforesaid; and any such justices shall sign such certificate on proof being adduced to them that the market-place is so completed and fit for public use.

Certificate of two justices evidence that market is completed. No. 5203 s. 741.

773. The several stallages rents or tolls payable in respect of the market shall be paid from time to time on demand to the council or the collector or other person authorized by the council to receive the same.

Stallages tolls &c. when to be paid. No. 5203 s. 742.

774. The tolls payable in respect of weighing carts with or without goods shall be paid to the person authorized by the council to receive the same by the persons bringing such carts to be weighed before the same are weighed.

Manner of payment. No. 5203 s. 743.

775. The tolls in respect of cattle or articles brought to the market for sale shall become due as soon as the cattle or articles in respect whereof they are demandable are brought into the market-place and before the cattle are put into any pen or tied up in such market-place; and if the cattle or articles are not removed within forty-eight hours after the close of the market another toll shall become due in respect of the cattle or articles so omitted to be removed.

Tolls in respect of cattle or articles when due. No. 5203 s. 744.

776. During the continuance of any lease of stallages rents or tolls or during the continuance of any licence in respect of which dues are paid the council of any municipality may from time to time with the consent in writing of the lessee farmer or licensee (as the case may be) and not otherwise by special order change within the limits prescribed as aforesaid the stallages rents tolls and dues to be taken in respect of the market and for weighing and in respect of the yards or premises for the sale of cattle.

Stallages tolls &c. may be varied from time to time. No. 5203 s. 745.

777. Every person who demands and takes a greater toll than that authorized to be taken under this Part shall for every such offence be liable to a penalty of not more than Forty shillings.

Penalty on taking excessive toll. No. 5203 s. 746.

778. If any person liable to pay any stallage rent toll or dues authorized by this Act to be taken does not pay the same when due the council or its lessee or any person authorized by the council or its lessee to collect the same may levy the same by distress of all or any of the cattle or articles in respect of which such stallage rent toll or dues is or are payable or of any other

Recovery of tolls. No. 5203 s. 747.

cattle or articles in the market belonging to or under the charge of the person liable to pay such stallage rent toll or dues or the same may be recovered before a court of petty sessions or any court of competent jurisdiction.

Disputes respecting tolls how settled. No. 5203 s. 748.

779. Any dispute concerning any such stallage rent toll or dues may be determined by a court of petty sessions in a summary way and such court may make such order therein and award such costs to either party as to such court seem just.

List of tolls &c. to be set up and placed in conspicuous places. No. 5203 s. 749.

780. The council or its lessee shall from time to time cause to be painted on boards or to be printed and attached to boards in large and legible characters lists of the several stallages rents and tolls from time to time payable under this Act, and shall cause to be conspicuously set up and continued in the market and in each weighing house provided by the council a board as aforesaid containing every list relating thereto; and no stallage rent or toll shall be payable at any such place as aforesaid which is not specified on some board set up therein: Provided always that if any such list is destroyed injured or obliterated the stallages rents and tolls shall continue to be payable during such time as is reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

By-laws relating to markets or weighing machines. No. 5203 s. 750; No. 5602 s. 2.

781. The council may from time to time make such by-laws as it thinks fit for all or any of the following purposes (that is to say):—

(*a*) For regulating the market-place and the buildings stalls pens and standings therein, and for preventing nuisances or obstructions therein or in the immediate approaches thereto.

(*b*) For fixing the days and the hours during each day on which the market shall be held.

(c) For licensing yards and premises for the sale of cattle within the municipal district, and for fixing (subject to the limitation hereinbefore mentioned) the dues to be paid for such licences.

(*d*) For regulating the carriers resorting to the market and fixing the rates for carrying articles carried therefrom within the limits of the municipal district.

(*e*) For preventing the sale or exposure for sale of unwholesome provisions in the market.

(*f*) For regulating the use of the weighing instruments and measuring instruments provided by the council.

PART XXXI.—TOLLS AT FERRIES.

Toll-gates &c. may be established. No. 5203 s. 751.

782. The council of every municipality may, with the consent of the Governor in Council, from time to time place erect and maintain, and may continue and maintain if lawfully existing before the commencement of this Act, at or near any ferry within the municipal district or placed under the control of the council, all such toll-bars toll-gates toll-houses and ferry-houses chains rails and fences as appear to it necessary for the purpose of enforcing the payment of tolls on such ferries under this Act, and may remove or alter the same.

Tolls may be directed to be payable. No. 5203 s. 752; No. 6151 s. 20.

783. (1) The council of every municipality may by special order confirmed by the Governor in Council from time to time direct that tolls shall be payable and collected at any ferry within the municipal district, or placed under the control of the council, for all persons animals and vehicles passing or repassing by or over the same respectively, and by the same or any other special order confirmed in like manner, appoint the several tolls so payable, and in like manner, from time to time alter or abolish the same or any tolls in force at the commencement hereof; but so that such tolls shall in no case exceed the several amounts to be from time to time limited and prescribed by the Governor in Council.

(2) Every such special order when confirmed shall be forthwith published in the *Government Gazette*, and shall at the expiration of one month from the day of such publication take effect and be of the same force and validity as if the several matters thereby directed had been directed by this Act.

Where ferries &c. ruinous payment of tolls may be suspended.

(3) The Governor in Council at any time may abolish the said tolls or any of them or if satisfied that any ferry at which such tolls are payable or the approach thereto is in a ruinous state or incapable of being used or worked, may direct that such tolls shall cease to be payabel until the same has been effectually repaired or put in working order, and such tolls shall cease to be payable accordingly.

Existing tolls. No. 5203 s. 753.

784. All rates of toll in force at the commencement of this Act in any municipality shall be deemed to have been appointed under this Act.

Payment and recovery of tolls. No. 5203 s. 754.

785. (1) All tolls payable under this Act shall be paid to the respective collectors thereof appointed by the council, and if any person liable to the payment of such toll on demand thereof neglects or refuses to pay any such toll, the collector thereof may seize and distrain any horse beast cattle carriage or other vehicle in respect of which any such toll is payable, and any goods and chattels thereon or therein of such person so neglecting or refusing to pay.

(2) If such toll with reasonable charges for such seizure and distress is not paid within five days, the property so seized may be sold after reasonable notice by advertisement has been given,

and the proceeds applied in payment of such tolls and the charges occasioned by such seizure distress and sale, and the surplus (if any) of such proceeds shall be paid on demand to the owner of such property; or such toll may in lieu of such distress be recovered before any court of petty sessions.

Exemption from tolls No. 5203 s. 755.

786. No toll shall be demanded or taken by virtue of this Act—

(1) for any horses or carriages belonging to or conveying or attending or going to convey or attend or returning from having conveyed or attended the Governor of Victoria or any member of either House of the Parliament of the State of Victoria;

(2) of or from any stipendiary magistrate or warden when on duty;

(3) of or from any of Her Majesty's officers or soldiers or any officer or member in the military or the naval forces being in proper staff or regimental or military uniform dress or undress for any horse ridden or any horse or carriage then employed by such officer soldier or member upon or for Her Majesty's service or returning from such employment;

(4) of or from any member of any corps of volunteers being in the proper uniform dress or undress of his corps going to or returning from exercise for any horse ridden by such member, or for any gun-carriage waggon or other vehicle belonging to any such corps or then being employed exclusively for the purposes of the same or returning from such employment and not otherwise employed;

(5) of or from any member of a fire brigade going to or returning from the discharge of his duty as such, for any horse or vehicle used by such member when going to or returning from any place where the same was employed or about to be employed for the purposes of such fire brigade;

(6) of or from any member of the police force being on actual duty and in the proper dress of the force, or prisoners under the charge of such member of the police force, for any horse or vehicle exclusively employed in carrying such member of the police force in such dress as aforesaid, or such prisoner or their baggage respectively or returning from such employment and not otherwise employed;

(7) of or from any minister of religion or any person going to or returning from attending at a funeral, or going to or returning from any place of

worship on Sunday Good Friday or Christmas Day, for any horse or private vehicle ridden or driven by such minister or person;

(8) for any animal or vehicle solely employed in carting manure or quartz earth cement or tailings for gold-washing purposes; or

(9) for any animal driven or going to or returning from water or feed.

False claim of exemption. No. 5203 s. 756.

787. Every person who claims or takes the benefit of any exemptions from toll hereinbefore mentioned not being entitled to the same, shall for every such offence be liable to a penalty of not more than Five pounds, and the proof of such exemption shall be upon the person claiming the same.

Boats not to ply within half-a-mile of ferry. No. 5203 s. 757.

788. Where under the provisions of this Act or any law heretofore in force any ferry has been established upon any river or creek and such ferry is sufficient for the traffic of all sorts crossing such river or creek, if any person without the consent of the owner or lessee of such ferry at or within half-a-mile of such ferry plies for hire with any boat punt or other vessel for carrying across such river or creek any passengers beasts or vehicles, or if any person without such consent as last aforesaid hires any boat punt or vessel so plying as aforesaid, every such person shall for every such offence be liable to a penalty of not more than Five pounds.

Evasion of toll. No. 5203 s. 758.

789. Every person who fraudulently or forcibly passes over any ferry with any horse cattle beast or vehicle, or takes off or causes to be taken off any horse or other beast from any vehicle either before or after having passed over any ferry, or having passed over the sam afterwards adds or puts any horse or other beast to any such vehicle and draws therewith so as to increase the number of horses or other beasts drawing the said vehicle after the same has so passed whereby the payment of all or any part of the tolls may be evaded, and every person who does any other act whatever in order or with intent to evade the payment of all or any of the tolls and whereby the same is evaded, shall for every such offence be liable to a penalty of not more than Five pounds.

Toll board. No. 5203 s. 759.

790. (1) The council of every municipality shall cause to be put up and afterwards to be continued on some conspicuous part of every ferry within the municipal district or placed under the control of the council, and so that the same is visible to public view, a table painted in distinct and legible black letters at least one inch in length and of a breadth in proportion on a board with a white ground containing at the top thereof the name of the ferry at which the same is put up, and also containing a list of the tolls payable thereat respectively, distinguishing the several tolls and the different sorts of animals or vehicles for which they are to be paid.

(2) The council shall also cause to be provided tickets denoting the payment of the toll, and on such several tickets shall be specified the name of the ferry at which the same are delivered, and one of such tickets shall if demanded be delivered gratis by the collector to every person paying any toll.

Toll collector's board. No. 5203 s. 760.

791. (1) Every toll collector shall place or cause to be placed on some conspicuous part of every ferry at which he is stationed, and so that the same appear to public view, his surname and christian or other name painted in black on a board with a white ground, each of such letters of such name to be at least two inches in length and of a breadth in proportion, and such board shall be and remain at such ferry during the whole of the time during which the person whose name is expressed thereon is on duty thereat.

Offences by toll collector.

(2) Every collector of the said tolls who—

(*a*) does not place such board and keep the same there during the time he is such collector as aforesaid; or

(*b*) demands and takes a greater or less toll from any person than he is authorized to do; or

(*c*) demands and takes a toll from any person exempt from the payment thereof and claiming such exemption; or

(*d*) refuses to permit or suffer any person to read or in anywise hinders any person from reading the inscriptions on any board put up or kept hereunder; or

(*e*) on being paid any toll refuses to tell his surname or christian or other name to any person who demands the same or in answer to such demand gives a false name; or

(*f*) when required omits or refuses to give any person paying the toll a ticket denoting the payment thereof and naming and specifying the ferry at which the same has been delivered; or

(*g*) upon the legal toll being paid or tendered unnecessarily detains or wilfully obstructs hinders or prevents any passenger from passing over such ferry; or

(*h*) makes use of any scurrilous or abusive language to any passenger—

shall for the first offence be liable to a penalty of not more than Five pounds, and for a second or any subsequent offence to a penalty of not less than Five nor more than Twenty pounds.

Letting of tolls. No. 5203 s. 761.

792. (1) The council of every municipality from time to time may let to farm for any term not exceeding twelve months all or any of the tolls authorized by or in pursuance of this Act to be collected by the council upon such terms and with such conditions as may be approved by the Governor in Council.

(2) Such letting shall be either by sealed tender to be advertised for in some newspaper generally circulating in the neighbourhood twenty-one days at least before such tenders are opened by the council, or by public auction to be advertised in the like manner and at the like distance of time before such auction is held.

(3) Such security shall be taken by the council as it deems necessary for the due payment of the rent or sum stipulated to be paid for such tolls.

(4) No tolls which have been let hereunder shall be altered or abolished by the council during the continuance of the lease without the consent of the lessee or farmer thereof.

Powers and liabilities of lessee. No. 5203 s. 762.

793. During such time as all or any of such tolls as aforesaid are leased to any person it shall be lawful for the lessee or farmer thereof, or such other persons as he may by writing under his hand authorize or appoint in that behalf to demand and take such tolls so leased or farmed, and to use all such means for the recovery thereof in case of non-payment or evasion as any collector of tolls appointed by the council is authorized and empowered to use; and such lessee or farmer or other person as aforesaid so demanding or taking such tolls shall be liable to the like penalties forfeitures actions and prosecutions as any collector of such tolls appointed by the council would be liable to.

Application of tolls. No. 5203 s. 763.

794. All tolls collected under this Part by the collectors appointed by the council of any municipality, and all rents and moneys received under or in respect of any lease of such tolls by such council shall be paid into the municipal fund and shall be expended in the maintenance and improvement of such ferry and the approaches thereto.

Part XXXII.—Pounds and Abattoirs and Sheep Dips.

The council may construct pounds and abattoirs. No. 5203 s. 764.

795. The council of every municipality may from time to time construct and erect such buildings fences and appliances as may be necessary for the purposes of all pounds appointed within the municipal district and all abattoirs that the council is, under any law now or hereafter to be in force, empowered to provide, and may lease or purchase such land as may be necessary for such purposes.

Power of councils to construct and maintain sheep dips or portable tanks. No. 5203 s. 765.

796. For the purpose of enabling sheep to be treated periodically or otherwise by effective dipping the council of every municipality may construct or provide and fit up and maintain dipping places within the municipal district or portable dipping tanks and afford the use thereof to the public and may make by-laws regulating the use thereof and fixing the charges to be made and enforced by the municipality for using the same. No dipping place shall be so constructed or used if the use thereof would injuriously affect the water in any river stream reservoir aqueduct well pond or place required or used for the supply of water for drinking or other domestic purposes.

PART XXXIII.—MAKING AND SUPPLY OF ICE.

Order in Council as to supply of ice by shire councils. No. 5203 s. 766.

797. (1) In any case where the Governor in Council is satisfied that there are not reasonably sufficient facilities for the making storage and supply of ice in the municipal district of any shire by any persons firms or corporations, the Governor in Council on the application of the council of that shire, where the said council is an undertaker within the meaning of the *Electric Light and Power Act* 1958 and has constructed or purchased works for the purpose of supplying electricity for public or private purposes within the municipal district or any part or parts thereof, may by Order authorize the council to do and perform all or any of the following acts matters or things so far as the same are provided for in the Order :—

(*a*) To provide erect maintain alter improve and renew any necessary machinery plant and apparatus for the making storage and supply of ice ;

(*b*) To make and store ice and to supply and deliver such ice within the municipal district ; and

(*c*) To make charges for the supply of ice made by the council.

Special order under s. 189 necessary.

(2) An application for an Order in Council under this section shall not be made except in pursuance of a special order under section one hundred and eighty-nine of this Act.

Conditions &c. in Order in Council and power to revoke &c. Order.

(3) Any Order in Council under this section—

(*a*) may be granted subject to any conditions restrictions and liabilities contained therein ; and

(*b*) may be rescinded revoked amended or varied by Order of the Governor in Council ; and any Order so amended or varied shall take effect accordingly.

Powers of shire councils.

(4) The council of any shire to which an Order in Council under this section is granted may subject to the provisions of this section and of the Order in Council do and perform all or any of the acts matters or things provided for in the Order in Council.

(5) So far as relates to the supply of ice made by the council of a shire pursuant to any Order in Council made under this section— Modification in cases of supply of ice of s. 502 as to contracts and non-application of s. 503 as to tenders.

(*a*) section five hundred and two of this Act shall be read and construed and have effect as if for the words " the councillors or any two of them acting by the direction and on behalf of the council " there were substituted the words " the person managing the ice-making works of the council " ; and

(*b*) section five hundred and three of this Act shall not apply.

(6) The providing erecting altering improving and renewing of machinery plant and apparatus for the making storage and supply of ice by the council of any shire shall be deemed and taken to be permanent works and undertakings within the meaning of Part XV. Provision &c. of machinery &c. for making storage and supply of ice by shire council to be permanent works and undertakings under Part XV.

PART XXXIV.—LANDING GROUNDS FOR AIRCRAFT.

798. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may with the approval of the Governor in Council provide landing grounds either within or outside the municipal district of such municipality for aircraft and for that purpose may by agreement purchase or take on lease or on permit any lands. Powers of councils as to providing landing grounds for aircraft. No. 5203 s. 767.

(2) Any landing grounds so provided by the council shall be under the care and management of the council. Care and management of council landing grounds.

(3) The council may level drain lay out and improve such lands and erect construct and repair buildings erections apparatus and equipment thereon for the more convenient use thereof as landing grounds for aircraft. Improvement of lands and erection &c. of buildings &c.

(4) The providing of landing grounds for aircraft and the purchase of lands for that purpose and the levelling draining laying out and improving such lands and the erection and construction thereon of buildings erections apparatus and equipment shall be deemed and taken to be permanent works and undertakings within the meaning of Part XV. Provision of landing grounds, improving lands &c. to be permanent works and undertakings under Part XV.

PART XXXV.—PLACES OF RECREATION, LIBRARIES, WAR MEMORIALS, AIR-RAID SHELTERS, ETC.

799. (1) The council of every municipality (including the city of Melbourne and the city of Geelong) may from time to time purchase rent or otherwise provide lands grounds buildings or other places, either within the municipal district or with the Council may provide places of recreation libraries &c. No. 5203 s. 768.

consent of the Governor in Council without the municipal district to be used as pleasure grounds public schools libraries museums gymnasiums gardens or places of public resort or recreation.

(2) The council may from time to time level drain plant and otherwise lay out and may repair and improve any such public lands grounds buildings or other places for the more convenient use and enjoyment thereof and may afford the use and enjoyment thereof to the inhabitants subject to such by-laws as the council may make in that behalf.

Power to make by-laws regulating charges for use of land purchased by or given to municipality. No. 5203 s. 769.

800. (1) Where the council of any municipality (including the city of Melbourne and the city of Geelong) has at any time purchased or rented or otherwise provided or has been granted or given by any person any land for the providing of pleasure grounds or places of public resort or public recreation, such council may with the consent of the Governor in Council make by-laws or regulations for imposing collecting and receiving charges or entrance fees for clubs associations or persons using or entering in or upon any such grounds or places, and also for regulating the conduct of persons using or being upon or in such grounds or places. Such charges or fees may be enforced at all times or only on any such particular occasions as may be indicated in such by-laws. No charge or fee may be imposed or enforced in contravention of the express terms and conditions of any grant or gift as aforesaid.

(2) The Governor in Council may at any time disallow and annul any such by-laws or regulations, and thereupon such by-laws or regulations shall have no force or effect.

(3) All such by-laws and regulations shall be published in the *Government Gazette* and shall be posted and kept posted in some conspicuous place on the land to which they relate.

Application of charges and fees.

(4) All charges and fees collected or received in pursuance of any such by-laws may be applied by the council towards the purposes of maintaining such grounds or places and keeping the same in order and rendering the same attractive to ratepayers and other persons. For such purposes any such by-law may also authorize the holding of musical performances in any such grounds or places and the charging of entrance fees at rates fixed by such by-law for admission of persons to any such grounds or places during such performances.

Council may aid athenæums &c. not conducted for private profit. No. 5203 s. 770.

801. (1)The council of every municipality may from time to time on such terms as appear expedient appropriate such portion of the municipal fund as the council sees fit for erecting establishing maintaining or otherwise aiding athenæums mechanics' institutes museums and libraries not conducted for the purpose of private profit if they are within the municipal district and with the consent of the Governor in Council if they

are without the municipal district and the council may appropriate such portion of the municipal fund as it sees fit for providing bands of musicians and accommodation and musical instruments for them. Bands.

(2) Notwithstanding anything in any Act it shall be deemed and taken to be and to have been lawful for the council to apply or to have applied out of the municipal or town fund of the municipality any sums of money approved by the council for or towards any memorial (whether within or without the municipal district) heretofore or hereafter instituted founded established or erected in commemoration of the war which commenced in the year One thousand nine hundred and fourteen or the war which commenced in the year One thousand nine hundred and thirty-nine or any continuation thereof or of persons who served therein or of anything connected therewith. Power to expend funds as contributions to memorials in connexion with war &c.

(3) The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

802. (1) Where any lands are granted or reserved by Her Majesty or any other person upon such trusts or for such purposes that the ratepayers of any municipality have the right to use the same for the purpose of recreation, the council of the municipality may with the consent of the trustees or other persons (if any) having the care of such lands and if such lands are outside the municipal district with the consent of the Governor in Council expend moneys out of the municipal fund in rendering such lands more suitable for the purpose aforesaid. Power to council to spend money in improving lands held for the recreation of the ratepayers. No. 5203 s. 771.

(2) The council of any municipality is hereby empowered and shall be deemed and taken to have been empowered to borrow moneys for rendering such lands more suitable for the purpose aforesaid and, with the consent of the trustees or other persons aforesaid and (if the case so requires) of the Governor in Council as aforesaid, to expend such moneys in rendering such lands more suitable for the purpose aforesaid ; and the rendering of such lands more suitable for the purpose aforesaid shall include and be deemed and taken to have included the provision of sanitary and other conveniences thereon and shall be and be deemed and taken to have been permanent works and undertakings within the meaning of Part XV. Borrowing moneys for improvement &c. of lands for recreation &c.

(3) The provisions of this section shall extend and apply and be deemed and taken to have extended and applied with respect to any lands being part of the seashore or strand of any river creek or sheet of water used as a public bathing-place and being within the municipal district or within three hundred yards of the boundary thereof and not within any other municipal district ; and the rendering of such last-mentioned lands more suitable for the purpose aforesaid shall include and be deemed and taken to have included the provision thereon of accommodation for bathers. Extension of provisions to bathing-places.

Operation of regulations as to bathing-places within public reserves.
Fifteenth Schedule.

(4) Where the council of any municipality under the powers conferred by section one of Part IX. of the Fifteenth Schedule to this Act has made any regulation thereunder, and any lands referred to in the last preceding sub-section are within any reserve for the purpose aforesaid which is under the control of any trustees or persons other than the council, such regulation shall with the consent of the Governor in Council on the recommendation of the Commissioner of Crown Lands and Survey apply to and operate within such reserve.

Construction &c. of air-raid shelters &c. as permanent works and borrowing therefor.
No. 5203 s. 772.

803. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may construct purchase or provide air-raid shelters, air-raid wardens' posts, first aid posts and any other premises and any equipment required in connexion with any scheme for protection against air-raids.

(2) Any such construction purchase or provision shall be deemed to be a permanent work and undertaking within the meaning of Part XV. and money may be borrowed by the council to meet the costs and expenses thereof.

(3) If the Governor in Council certifies that any such work is urgent the council may, by resolution carried by a majority of the whole number of members of the council, forthwith borrow money to meet the costs and expenses of such work without proceeding under sections three hundred and ninety-nine and four hundred of this Act and without making a special order and without any poll as to whether or not the money should be borrowed.

Power to councils to provide conveniences &c.
No. 5924 s. 5.

804. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may from time to time on such terms and conditions as appear expedient appropriate such portion of the municipal fund as the council thinks fit for erecting and maintaining within or outside the municipal district public rest rooms conveniences and comfort stations.

(2) When two or more councils agree in combination to erect or maintain any such works the cost and expenses thereof shall be borne in the proportions agreed between the councils.

Provision of car parks.
No. 5924 s. 6; No. 6151 s. 3 (8).

805. (1) The council of any municipality (including the city of Melbourne and the city of Geelong) may from time to time on such terms as appear expedient appropriate such portion of the municipal fund as the council thinks fit for providing car parking areas and acquiring land for that purpose and erecting and maintaining buildings thereon and controlling and managing such areas and buildings for the parking of cars, and may make by-laws with respect to the control and management of such areas and buildings and for fixing and collecting charges for the use thereof.

(2) Any such provision of areas and erection of buildings shall be a permanent work and undertaking within the meaning of Part XV. of this Act.

PART XXXVI.—CHARITABLE INSTITUTIONS.

Council may establish aid &c. charitable and other institutions. No. 5203 s. 773.

806. (1) The council of every municipality may from time to time on such terms and conditions as may appear expedient appropriate such portion of the municipal fund as the council sees fit to erecting establishing maintaining or otherwise aiding any hospital asylum or other institution or society within or without the municipal district for the relief of such poor persons as through age sickness infirmity or accident are unable to help themselves and also to the relief at their own houses or elsewhere within the municipal district of such poor persons as aforesaid; and also to erecting establishing maintaining or otherwise aiding charitable schools not conducted for the purpose of private profit within the municipal district.

Establishment &c. of hospitals not conducted for profit.

(2) Without limiting or affecting the generality of the foregoing provisions of this section the council of every municipality may from time to time on such terms and conditions as may appear expedient appropriate such proportion of the municipal fund as the council sees fit to or towards the erection or establishment or the purchase of land for the erection or establishment, within or without its municipal district, of any hospital which is not or not to be conducted for the purpose of private profit, or to or towards the maintenance or aid of any such hospital.

PART XXXVII.—MATERNITY AND CHILD WELFARE CENTRES.

Power to councils to establish aid &c. Maternity and Child Welfare Centres. No. 5203 s. 774.

807. (1) The council of every municipality (including the city of Melbourne and the city of Geelong) may from time to time on such terms and conditions as appear expedient appropriate such portion of the municipal fund or town fund (as the case may be) as the council thinks fit for erecting establishing maintaining or otherwise aiding within or outside the municipal district Maternity and Child Welfare Centres which are not conducted for the purpose of private profit and which are approved as such Centres by the Minister of Public Health.

Cost and expenses when Centre erected &c. by councils in combination.

(2) When two or more councils agree in combination to erect establish maintain or otherwise aid a Maternity and Child Welfare Centre the cost and expenses thereof shall be borne by the respective councils in such proportions as are provided in the agreement.

Providing such Centres deemed permanent works and undertakings under Part XV.

(3) The erection establishment and providing of Maternity and Child Welfare Centres shall be deemed and taken to be permanent works and undertakings within the meaning of Part XV.

Interpretation. "Maternity and Child Welfare Centre."

(4) In this section, a "Maternity and Child Welfare Centre" means an institution establishment or place where or in connexion with which—

(*a*) from legally qualified medical practitioners registered dentists dietitians registered nurses holding special certificates under the *Nurses Act* 1958 for infant welfare persons holding a diploma or certificate as a specialist in nursery school and kindergarten work issued or indorsed by the Department of Health or a certificate issued by the Council of Public Education indorsed "Specialist in Nursery School and Kindergarten Work" or social workers holding a university diploma in social studies (as the case may be)—

(i) expectant mothers may obtain expert advice relating to the hygiene of pregnancy; and

(ii) parents or guardians of children up to the age of six years may, in respect of such children, obtain expert advice relating to health and physical and mental development;

(*b*) parents or guardians of children may obtain expert advice from legally qualified medical practitioners relating to the prevention of infectious and of preventable diseases;

(*c*) children up to the age of six years may receive dental treatment from registered dentists; and

(*d*) children up to the age of six years may receive opportunity for physical and mental training and development.

PART XXXVIII.—BUSH NURSING CENTRES.

Power to councils to aid &c. Bush Nursing Centres. No. 5203 s. 775.

808. (1) The council of every municipality may from time to time on such terms and conditions as appear expedient appropriate such portion of the municipal fund as the council thinks fit for maintaining or otherwise aiding within or outside the municipal district Bush Nursing Centres which are not conducted for the purpose of private profit and which are approved as such Centres by the Minister of Public Health.

Costs &c. where Centres aided &c. by councils in combination.

(2) When two or more councils agree in combination to maintain or otherwise aid a Bush Nursing Centre the cost and expenses thereof shall be borne by the respective councils in such proportions as are provided in the agreement.

(3) This section shall be read and construed as in aid of and not in derogation from the provisions of section two hundred and forty-three or Part XXXVI. of this Act. Savings as to provisions relating to charitable institutions.

(4) In this section "Bush Nursing Centre" means Bush Nursing Centre (whether under that designation or under any analogous designation) established by or under the control of or aided or supported by the body known as the Victorian Bush Nursing Association. Interpretation. "Bush Nursing Centre."

PART XXXIX.—POWER TO TREAT AS TO NOXIOUS TRADES.

809. When any profession occupation manufacture trade calling or business now or hereafter to be established within any municipal district becomes and is of so offensive a nature as to create cause or be a public nuisance the council of the municipality may contract and agree with the person or company carrying on or causing to be carried on such offensive profession occupation manufacture trade calling or business not to carry on the same or cause or so far as lies in the power of such person or company permit the same to be carried on within such municipal district or within such distance from the boundaries of such municipal district as may be agreed upon in such contract, and the council may give out of the municipal fund to such person or company such reasonable compensation by way of consideration for such contract as may be agreed upon between the contracting parties. Council may give compensation to persons removing offensive trades &c. No. 5203 s. 776.

810. (1) No proposition to make such contract and give such compensation as mentioned in the last preceding section shall be considered by the council unless a notice setting forth the terms of the proposed contract and the amount of compensation proposed to be given has been published in the *Government Gazette* and also three times in some newspaper generally circulating in the neighbourhood not less than one month nor more than two months before such proposition is considered. Compensation to be given only upon notice and "special order." No. 5203 s. 777.

(2) No resolution to make such contract and give such compensation shall be adopted by the council save by "special order," nor unless the resolution for confirmation is carried by a majority of the whole number of members of the council.

(3) Nothing in this or the last preceding section shall in any way alter or affect the right of any council to proceed against any such person or company under any law now or hereafter in force relating to the abatement of nuisances or the punishment of persons guilty of creating or causing nuisances.

PART XL.—POWER TO MAINTAIN AND AID PUBLIC AGRICULTURAL AND OTHER SCHOOLS AND COLLEGES.

Power of municipal councils to contribute towards public agricultural &c. schools and colleges. No. 5203 s.778; No. 5443 s. 25.

811. The council of every municipality including the city of Melbourne and the city of Geelong may from time to time on such terms as may appear expedient appropriate such portion of the municipal fund as it sees fit—

(*a*) towards maintaining providing scholarships at or otherwise aiding any agricultural school technical school district high school higher elementary school or working men's college within the municipal district and not conducted for the purpose of private profit ; or

(*b*) with the consent of the Governor in Council towards maintaining providing scholarships at or otherwise aiding in combination with any other municipal council any school or college as aforesaid in any other municipal district and not conducted for the purpose of private profit ; or

(*c*) for or towards the cost of any lecture class demonstration or other educational activity which may be conducted within the municipal district by or under the auspices of the University of Melbourne or the Council of Adult Education.

PART XLI.—REGISTRATION OF DANCING SALOONS.

Dancing-room may be registered by council. No. 5203 ss. 779-781.

812. (1) It shall be lawful for the council of any municipality to register on the application of twenty householders resident in the immediate locality for such term on payment of such sum and subject to such conditions as such council directs any room or saloon within the municipal district (not in the premises of a licensed victualler) as a dancing room or saloon where payment may be received or taken for admission thereto.

Registration may be refused or cancelled.

(2) If upon inspection or satisfactory evidence it appears to any such council that on account of the position or insufficiency of the premises or the improper character of any of the applicants or of the occupier of the premises or of any person resorting thereto or from other sufficient cause or the non-fulfilment of any conditions of registration it is desirable or expedient so to do such council may refuse to register or may cancel the registration of any such room or saloon.

Penalty where dancing saloon not registered.

(3) Every person who—

(*a*) keeps open or maintains in any house tent or edifice any such dancing room or saloon the same not being duly registered; or

(*b*) takes or receives either directly or indirectly payment for the admission of any other person thereto—

shall be liable to a penalty of not less than Five nor more than Twenty pounds or to imprisonment with or without hard labour for a term of not more than three months.

PART XLII.—SPECIAL IMPROVEMENT CHARGE.

Power to council to execute certain works by means of moneys borrowed on the security of special improvement charge. No. 5203 s. 782.

813. Where under the provisions of any Act (other than the provisions of Division ten of Part XIX.) the council of a municipality is empowered to execute any work at the cost of owners of property in any particular portion of the municipal district or of owners of any particular properties in the municipal district or to require such owners to execute any work, the council may proceed in manner hereinafter appearing to make a special improvement charge for the purpose of carrying out such work :—

The council shall cause to be prepared—

Preparation of plans &c.

(*a*) such specifications maps plans sections and elevations of such work as it may think necessary;

Estimate of cost.

(*b*) an estimate of the cost of such work; and

Scheme of apportionment.

(*c*) a scheme apportioning such cost among the various properties from the owners of which the council would be able to recover such cost or some part thereof or the owners of which would be compellable to execute the work or some part thereof.

Notice and contents thereof. No. 5203 s. 783.

814. (1) The council not less than fourteen days before making such charge shall give to every such owner a notice—

(*a*) stating that the council intends to make a special improvement charge for the purpose of carrying out such work ;

(*b*) specifying the time at which such charge is intended to be made ;

(*c*) describing generally the locality of the property in respect of which the same is intended to be made ; and

(*d*) naming the place where a statement of the proposed charge is deposited for inspection.

Special notice in certain cases.

(2) And where the council in the exercise of any of the powers contained in any Act is required to give to the owner of any property notice of the preparation of specifications maps plans sections elevations and of estimate of cost and scheme of apportionment he shall receive the like notice of the preparation of such specifications maps plans sections and elevations and of

such estimate and scheme of apportionment or any variation made by the council and of the estimated amount of his liability and shall have the like opportunity of objecting to the adoption of the same before the council as is by such Act provided in case the council intends to execute such work under the powers contained in such Act and shall be bound and concluded by all the proceedings of the council in the same manner as he would be if such council was executing such powers.

Adoption of plans &c. No. 5203 s. 784.

815. So soon as any final adoption has been made as regards such specifications maps plans sections and elevations estimate and scheme of apportionment the council may make a special improvement charge in respect of the properties comprised in such scheme of such amount as in the opinion of the council is sufficient to repay the cost of such work and interest in such period of time as the council deems expedient.

Making and levying charge. No. 5203 s. 785.

816. (1) Such charge shall be made and levied rateably in respect of such properties having regard to the period of time during which it is to continue and in proportion to the amount of the cost of the works apportioned in respect of them according to such scheme.

(2) Such charge shall without any further order continue payable every year by the owner or the occupier of such property without any alteration in the amount levied in respect of such property except as hereinafter mentioned until the time hereinafter mentioned for its cessation.

Borrowing upon charge. No. 5203 s. 786.

817. (1) So soon as the council has made a special improvement charge it may publish in the *Government Gazette* a notice of its intention to borrow money on the security of such charge for the purpose of carrying out the work for which such charge was made.

(2) Such money may be borrowed on the security of such charge in either but not both of the following ways:—

(*a*) By mortgage; or

(*b*) By the issue of debentures.

(3) All such moneys shall be borrowed subject to the respective provisions contained in Part XV. with regard to borrowing on the security of a special improvement charge by mortgage or the issue of debentures.

Application of proceeds of charge. No. 5203 s. 787.

818. The money received by the council in respect of any special improvement charge shall be applicable in repayment of any money borrowed on the security of it and interest and of any expenses connected therewith or of levying the charge.

When charge is to cease to be payable. No. 5203 s. 788.

819. So soon as all the purposes for which a special improvement charge is applicable have been discharged the charge shall cease to be payable and should the amount requisite for such purpose at any time be less than the full amount of the charge the council shall levy such amount only as is so requisite upon the same persons and in the same proportions as the full amount of the charge would have been leviable but should the amount requisite for such purpose at any time be more than the full amount of the charge the council may levy such further amount as is so requisite (but not exceeding twenty per centum of the estimate as finally adopted) upon the same persons and in the same proportions as the full amount of the charge was leviable and the charge shall continue to be payable accordingly.

Provision for cases where special improvement charge insufficient to pay cost of works.

Charge may be made so as to include several distinct works. No. 5203 s. 789.

820. The council if it thinks it advisable so to do may make and levy one special improvement charge for the purpose of borrowing money for the execution of distinct works but the amount of such charge leviable in respect of any property shall be proportioned to the proportion of the estimated cost apportioned to such property of the works which the owner of such property is liable to carry out or for the carrying out of which he is liable to find in funds or to reimburse the municipality.

Separate account to be kept of special improvement charge. No. 5203 s. 790.

821. The council shall in every case in which it makes and levies any special improvement charge cause a separate and distinct account to be kept of all moneys collected and received and of all payments and disbursements in respect of such charge and shall apply the said moneys for the several purposes in respect of which it has been authorized to make and levy such charge and not otherwise.

Vesting of special improvement charge. No. 5203 s. 791.

822. (1) Every special improvement charge shall be vested in the municipality and shall be payable at such times and in such amounts as the council has appointed in such charge.

Payment.

(2) The owner of any property may on such terms as are agreed upon by the council at any time pay off the whole or the balance of any special improvement charge due in respect of such property.

Apportionment of charge on subdivision of property. No. 5203 s. 792.

823. (1) When any property in respect of which a special improvement charge has been made is subsequently subdivided and becomes the property of different owners the council may apportion and declare the respective liability to be thereafter borne and discharged in respect of such charge by each of such owners.

(2) Such liability as so apportioned and declared shall thereafter be borne and discharged by and be recoverable by the council from each or such owners as if he had been originally made liable to such charge.

(3) The amount which upon such apportionment is declared to be due in respect of each part of such property and no more shall be and until paid remain a charge on such part.

PART XLIII.—INSPECTION OF SCAFFOLDING AND BUILDING CRANES.

Application. No. 5203 s. 793; No. 5443 s. 26.

824. (1) This Part shall have effect in the municipal district or any part thereof of any municipality to which the operation of this Part is extended under this section, but shall not apply to any mine within the meaning of the *Mines Act* 1958 or to any engineering works or structures.

(2) The Governor in Council may by proclamation published in the *Government Gazette* extend the operation of this Part to—

(*a*) any city or town ; or

(*b*) any other municipality or part thereof at the request of the council of such municipality.

Interpretation. No. 5203 s. 794.

825. In this Part unless inconsistent with the context or subject-matter:—

"Building crane." "Building crane" means any steam crane electric crane hydraulic crane or any other power or any hand crane or hoist used in connexion with building operations and includes any apparatus or equipment used in connexion therewith.

"Gear." "Gear" includes ladder plank rope fastening hoist-block pulley hanger sling brace or other movable contrivance of a like kind.

"Inspector." "Inspector" means—

(*a*) the surveyor for any municipality ; or

(*b*) any other officer of the municipality who is appointed by the council of the municipality to discharge the duties of an inspector under this Part.

"Municipality." "Municipality" means any municipality (including the city of Melbourne and the city of Geelong) to which this Part is declared to be applicable.

"Scaffolding." "Scaffolding" means any structure or framework of timbers planks or other material used or intended to be used for the support of workmen in erecting demolishing altering repairing cleaning painting or carrying on any other kind of work in connexion with any building (other than a wooden building not more than fourteen feet high) structure ship or boat and includes any swinging stage used or intended to be used for any of the purposes aforesaid.

Appointment of inspectors. No. 5203 s. 795.

826. (1) The council of every municipality shall appoint such officers to discharge the duties of inspectors under this Part as are necessary for the purpose.

Duties of inspectors.

(2) Inspectors shall make such inspections and discharge such other duties as the council directs in order to secure the due observance of this Part and the regulations under this Part.

Notice to be given before scaffolding or building crane erected. No. 5203 s. 796.

827. (1) Written notice of intention to erect scaffolding (other than scaffolding to be used solely by painters or plumbers) or any building crane shall in all cases be given by post or otherwise to the inspector of the municipality in which such scaffolding or building crane is to be erected at least twenty-four hours before the erection of such scaffolding or building crane is begun.

(2) Every person who commences to set up or erect or causes to be set up or erected any scaffolding or building crane unless such notice has been given and such period of twenty-four hours has elapsed shall be liable to a penalty of not more than Twenty pounds:

Provided that—

(*a*) in any case of emergency arising from damage caused by fire tempest or other like cause it shall not be necessary to allow any period to elapse after giving the notice required by this section ; and

(*b*) no notice shall be required to be given of the erection of any scaffolding or building crane on any ship or boat.

Powers of an inspector. No. 5203 s. 798; No. 5988 s. 5 (4). No. 6151 s. 21 (2) (*b*) (*c*).

828. (1) Whenever it appears to an inspector—

(*a*) that the use of any scaffolding or any gear being used in connexion therewith or of any building crane would be dangerous to life or limb ; or

(*b*) that with regard to any scaffolding erected or in course of erection or any gear being used in connexion therewith or any building crane the requirements of the regulations are not complied with—

he may give such directions in writing to the owner or person in charge of such scaffolding or gear or building crane as he deems necessary to prevent accidents or to insure compliance with such regulations ; and such owner or person shall forthwith carry out such directions.

(2) Whenever an inspector gives any such direction he may at the same time or subsequently order any persons forthwith to cease to use or to work on or in connexion with any scaffolding or gear or building crane until such direction has been complied with.

Appeal to referee.

(3) (*a*) There shall be an appeal to a referee appointed by the Governor in Council against any direction of an inspector under this section, and written notice of such appeal shall be delivered at or posted to the office of the council within forty-eight hours from the receipt of such direction.

(*b*) The referee may hear such appeal and make such order thereon as he thinks proper, and for that purpose may (in relation to any part whatsoever of Victoria) exercise all or any of the powers conferred upon referees by the Sixteenth Schedule and such order when made shall be final.

Sixteenth Schedule.

(*c*) The provisions of the said Schedule as to payment of fees to referees on appeals shall with such modifications as are necessary extend and apply to an appeal to a referee under this section.

Penalties.

(4) Every person who refuses or fails to comply with—

(*a*) any direction given to him by an inspector in pursuance of this section;

(*b*) any order given to him by an inspector to cease to use or to work on or in connexion with any scaffolding or gear or building crane; or

(*c*) any order made by the referee as aforesaid—

shall be liable to a penalty of not more than Fifty pounds.

(5) Where in the case of any particular scaffolding gear or building crane proposed to be erected used or dismantled any person concerned therewith lodges with the council an objection in writing to the effect that with respect to that scaffolding gear or building crane any of the provisions of the regulations are inapplicable or will needlessly affect with injury the course and operation of business or will defeat the objects of such regulations or that by the adoption of a variation of such provisions such objects will be obtained either better or as effectually the objection shall be considered by the inspector and a referee appointed by the Governor in Council for the purpose.

(6) If the referee after consultation with the inspector is of the opinion that the objection is well founded he may direct with respect to such scaffolding gear or building crane such variation of any provision of the regulations to be made as will give effect to the purposes of the said regulations.

Penalty for breach of regulations. No. 5203 s. 799.

829. Every person who is guilty of any contravention of or failure to comply with any regulations under this Part for which no penalty is expressly provided shall be liable to a penalty of not more than Ten pounds.

Penalty for interfering with inspector. No. 5203 s. 800.

830. Every person who interferes with or obstructs any inspector in the execution of any power or duty conferred or imposed on such inspector by or under this Part shall be liable to a penalty of not more than Five pounds.

Notice of accident to be given. No. 5203 s. 801.

831. Where in connexion with any scaffolding or building crane an accident occurs which—

(*a*) causes loss of life to a person working on or in connexion with the scaffolding or building crane; or

(*b*) causes bodily injury to any such person and is of such a nature as to prevent the person injured from returning to his work within forty-eight hours after the occurrence of the accident—

written notice of the accident shall be given to the Chief Inspector of Factories and Shops and also to the surveyor for the municipality forthwith in the first-mentioned case or immediately after the expiration of the said forty-eight hours in the last-mentioned case and shall state the last known address of the person killed or injured; and if any such notice is not so given the person who set up or erected the scaffolding or building crane shall be liable to a penalty of not more than Five pounds.

By-laws as to fees chargeable for inspection. No. 5203 s. 802.

832. (1) The council of any municipality may make by-laws for appointing fees (not in any case exceeding Two pounds) which may be charged and received on account of the municipal fund by the officer authorized by the by-law to receive the same for any inspection or service made or performed by an inspector under this Part or any regulations under this Part.

(2) Every such by-law shall be subject to the approval of the Governor in Council.

Regulations with respect to scaffolding &c. No. 5203 s. 803; No. 6151 s. 21 (1).

833. (1) The Governor in Council may make regulations for or with respect to—

(*a*) the provision maintenance and use of scaffolding and gear used in connexion therewith and of building cranes;

(*b*) the materials to be used in any such scaffolding gear or crane;

(*c*) the erection and dismantling of any such scaffolding gear or crane;

(*d*) the preservation and the safety of workmen and members of the public in relation to all or any of those matters; and

(*e*) the imposition of penalties (not in any case exceeding Two hundred pounds) for any contravention of or failure to comply with such regulations.

(2) Any such regulation may—

(*a*) leave any matter or thing to be from time to time determined applied dispensed with or regulated by any council or inspector or other person;

(*b*) confer powers or impose duties in connexion with the regulations on any council or inspector or on the owners or occupiers of lands buildings or premises or on builders or on any persons whomsoever;

(*c*) require any work to be constructed or done of such materials within such time or in such manner as is directed or approved in any particular case by any council or inspector or other person;

(*d*) provide for the purposes of the regulations for the granting of permits.

(3) All such regulations shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

PART XLIV.—COMPENSATION, HOW DETERMINED.

Procedure for determining compensation. No. 5203 s. 804.

834. Wherever it is provided that compensation shall be made in consequence of the exercise by any municipality of any of the powers contained in this Act the amount of such compensation, if not agreed upon by the council and any person claiming the same, shall, unless it is otherwise expressly provided, be determined in manner hereinafter appearing.

Claims to be made within two years. No. 5203 s. 805.

835. No municipality shall be liable to make any such compensation unless a notice in writing stating the nature and extent of the damage complained of is furnished to the council of such municipality within two years after the council has done the thing in respect of which such notice is given and unless after giving such notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation.

Principles in determining compensation. No. 5203 s. 806.

836. In determining whether any and what compensation is to be made under this Act the council stipendiary magistrate or arbitrator or Judge of the Supreme Court (as the case may be) shall in each case have regard to and is hereby authorized and directed to apply the following principles :—

In case of enhancement in value.

(*a*) There shall be considered in reduction of all claims for compensation any and what enhancement in value of any property of the claimant wherever situated has been or will be directly or indirectly caused, and whether any or what other immediate or proximate benefit has been gained by or will become available to such claimant by reason of the execution of any works with respect to which such claim for compensation is made or of any other works of which the said works form a part.

(*b*) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote indirect or speculative damages. Measure of damages.

(*c*) The sum awarded shall be in full settlement of all claims, and after such award no further compensation shall be made to any person whatsoever in respect of any such works. Compensation to be in full settlement of all claims.

837. Where any claim for compensation is made by any person under this Act against any council and such person and such council do not agree on the questions raised by such claim the questions whether any or what compensation shall be made to such person shall be determined by some stipendiary magistrate sitting as a court of petty sessions unless the compensation claimed exceeds Five hundred pounds when such claim shall be determined upon by an arbitrator as hereinafter provided. Claims for compensation when not exceeding Five hundred pounds to be determined by a stipendiary magistrate. No. 5203 s. 807.

838. It shall be lawful for any clerk of petty sessions upon the application of either party to any claim authorized to be so settled by such stipendiary magistrate to summon the other party to appear before such stipendiary magistrate at a time and place to be named in the summons, and upon the appearance of such parties or in the absence of either of them upon proof of due service of the summons it shall be lawful for such stipendiary magistrate to hear and determine such question and for that purpose to examine such parties or any of them and their witnesses upon oath and the costs of every such inquiry shall be in the discretion of such stipendiary magistrate and he shall settle the amount thereof. Proceedings before stipendiary magistrate. No. 5203 s. 808.

839. Where such stipendiary magistrate has heard and determined any question under the last preceding section he shall thereupon draw up an award and sign and seal the same and such award may be made a rule of the Supreme Court on the application of either of the parties. Stipendiary magistrate to draw up award. No. 5203 s. 809.

840. (1) When in any question of disputed compensation as aforesaid the compensation claimed exceeds Five hundred pounds the questions whether any or what compensation shall be made shall be determined by a single arbitrator who shall be the County Court Judge appointed to act as such arbitrator by the Governor in Council. Where over Five hundred pounds County Court Judge to be sole arbitrator. No. 5203 s. 810.

(2) Such appointment shall be deemed to be a submission to the arbitration of such Judge by both parties to such claim and the death of any claimant after such appointment shall not affect such appointment and such arbitrator shall proceed to hear and determine the questions in dispute, and the award or

determination of such arbitrator shall be absolutely final and conclusive upon all parties where the amount awarded as compensation does not exceed Five hundred pounds.

Death or incapacity of arbitrator. No. 5203 s. 811.

841. If any arbitrator so appointed as aforesaid dies or becomes incapable to act before he has made his award the questions referred to him shall be determined by another arbitrator appointed under this Part as though such first named arbitrator had not been appointed.

Arbitrator may call for documents and examine witnesses. No. 5203 s. 812.

842. Any such arbitrator may call for the production of any documents in the possession or power of either party which he or either of the parties may think necessary for determining the questions in dispute and such arbitrator may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Award to be delivered. No. 5203 s. 813.

843. Such arbitrator shall within fourteen days after the making thereof deliver his award to the party first applying for the same and paying such arbitrator's charges and such party shall retain the same and shall forthwith on demand furnish a copy thereof to the other party and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Award may be enforced as a rule of court. No. 5203 s. 814.

844. Such award may be made a rule of the Supreme Court on the application of either of the parties.

Award to be final when under Five hundred pounds. No. 5203 s. 815.

845. No award made by any stipendiary magistrate or by any arbitrator under the provisions of this Part where the amount awarded as compensation does not exceed Five hundred pounds shall be set aside reversed altered or varied by or questioned in any court of law whatsoever upon any ground whatsoever, but the same shall be absolutely binding and conclusive upon the parties thereto and all other persons in any way affected thereby.

Appeal to Judge of Supreme Court where sum awarded exceeds Five hundred pounds. No. 5203 s. 816.

846. (1) In the case of any award made by an arbitrator under the provisions of this Part where the sum awarded as compensation exceeds the sum of Five hundred pounds and either party is dissatisfied with the award and desires to have the compensation settled by an appeal to a Judge of the Supreme Court and within twenty days after making the award and notice thereof signifies such desire by notice in writing to the other party then no steps shall be taken to enforce performance of the award, but the party claiming compensation shall proceed to the Supreme Court to a trial before a Judge of that court without a jury by means of an issue in the form of or to the effect in the Thirty-first Schedule to be settled by the parties or their respective solicitors (or in the case of difference by a Judge of the Supreme Court) to recover from the council the compensation to which he is entitled under the provisions of this Part.

Thirty-first Schedule.

(2) The decision of the Judge of the Supreme Court in every such case shall be final and conclusive and shall not be subject to any appeal or review and shall be enforced in the same manner as any judgment of the court may be enforced.

Travelling expenses of arbitrator. No. 5203 s. 817.

847. Every arbitrator under this Part shall in respect of each arbitration be entitled to charge for the travelling expenses incurred by him in attending and conducting such arbitration, including his expenses in going to and returning from the place of reference his stay there and any view necessarily undertaken for the purpose of such arbitration.

Costs of the arbitration. No. 5203 s. 818.

848. (1) The party by whom all or any of the costs of any such arbitration and incident thereto shall be borne shall be in the absolute discretion of such arbitrator and in the case of an appeal to a Judge of the Supreme Court as hereinbefore provided the party by whom all or any of the costs of any such appeal and of the arbitration and incident thereto shall be borne shall be in the absolute discretion of the said Judge of the Supreme Court.

(2) All such costs as aforesaid shall be taxed by the proper taxing officer of the Supreme Court and the amount allowed by such officer shall be the amount to be paid and all costs so taxed and ascertained as aforesaid may when payable to the party against whom the claim has been made be set off by such party against any sum awarded or costs payable to the claimant, and if there is no such sum awarded or costs payable may be recovered from such claimant as though expressly awarded against him to such party against whom such claim has been made and when payable to the claimant may be recovered by him from such party in like manner as the sum awarded.

One sum may be awarded for all interests affected. No. 5203 s. 819.

849. (1) Where compensation is sought to be recovered under this Part in respect of any property and where in respect of such property there are interests in reversion as well as in possession the person claiming compensation shall give notice of such claim to all other persons having any such interest in the property, and in any proceedings to obtain compensation under this Act the person claiming compensation shall satisfy the stipendiary magistrate arbitrator or Judge (as the case may be) as to the nature and extent of the respective estates or interests of such claimant and all other persons (if any) in such property and that he has given sufficient notice to all such other persons of his proceedings to obtain compensation, and all such other persons whether they have received such notice or not who appear before such stipendiary magistrate or arbitrator or Judge shall be entitled to be heard on behalf of their respective interests in the compensation to be awarded.

(2) In awarding any sum by way of compensation such stipendiary magistrate or arbitrator or Judge shall award and apportion as between such claimant and such other persons in

such manner in all respects as to such stipendiary magistrate or arbitrator or Judge seems fit the amounts to be received by any one or some or all of them respectively out of such sum, and such amounts shall be received by such claimant or other person and shall be in full discharge and satisfaction of all claims of such persons to compensation.

(3) Any person to whom any such sum has been awarded or apportioned as aforesaid shall have all such remedies and means of recovering such sum as though such person had originally been a claimant under the arbitration in which such award or apportionment has been so made.

Lands Compensation Act incorporated. No. 5203 s. 820.

850. The *Lands Compensation Act* 1958 so far as it is not inconsistent herewith is hereby incorporated with this Act, and shall be construed together herewith as one Act and shall take effect with regard to all works and undertakings for the purposes for which the council is authorized to take and use lands and not otherwise, and for the purposes of this Act the following expressions in the *Lands Compensation Act* 1958 shall have the meaning hereby assigned to them save where the context is inconsistent therewith that is to say:—

"The Board of Land and Works" and "the Board" shall mean the council.

"The Special Act" shall mean this Act.

PART XLV.—RAILWAY AGREEMENTS.

Powers of councils to enter into agreements with the Victorian Railways Commissioners in certain cases. No. 5203 s. 821; No. 5443 s. 27.

851. (1) Where it appears to the council of any municipality that it will be of special benefit to the owners of property in any area in the municipal district that the council should enter into an agreement with the Victorian Railways Commissioners—

(*a*) to contribute, either in one amount or by instalments, towards the cost of the provision by the said Commissioners of an additional railway station on any line of railway within the municipal district; or

(*b*) to pay, either in one amount or by instalments, the whole or any portion of the cost of the execution by the said Commissioners of any other work within the municipal district which the council desires to have executed upon or in connexion with any land or railway vested in the said Commissioners; or

(c) to purchase or take and to transfer to the said Commissioners any land within the municipal district which may be required by the said Commissioners for the purpose of any such additional railway station or of any such work aforesaid—

the council may subject to this section enter into such an agreement.

Incorporation of s. 693 (2)-(11).

(2) The provisions of sub-section (2) to (11) of section six hundred and ninety-three of this Act are hereby incorporated in this section, and for the purposes of this section any reference to the said section six hundred and ninety-three contained in any of the said sub-sections shall be deemed and taken to be a reference to this section.

Purchase or taking of land.

(3) For the purchase or taking of any land pursuant to any such agreement the council may exercise any powers conferred on a municipality under Divisions one two or four of Part XVIII. or under Part XLIV. of this Act, and those provisions shall so far as applicable and with such adaptations as are necessary extend and apply accordingly.

Powers &c. of councils and the Victorian Railways Commissioners.

(4) Upon any such agreement being entered into the municipality and the said Commissioners may do or suffer anything necessary and proper for carrying the same into effect.

Interest in certain cases.

(5) If in any such agreement provision is made for the payment by instalments of the sum thereby agreed to be paid by the council to the said Commissioners it shall also be provided therein that the council shall pay to the said Commissioners, at a rate to be agreed upon with them, interest on the balance of the said sum from time to time remaining unpaid.

Contributions by municipalities to cost of works on railway land.

(6) In addition to the powers conferred by the foregoing provisions of this section the council of any municipality may enter into agreements with the Victorian Railways Commissioners to contribute out of the municipal fund either in one amount or by instalments the whole or an agreed portion of the cost of any works which the council considers desirable upon or in connexion with any land or railway line of the said Commissioners; and the municipality and the said Commissioners may do or suffer anything necessary and proper for carrying any such agreement into effect.

Part XLVI.—Septic Tanks.

Interpretation. No. 5203 s. 822; No. 5924 s. 7 (3).

852. In this Part unless inconsistent with the context or subject matter—

"Council." "the council."

"Council" means council of a municipality; and "the council" means the council of the municipality to the municipal district of which the provision in which the term is used applies.

"Septic tank system."

"Septic tank system" means a system including a chemical closet for the bacterial biological chemical or physical treatment of sewage; and includes all tanks beds sewers drains pipes fittings and appliances used in connexion therewith.

"Sewerage Authority."

"Sewerage Authority" means the Melbourne and Metropolitan Board of Works, the Geelong Waterworks and Sewerage Trust and any Sewerage Authority under the *Sewerage Districts Act* 1958.

"Sewerage district."

"Sewerage district" means the metropolis under the *Melbourne and Metropolitan Board of Works Act* 1958 the drainage area under the *Geelong Waterworks and Sewerage Act* 1958 and any sewerage district under the *Sewerage Districts Act* 1958.

Installation by councils of septic tank systems. No. 5203 s. 823; No. 5843 s. 37 (1), No. 5924 s. 7 (1).

853. (1) At the request of the owner of any property which is within a municipal district the council may at the expense of the said owner install on the property a septic tank system for the service of the property.

(2) At the request of the owners of two or more such properties which are adjacent the council may (if it thinks fit) at the expense of such owners install one septic tank system to serve all such properties; and the situation of such system and (where the effluent is intended to be disposed of by absorption in land) of the effluent disposal area shall be fixed by agreement between the council and the owners of the properties concerned.

Installation of septic tank systems without request of owners.

(3) Without any such request the council may at the expense of owners of the property concerned install a septic tank system for the service of any property or properties but shall not proceed with any such installation until a scheme therefor has been prepared and approved in accordance with the provisions of sub-sections (1) and (3) of section five hundred and seventy-seven and of section five hundred and seventy-eight (except paragraph (*a*) of sub-section (2) thereof) of this Act which provisions shall for the purposes of this section apply, with such adaptations as are necessary, as if the installation of a septic tank system were the construction of a private street and the premises to be served by such system were premises fronting on such a street.

(4) A council shall not proceed with the installation under this section of any septic tank system in relation to any property within a sewerage district without the consent in writing of the Sewerage Authority first obtained.

Submission plans &c. to Commission of Public Health. No. 5203 s. 824.

854. (1) Before the council installs any septic tank system under this Part the council shall—

(*a*) submit to the Commission of Public Health for its approval plans and specifications of the system and a full description of the means to be adopted for treating and disposing of the effluent; and

(*b*) obtain the consent in writing of the said Commission.

(2) The provisions of the last preceding sub-section shall not apply with respect to the installation of any septic tank system for the service of a private residence which is not situate within— Saving.

(*a*) any city borough town or township; or

(*b*) any portion of a shire in which more than one thousand persons reside in an area of one square mile or less.

Duties of councils before installing septic tank systems in certain towns &c. No. 5203 s. 825; No. 5843 s. 37 (2).

855. (1) When a council proposes to install any septic tank system under this Part in any area which is not within a sewerage district in—

(*a*) any city or town; or

(*b*) any borough or township having a population of more than one thousand persons; or

(*c*) any portion of a shire in which more than one thousand persons reside in an area of one square mile or less—

the council before commencing to install any such system shall—

(i) cause a survey to be made and plan to be prepared of the area comprising the said city town borough township or portion of a shire to a scale not smaller than one hundred and sixty feet to one inch and cause to be marked on such plan—

contour lines representing differences of level of one foot or such greater differences as are approved for the purpose by the Commission of Public Health;

the positions of all roads streets rights-of-way drainage easements drains water-courses and streams in the area;

the positions and levels of all buildings and of all existing septic tank systems in the area;

the proposed positions of all septic tank systems intended to be installed in the area by the council; and

the approximate positions diameters levels and grades of a system of sewers which would be sufficient to carry off sewage from all the premises in the area; and

(ii) cause estimates to be prepared of the capital cost of and the annual expenditure and rating necessary to finance a sewerage scheme to serve all the premises in the area including the outfall and works for the treatment and disposal of sewage.

(2) The council shall submit a copy of every such plan to the Commission of Public Health not later than the day on which it first submits to the said Commission plans and specifications of any septic tank system proposed to be installed by it in the area depicted on the plan.

Apportionment of costs between owners. No. 5203 s. 826.

856. Where under this Part one septic tank system is installed by a council to serve two or more properties under separate ownership—

(*a*) the proportion of the cost of such installation for which each owner shall be liable shall in default of agreement be determined by the council so that—

(i) the cost of providing such part of the system as serves one property only shall be paid by the owner of such property; and

(ii) the cost of providing such part of the system as serves two or more properties shall be paid by the several owners of such properties in such proportions as the council considers just and reasonable;

(*b*) the owners of the properties shall be responsible for maintaining repairing and cleansing the system, and—

(i) the cost of maintaining repairing altering and cleansing such part of the system as serves one property only shall be paid by the owner of such property; and

(ii) the cost of maintaining repairing altering and cleansing such part of the system as serves two or more properties shall be be paid by the several owners of such properties in such proportions as are are agreed upon or in default of agreement as the council considers just and reasonable; and

(*c*) when so requested by the owners of the properties or a majority of such owners the council shall cause the system to be cleansed at the expense of the said owners and the cost of such cleansing shall be paid by the several owners of such properties in such proportions as the council considers just and reasonable.

Inclusion of certain items in cost of installation. No. 5203 s. 827.

857. The council may include in the cost of installing any septic tank system such sum (not exceeding ten per centum of the actual cost of the work) as the council thinks proper in respect of the preparation of plans specifications and estimates of the work

the supervision and inspection of the work during construction and printing and posting in connexion with the work; and any sum so included shall for the purposes of this Act be deemed to be part of the cost of installing such septic tank system.

Cost of installation by council a charge on land. No. 5203 s. 828.

858. Any cost required by this Part to be paid by an owner in respect of any property shall be a charge upon such property and except as in the next succeeding section provided every owner liable to pay such cost shall forthwith pay to the council the amount payable by him.

Payment by instalments and borrowing. No. 5203 s. 829.

859. The provisions of sections five hundred and eighty-two to five hundred and eighty-six of this Act shall with such adaptations as are necessary extend and apply with respect to septic tank systems installed or to be installed by a council under this Part.

Transfer of liabilities from council to Sewerage Authority in certain cases. No. 5203 s. 830.

860. If any sewerage district is proclaimed or extended so as to include any property on which the council has under this Part installed a septic tank system in respect of which the whole of the cost and interest has not been repaid to the council, then as on and from the date on which the first sewerage rate (which expression in this section includes a special rate) levied by the Sewerage Authority in respect of such property becomes payable—

(*a*) there shall by virtue of this Part be transferred from the council to the Sewerage Authority all outstanding liabilities of the council under this Part with respect to the installation of the septic tank system and such liabilities may be recovered from the Sewerage Authority instead of the council accordingly; and

(*b*) all unpaid instalments (with interest) of the cost of installing the septic tank system shall be payable to and recoverable by the Sewerage Authority instead of the council in the like manner as the same would otherwise have been payable to and recoverable by the council.

Committee of management of reserve and school committee of State school deemed owners of land for purpose of septic tank installation by council. No. 5203 s. 831; No. 5924 s. 7 (2).

861. (1) Subject to this section, the provisions of this Part (other than the provisions of sub-section (3) of section eight hundred and fifty-three and of section eight hundred and fifty-eight) shall extend and apply—

(*a*) with respect to any land reserved under section fourteen of the *Land Act* 1958 or any corresponding previous enactment as if the committee of management of the land so reserved were the owner of such land; and

(*b*) with respect to any land vested in the Minister of Education and his successors and occupied as a State school as if the school committee of such State school were the owner of such land.

As to payment and guarantee of payment, of cost of installation.

(2) The cost of the installation by a council of a septic tank system at the request of any committee of management or school committee as aforesaid (including such interest and other amounts as may become payable in relation thereto) shall be paid out of the funds of such committee: Provided that the council may, before agreeing to install such septic tank system, require that a guarantee of payment of such cost—

(*a*) shall be executed by some persons (whether members of such committee or not) to the satisfaction of the council; and

(*b*) be lodged with the council as security for the payment of such cost.

PART XLVII.—LEGAL PROCEEDINGS AND ENFORCEMENT OF ACT.

DIVISION 1.—LEGAL PROCEEDINGS BY AND AGAINST MUNICIPALITIES.

(1) *General Provisions.*

Service of notice and legal proceedings. No. 5203 s. 832.

862. Any summons or notice or any writ or other proceeding at law requiring to be served upon any municipality may be served by being given personally to the chairman or clerk of the municipality.

Documents how authenticated by the council. No. 5203 s. 833.

863. Every order summons notice or other such document requiring authentication by the council may be sufficiently authenticated without the common seal of the municipality if signed by two councillors or by the municipal clerk.

Exemption of summonses &c. from fees. No. 5203 s. 834.

864. (1) Except the fee for service of a default summons by a member of the police force as provided by the *Justices Act* 1958 no fee shall be payable on the issue or service of any summons or the issue of a warrant of distress on the complaint or application of any municipality.

(2) Notwithstanding anything in sub-section (1) of this section or in section six of the *Justices Act* 1958 no municipality shall be exempted from the payment of fees for the service of summonses issued on the complaint of the municipality to enforce payment of any rates or moneys.

Proceedings in estates of bankrupts &c. No. 5203 s. 835.

865. If any person against whom any municipality or the council thereof has any claim or demand takes the benefit of any Act for the relief of bankrupt debtors, the clerk or treasurer of the

municipality in all proceedings against the estate of such bankrupt or under any adjudication sequestration or act of bankruptcy against such bankrupt may represent the municipality or the council thereof and act in its behalf in all respects as if such claim or demand had been the claim or demand of such clerk or treasurer.

Council may direct prosecutions &c. No. 5203 s. 836.

866. The council may order either generally or in any particular case proceedings to be taken for the recovery of any penalties, and for the punishment of any person offending against the provisions of this Act, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

Proceedings in petty sessions. No. 5203 s. 837.

867. In all proceedings in any court of petty sessions or before any justice—

(*a*) the clerk of any municipality; or

(*b*) any other officer of the council appointed by the chairman of the municipality in writing under his hand—

may represent the municipality or the council in all respects as though he had been the party concerned.

Reimbursement of officer. No. 5203 s. 838.

868. The municipal clerk treasurer or other officer appointed as last aforesaid shall be reimbursed out of the municipal funds all damages costs charges and expenses to which he may be put, or with which he may become chargeable, by reason of anything contained in either of the last two preceding sections.

(2) *Evidence.*

Proof of appointment of councillors chairman or clerk or of presence of quorum of council dispensed with. No. 5203 s. 839.

869. In any prosecution or other legal proceeding under the provisions of any Act relating to local government instituted by or under the direction of the council of any municipality no proof shall until evidence is given to the contrary be required—

(*a*) of the persons constituting the council or the extent of the municipal district;

(*b*) of any order to prosecute or of the particular or general appointment of any municipal clerk surveyor inspector or other officer of the council;

(*c*) of the authority of any municipal clerk surveyor inspector or other officer of the council to prosecute;

(*d*) of the appointment of the chairman of the municipality or the municipal clerk;

(*e*) of the presence of a quorum of the council at the making of any order or the doing of any act.

Evidence of by-laws notices &c. No. 5203 s. 840.

870. The production of—

(*a*) a copy of the *Government Gazette* containing any by-law regulation joint regulation order or notice purporting to be made or given under the provisions of this Act or of any Act relating to the city of Melbourne or the city of Geelong; or

(*b*) a copy purporting to be a true copy of any by-law regulation joint regulation map plan or document of any municipality or municipalities (including the city of Melbourne and the city of Geelong) certified as such under the hand of the clerk of such municipality or in the case of a joint regulation of one of such municipalities—

shall be evidence until the contrary is proved of the due making existence confirmation approval and giving of such by-law regulation order notice map plan or document and of all preliminary steps necessary to give full force and effect to the same and of the contents thereof.

Proof of service of notices orders or demands. No. 5203 s. 841.

Thirty-second Schedule.

871. If any officer of the council of any municipality or other person who has in the manner directed by any Act served any notice order or demand thereby required to be given by such council indorses upon a true copy of such notice order or demand a statutory declaration in the form or to the effect of the Thirty-second Schedule stating the place the time and the manner in which the same has been so served, such statutory declaration purporting to have been so made shall until evidence is given to the contrary be received by any justice or justices and in all courts of law as proof of the service of such notice order or demand.

Evidence of documents issued by municipalities. No. 5203 s. 842.

872. All documents whatever purporting to be issued or written by or under the direction of the municipality and purporting to be signed by the municipal clerk shall be received as evidence by any justice or justices and in all courts of law and shall be deemed to be issued or written by or under the direction of the said municipality without proof unless the contrary is shown. The word " documents " in this section shall include all regulations orders directions and notices.

Rate books to be evidence. No. 5203 s. 843.

873. In any proceeding for levying and recovering any rate or interest thereon or for taking possession of land for arrears of rates or interest thereon or for enforcing any charge upon land, or in any proceeding consequent upon any of the foregoing, the books of rates of the council and all entries purporting to be made therein in manner by this Act directed by the production thereof alone shall be *prima facie* evidence of such rate and of the contents thereof, without any evidence that the notices required by or other requirements of this Act have been given or complied with.

Evidence of minutes of council or committee. No. 5203 s. 845.

874. Any minutes purporting to be minutes of the proceedings of any meeting of the council of any municipality or of any committee of such council, and to be signed by the chairman of the municipality or the chairman of a meeting, either at the meeting at which such proceedings took place or at the next ensuing meeting, or a copy of or an extract from such minutes attested with the corporate seal and the signatures of the chairman of the municipality and municipal clerk shall be received as evidence in all courts and before all judges justices and others without proof of the meeting to which the same refers having been duly convened or held or of the persons attending such meeting having been or being councillors or members of committee respectively or of the signature of the chairman or of the fact of his having been chairman all which last-mentioned matters shall be presumed until the contrary is proved.

Prima facie evidence of ownership. No. 5203 s. 846; No. 5924 s. 8 (1) (*l*).

875. (1) In any legal proceedings under the provisions of this Act in addition to any other method of proof available—

(*a*) evidence that the person proceeded against is rated in respect of any land or premises to any general rate for the municipality within which such land or premises are situated; or

(*b*) evidence by the certificate of the Registrar of Titles or an Assistant Registrar of Titles authenticated by the seal of the Office of Titles that any person is the registered proprietor of an estate in fee simple or of a leasehold estate held of the Crown in any land; or

(*c*) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed conveyance or instrument to be the last registered owner of any land—

shall until the contrary is proved be evidence that such person is the occupier or owner (as the case may be) of such land or premises.

(2) Such certificate shall be furnished by the Registrar of Titles or the Registrar-General upon the written application of a municipal clerk who shall—

(*a*) certify that it is required for legal proceedings under this Act; and

(*b*) in the case of land under the operation of the *Transfer of Land Act* 1958, give a reference to the volume and folium of the relevant Crown grant or certificate of title and supply such further particulars as the Registrar of Titles or Registrar-General may require, or in the case of other land supply the number and book of the relevant memorial.

(3) The fee payable for each such certificate shall be Five shillings and for any diagram other than a simple diagram such additional fee as is fixed by the Registrar of Titles or Registrar-General in any particular case.

(3) *Notices to Owners and Occupiers and by Occupiers and Vendors of Rateable Property.*

Notices orders or demands how served. No. 5203 s. 847.

876. (1) Unless it is otherwise expressly provided every notice order or demand which by this Act is required to be given to the owner or to the occupier of any building or land shall be addressed to the owner or to the occupier of such building or land, and shall—

(*a*) if such owner or occupier and his residence in either case are known to the council be served on such owner or occupier or left with some adult inmate of his abode;

(*b*) if such owner and his residence are not known to the council be served on the occupier (if any) of such building or land or left with some adult inmate of his abode, or if there is no occupier be put up on some conspicuous part of such building or land;

(*c*) if such occupier and his residence are not known to the council be put up on some conspicuous part of such building or land.

(2) But any such notice order or demand may also be served by post by prepaid letter addressed to such owner or occupier; and in proving such service it shall be sufficient to prove that such notice order or demand was addressed to the usual or last-known place of abode or of business of such owner or occupier and was put into the post.

(3) Any such notice order or demand may be addressed by the description of " the owner " or " the occupier " of the building or land (naming it) in respect of which the notice is given, without further name or description.

Notices to bind future owners and occupiers. No. 5203 s. 848.

877. All notices or orders required under this Act to be served on any owner or occupier shall if due service thereof has been once made on any owner or occupier be binding on every subsequent owner or occupier to the same extent as if such notice or order had been served on such last-mentioned owner or occupier respectively.

Vendors of property to give notice to the municipal clerk. No. 5203 s. 849.

878. Notwithstanding any sale or conveyance of any property in any municipal district the former owner thereof shall remain answerable to the municipality for all rates moneys and other liabilities which may accrue due by or be imposed upon the owner of such property as such before such former owner

has given notice in writing of such sale describing the property and the name and address of the purchaser to the municipal clerk, and upon receiving any such notice the municipal clerk shall forthwith enter the particulars thereof in a book to be kept for that purpose together with the date on which he received it. But nothing in this section shall exonerate from any liability any person becoming the owner of any property.

Vendor of land in municipal district to give notice of sale to municipal clerk. No. 5203 s. 850.

879. (1) Any person who sells conveys or transfers any land in any municipal district shall within two months after the date of the execution of the contract of sale or (where there is no contract of sale) of the conveyance or transfer give notice in writing of such sale conveyance or transfer describing the land and the name and address of the purchaser to the municipal clerk.

In every notice given pursuant to this sub-section the description of the land shall include the total area of the land the name of the parish and township (if any) in which the land is situated the number of the Crown allotment or portion and the letter or number of the section (if any) of which the allotment or portion forms part and (where the land forms part of land shown on a lodged plan of subdivision) the lot number and lodged plan number and (where the land is situated within any city town or borough) the frontage and depth of the land and the volume and folio of the certificate of title of the land or (where the land is not under the *Transfer of Land Act* 1958) the number of the last memorial of conveyance.

Penalty.

(2) Any such person who contravenes or fails to comply with any provision of this section shall be liable to a penalty of not more than Two pounds.

Saving as to s. 878.

(3) This section shall be read and construed as in aid of and not in derogation from the provisions of the last preceding section.

Persons becoming occupiers of premises to notify municipal clerk giving full name occupation premises occupied and last place of residence. No. 5203 s. 851.

880. (1) Every person who becomes the occupier of any premises in any municipal district shall within twenty-one days after becoming such occupier give notice in writing to the municipal clerk setting forth his full name and his occupation or calling, a description of the premises of which he has become the occupier, and his last place of residence before becoming such occupier.

Penalty.

(2) Any person who contravenes or fails to comply with this section shall be liable to a penalty of not more than Two pounds.

Application of ss. 878-880 to Melbourne and Geelong. No. 6151 s. 22.

881. The provisions of last three preceding sections shall extend and apply to the city of Melbourne and the city of Geelong.

(4) *Actions against Municipalities for Negligence in respect of Streets &c.*

Action to be brought in the County Court unless otherwise ordered. No. 5203 s. 853; No. 5914 s. 2.

882. (1) An action to recover damages against any municipality in respect of any loss or injury sustained by any person or property by reason of any accident upon or while using any highway street road bridge ferry or jetty in the municipal district or under the control of the council or upon or in or while using any baths or any land or building under the control of the council may subject to the provisions of any law for the time being in force as to the venue of county court actions be brought in the County Court whatever is the amount claimed and except as hereinafter mentioned such action shall not be brought in the Supreme Court.

(2) But if it appears to any Judge of the Supreme Court on application of either party that such action ought more properly to be brought in the Supreme Court such Judge may order that such action be brought in the Supreme Court, or if it is already commenced be transferred to the Supreme Court.

DIVISION 2.—ENFORCEMENT OF ACT.

(1) *Generally.*

Powers of entry by officers of council. No. 5203 s. 855.

883. The council of every municipality shall for the purposes of this Act have power by itself or its officers to enter at all reasonable hours in the day-time into and upon any building or land within the municipal district for the purpose of executing any work or making any inspection authorized to be executed or made by them under this Act without being liable to any legal proceedings on account thereof: Provided always that except herein otherwise provided the council or its officers shall not make any such entry upon occupied premises unless with the consent of the occupier until after the expiration of twenty-four hours' notice for that purpose given to the occupier.

Obstructing council or officers. No. 5203 s. 856; No. 5843 s. 38.

884. Every person who at any time obstructs the council or any person employed by it or any person appointed by the Governor in Council or the Minister in the performance of anything which the council or any such person so employed or appointed is respectively empowered or required to do by or under this or any other Act shall be liable to a penalty of not more than Five pounds.

Occupier may act in certain cases on default of owner. No. 5203 s. 857.

885. Whenever default is made by the owner of any building or land in the execution of any work by this Act required to be executed by him the occupier of such building or land may with the approval of the council of the municipality cause such work to be executed and the expense thereof shall be a debt due to such occupier by the owner of the building or land, and such occupier may deduct the amount of such expense out of the rent from time to time becoming due from him to such owner.

Occupier obstructing owner in carrying Act into effect. No. 5203 s. 858.

886. (1) If the occupier of any building or land within the municipal district prevents the owner thereof from carrying into effect in respect of such building or land any of the provisions of this Act after notice of his intention so to do has been given by the owner to such occupier any justice upon proof thereof may make an order in writing requiring such occupier to permit the owner to execute all such works with respect to such building or land as may be necessary for carrying into effect the provisions of this Act.

(2) If after the expiration of ten days from the date of such order such occupier continues to refuse to permit such owner to execute such works such occupier shall for every day during which he so continues to refuse be liable to a penalty of not more than Five pounds and every such owner during the continuance of such refusal shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

Occupier or agent refusing to give name of owner liable to penalty. No. 5203 s. 859.

887. If on the request of the council of the municipality or any collector of rates duly authorized by it as such the occupier of any property or any agent of the owner of such property refuses or wilfully omits to disclose or wilfully misstates to the council or collector making such request the name of the owner of such property or of the person receiving or authorized to receive the rents of the same such occupier or agent shall be liable to a penalty of not more than Five pounds.

Duty of members of police force to report breaches of Act by-laws &c. to municipal clerk. No. 5203 s. 860.

888. It shall be the duty of every member of the police force who finds any person committing a breach of any of the provisions of this Act or of any by-law regulation or joint regulation made thereunder to demand from such person his name and place of abode and to report forthwith the fact of such breach and the name and place of abode of such person to the clerk of the municipality in whose district such breach was committed.

Penalty in case of person found committing breach of Act by-laws &c. and refusing to state name &c. or giving false name &c. No. 5203 s. 861; No. 5443 s. 28.

889. If any officer of the municipality or other person employed by the council or any member of the police force finds any person committing a breach of any of the provisions of this Act or of any by-law regulation or joint regulation made thereunder or of any other enactment by-law regulation or joint regulation which is administered by the municipality and such person refuses to state his name and place of abode when required by such officer or other person or member of the police force so to do or in the opinion of such officer or other person or member of the police force states a false name or place of abode such person may without any other warrant than this Act be apprehended by such officer or other person or member of the police force and taken before a justice of the peace and upon conviction of such refusal or false statement shall be liable to a penalty of not more than Five pounds.

(2) *Penalties &c.*

Penalty for non-performance of provisions of this Act. No. 5203 s. 862.

890. Where any matter or thing is by this Act or by any order or notice made and published under the authority hereof directed or forbidden to be done or where any authority is given by this Act to any person to direct any matter or thing to be done or to forbid any matter or thing to be done and such act so directed to be done remains undone or such act so forbidden to be done is done in every such case every person offending against such direction or prohibition shall be deemed guilty of an offence against this Act.

Penalty for offences against this Act. No. 5203 s. 863.

891. Every person guilty of an offence against this Act shall for every such offence be liable to the penalty expressly imposed by this Act or by any by-law in force in that behalf and if no other penalty is imposed to a penalty of not more than Twenty pounds.

Recovery of penalties. No. 5203 s. 864.

892. Every penalty payable in respect of any offence against this Act may be recovered in the manner expressly named in this Act or in any by-law lawfully in force in that behalf and in case no other manner of recovering the same is so named if the person against whom such penalty is sought to be recovered is not a municipality before any court of petty sessions and if the person against whom the same is sought to be recovered is a municipality before any court of petty sessions consisting of two or more justices one of whom is a stipendiary magistrate.

Application of penalties. No. 5203 s. 865.

893. Except where it is by this Act provided to the contrary all penalties recovered for offences against this Act committed against the by-laws or regulations or in the municipal district or in any way in respect of any municipality shall be paid into the municipal fund of such municipality.

Application of penalties recovered against municipalities. No. 5203 s. 866.

894. All penalties recoverable against any municipality shall be payable to any party aggrieved who may sue for the same.

(3) *Decision of Disputes between Municipalities; and Returns by Councils.*

Minister to have power to decide disputes between municipalities. No. 5203 s. 867.

895. If any difference, whether arising out of the construction of this Act or not, arises between any two or more municipalities, touching and relating to the carrying out of the provisions of this Act, or touching and relating to the fulfilment and exercise of the duties powers privileges or authorities of such municipalities (other than such differences as are herein otherwise expressly provided for), such difference shall be referred to the Minister, who is hereby authorized and empowered to entertain inquire into and decide upon the same, and for that purpose to hear receive

and examine evidence upon oath, which oath he is hereby empowered to administer, summon if he think fit one or more assessors, compel the attendance of witnesses, call for the production and examination of documents, commit for contempt, and do all such other matters and things relating to the same in the same manner, and to the like extent, as the same may be done by any judge of the county court in Victoria in the exercise of his jurisdiction; and the decision of such Minister with regard to such difference shall be final, and may be made a rule of the Supreme Court.

The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

Councils to furnish returns to Parliament when directed. No. 5203 s. 868.

896. If the council of any municipality refuses or neglects for the space of thirty days after being duly required so to do by the Minister or any person lawfully authorized by him on that behalf to comply with and obey any decision of the Minister under this Act or to furnish accounts or to give and furnish any returns or other information requested by such Minister in relation to its proceedings under and by virtue of this Act, or in compliance with any resolution of either the Legislative Council or Legislative Assembly asking for the same, it shall be lawful for such Minister on complaint to him of such default to cause by order under his hand all or any moneys payable or to become payable to such municipality out of the Consolidated Revenue or on account of the fees fines or penalties which may be payable to such council not to be paid until such decision has been complied with and obeyed or such accounts returns or other information aforesaid has been duly furnished to the satisfaction of the Minister.

Penalty for not furnishing returns or not complying with decision of Minister.

The provisions of this section shall extend and apply to the city of Melbourne and the city of Geelong.

DIVISION 3.—RULES OF THE SUPREME COURT.

Judges of the Supreme Court may make rules. No. 5203 s. 869.

897. It shall be lawful for the Judges of the Supreme Court to make rules for regulating the procedure and practice of the court in all applications to the court under the provisions of this Act, and for regulating the conduct of receivers appointed under the provisions of this Act in the discharge of their duties and to repeal amend add to or alter any of such rules as to them may seem fit. All rules made under this section of this Act shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament within ten days after their being promulgated if Parliament is then sitting, and if Parliament is not then sitting then within ten days after the next meeting of Parliament.

DIVISION 4.—POWER TO PRESCRIBE FORMS.

Power to the Governor in Council to prescribe forms.
No. 5203 s. 870.

898. The Governor in Council may by regulations prescribe the form of any notice or order which any council of any municipality is authorized to give or make under any Act, and such form or one to the like effect varied as the circumstances of the case may require shall be good and binding in law, and no objection shall be taken by any person thereto.

PART XLVIII.—UNUSED ROADS AND WATER FRONTAGES.

Application of Part.
No. 5203 s. 871.

899. This Part shall not apply to the city of Melbourne or the city of Geelong.

Extension to this Part of provisions of Part XLVII.
No. 5203 s. 872.

900. The provisions of Part XLVII. shall as far as applicable extend to this Part.

Interpretation.
No. 5203 s. 873; No. 5331 s. 2.

901. In this Part unless inconsistent with the context or subject-matter—

"Board."

(*a*) "Board" means Board of Land and Works.

"Occupier."

(*b*) "Occupier" where land is apparently not occupied by a tenant means the owner of such land.

"Private land."

(*c*) "Private land" means any land alienated from the Crown in fee simple or which is in course of alienation from the Crown or is held under a licence or lease or perpetual lease from the Crown.

"Road."

(*d*) "Road" includes "street" and also includes—

(i) any portion of Crown land delineated or shown as a road in any original map or plan in the Department of Crown Lands and Survey in accordance with which any Crown land has or may have been sold or leased, and which road so delineated or shown has not under any Act relating to Crown lands been sold leased or licensed by the Crown save and except any formed or metalled roads;

(ii) any portion of Crown land which by a general or particular description has been or purports to have been proclaimed by the Governor in Council as a road under the provisions of any Act relating to Crown lands; or

(iii) any portion of Crown land which may have been or may be by a general or particular description reserved from sale permanently as a road and the

reservation of which has been duly published in the *Government Gazette* under the provisions of any such Act.

Such map or plan or a copy of the *Government Gazette* containing any such proclamation of a road or any such reservation shall until the contrary is shown be conclusive evidence that the portion so delineated shown or described respectively is a road within the meaning of this section.

(*e*) " Unused road " means so much of any road or part of a road as is specified as unused in any return made by any council as hereinafter provided or which whether included in any such return or not is declared by the Governor in Council to be an unused road. "Unused road."

(*f*) " Water frontage " means any portion of Crown land not exceeding twenty chains in width which is not for the time being held under lease or licence or reserved as a water reserve along any public road under any Act relating to Crown lands or to mining and which has a frontage to the sea or any river creek lake or swamp. In this definition " Crown land " includes any Crown land permanently or temporarily reserved from sale if the same is not vested in trustees or in any municipality. "Water frontage."

Duty of Councils to furnish Returns.

902. (1) The council of every municipal district shall on or before the first day of February in each year or such other day as may from time to time be fixed by the Governor in Council and notified in the *Government Gazette,* furnish to the Minister a correct return specifying every road or part of a road within such district which the council determines (which it is hereby empowered to do) to be an unused road, and which is not fenced off on both sides thereof and which the council considers is not required for public traffic. Councils to furnish returns of unused roads. No. 5203 s. 874.

(2) Such return shall state—

(*a*) the name and address of the occupier or occupiers and owner or owners of all land abutting on each unfenced side of each unused road so specified;

(*b*) the portion or portions of any such road which appear to be used otherwise than for traffic by each such occupier;

(*c*) the annual rateable value of the land of each occupier abutting on such unused road; and

(*d*) the capital and annual rateable values if any (based upon the municipal valuation) of such portion or portions of such road as in its condition at the date of making such return appears to be of greater or less value for grazing purposes than the lands abutting on such portion or portions and not being fenced off therefrom.

(3) If in any year such return is not so furnished by any council on or before such first day of February or such other day as may from time to time be fixed by the Governor in Council and notified in the *Government Gazette*, the Minister may by order under his hand direct that for every day which such council is in default there shall be deducted by the Treasurer the sum of Five shillings from any moneys that may at any time be or become payable by him to such municipality out of the Consolidated Revenue or on account of any fees fines penalties or equivalent of licence-fees, and such deduction shall be made accordingly.

Councils to furnish returns of water frontages. No. 5203 s. 875.

903. (1) The council of every municipal district shall on or before the first day of February in each year or such other day from time to time fixed and notified as aforesaid furnish to the Minister a correct return specifying every water frontage within such district.

(2) Such return shall state—

(*a*) the name and address of the occupier or occupiers and owner or owners of all private land abutting on each frontage so specified and which is not fenced off from such frontage;

(*b*) the portion or portions of any such frontage which appear to be used otherwise than for traffic by each such owner or occupier;

(*c*) the annual rateable value of each such occupier's or owner's abutting land whether so fenced off or not; and

(*d*) the capital and annual rateable values if any (based upon the municipal valuation) of such portion or portions of such frontage as in its condition at the date of making such return appears to be of greater or less value for grazing purposes than the lands abutting on such portion or portions and not being fenced off therefrom.

(3) If in any year such return is not so furnished by any council on or before such first day of February or such other day from time to time fixed and notified as aforesaid, the Minister may by order under his hand direct that for every day which such council is in default there shall be deducted by the Treasurer the sum of Five shillings from any moneys that may at any time be or become payable by him to such municipality out of the

Consolidated Revenue or on account of any fees fines penalties or equivalent of licence-fees, and such deduction shall be made accordingly.

Provision as to Licensing Unused Roads or Water Frontages.

General power of Minister to license unused roads or water frontages. No. 5203 s. 876.

904. Notwithstanding anything contained in any Act or in any proclamation or order of the Governor in Council or in any map or plan the Minister may grant licences for the occupation and use of any unused road or of any water frontage.

Duty of obtaining licence to use roads. No. 5203 s. 877.

905. (1) Where the land on one side only of any unused road is fenced off from such road it shall be the duty of the occupier of any unfenced private land on the opposite side of such road to obtain a licence to occupy and use the whole of such road to the extent to which his land abuts thereon. Such occupier of such unfenced private land shall when any dividing fence between such road and the private land of the other adjoining occupier is out of repair or becomes insufficient be liable for one-half the cost of repairing such fence as if he were an occupier within the meaning of the *Fences Act* 1958.

(2) Where the land on both sides of any unused road is not fenced off from such road it shall be the duty of the occupier of any private land on either side of such road to obtain a licence to occupy and use the half of such road on which his land abuts.

(3) The last preceding sub-section shall be deemed to be sufficiently complied with if the occupier of the private land on either side of such road, with the written consent of the occupier on the other side thereof, obtains a licence to occupy and use the whole of such road on which his land abuts, or if such occupiers arrange in writing as to the proportion of such road for which each of them shall obtain a licence provided that they obtain between them licences for the whole of the road on which their lands abut and that no fence be placed on any road except at right angles to such road.

Duty of obtaining licence to use water frontage. No. 5203 s. 878.

906. Where private land abutting on a water frontage is not fenced off from such frontage it shall be the duty of the occupier of such private land to obtain a licence to occupy and use the whole of such frontage to the extent to which his land abuts thereon; and no person whosoever shall occupy a water frontage or use the same otherwise than for traffic unless he is the licensee thereof under this Part.

Application for licence for unused road or water frontage. No. 5203 s. 879.

907. Every person on whom is imposed by this Part the duty of obtaining a licence to occupy and use any unused road or any water frontage shall not later than the month of February in each year or such other month as may be fixed by the Governor in Council and published in the *Government Gazette* apply for such licence to the Minister.

Liability to pay occupation fees after notice. No. 5203 s. 880.

908. (1) Where by this Part a duty is imposed upon any person to obtain a licence to occupy and use any unused road or any water frontage, he shall after receiving from the Minister a written notice of his duty so to do and until he constructs a fence on the common boundary of his land and such road or water frontage as in this Part provided pay a licence-fee for the occupation of so much of such road or water frontage as is specified in such notice as from the first day of January in any year in which he received such notice whether he obtains a licence or not, and such fee shall be due and payable to Her Majesty and may be recovered accordingly.

Default by occupiers.

(2) Every person who refuses or neglects to obtain a licence to occupy and use any unused road or any water frontage pursuant to any such notice shall within six months from the date of such notice in lieu of obtaining a licence or paying therefor construct a fence on the common boundary of his land and the road or water frontage on which his land abuts, and such fence must be a sufficient fence within the meaning of the *Fences Act* 1958; and when any fence has been so constructed the occupier of the land thereby enclosed shall keep such fence in good repair.

(3) If any licence-fee is not duly paid or if (as the case may be) any fence is not constructed or kept in good repair as aforesaid the person in default shall on conviction be liable to a penalty of not more than One pound for every day the said licence-fee is unpaid or the fence is not constructed as aforesaid or is not kept in good repair.

Term conditions &c. of licences. No. 5203 s. 881.

909. (1) Every licence of any unused road or any water frontage shall be for the term of three years, provided nevertheless that if the licensee be the tenant of the land abutting upon any such unused road or frontage, the term of such licence may be for any shorter period approved of by the municipal council and the Minister, and such licence shall commence to run as from the first day of January in any year and may be renewed from time to time by indorsement or otherwise, and shall contain—

(*a*) a condition conferring on the Governor in Council power at any time after giving to the licensee three months' notice in writing to cancel such licence either as to the whole or part of the licensed road or water frontage;

(*b*) a condition for the payment of the licence-fee yearly in advance;

(*c*) a condition that the licensee shall not except as hereinafter provided cultivate or break the soil of any land held by him under licence and shall not erect or construct any obstruction thereon:

(*d*) a condition that on payment of such increased rate of licence-fees as is specified in the licence the licensee may cultivate or break the soil of the licensed land with the written consent of the Minister and the council of the municipality within which such road or water frontage is situated;

(*e*) a condition that the licence may be forthwith cancelled for the breach of any condition thereof; and

(*f*) such other conditions and provisions as may be necessary for carrying out the objects and intention of this Act including a condition requiring the erection and maintenance of suitable unlocked swing gates cattle pits or ramps or other suitable means of passage when in the opinion of the Minister such a condition is reasonable.

Licence-fee.

(2) The licence-fee payable shall be fixed at Five pounds per centum of the capital value of the licensed land; and such value shall be on the same basis as the land occupied by the licensee which abuts thereon, as specified in the returns to be furnished by the council to the Minister as hereinbefore provided unless the Minister after obtaining a report in writing as to the capital value of the licensed land from the municipal valuer or such other person as he may appoint shall otherwise determine.

Effect of cancellation of a licence. No. 5203 s. 882.

910. (1) If any licence is cancelled during its currency for any reason other than a breach of the conditions thereof there shall be refunded to such licensee by the Crown and the council respectively such occupation fees and municipal rates (if any) as have been paid in respect of the unexpired portion of the term of such licence.

(2) On the cancellation of any licence for any reason whatever the owner or occupier of land abutting on the land which was licensed if notified by the council or the Minister so to do shall within six months construct at his own cost a fence on the common boundary of his land and the road or water frontage.

(3) Such fence must be a sufficient fence within the meaning of the *Fences Act* 1958; and after the construction of any such fence such owner or occupier shall keep such fence in good repair.

(4) In default of constructing a fence or keeping the same in good repair as aforesaid such owner or occupier shall on conviction be liable to a penalty of not more than Five shillings for every day such fence is not erected or is not in a state of good repair.

Miscellaneous.

Re-opening of licensed closed road. No. 5203 s. 883.

911. Where any council of a municipal district in which there is an unused road or a water frontage proves to the satisfaction of the Minister that it is desirable that such road or water frontage be made available for traffic, the Minister may require and compel any licensee thereof to open such road or water frontage to be used for traffic or by the public and may cancel his licence thereof. But in every case where such licensee has paid for one-half the cost of repairing any portion of the dividing fence between such road and the private land of the other adjoining occupier as provided by sub-section (1) of section nine hundred and five of this Act, or has himself, under any agreement with such occupier, repaired or renewed any portion of such fence the said licensee may in a court of petty sessions recover from the said occupier so much of the said one-half cost or of the cost of such repair or renewal as the court, taking into consideration the value then remaining of such repairs or renewals, may consider just and reasonable.

Recovery of fees and penalties. No. 5203 s. 884.

912. All proceedings for the recovery of fees or penalties under this Part may be dealt with in a summary manner before any court of petty sessions, but no such proceedings shall be taken except by some person authorized in writing in that behalf by the Minister.

Regulations. No. 5203 s. 885.

913. (1) The Governor in Council may make regulations for carrying into effect the provisions of this Part.

Publication.

(2) All such regulations on being published in the *Government Gazette* shall have the same force and effect as if they were enacted in this Part; and all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be then sitting, and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament.

Limitation of term for licences &c. No. 5203 s. 886.

914. No road or water frontage shall be licensed or leased for a longer term than three years.

Effect of opening unused road or water frontage. No. 5203 s. 887.

915. Whenever any unused road or water frontage has been made available and opened for traffic as herein provided, the provisions hereinbefore contained directing any person or persons occupying land abutting on such road or water frontage to keep in good repair the fence erected in pursuance of an order of the council or Minister on the common boundary of his or their land, and the road or water frontage shall cease to have any effect with regard to such fence, and thereafter no proceedings shall be taken for the recovery of any penalty prescribed by this Part for such neglect.

916. Notwithstanding anything hereinbefore contained every person who wilfully damages or destroys any fence swing gate cattle pit ramp or other means of passage erected upon any unused road or a water frontage under the provisions of this Part shall be liable to pay a penalty of not more than Ten pounds for each such offence, and every person who opens and wilfully or negligently leaves open such swing gate shall be liable to a penalty of not more than Two pounds for each such offence. Penalty for damaging fence or gate. No. 5203 s. 888.

PART XLIX.—BUILDING REGULATIONS.

917. In this Part unless inconsistent with the context or subject-matter— Interpretation. No. 5203 s. 889; No. 6151 s. 23.

"Alteration" includes alteration addition and extension, and "Alter" has a corresponding interpretation. "Alteration." "Alter."

"Authorized" means authorized whether generally or in any particular case. "Authorized."

"Building" includes any building whether temporary or permanent and any part thereof, and includes outbuildings fences walls provision for lighting heating water supply drainage and sewerage and other appurtenances of a building. "Building."

"Committee" means the Building Regulations Committee appointed under this Part. "Committee."

"Construct" includes build construct erect and place in position, re-build re-construct re-erect and replace in position, and alter and do any structural work, and "construction" has a corresponding interpretation. "Construct." "Construction."

"Proper officer" means officer of a Government Department council or public authority authorized by such Department council or authority in respect of, or whose duty it is to deal with or act in regard to, any acts matters or things in connexion with which the expression is used. "Proper officer."

"Public authority" means any public statutory corporation (other than a Government Department or a municipality) administering (whether or not subject to direction or control by any Minister or by the Governor in Council) any Act or enactment containing provisions for the making or approval of regulations or by-laws relating to any of the matters for or with respect to which regulations may be made under this Part. "Public authority."

"Regulations" means regulations made by the Governor in Council under this Part. "Regulations."

Application to Melbourne and Geelong.
No. 5203 s. 890.

918. The provisions of this Part shall extend and apply to the city of Melbourne and the city of Geelong.

Administration of regulations by councils.
No. 5203 s. 891.

919. Subject to this Part and to any express provision, with respect to any matter under the jurisdiction of any Government Department or public authority, in the regulations made under this Part, the administration of the regulations within any municipality in which the regulations have effect shall be carried out by the municipal council of that municipality.

Building Regulations Committee.
No. 5203 s. 892; No. 5988 s. 2 (1).

920. (1) There shall be a committee to be known as the "Building Regulations Committee" consisting of eight members of whom—

(*a*) one, who shall be the chairman, shall be appointed by the Governor in Council;

(*b*) one shall be the person for the time being holding the office of Chief Architect of the Public Works Department or an architect nominated by him and the Chief Architect may at any time revoke any such nomination;

(*c*) one shall be the person for the time being holding the office of Chief Engineer of the Health Department;

(*d*) one shall be the person for the time being holding the office of Building Surveyor of the city of Melbourne;

(*e*) one shall be appointed by the Governor in Council from a panel of three names submitted by the Executive Committee of the Municipal Association of Victoria;

(*f*) one shall be appointed by the Governor in Council from a panel of three names submitted by the governing body of the Royal Victorian Institute of Architects;

(*g*) one shall be appointed by the Governor in Council from a panel of three names submitted by the governing body of the Melbourne Division of the Institution of Engineers (Australia);

(*h*) one shall be appointed by the Governor in Council from a panel of three names submitted by the governing body of the Master Builders' Association of Victoria.

(2) Of the members appointed by the Governor in Council the chairman shall be appointed for a term of not more than five years and the other members shall be appointed for a term of not more than three years.

(3) If for any cause any of the bodies authorized to submit a panel of names fails to submit a sufficient panel of names within one month after being so requested by the Minister the Governor in Council may appoint a person without any such nomination.

(4) In the case of a vacancy (however arising) in the office of any of the appointed members the Governor in Council may subject to this section appoint some fit and proper person to fill such vacancy, and the person so appointed shall subject to this section hold office for the remainder of the term of office of the member in whose place he is appointed.

Quorum. No. 5203 s. 893; No. 5988 s. 2 (2), No. 6151 s. 24. Thirty-third Schedule.

921. (1) A quorum of the Committee shall consist of five members, except where members of the Committee are acting as referees for the purpose of the Thirty-third Schedule, in which case a quorum shall consist of three members.

Who to preside.

(2) At any meeting of the Committee the chairman (or, in the absence of the chairman, such member as the members present appoint) shall preside, and in the case of an equality of votes the person presiding shall have a second or casting vote.

Proceedings.

(3) Subject to this Part the Committee may regulate its own proceedings.

Fees, expenses &c. No. 5203 s. 894.

922. (1) The members of the Committee shall severally be entitled to receive such remuneration by way of fees or salaries as is determined by the Governor in Council.

(2) The members of the Committee shall severally be entitled to receive such reasonable travelling expenses as are fixed by the Governor in Council.

Objects for which Committee is constituted. No. 5203 s. 895.

923. (1) The objects for which the Committee is constituted are—

(*a*) the provision, so far as practicable and desirable, of standard specifications and uniform regulations in connexion with the construction of buildings;

(*b*) the reduction of the cost of the construction of buildings; and

(*c*) the improvement of buildings and living conditions and of the methods of construction of buildings.

Functions of Committee.

(2) The functions of the Committee shall be—

(*a*) to investigate and report to the Minister as to how the said objects can best be attained;

(*b*) to prepare and submit to the Minister draft regulations on any matter in respect of which regulations may be made by the Governor in Council under this Part;

(*c*) to inquire into and report to the Minister upon any matter relating to buildings or the construction thereof referred to the Committee by the Minister for inquiry; and

(*d*) to exercise or perform any powers or duties conferred or imposed on the Committee by or under this or any other Act.

Powers as to inquiries &c. No. 5203 s. 896.

924. For the purpose of enabling the Committee to conduct any investigation or inquiry for the purposes of this Part the provisions of sections fourteen to sixteen of the *Evidence Act* 1958 shall apply as if the Committee was a board appointed by the Governor in Council and as if the chairman of the Committee had the powers of the chairman of such a board.

Regulations as to buildings. No. 5203 s. 897; No. 6151 s. 25.

925. The Governor in Council, after consideration by the Minister of any report and draft regulations submitted to the Minister by the Committee, may make regulations for or with respect to regulating restricting restraining or prohibiting the construction pulling down and removal of buildings and any matters connected therewith, and (without affecting the generality of the foregoing) for or with respect to all or any of the following matters, namely:—

Classes of buildings.

(1) The classification of buildings into classes and sub-classes and the definition of the several classes and sub-classes of buildings;

(2) The application or non-application to any buildings or classes or sub-classes of buildings of all or any of the provisions of any regulation;

Ingress and egress &c.

(3) Means of ingress to and egress from buildings;

(4) Exits from and stairways in buildings;

(5) Means of escape from buildings in case of fire and the prevention and extinguishing of fire in buildings;

Drainage, sanitation, ventilation, lighting &c.

(6) The drainage of areas of land on which buildings are to be constructed and the drainage of the sub-soil of such areas;

(7) The drainage sanitation ventilation air conditioning and lighting of buildings;

(8) The dimensions cubical content height ventilation sanitation and lighting of rooms (including cellars basements attic rooms and underground rooms);

(9) The provision in or in connexion with buildings of conveniences machinery apparatus fittings and equipment for sanitary purposes, for sewerage and

drainage, for the carrying off of water, for the generation supply or use of light heat or motive power, for ventilation or air conditioning, and for the conveyance of fumes smoke vapour air steam or heated water; and the construction and installation thereof and the materials thereof and the enclosing and protection thereof and the precautions to be taken with respect to the use thereof;

Building materials.

(10) Building materials and the quality and strength thereof, the testing of building materials whether before during or after the construction of a building, methods of testing building materials, and the prohibition of the use or the rejection of unsuitable building materials;

Methods of construction.

(11) The construction of buildings, including methods of construction for different kinds of buildings and for different kinds of building materials;

(12) Steel frame construction and reinforced concrete construction of buildings;

(13) The strength and stability of buildings; and the loads of buildings or parts thereof;

(14) Regulating the method of construction of buildings or parts of buildings to be constructed wholly or partly of wood;

Excavations, foundations &c.

(15) Excavations; the materials and construction of foundations and footings; testing the bearing capacity of soils; requiring and regulating the use of piles and prescribing the materials methods of construction and use of piles;

Provision against damp &c.

(16) Requiring that the ground surface of so much of the land as will be covered by buildings to be constructed shall be covered with a layer of material impervious to noxious exhalations or to damp;

(17) Effective damp courses in buildings;

Underpinning and shoring up.

(18) Underpinning and shoring up buildings;

Height.

(19) Regulating or limiting the height of buildings whether with or without reference to the materials of which the buildings are to be constructed or the width of streets or lanes abutting on the area of land on which the buildings are to be constructed;

Walls, floors, roofs &c.

(20) The dimensions materials and methods of construction of walls, footings, floors, roofs, roof-coverings and the several parts of buildings;

Bathrooms, stores &c.

(21) The provision in dwelling-houses of lavatories bath-rooms baths and laundries and of conveniences for the storage of food and the capacity and ventilation thereof;

Furnaces, fireplaces &c.

(22) The construction of furnaces, fireplaces, chimneys, flues and smoke-vents;

(23) Prohibiting or regulating the use of prescribed combustible or inflammable materials in the construction of buildings or any parts thereof, including furnaces, fireplaces, chimneys, flues, smoke-vents, stoves, stove pipes or any machinery apparatus fittings or equipment whatsoever in or in connexion with buildings for the conveyance of fumes, smoke, air, vapour, steam or heated water;

Fireproof &c. construction.

(24) Fireproof or fire-resisting construction of buildings, and the provision of bomb resisting and gas proof shelters in buildings;

Areas of land &c. for buildings.

(25) The proportion of the area of land on which buildings are to be erected which may be covered by such buildings, and the provision of open spaces and light areas about or in connexion with buildings;

(26) Prescribing the minimum area and the minimum depth and the minimum frontage of land on which buildings may be erected;

Position of buildings.

(27) The distance of buildings from the boundaries of the area of land on which they are to be constructed or from other buildings;

(28) The position of buildings outbuildings and offices in relation to other buildings or to the boundaries of the area of land on which the buildings outbuildings or offices are to be constructed;

Shop fronts, balconies, verandahs &c.

(29) Regulating shop fronts and shutters;

(30) Regulating the method of construction of balconies, verandahs, awnings, porticoes, porches, sheds, shades, coverings, landings, steps, pilasters, architectural features and erections and structures of every kind in on over or across any street or public place;

(31) Prohibiting the construction or placing, after the commencement of the regulation, against in front of or projecting from any building abutting on or adjacent to any public street or footway or any public place or any part thereof specified in the regulation, of any verandah over or across such public street or footway or public place unless such verandah is supported by cantilevers brackets or projecting supports and not otherwise;

(32) Requiring the pulling down and removal before a date specified in the regulation (not being less than ten years after the coming into operation of the regulation which required such pulling down and removal) of all verandahs which have been

constructed or placed against in front of or projecting from any building abutting on any such public street footway or public place or part thereof specified in the regulation which verandahs are upon over or across such footway street or public place and are supported otherwise than by cantilevers brackets or projecting supports:

Provided that no regulation shall be made under this paragraph so as to have effect in any locality in which there is in force a by-law made under sub-paragraph (ii) of paragraph (*h*) of sub-section (1) of section one hundred and ninety-eight of this Act or the corresponding previous enactment;

(33) The method of construction of fixtures (including hoardings lightning conductors and appliances and apparatus for exterior lighting of buildings) attached to or projecting from the outside of buildings; **Exterior fixtures.**

(34) The construction of party walls party fence walls and partitions (including the position, design, materials, strength, stability, thickness and height of party walls party fence walls and partitions); **Party walls &c.**

(35) The conversion of buildings of one class or sub-class into buildings of another class or sub-class; **Conversion of buildings.**

(36) Uniting buildings and severing buildings and dividing buildings; **Uniting and severing.**

(37) Limiting the time which may elapse between the commencement of the construction of a building and the completion of the construction thereof; **Time for construction.**

(38) The pulling down of buildings; **Pulling down.**

(39) The raising of buildings; **Raising.**

(40) The removal and reconstruction of buildings; **Removal.**

(41) The securing or the pulling down or removal of ruinous or dangerous buildings; **Ruinous buildings.**

(42) Sky-lights and roof-lights on buildings; **Sky-lights &c.**

(43) Authorizing or requiring the pulling down, opening or cutting into of any work for facilitating inspection for the purposes of the regulations; **Inspection.**

(44) Requiring buildings constructed in whole or in part contrary to the provisions of any regulation to be brought into conformity with the regulation, or authorizing or requiring the pulling down or removal in whole or in part of buildings constructed in whole or in part contrary to any of the provisions of any regulation or not pulled down or removed as required by or under any regulation; **Buildings &c. constructed contrary to regulation.**

Sale of materials of buildings pulled down &c.

(45) The sale or disposal of the materials of any buildings or parts thereof pulled down or removed by or under the authority or direction of any council under the regulations and the application of the proceeds thereof in reimbursing the expenses of pulling down or removing the same and in paying into the municipal or town fund any fees or penalties due by the owner thereof;

Prohibiting use of buildings constructed contrary to regulation.

(46) Prohibiting the use or occupation of buildings constructed otherwise than in accordance with the regulations and the conversion of any building to use or occupation for any purpose for which under the regulations such building could not lawfully be constructed; and

General.

(47) Generally, carrying into effect the purposes of this Part.

General provisions as to regulations. No. 5203 s. 898; No. 5443 s. 29. No. 5988 s. 3.

926. Any regulation may—

(*a*) be made so as to be limited in respect of time, place or circumstances having regard to the conditions already existing in any area in which the regulation is to have effect;

(*b*) leave any matter or thing to be from time to time determined applied dispensed with or regulated by any Government Department council or public authority or by the proper officer;

(*c*) confer powers or impose duties in connexion with the regulations on any Government Department council or public authority or on officers or on the owners or occupiers of lands buildings or premises or on builders or on any persons whomsoever;

(*d*) provide for the entry by a building owner his servants agents or workmen on adjoining premises at reasonable hours for the execution of any work or the doing of anything which he is required by the regulations to execute or do, and the conditions under which any such entry may be made, and the compensation (if any) to be made for any loss or damage thereby occasioned;

(*e*) require any work or thing to be constructed or done of such materials within such time or in such manner as is directed or approved in any particular case by any Government Department council or public authority or by the proper officer or by any person authorized by any Government Department council or public authority;

(*f*) incorporate by reference any standards prescribed or published by any authority or body whether as in force at the time of such incorporation or whether as amended or prescribed or published from time to time;

(*g*) provide, for the purposes of the regulations, for the granting of permits;

(*h*) appoint fees which may be charged and received by any council or public authority or the Crown respectively for any permit granted under the regulations by such council or public authority or by any Government Department or for any inspection made or other service provided under the regulations by any officer of such council or public authority or of any Government Department;

(*i*) empower any Government Department council or public authority or the proper officer or any person authorized by any Government Department council or public authority to pull down remove or alter any building work structure or thing constructed or being in breach of the regulations and to recover all the expenses incurred in so doing by sale of the materials or otherwise:

Provided that the exercise of this power shall not relieve any person from liability to any penalty incurred by reason of such breach;

(*j*) provide for the practice and procedure in respect of applications notices orders or permits under the regulations, and for the procedure to be followed, the conditions to be complied with and any matters for carrying the regulations into effect;

(*k*) prescribe forms for use under the regulations (and any such forms or forms to the like effect shall be sufficient in law);

(*l*) impose a penalty of not more than Twenty pounds for any breach thereof, and also different penalties in case of successive convictions in respect of successive similar breaches thereof not exceeding in the case of any such penalty Twenty pounds;

(*m*) impose also a daily penalty of not more than Five pounds for any offence against the regulations which is continued or repeated after a conviction or order of any court in relation to the offence;

(*n*) provide that in addition to any penalty any expenses incurred by any Government Department council or public authority in consequence of a breach of the regulations or in the construction or execution of any work directed by the regulations to be

constructed or executed by any person and not constructed or executed by him shall be paid by the person committing such breach or failing to construct or execute such work; and

(*o*) empower any council to make by-laws for or with respect to any matter left to be determined applied dispensed with or regulated by the council or any matter in respect of which powers are conferred or duties are imposed on the council under the regulations, and any such by-law shall be made as if the making thereof were authorized by paragraph (*a*) of sub-section (1) of section one hundred and ninety-eight of this Act.

Co-operation with public authorities &c. No. 5203 s. 899; No. 5745 s. 8, No. 5843 s. 39, No. 5988 s. 4.

927. (1) The Committee shall confer and co-operate with Government Departments, the Municipal Association of Victoria, the Melbourne City Council and public authorities in connexion with the preparation of draft regulations.

(2) Without affecting the generality of the last preceding sub-section, where any Act or enactment other than this Part authorizes or requires the making of regulations or by-laws (whether by the Governor in Council or any public authority or the council of any municipality) for or with respect to any matters for which provision may be made by regulations under this Part or for or with respect to the like matters, then, for the purpose of securing so far as practicable that the provisions of such regulations and by-laws and of regulations made under this Part shall be uniform and consistent and shall contain only such matters as are proper to be included therein in compliance with the Acts and enactments aforesaid and with this Part, and for the purpose of securing the effective operation of any provisions of the regulations under this Part, the following provisions shall have effect:—

(*a*) In the preparation of any regulation under this Part for submission to the Governor in Council consideration shall be given to the Acts or enactments aforesaid;

(*b*) It shall be the duty of the permanent heads of the several Government Departments concerned and of the proper officers of the several public authorities concerned, before any such regulation is submitted to the Governor in Council, to confer with one another for the purposes aforesaid;

(*c*) Before any such regulation made under paragraph (19) or (25) or (26) or (27) or (28) of section nine hundred and twenty-five of this Act is submitted to the Governor in Council the Minister shall cause

draft copies thereof to be submitted to any Government Department concerned and to the Municipal Association of Victoria and to the several public authorities and the councils of the several municipalities to which it is intended to become applicable in order that representations thereon may be made to the Minister by such Departments Association authorities and councils; and any representations so made by any such Department or by such Association or by any such authority or by any such such council within two months after any such draft copy has been submitted to it shall be taken into consideration in the preparation of the regulation.

(3) The foregoing provisions of this section shall not apply in any case where the Minister certifies in writing that the draft regulations are designed only to consolidate and replace existing regulations and contain no new matter and do not alter in substance the regulations to be consolidated.

Operation of regulations. No. 5203 s. 900.

928. (1) Subject to the provisions of this section and to any limitation provided in any regulation the regulations shall have effect in relation to buildings—

(*a*) in the municipal district of any city or town;

(*b*) in the municipal district or any part thereof of any other municipality to which the operation of the regulations is extended under this section;

(*c*) in any other part of Victoria to which the operation of the regulations is extended under this section—

but in no other area.

(2) The Governor in Council may by proclamation published in the *Government Gazette*—

(*a*) at the request of the council of any municipality (not being a city or town) extend the operation of the regulations to the municipal district of such municipality or to any part thereof;

(*b*) extend the operation of the regulations to any part of Victoria which is not comprised in a municipal district.

Effect of regulations. No. 5203 s. 901; No. 5443 s. 30, No. 5843 s. 40, No. 5988 s. 5.

929. (1) All regulations under this Part shall have full force and effect notwithstanding anything in any other Part of this Act or in any Act relating to municipalities (including the cities of Melbourne and Geelong) or in any by-law regulation or joint regulation under any other Part of this Act or under any other

Act, and any provision of any such other Part Act by-law regulation or joint regulation shall so far as relates to any matter as to which any regulation under this Part is in operation have no force or effect in any municipal district or part thereof in which such regulation under this Part is in operation.

Thirty-third Schedule.

(2) In any municipal district or part thereof in which regulations under this Part are in operation the provisions of the Thirty-third Schedule to this Act shall apply in relation to such regulations and also to any by-law regulation or joint regulation of the municipality which is in force therein relating to the regulation restriction restraint or prohibition of the erection or constructon of buildings erections or hoardings.

(3) No regulation under this Part shall permit to be constructed and no council shall permit the construction of any building contrary to the provisions of any regulation made under section sixty-five of the *Housing Act* 1958.

(4) Save as aforesaid nothing in this Part shall affect the validity or operation of any other Part of this Act or of any other Act or of any by-law regulation or joint regulation thereunder or the power of the Governor in Council or of any council or public authority to make rescind revoke amend or vary by-laws regulations or joint regulations thereunder.

Regulations not to apply to construction of buildings &c. commenced before commencement of regulations. No. 5203 s. 902; No. 5443 s. 30.

930. (1) No regulation shall apply to the construction of any building or to the doing of any work where such construction or work was commenced before the date of the commencement of such regulation or is to be carried out under any existing contract entered into before the commencement of such regulation.

(2) Any such construction or work shall be carried out in accordance with the provisions of any by-laws regulations joint regulations or enactments in force at the material times as if the regulation made under this Part had not come into operation, unless the building owner and the council or (as the case may be) the public authority concerned otherwise agree.

Power to Minister to enforce exercise of powers and performance of duties by councils. No. 5203 s. 903; No. 5745 s. 9.

931. (1) If after due inquiry at which the council has an opportunity of being heard the Minister is of opinion that any council has not satisfactorily exercised any power or performed any duty conferred or imposed on it by or under any of the provisions of any regulation—

(*a*) the Minister may by order under his hand direct the council to exercise the power or to perform the duty within a specified time;

(*b*) if within the time so specified the power is not exercised or the duty is not performed to the satisfaction of the Minister, the Minister may—

(i) make such further order as he considers necessary to secure the satisfactory observance of the regulation; or

(ii) himself exercise the power or perform the duty.

(2) (*a*) Any order under the foregoing provisions of this section may be enforced by writ of *mandamus.*

(*b*) Where the Minister or any person on his behalf exercises any power or performs any duty under the last preceding sub-section the Minister may by further order direct that all costs charges and expenses thereby incurred and specified in such further order (including remuneration of any persons appointed or employed in that behalf) shall be paid by the council, and any such further order may be removed into the Supreme Court and thereupon enforced in the same manner as if it were an order of that court.

(3) For the purposes of this section—

(*a*) the Minister and any persons authorized by him in that behalf shall have and may exercise all or any of the powers of the council and its officers;

(*b*) the Minister may institute and carry on any legal or other proceeding as fully and completely as if he were the council of the municipality concerned, and may institute and carry on any legal or other proceeding against such council or municipality or any officer of or person employed by the same, and it shall not be necessary for the Minister to give to such council municipality or officer any notice of action required, by any Act relating to local government or to municipalities thereunder or to the city of Melbourne or the city of Geelong, to be given in the case of actions against municipalities councils or officers thereof;

(*c*) any sum specified in an order of the Minister as aforesaid for payment of costs charges and expenses shall be deemed to be expenses properly incurred by the council and shall be a debt due by the municipality to the Crown, and the order shall be conclusive evidence of the sum due; and

(*d*) the council and every member or officer thereof and every person employed by it shall aid and assist the Minister and obey all directions given by the Minister in the exercise of any of the powers of the Minister under this section.

(4) The provisions of this section shall be in aid of and not in derogation from any other powers of the Minister or the Governor in Council and shall not prejudice any other proceeding or remedy against or liability of the council or the municipality.

Power to withhold payments from Consolidated Revenue &c. to councils in default. No. 5203 s. 904.

932. (1) If any council does not exercise any power or perform any duty conferred or imposed on it by or under this Part (including the payment of any sum ordered by the Minister to be paid under the last preceding section) the Treasurer of Victoria may by order under his hand cause all or any moneys payable or to become payable to the municipality out of the Consolidated Revenue or on account of fees fines or penalties not to be paid until the power has been exercised or the duty performed to the satisfaction of the Minister.

(2) The provisions of this section shall be in aid of and not in derogation from any other powers of the Governor in Council the Treasurer of Victoria or the Minister and shall not prejudice any other proceeding or remedy against or liability of the council or the municipality.

Publication, tabling commencement, revocation &c. of regulations. No. 5203 s. 905 (2); No. 5745 s. 10.

933. Regulations made under this Part—

(*a*) shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament and a copy of such regulations shall be posted to each member of Parliament;

(*b*) shall come into operation on the day fixed therefor in the regulations or if no day is so fixed then on the day after the publication thereof in the *Government Gazette*;

(*c*) without prejudice to any other method of revocation, may be revoked by order of the Governor in Council published in the *Government Gazette*; and

(*d*) shall not contain any provision altering or affecting the onus of proof in any legal proceedings or the rules governing the admissibility of evidence.

Regulations to be available to the public. No. 5203 s. 906.

934. Any person shall be entitled to obtain from the Government Printer a printed copy of any regulations made under this Part upon payment of a reasonable sum to be fixed by the Government Printer.

Section 2.

SCHEDULES.

FIRST SCHEDULE.

Number of Act.	Title of Act.	Extent of Repeal.
4329 ..	*Local Government (Preferential Voting) Act* 1935	So much as is not already or otherwise repealed.
4565 ..	*Local Government (Rates) Act* 1938 ..	So much as is not already repealed.
4712 ..	*Weights and Measures Act* 1939 ..	The item (as amended) in the First Schedule referring to the *Local Government Act* 1928.
4738 ..	*Local Government (Rates) Act* 1940	The whole.
4926 ..	*Local Government (Street Construction) Act* 1942	Sections 4 and 5.
5203 ..	*Local Government Act* 1946	So much as is not already repealed.
5204 ..	*Stamps Act* 1946	Item 3 of Part II. of First Schedule.
5217 ..	*Statute Law Revision Act* 1947 ..	Item in Schedule referring to *Local Government Act* 1946.
5221 ..	*Local Government (Private Street Construction) Act* 1947	The whole.
5289 ..	*Local Government (Streets) Act* 1948 ..	The whole.
5331 ..	*Statute Law Revision Act* 1948 ..	Item in Schedule referring to *Local Government Act* 1946.
5378 ..	*Collingwood (Unimproved Rating Poll) Act* 1949	The whole.
5443 ..	*Local Government Act* 1949	The whole.
5505 ..	*Local Government (Imported Houses) Act* 1950	The whole.
5512 ..	*Municipalities and other Authorities Finances Act* 1950	Section 3.
5526 ..	*Local Government (Shire of Braybrook) Act* 1950	The whole.
5530 ..	*Local Government (Enrolment) Act* 1951	The whole.
5555 ..	*Local Government (Overdrafts) Act* 1951	The whole.
5595 ..	*Local Government (Imported Houses) Act* 1951	The whole.
5596 ..	*Wooroayl (Unimproved Rating Poll) Act* 1951	The whole.
5602 ..	*Statute Law Revision Act* 1951 ..	Items in Schedule referring to *Weights and Measures Act* 1939 and *Local Government Act* 1946.
5658 ..	*Local Government (Imported Houses) Act* 1952	The whole.
5730 ..	*Local Government (Imported Houses) Act* 1953	The whole.
5745 ..	*Local Government (Amendment) Act* 1953	The whole.
5775 ..	*Local Government (City of Sunshine) Act* 1954	The whole.
5842 ..	*Transfer of Land Act* 1954	Clause 2 of Part II. of the First Schedule.

FIRST SCHEDULE—*continued.*

Number of Act.	Title of Act.	Extent of Repeal.
5843 ..	*Local Government (Amendment) Act* 1954	So much as is not already or otherwise repealed.
5914 ..	*Limitations of Actions Act* 1955 ..	Clause 42 of Schedule.
5924 ..	*Local Government (Amendment) Act* 1955	The whole.
5943 ..	*Keilor (Unimproved Rating Poll) Act* 1956	The whole.
5988 ..	*Local Government (Building Regulations) Act* 1956	The whole.
6025 ..	*National Art Gallery and Cultural Centre Act* 1956	Section 11.
6048 ..	*Local Government (Amendment) Act* 1956	The whole.
6074 ..	*Wodonga (Unimproved Rating Poll) Act* 1957	The whole.
6100 ..	*Wangaratta (Rating on Unimproved Values) Act* 1957	The whole.
6112 ..	*Statute Law Revision Act* 1957 ..	Item in Schedule referring to *Local Government (Building Regulations) Act* 1956.
6128 ..	*Local Government Act* 1957	The whole.
6151 ..	*Local Government (Amendment) Act* 1957	The whole.

Section 36.

SECOND SCHEDULE.

Shire of

Proposal that it is desired that the Governor in Council should make an Order that (*here give a summary of the proposal*) in accordance with the request to the Governor in Council published in the newspaper on the day of 19 .

Are you in favour of the proposal?

"YES"

"NO"

If you are in favour of the proposal strike out the word "No".

If you are against the proposal strike out the word "Yes".

Directions.

The ballot-paper so marked is to be dropped by the voter into the ballot-box.

The voter is not permitted to take the ballot-paper out of the ballot-room or polling booth.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 40.

THIRD SCHEDULE.

I A.B. of do solemnly and sincerely declare that all the signatures [*or if the case so requires such and such signatures describing them as initialed or otherwise marked by each declarant*] affixed to the above petition [*or* the above request *as the case requires*] are the genuine signatures of the persons whose they purport to be and that such persons are persons whose names are inscribed on the municipal roll in respect of property in the municipal district of (*or as the case requires*).

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

(Signed) A.B.

Made and subscribed at this day of 19 , before me,

C.D.,

A Justice of the Peace for the Bailiwick of the State of Victoria [*or, as the case may be*].

FOURTH SCHEDULE.

Sections 79, 80, 330.

No. 5843 s. 4 (*b*).

FORM "A."

Voters' List.

Voters' list for the shire of [*If the shire is divided into ridings say* for the riding of the shire of] made in the year 19 .

Surname in full: Christian or other names in full: Residence and post town or post office: Nature of calling or occupation: owner or occupier: Situation or other description of rateable property [*Note: Except as otherwise stated, the rateable property is also the place of residence*]: Yearly value of rateable property: Number of votes: *Thus*—

Atkins, Alfred James, 10 Marshall-street, Ivanhoe, Manufacturer, Occupier, House. £50, Votes: 2.

Baker, Charles Henry, 7 Arnold-street, Bendigo, Clerk, Owner, Land Ford-street, £12, Votes: 1.

[*And so on in alphabetical order of surnames.*]

(Signed) E.F.,
Shire Secretary.

FORM "B"

To the Secretary of the Shire of

I hereby give you notice in accordance with the provisions of the *Local Government Act* 1958 that the persons whose names appear hereunder would, if the severance from the municipal district of the municipality of had not taken place, have been entitled to have their names inserted in the Voters' List for that municipality or some subdivision thereof.

[*Insert names and particulars as indicated in Form "A."*]

[*Indicate also in each case the subdivision (if any) of annexing municipal district in which the property is situate.*]

Dated this day of , 19 .

(Signed) E.F.,
Secretary of the Shire of .

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Forms.

FIFTH SCHEDULE.

Section 84.

No. 5843 s. 4 (*c*).

To the Secretary of the Shire of

I hereby give you notice that I claim to have my name inserted in the Voters' List for the shire of [*or if the shire has been divided into ridings say* for the ridings of the shire of] in virtue of my qualifications as under:—

Surname of Claimant.	Christian or Other Names of Claimant.	Trade or Occupation.	Description and Situation of Property in Respect of which Vote is Claimed.	Whether Claiming as Owner or Occupier.	Value at which Property is Assessed to Last Rate or if not so Assessed is Valued by Owner or Occupier.	The Number of Votes Claimed.

Dated this day of 19 .

(Signed) A.B. [*Christian or other names and surname in full*] of [*state residence*].

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 85.

SIXTH SCHEDULE.

To the Secretary of the Shire of and to A.B. of

I [*] hereby give you notice that I object to the name of A.B. of being retained [*or if the objection is to the number of votes assigned to A.B. say* being retained as for any number of votes exceeding] on the Voters' List for the shire of [*or if the shire has been divided into ridings say* for the riding of the shire of] in respect of the following rateable property [†] on the following grounds [‡].

Signature (under his own hand) of objector—

Description—

Address—

* Insert Christian or other names and surname of objector.

† Insert situation and description of rateable property.

‡ Here state grounds of objection.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 86.

No. 5843 s. 4 (e).

SEVENTH SCHEDULE.

List of persons having claimed to be placed on the Voters' List for the shire of [*or if the shire has been divided into ridings say* for the riding of the shire of] made in the year 19 .

Surname of Person.	Christian or Other Names of same Person.	Trade or Occupation.	Description and Situation of Property in Respect of which Vote is Claimed.	Whether Claimant Claims as Occupier or Owner.	Value as Stated in Claim.	The Number of Votes Claimed.

(Signed) E.F.
Shire Secretary.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 86.

EIGHTH SCHEDULE.

List of persons whose names appear on the Voters' List for the shire of [*or if the shire has been divided into ridings say* for the riding of the shire of] against whom objections have been sent in.

Surname of Person objected to.	Christian or other Names of the same	Description on Voters' List of Person objected to.	Description and Situation of Rateable Property referred to in Objection.	Christian or other Names and Surname of Objector.	Substance and Grounds of Objection.

(Signed) E.F.,
Shire Secretary.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

NINTH SCHEDULE.

Sections 96, 330.

VOTERS' ROLL.

No. 5843 s. 4 (*d*).

For the shire of [*or if the shire is divided into ridings say* for the riding of the shire of] for the year ending on the day of August, 19 .

Number on Roll: Surname in full: Christian or other names in full: Residence and post town or post office: Nature of calling or occupation: Owner or occupier: Situation or other description of rateable property [*Note: Except as otherwise stated, the rateable property is also the place of residence*]: Yearly value of rateable property: Number of votes: *Thus*—

1. Atkins, Alfred James, 10 Marshall-street, Ivanhoe, Manufacturer, Occupier, House, £50, Votes: 2.
2. Baker, Charles Henry, 7 Arnold-street, Bendigo, Clerk, Owner, Land, Ford-street, £12, Votes: 1.

[*And so on in alphabetical order of surnames.*]

(Signed) E.F.,
Shire Secretary.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

TENTH SCHEDULE.

Section 124.

FORM OF NOMINATION.

The day of 19 .

We the undersigned voters of the shire of [*or if the shire has been divided into ridings say* for the riding of the shire of] do hereby nominate [*insert Christian or other names and surname of person nominated*] of as a candidate for the office of councillor of the said shire at the election [*or* extraordinary election] to be held for the said shire [*or* riding] on the day of 19 .

[*Signatures of not less than ten persons qualified to vote at such election, signed under their own hands to be written here.*]

And I the above-named [*insert Christian or other names and surname of person nominated*] do hereby consent to such nomination.

And I declare that the particulars of my qualification for the office of councillor are as follows:—

(*Set forth the said particulars.*)

Signature of person nominated—

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

ELEVENTH SCHEDULE.

Sections 133, 140.

Shire of [*if shire is divided into ridings add* riding].

Election [*or* extraordinary election of* councillor [*or* councillors].

* In printing ballot-papers state numbers of councillors to be elected.

Candidates' names [*arranged in alphabetical order of surnames thus*

BROWN, Alfred
JONES, Robert William
ROBINSON, Samuel James
SMITH, John].

DIRECTIONS.

The voter must not strike out the name of any candidate.

The voter must place the figure 1 opposite the name of the candidate for whom the voter wishes to vote as his first preference.

The voter must then place opposite the respective names of all the remaining candidates the figures 2, 3, 4 (and so on as the case requires) so as to indicate by such numerical sequence the order of the voter's preference for each such candidate.

The ballot-paper so marked by or for the voter is to be dropped by him into the ballot-box.

The voter is not permitted to take his ballot-paper out of the ballot-room or polling booth.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 135.

TWELFTH SCHEDULE.

We the undersigned nominators of A.B. as a candidate at the election [*or* extra-ordinary election] of councillor to be held on the day of in and for the shire of [*or* the riding of the shire of] do hereby withdraw the said A.B. as such candidate.

[*Signatures of not less than five nominators signed under their own hands to be written here.*]

And I the said [*insert Christian or other names and surname of candidate*] do hereby retire from being such candidate.

Signature of candidate—

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 154.

THIRTEENTH SCHEDULE.

DECLARATION AT RECOUNT OF VOTES.

I (A.B.) being a stipendiary magistrate (*or* returning officer *or* clerk of the municipality of *or* scrutineer appointed on behalf of a candidate at the election hereinafter mentioned) do solemnly declare that I will faithfully observe all the provisions of the *Local Government Act* 1958 which relate to my duties at the recount of votes in connexion with the election for the municipality (*or* the ward *or* riding of the municipality) of held on the day of 19 .

And I do further solemnly promise and declare that I will not at the said recount of votes attempt to ascertain for what candidate any person voted at the said election, and that if, in the discharge of my duties at or concerning the said recount of votes, I learn, or have the means of learning, for what candidate any person voted thereat, I will not by word or act, or any other means whatsoever, directly or indirectly, divulge or discover or aid in divulging or discovering the same, save in answer to some question which I am legally bound to answer.

(Stipendiary Magistrate *or as the case may be*).

Declared before me at , in the State of Victoria, this day of 19 .

Justice of the Peace.

Section 155.

FOURTEENTH SCHEDULE.

DECLARATION AT RECOUNT OF VOTES.

I (A.B.) being a stipendiary magistrate (*or* returning officer *or* clerk of the municipality of *or* scrutineer appointed on behalf of ratepayers of the said municipality) do solemnly declare that I will faithfully observe all the provisions of the *Local Government Act* 1958 which relate to my duties at the recount of votes in connexion with the poll held on the day of 19 . on the proposal

And I do further solemnly promise and declare that I will not at the said recount of votes attempt to ascertain whether any person voted for or against the proposal at the said poll and that if, in the discharge of my duties at or concerning the said recount of votes, I learn, or have means of learning, whether any person voted for or against the proposal at the poll, I will not by word or act or by any other means whatsoever, directly or indirectly, divulge or discover or aid in divulging or discovering the same, save in answer to some question which I am legally bound to answer.

(Stipendiary Magistrate *or as the case may be.*)

Declared before me at , in the State of Victoria, this day of , 19 .

Justice of the Peace.

FIFTEENTH SCHEDULE.

Sections 197, 198, 200, 202, 203, 208, 212, 215, 227, 230, 233, 603, 604, 802.

PART I.—STREETS AND FOOTWAYS.

No. 5443 s. 31, No. 5559 s. 11 (3), No. 5843 s. 10 (5), No. 5930 s. 2, No. 6151 s. 3 (7).

(1) *Porticoes Projections &c.*

Interpretation.

1. The word "portico" shall mean and include every awning portico porch verandah shed shade or covering upon or across any public footway for the purpose of shade or shelter together with the supports other than the building against which it is of such portico.

Erection of porticoes.

2. Subject to the provisions hereinafter contained it shall be lawful for the owner of any house or building abutting upon any public footway to erect or place against or in front of such building and upon or across such footway such portico as such owner may see fit.

Height &c. of porticoes.

3. Every such portico shall be supported by upright pillars or supports fixed on the outer line or curb of the footway or by cantilevers brackets or projecting supports, and shall be in every part thereof of such height from the ground not less than seven feet, and with the pillars or supports thereof or such cantilevers brackets or projecting supports shall be of such shape figure dimensions and materials respectively as have been appointed as herein provided.

Regulations relating to porticoes.

4. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following (that is to say):—

For regulating the height from the ground of such porticoes as aforesaid.

For appointing the shape figure dimensions and materials of such porticoes.

And there shall be deposited at the office of the council a plan and specification of such portico as may be appointed in any such regulation, and such plan and specification shall be referred to in such regulation, and shall be open for inspection by any ratepayer or person interested at all reasonable times without fee or reward.

Porticoes erected contrary to by-laws or regulations.

5. If before the coming into operation of this subdivision any portico has been erected or placed against or in front of any building and upon or across any public footway contrary to some by-law lawfully in force in that behalf, or if after such coming into operation any portico has been erected or placed against or in front of any building, and upon or across any public footway, otherwise than as has been appointed by some regulation made hereunder, or if any projecting window balcony step cellar cellar-door or window or steps leading into any cellar or otherwise lamp lamp-post lamp-iron sign sign-post sign-iron show board window shutters wall-gate fence or opening or any other projection or obstruction placed or made against or in front of any building after the coming into operation of this subdivision therein is an annoyance in consequence of the same projecting into or being made in or upon or endangering or rendering less commodious the passage along any footway or street, it shall be lawful for the council to give notice to the owner or occupier of such building to remove or to alter so as to conform to such regulation such portico, or to remove, or in such manner as the council by such notice requires to alter such projection or obstruction, and such owner or occupier shall within fourteen days after the service of such notice upon him remove or in manner aforesaid respectively alter such portico or such projection or obstruction as aforesaid respectively; and if the owner or occupier of any such building neglect or refuse for fourteen days after such notice so served to remove such portico or such projection or obstruction or to alter the same in manner aforesaid respectively he shall forfeit a sum not exceeding Five pounds, and a further sum not exceeding Forty shillings for every day during which such projection or obstruction continues after the expiration of fourteen days from the time when he may be convicted of any such offence contrary to the provisions of this section.

Projections and obstructions.

Porticoes erected without violation of previous by-laws.

6. If before the coming into operation of this subdivision any portico has been erected or placed without violation of any by-law for the time being lawfully in force against or in front of any building and upon or across any public footway laid out as such hereunder or otherwise, and such portico is not in conformity with some regulation for the time being in force hereunder, or if any such projection or obstruction as in the last preceding section mentioned which has been placed or made against or in front of any building before such coming into operation as aforesaid is an annoyance, as in the said section mentioned, it shall be lawful for

Projections and obstructions.

FIFTEENTH SCHEDULE—*continued.*

the council to cause such portico to be removed or altered so as to conform to such regulation, or (as the case may be) such projection or obstruction to be removed or altered as they see fit: Provided that the council shall give notice of every such intended removal or alteration to the owner or occupier against or in front of whose building such portico projection or obstruction may be seven days before such removal or alteration is commenced, and shall make reasonable compensation, to be ascertained and ordered, if the parties differ, by two justices, to every person who may incur any loss or damage by such removal or alteration, except in cases where the portico projection or obstruction has been erected placed or made without lawful right, or may be removable under some other Act or law, in which case no compensation shall be made hereunder.

Repairs &c. of porticoes.

7. Every owner or occupier of any building against or in front of which there is any portico shall keep the same clean and in good repair; and it shall be lawful for the council to give notice to any such owner or occupier to clean or repair such portico, if and as the same may require; and every owner or occupier who neglects or refuses within seven days after the service of such notice to effect such cleaning and repair shall forfeit a sum not exceeding Forty shillings for every day during which he fails to effect the same.

(2) *Naming Streets and Numbering Houses.*

Names of streets.

8. It shall be lawful for the council from time to time to cause to be painted or affixed on a conspicuous part of some house or building at or near each end corner or entrance of every street, and in the direction of the line of such street, the name of such street in legible characters not exceeding three inches in length and proportionately broad and near to each other, and the council may alter the name of any street or road in the municipal district (to be described in the order altering the same) to any other name which to the council may seem fit, and before any name is given to any new street or road notice of the intended name shall be given to the council, and the council may, by notice given to the person by whom notice of such intended name was given to them, at any time within fourteen days of the receipt of such last-mentioned notice, object to such intended name; and it shall not be lawful to give any name to any street or road or set up any such name thereto until the expiration of fourteen days after notice thereof has been given as aforesaid to the council, or to give or to set up any name objected to as aforesaid. Where the council changes the name of any street it shall forthwith cause a notice thereof, stating the old name and the new name, to be published in the *Government Gazette.*

Numbering &c. of houses.

9. The owners or occupiers of houses or buildings shall, on the gate or gatepost or in such other conspicuous position as the council determines, mark such houses or buildings with such numbers and names, for the purpose of distinguishing the same, as the council may from time to time direct or approve, and shall renew the numbers or names of such houses or buildings as often as they are obliterated or defaced; and if any owner or occupier of any such house or building neglects for one week after notice to him from the council to mark such house or building with such number or name as the council may direct or approve, or to renew the number or name thereof as aforesaid, he shall forfeit a sum not exceeding Forty shillings; and the council may cause such number or name to be so marked or renewed, and recover the expense thereof from the owner or occupier of such house or building before any justice; and where such expense is paid by or recovered from the occupier he may deduct the same from any rent payable by him to the owner.

Malicious injury to name or number.

10. If any person wilfully and maliciously destroys pulls down obliterates or defaces the name of any street or road, or the name or number of any house or building, or paints affixes or sets up any name to any street or road, or any name or number to any house or building, contrary to this subdivision, he shall for every such offence forfeit a sum not exceeding Five pounds; and it shall be lawful for the council to cause such name or number so unlawfully painted affixed or set up to be obliterated or destroyed.

Register of alterations.

11. The council shall cause to be kept a register of all alterations made by them in the names of streets and roads, and such register shall be kept in such form as to show the date of every such alteration, and the name of every street or road previous to such alteration, and the new name thereof.

FIFTEENTH SCHEDULE—*continued.*

(3) *Spouts and Drains from Houses &c.*

Spouts &c.

12. The owner or occupier of every house or building in adjoining or near to any street or road, within seven days next after service of a notice by the council for that purpose, shall put up a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or building or with a pipe or trunk to be fixed to the front or side of such first-mentioned house or building from the roof to the ground to carry the water from the roof thereof in such manner that the water from such house or the shoot or trunk affixed thereto, or from any portico or projection therefrom, will not fall upon the persons passing along the street or road, or flow over the footway, but so that no such pipe or trunk be an obstruction to the safe and convenient passage along the footway, and shall construct or lay from and in continuation of such pipe or trunk to the water channel a gutter, herein called channel, at the outer edge of the footway, and through under and transversely to the footway, such covered drain or trunk for carrying such water to such channel as may be authorized or directed by some regulation in that behalf, and shall thereafter keep in good condition every such shoot trough pipe drain and trunk, and every such drain or trunk shall be constructed laid and repaired subject to the inspection of such officer as the council appoint in that behalf, and in default of compliance with any such notice within the period aforesaid or with the provisions of this section such owner or occupier shall forfeit a sum not exceeding Forty shillings for every day that he so makes default.

Drains.

Drains for discharge of surface water from land.

13. Every owner or occupier of land in adjoining to or near any street or road, if such land is so situated that surface or storm water from or upon the same overflows or tends naturally, if not otherwise discharged, to overflow any footway of such street or road, shall within seven days next after the service of notice by the council for the purpose construct and lay from such point upon such land being near to the footway as is specified in such notice by plan appended or otherwise, and higher in level than the bottom of the channel at the outer edge of the footway, to the said channel and through under and transversely to the footway, and keep in good condition such covered drain or trunk as and subject to the like inspection as in the last preceding section mentioned respectively; and in default of compliance with any such notice within the period aforesaid or with the provisions of this section such owner or occupier shall forfeit a sum not exceeding Forty shillings for every day during which he makes default.

Regulations.

14. It shall be lawful for the council to make regulations for all or any of the purposes following (that is to say):—

For regulating the materials and the size the level and the fall of any drain or trunk to be laid or constructed under any footway; either absolutely or with relation to the level or fall of the footway or channel or otherwise, in like manner and so if they please that such size be variable within limits prescribed in the regulation according to the discretion of such officer as the council may thereby direct.

(4) *Crossings over Footways and Channels.*

As to horses and vehicles crossing &c. footway &c. save by made crossing.

15. Every person who wilfully and without lawful excuse rides drives or leads any horse or other animal, or drives or wheels any carriage cart or other vehicle upon along or across any footway or any water channel or gutter, herein called channel, by the side of any street or road, save in each case upon and by or at some crossing to be made as hereinafter mentioned, shall forfeit a sum not exceeding Five pounds. and shall also pay to the council such sum by way of compensation for any damage done by him to the footway or channel as the justices adjudicating upon the information shall on the hearing thereof order.

Notice of making crossing.

16. If any land fronts to adjoins or abuts upon the footway of any street or road, and if access with horses and vehicles from such street or road to such land or to some sufficient way appurtenant thereto cannot be had without riding driving leading or wheeling the same respectively upon or across the said footway, or the channel (if any) lying along the outer edge thereof, and if the owner of such land desires that a crossing for horses and other animals and for vehicles be made as herein provided over such footway and channel, and gives a notice in writing of such his desire to the council, and in such notice describes the land in question and the proposed work by reference to the specification deposited as hereinafter mentioned, such specification being in accordance with the provisions hereof and with such regulation as may be in force in that behalf, it shall be

FIFTEENTH SCHEDULE—*continued.*

lawful for such owner, after seven clear days from the giving of such notice and not before (with no unnecessary delay or obstruction), at his own cost and under the inspection of such officer as the council appoint for the purpose, to make such crossings according to the tenor of such notice and specification, and not otherwise, and the owner of such land shall afterwards in like manner maintain the same.

Specification.

17. Every such owner who desires as aforesaid that any such crossing be made shall, before giving notice to the council as herein provided, deposit with the municipal clerk a specification describing the proposed work with respect to each of the several matters hereby or by any such regulation in force in that behalf required or provided.

Immunity of person giving irregular notice in certain cases.

18. Unless within the period of seven days after the receipt of any such notice as aforesaid the council gives notice to the person giving the same that (if the fact be so) such notice or the specification referred to therein and deposited is not in accordance with the provisions of such regulation as aforesaid, such notice and specification shall thereafter, so far only as affects the liability of such person to any penalty, be deemed to be in accordance therewith.

Nature of crossing where there is a street curb.

19. In streets or roads in which, at the site of any such proposed crossing, there is a curb of stone wood or concrete brick or other permanent material along the outer edge of the footway, the crossing so far as the footway extends shall have on both sides a curb not higher in any part than the surface of the footway at that part and similar in all respects to such first-mentioned curb, and such curb shall approach to and join the street-curbing in gentle-curves outwards, and such crossing shall be of such width, and the surface thereof so far as the footway extends shall have such inclination outwards, and be depressed so far below the footway as has been respectively appointed by some regulation in that behalf, and shall with respect to the channel be so laid or constructed as not to raise or obstruct the same or any part thereof.

Nature of crossing where there is no street curb.

20. In streets or roads in which, at the site of any such proposed crossing, there is no such curbing as in the last preceding section mentioned the crossing over the channel shall be such suitable bridge as leaves a free passage for the water underneath the same, and shall be of such materials form length size strength and fall as has been respectively appointed by some regulation in that behalf, and the surface of such crossing so far as the footway extends shall be so made good by paving macadamizing gravelling or otherwise that the necessary traffic by animals or vehicles over the same may not cause any damage thereto, but that such crossing may be as sound and commodious for the passage of persons using the footway as the other portions of such footway adjoining such crossing.

Departures from notice &c. not punishable in certain cases.

21. No person making any crossing shall be deemed guilty of an offence by reason only of some departure in making such crossing from the notice or specification relating thereto, unless the officer of the council appointed as hereinbefore provided to inspect the making of the crossing has reported in writing such departure to the council within one month after the same has occurred, and unless such person, being served by the council within one month after such report with a notice so to do, for the space of seven clear days after such notice has failed to correct or supply such departure.

Council may alter improper crossing.

Expenses.

22. If any crossing has been made in any respect contrary to this by-law or any regulation in force hereunder, it shall be lawful for the council, if they see fit, to cause the same to be altered so as to conform hereto and to such regulation respectively, and to recover in manner in the *Local Government Act* 1958 provided the expenses of such alteration from the owner of the land to which such crossing leads, but they shall not so recover in those cases of departure from the notice or specification which the council or their officer might respectively have given notice of or reported, but failed to give notice of or report respectively in manner and within the time provided in the preceding sections hereof.

Crossings for private streets.

23. If any private street or road meets at an angle the footway of any public street or road, and there is no crossing upon and across such footway and the channel adjacent thereto from such private street or road to such public street or road, it shall be lawful for the council if they see fit to make in accordance with any regulation in force in that behalf a crossing upon and over such footway and channel of the description hereinbefore provided with respect to other crossings, and to recover from the owner of each of the tenements abutting on

FIFTEENTH SCHEDULE—*continued.*

such private street or road such portion of the expenses of such making as bears to the whole of such expenses the same proportion as the rateable value of such tenement bears to the whole rateable value of all the tenements so abutting. **Expenses.**

24. If any crossing across or over any footway or channel to any land or way appurtenant thereto, or to any private street or road, has been made before the coming into operation of this sub-division, but is in any respect not in accordance with any regulation made hereunder, the council may if they see fit cause the same to be altered so as to conform to such regulation; and if such crossing has been made contrary to any by-law in force at the time of making the same, the council may recover the expenses of such alteration in manner in the last two preceding sections mentioned, according as one or the other may be applicable to the case. **Council may alter crossings made before subdivision in force.**

25. If any crossing be out of repair, and the person liable hereunder to maintain or repair the same, for seven days after notice from the council to that effect, neglects properly and completely to repair the same, he shall forfeit for every day that such crossing remains so unrepaired a sum of Forty shillings, and the council may, if they see fit, effect such repair and recover the same from such person before any justice. **Repair of crossings.**

26. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following, that is to say:— **Regulations.**

For regulating the width depression and inclination of crossings across or over footways and channels, and the materials for making and constructing the same, the mode of laying and bedding such materials, the length width size strength and fall of bridge crossings and the said inclination and fall, either absolutely or with relation to the levels inclination or fall of the footway or channel or otherwise in like manner.

(5) *Deposit or Discharge of Rubbish Liquid &c. on Streets &c.*

27. Every person who causes or permits to run from any manufactory or any establishment for the boiling or preparing of any animal matter or any brewery slaughter-house butcher's shop or any dunghill or other receptacle or from any inn into or upon any street or road public or private or any footway or channel, and every occupier of any land or premises who causes or permits to run from such land or premises into or upon any such street or road footway or channel, any offensive liquid or matter shall for every day during which any such liquid or matter so runs forfeit a sum not exceeding Five pounds. **Causing &c. offensive liquid &c. to flow on street &c.**

28. Every manager and director of any company established for mining purposes whether incorporated or not and every other person who, unless where authorized by or under some Statute now or hereafter to be in force, causes or allows any sludge made in the process for washing earth for gold or otherwise to flow or run into or upon any street public or private or any footway or channel shall, for every day during which any such sludge so flows or runs, forfeit a sum not exceeding Five pounds. **Causing sludge to flow on street &c.**

(6) *Depositing Building Materials Excavations &c.*

29. Every person who throws or lays any building or other materials or building rubbish, or puts up, constructs, or erects any stage scaffolding hoarding or fence in upon across or over any street road footway channel or public place, save in lawful execution of the powers given by this subdivision, shall forfeit a sum not exceeding Ten pounds, and a further sum not exceeding Forty shillings for each day during which such matter or thing or any of it or any part thereof is suffered to remain in or upon such street road footway channel or public place. **Unlawful depositing of building materials in street.**

30. Every person intending to build put up or take down, or cause to be built put up or taken down, any building wall or other structure or any fence, or to alter or repair or cause to be altered or repaired the outward part of any such building or other structure, whether in any of such cases over or under ground, or to make any hole, within ten feet of any street road or footway, shall give notice in writing of such his intention to the council: and in such notice shall describe the intended work, and the height depth extent and position thereof; and whether or not it be necessary for the execution of the said work that a scaffold or stage be constructed or that building or other materials or building **Notice of intention to build &c.**

rubbish be deposited upon or in the footway or street adjoining or in front of such structure or hole, and for what time it will be necessary that such stage or scaffolding or such materials deposited be so kept or continued or that such hole remain open, together with such other particulars touching such intended work as such person may see fit.

Penalty for commencing &c. work without notice.

31. No person shall execute or begin or continue to execute any such work as in the last preceding section mentioned without having given to the council such notice as therein provided or until the expiration of forty-eight hours after giving the same; and every person offending against the provisions of this section shall forfeit a sum not exceeding Five pounds for every day upon which he so offends.

Licence for depositing materials scaffolding &c.

32. It shall be lawful for the council, having received any such notice as aforesaid, to grant if it seem to them fit to the person having given such notice, upon payment by him of the sum of Five shillings, a licence in the appointed form under the hand of the municipal clerk, authorizing such person to construct such stage and scaffolding as the proper officer of the council to be appointed in that behalf require or permit, and to deposit building and other materials and building rubbish upon or across in each of the cases aforesaid so much of the footway adjoining or in front of the site of the intended work and so much of the street or road adjoining such footway, and to keep and continue the said stage scaffolding and materials or rubbish so constructed or deposited respectively for such time respectively as may seem fit to the said council and be specified in the said licence; and the council may if it seem fit renew such licence or grant a fresh licence to such person from time to time, and such person may thereupon from time to time do the said acts according to the tenor of such licence.

Hoarding and fence.

33. Every person intending to build take down or cause to be built or taken down any building or other structure whether over or under ground, or to alter or repair or cause to be altered or repaired the outward part of any such structure within, in any of the cases aforesaid, ten feet of any street road or footway, or who may have a licence for constructing any stage or scaffolding or depositing any building or other materials or building rubbish upon or across any footway street or road, shall before beginning to execute such work or to do such act, cause to be put up so as to separate from the street or road and from the remainder (if any) of the footway so much of the premises where the work is to be executed as fronts the site of such work and the area upon which according to the licence such stage or scaffolding is to be constructed or such materials or rubbish are to be deposited, such sufficient hoards or fences together with such convenient platform or handrail, if there be room enough, to serve as a footway for passengers outside of such hoard or fence, as may be respectively approved by such officer as the council may appoint in that behalf, and shall continue such hoard or fence with such platform and handrail as aforesaid standing and in good condition to the satisfaction of such officer during the time limited as aforesaid in the said licence or the last renewal thereof and for such longer time as the public safety or convenience requires; and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted from sunset to sunrise, and shall remove such hoard fence platform and handrail and make good the footway and the street or road within a reasonable time after the provisions of this section have been fulfilled.

Penalty for not putting up lighting &c. hoarding.

34. Every person who executes or begins or continues to execute any such work as in the last section mentioned, or who being licensed thereto constructs or begins or continues to construct any such stage or scaffolding, or deposits or keeps deposited any such material or rubbish upon or across any footway street or road without having in any of the cases aforesaid put up such hoard or fence or such platform with such handrail as aforesaid, or continuing the same respectively standing and in good condition as aforesaid during the time aforesaid, or without keeping the said hoard fence platform or rail and each part thereof respectively while the same are standing sufficiently lighted from sunset to sunrise, or without removing the same within such reasonable time as aforesaid, or without making good the footway and the street or road after such removal, shall for every such offence forfeit a sum not exceeding Five pounds, and a further penalty not exceeding Forty shillings for every day while such default is continued.

Removal of scaffolding &c

35. Every person licensed as herein mentioned to construct any stage or scaffolding or to deposit any materials or rubbish shall remove within a reasonable time after the time limited as aforesaid in such licence or in the last renewal thereof all such stage scaffolding material and rubbish, and shall make good the

FIFTEENTH SCHEDULE—*continued.*

footway and the street or road; and if any such person fails in any such case to comply with this section he shall forfeit a sum not exceeding Five pounds, and a further penalty not exceeding Forty shillings for every day while such default is continued.

Street &c. not to be obstructed &c.

36. Nothing herein contained shall render it lawful to construct any stage or scaffolding, or to deposit any materials or rubbish, or to put up any hoarding or fence platform or handrail as aforesaid, or all or any of them, so that the same may extend or be across or over or upon any street or road further from the inner edge of the footway than one-third of the whole breadth of such street or road, or in any case so as to render the street or road, exclusively of the footways, impassable for carriages or so as to obstruct the channel.

Council may remove &c. in certain cases and recover expenses.

37. If any person who ought under this by-law to remove any matter or thing or to make good any footway or street or road fails so to do, whether or not such person has been convicted of any offence under this subdivision, the council may remove such matter or thing, or make good such street road or footway, and may recover the expenses of so doing from the person so making default before any justice.

(7) *Lighting &c, of obstructions generally.*

Persons laying materials or making hole whether by authority or not to light &c. same.

38. When any building materials rubbish or other things are laid or any hole made in any street road or footway whether the same be done by order or authority of the council or not the person causing such materials or other things to be so laid or such a hole to be made shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sunset to sunrise while such materials or hole remain, and such person shall at his own expense cause such materials or other things and such hole to be sufficiently fenced and enclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light fence or enclose such materials or other things or such hole shall for every such offence forfeit a sum not exceeding Ten pounds, and a further sum not exceeding Forty shillings for every day while such default is continued.

Penalty in like case for non-removal.

39. In no case shall any such building materials or other things or such hole as last mentioned respectively be allowed to remain an unnecessary time, under a penalty not exceeding Ten pounds, to be paid for every such offence by the person who, whether by order or authority of the council or not, causes such materials or other things to be laid or such hole to be made; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid or causing such hole to be made.

(8) *Houses &c. encroaching on Streets &c.*

Houses built as to encroach on street.

40. If any person erects or places any house or other building or any part thereof upon over or across any public street or road footway or channel he shall forfeit a sum not exceeding Twenty pounds, and a further sum not exceeding Five pounds for every day while the same so continues.

(9) *Obstructions &c., to Streets &c. by Cattle &c.*

Cattle found on any street or unfenced land without person in charge.

41. If any cattle are found without any person having charge of them—

(*a*) in any street; or

(*b*) upon any land (not being a common) which is not enclosed or fenced with some sufficient fence within the meaning of the *Fences Act* 1958 or any amendment thereof, and the openings (if any) in which fence are not secured and barred with gates or other fastenings of equivalent closeness and strength with the fence—

the proper officer of the council may seize such cattle and impound them, or place them at some neighbouring place of safe custody, and any person rescuing or attempting to rescue or interfering with cattle placed at any such place of safe custody or seized for the purpose of being placed at any such place shall be liable to a penalty of not more than Fifty pounds or to imprisonment for a term of not more than six months.

Penalty.

42. The owner of such cattle shall forfeit a sum not exceeding Five pounds for every head of such cattle, or if such cattle are so found in any area declared by the council to be a populous or residential area (which declaration the council is hereby authorized to make) such owner shall forfeit a sum of not less than

FIFTEENTH SCHEDULE—*continued.*

Ten shillings and not more than Five pounds for every head of such cattle, and any justice, if such owner be not known, upon proof of the issue of a summons in the usual form addressed to such owner as "owner" only without otherwise naming or describing him, such cattle and the place of seizure being duly described therein, and of the publication of such summons in some newspaper commonly circulating in the neighbourhood, may after the expiration of twenty-four hours from such publication proceed with respect to such owner not appearing as if personal service of a summons stating his name had been effected, or if such owner appear then as in other cases, and the justice may order the cattle to be sold and the money arising from the sale, after deducting the said penalty and the costs awarded and the reasonable expenses, to be estimated and assessed by the justice, of seizing keeping and selling the said cattle, shall be paid if demanded within one month to the owner of the cattle, and if not so demanded then to the municipal fund, and if the said money is not sufficient for all the purposes aforesaid the amount whereby the same falls short, or if no such sale be ordered the whole of the said amount may be recovered from the said owner if and when known in like manner as other penalties and sums adjudged or ordered to be paid by justices are to be recovered.

Sale of cattle.

Penalty and sale where cattle impounded.

43. If such cattle by reason of having been so found at large have been impounded by the council the amount of such penalty and costs if adjudged respectively before the release or sale of such cattle shall be added to the pound fees and charges payable in respect of such cattle, and the amount thereof or such lesser amount (if any) as after the sale of the cattle may remain in the hands of the poundkeeper shall be paid over by him accordingly; and if the proceeds of any sale of such cattle are not sufficient after paying the lawful fees and charges aforesaid to satisfy such penalty and costs, or if such penalty and costs have been adjudged after the release or sale of the cattle the same or so much thereof as remains unpaid shall and may be recovered from the owner of the cattle in like manner as other penalties and costs adjudged by justices are by law to be recovered; and if in the case of any information under this section the owner be not known then the provisions of the last preceding section so far as necessary to give the adjudicating justice jurisdiction shall apply.

Regulation as to driving cattle.

44. It shall be lawful for the council to make regulations from time to time for appointing the hours during which it shall not be lawful to drive into or through the municipal district or any parts thereof by boundaries set forth in such regulation any cattle intended for sale slaughter or shipment or travelling from one part of Victoria or of any other State to any other part, and to provide if they see fit in such regulation separately with respect to Sundays and week days; and if any person drives any such cattle contrary to such regulation he shall forfeit for every head of cattle so driven a sum not exceeding Twenty shillings: Provided that nothing herein contained shall apply to horses driven in harness or to oxen in the yoke.

Breaking in &c. horses in streets.

45. It shall not be lawful to break in any horse or other animal in any street whether public or private or in any public place save such public places as from time to time may be appointed by some regulation of the council in that behalf, which regulation the council are hereby authorized to make, or by locking the wheels of any cart or other vehicle or otherwise to test or try any horse or other animal so as to obstruct or injure any street or public place; and any person offending against this section shall forfeit a sum not exceeding Five pounds.

(10) *Undermining Streets.*

Court of Mines may restrain undermining of street.

46. Upon application of the council in that behalf and hearing of the parties it shall be lawful for the judge of the Court of Mines having jurisdiction at the place (subject to and in accordance with the provisions of any law now or hereafter in force relating to the management of and the administration of justice in regard to mining interests) by order under his hand to enjoin any person named in such order from mining under any street or road whether public or private; and if any person disobeys such order he shall be liable to be dealt with in like manner as persons disobeying other like orders of such judge are by law liable to be dealt with.

(11) *Miscellaneous.*

Council may regulate driving near places of worship.

47. It shall be lawful for the council, on the application of the minister of any church chapel or other place of public worship, to make orders for regulating with respect to such place of public worship the route and conduct of persons who drive any cart or carriage or any cattle during the hours of divine service

FIFTEENTH SCHEDULE—*continued.*

(to be named in every such order) on Sunday Christmas Day or Good Friday or any day appointed for a public fast or thanksgiving and any orders so made shall be printed or affixed on or near the church chapel or place of public worship to which the same refer and in some conspicuous places leading and contiguous thereto and elsewhere as the council may direct; and every person who offends against such orders shall forfeit a sum not exceeding Forty shillings.

Council may regulate driving loaded drays &c. on Sundays.

48. It shall be lawful for the council to make regulations for prohibiting or restraining the travelling with or driving of loaded drays or carts on Sundays; and if any person travel with or drive any such loaded dray or cart contrary to such regulations, he shall forfeit for every such breach of such regulations a sum not exceeding Forty shillings.

Council may regulate rate of speed for crossing bridges &c.

49. It shall be lawful for the council to make regulations prescribing the rate of speed and the manner of crossing over all bridges and crossings for horses carts and carriages; and if any person driving or having the charge of any horse cart or carriage violates any such regulation, he shall forfeit a sum not exceeding Forty shillings.

PART II.—WATERWORKS DRAINS ETC.

Polluting water reservoirs &c.

1 Whosoever bathes in any stream reservoir conduit aqueduct or other waterworks belonging to the municipality or under the management or control of the council, or washes cleanses throws or causes to enter therein any animal whether alive or dead or any rubbish filth stuff or thing of any kind whatsoever, or causes or permits or suffers to run or be brought therein the water of any sink sewer drain engine or boiler or other filthy unwholesome or impure water, or does anything whatsoever whereby any water or waterworks belonging to the municipality or under the management or control of the council are fouled obstructed or damaged, shall for every such offence forfeit on conviction a sum not exceeding Five pounds, and a further sum not exceeding Twenty shillings for each day while such offence is continued after written notice in that behalf.

Wilful waste of water.

2. Whosoever being supplied with water by the council from any waterworks of or belonging to the municipality or under the control or management of the council, or having access to any such waterworks for the taking of water therefrom, wilfully or negligently suffers any water to run to waste from any pipe or conduit from or by which he is so supplied or to which he has such access, shall on conviction forfeit and pay for every such offence a sum not exceeding Ten pounds.

Damming up water without consent.

3. Whosoever without the consent in writing of the council or of the State Rivers and Water Supply Commission constructs or places any dam or embankment in or across any river creek or natural water-course or permanently obstructs the same in any way shall on conviction forfeit a sum not exceeding Twenty pounds, and a further sum not exceeding Five pounds for every day after such conviction during which such dam or embankment or any part thereof continues.

Diverting water from reservoirs of council in certain cases.

4. In any case in which the council has the exclusive right of collecting for the supply of any reservoir or waterworks belonging to the municipality or under the management or control of the council the storm-water having fallen on any gathering ground whosoever by any means whatsoever diverts any such water from the course of its natural flow, so that the same may tend to flow elsewhere than to such reservoir or waterworks or some water-course leading thereto or flow to the same respectively in a foul state, shall forfeit on conviction a sum not exceeding Fifty pounds, and a further sum not exceeding Ten pounds for every day after such conviction during which such water so tends to flow or flows (as the case may be).

Shooting or fishing in or near reservoir.

5. It shall be lawful for the council from time to time to make regulations for prohibiting or regulating the shooting of water-fowl and the taking of fish upon or in or within one-quarter of a mile of any stream reservoir or other waterworks belonging to the municipality or under the management or control of the council; and every person who offends contrary to any such regulation shall on conviction forfeit and pay for every such offence a sum not exceeding Five pounds.

Obstructing &c. culverts &c.

6. Whosoever obstructs or damages any culvert sewer or drain belonging to the municipality or under the control or management of the council shall forfeit a sum not exceeding Ten pounds and shall pay to the council by way of compensation for any such damage such further sum not exceeding Ten pounds as the convicting justice may order.

FIFTEENTH SCHEDULE—*continued.*

PART III.—WHARFS ETC.

Application of this Part.

1. This part shall apply only to to such wharfs jetties and piers as belong solely to the municipality and are under the sole management or control of the council and as are not within the operation of any Act relating to ports or harbors.

Regulations.

2. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following (that is to say):—

Tolls.

For limiting the time during which goods shall be suffered to remain upon such wharf jetty or pier according to the nature of such goods;

For appointing the rates and tolls to be paid in respect of goods landed shipped or deposited upon or from such wharf pier or jetty;

For appointing the parts and the extent of such wharf pier or jetty on which it shall be lawful to deposit goods.

And every person who shall place or keep any goods contrary to any such regulation shall on conviction forfeit a sum not exceeding Five pounds for such offence, and a further sum not exceeding Forty shillings for every day after such conviction during which such goods or any of them shall so remain.

Offences by masters &c. of ships.

3. If any master or person in charge of any ship do not on being thereto required by the proper officer of the council remove his ship from the wharf pier or jetty or from one part to another part thereof, or if any such master or person or the owner of any ship cause or suffer such wharf or jetty to be damaged by contact of such ship therewith or otherwise, every such master owner or person shall forfeit a sum not exceeding Ten pounds, and such further sum by way of compensation to the council for any such damage as the convicting justice shall on the hearing order.

PART IV.—PLACES OF IMPROVEMENT AND RECREATION ETC.

(1) *Public Libraries and Museums.*

Misconduct &c. in library or museum.

1. Every person who, being intoxicated, enters or remains in any public library or museum belonging to the municipality or under the control or management of the council, or who uses therein any abusive improper or unbecoming language, or who by unnecessarily loud talking or any unnecessary noise or otherwise disturbs or annoys the persons using or resorting to such library or museum, or who without lawful excuse but without felony removes any property from such library or museum, shall forfeit a sum not exceeding Ten pounds, and every such person may be forthwith removed by any officer of the council in charge of such library or museum.

Regulations.

2. It shall be lawful for the council from time to time to make regulations for the proper management and control of every such library and museum, and every person offending against any such regulations shall forfeit a sum not exceeding Five pounds.

(2) *Public Gardens.*

Hours.

3. The gardens under the management or control of the council and ground appertaining thereto, herein called the gardens, shall be open from sunrise to sunset on each day of the week.

Injury to things in gardens.

4. No person shall pluck any of the flowers, or walk on the beds or borders, or climb upon or get over the fences, or remove any of the tallies, or disturb damage or destroy any property or thing in the gardens.

Shooting &c.

5. No person shall carry firearms through the gardens, or shoot snare or destroy any wildfowl either in the gardens or in or on any water adjacent thereto, or bathe within such distance from such gardens as may be fixed by any regulation of the council to be made on that behalf in such water.

Driving carts.

6. No cart or other vehicle used for the conveyance of goods shall without the authority of the proper officer of the council be driven through the gardens.

Supplying plants &c.

7. Such plants seeds or cuttings as are commonly purchasable at nurseries in Victoria shall not be supplied from the gardens to any person unless in exchange or for public institutions or for benevolent purposes.

Interrupting workmen.

8. No visitor shall interrupt the gardeners or labourers by conversation or otherwise.

Children.

9. Children under the age of ten years, not being under the control of some competent person, shall be removed from the gardens.

FIFTEENTH SCHEDULE—*continued.*

10. All dogs and goats and all poultry found within the gardens shall be destroyed, and the owner shall make compensation, to be recovered before any justice, for any damage done. Dogs &c.

11. In addition to the provisions herein contained, it shall be lawful for the council from time to time to make such regulations for the proper maintenance and management of the gardens as may seem to them fit. Regulations.

12. Any person offending against this by-law or any such regulation shall forfeit a sum not exceeding Ten pounds. Penalties.

PART V.—REGULATION ETC. OF BUILDINGS.

1. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following, that is to say:— Regulations for buildings.

For prohibiting or restraining the use of combustible materials in the construction alteration repair or renewal of buildings roofs or chimneys flues smoke-vents or stove-pipes, hereinafter in this subdivision called in common "chimneys," or of parts thereof respectively to be specified in the regulation:

For regulating the distance from any other building at which it shall be lawful to construct any building:

For regulating the distance from any class of building at which it shall be lawful to erect or construct a building for burning clay or other material:

For regulating the height thickness construction or materials of the party walls of buildings adjoining each other, and of the external walls of buildings and of chimneys, and the materials for and mode of enclosing the same:

For regulating the construction materials and enclosing by building or otherwise of fireplaces or furnaces to be used in the working of engines by steam, or in any mill brewery bakehouse or gaswork, or in any manufactory whatsoever, although a steam-engine be not used therein respectively:

For regulating the erection of tents:

For limiting a time, not in any case less than seven years from the coming into force of the limiting regulation, after which it shall not be lawful without the consent of the council to use keep continue or suffer to remain any building roof fireplace furnace or chimney, or the enclosure of any fireplace furnace or chimney originally constructed or made without violation of law and existing at the time of such coming into force, being of any such construction height thickness materials or description or within any such distance of other buildings as respectively are contrary to any regulation existing at the time of such coming into force:

For appointing fees, not in any case exceeding the sum of Two pounds, which may be charged and received on account of the municipal fund by the proper officer of the council for any inspection superintendence or other service made or performed by him under any such regulations as hereinbefore in this section provided for:

And every such regulation may be made to apply to the whole or separately to a part or parts of the municipal district described by boundaries in such regulation and may provide with respect to the several matters of prohibition restraint and regulation hereinbefore in this section mentioned, either absolutely or with relation to classes rates situations distances or other like *data* to be laid down or referred to in general terms therein, and with or without relation to a right of approval or disapproval or inspection to be vested in the council or some proper officer of the council.

2. If any person, after the coming into force of any such regulation in this subdivision aforesaid and whilst the same is in force, construct alter repair or renew within the limits prescribed in such regulation any building roof fireplace furnace or chimney, or put up any tent or enclose any fireplace furnace or chimney, contrary in any of the cases aforesaid to such regulation, or after the expiration of the time (if any) limited in that behalf and notice from the council to remove or alter any building roof fireplace furnace chimney or enclosure to which the limiting regulation applies, use keep or continue the same, or suffer Constructing &c. building contrary hereto.

FIFTEENTH SCHEDULE—*continued.*

the same to remain, or (if the case be so) to remain unaltered for more than twenty-eight days after the time when such notice has been given him, he shall forfeit a sum not exceeding Ten pounds for every day whilst such building roof chimney fireplace furnace or tent continues so constructed or standing, or continues so unlawfully altered repaired renewed or enclosed, or while (if the case be so) the same after the expiration of the said twenty-eight days be used kept continued or suffered to remain as aforesaid.

Buildings &c. heretofore unlawfully constructed.

3. If any building roof fireplace furnace or chimney before the coming into operation of this by-law has been constructed, or any fireplace furnace or chimney enclosed or left unenclosed in violation of any law or by-law theretofore in force, it shall be lawful for the council to give notice to the owner or occupier thereof respectively to remove or to alter or enclose, so as to conform to any regulation in force in that behalf under this subdivision, such building roof fireplace furnace or chimney, and such owner or occupier shall remove or in manner aforesaid alter or enclose the same within twenty-eight days after the service of such notice upon him; and if such owner or occupier neglect or refuse within twenty-eight days after such notice so served to remove or in manner aforesaid to alter or enclose such building roof fireplace furnace or chimney he shall forfeit a sum not exceeding Ten pounds, and a further sum not exceeding Forty shillings for every day during which the same continues or (if the case be so) continued so unaltered or unenclosed after the expiration of fourteen days from the time when he may first be convicted of any such offence under this section.

Buildings &c. heretofore improperly constructed but without violation of law.

4. If any chimney has been commenced or constructed before the coming into operation of this by-law, and is of other height thickness construction or materials or enclosed otherwise than respectively required by or left unenclosed contrary to the tenor of any regulation in force under this by-law, but has been so constructed enclosed or left unenclosed without violation of law, and if the proper officer of the council upon inspection had (which inspection any ratepayer may upon payment of Five shillings demand and require) deem that such chimney by reason of want of proper height thickness or enclosure, or by reason of its being constructed of inflammable materials, causes reasonable danger of fire to any building, or causes a nuisance through not properly carrying up the smoke, it shall be lawful for such officer to give notice to the owner and occupier of the premises in which such chimney is forthwith to take down or alter or enclose such chimney as the case may require for prevention of such danger or nuisance; and if such owner or occupier do not within seven days after such notice comply with the same, then any two justices, if they are satisfied that for the reasons aforesaid such chimney causes such danger or nuisance, may order the same to be removed altered or enclosed as they may see fit by the said officer, and reasonable compensation shall be paid out of the municipal fund to all persons who shall be put to expense or suffer damage in complying with any such notice or through the execution of such order.

(2) *Ruinous or Dangerous Buildings &c.*

Notice to owner &c. of ruinous building.

5. If any building or wall or anything affixed thereon be deemed by the proper officer of the council to be in a ruinous state, and dangerous to passengers or to the occupiers thereof or of the neighbouring buildings such officer shall immediately cause a proper hoard or fence and if he deem it necessary props to be put up for the protection of passengers and of such occupiers, and shall also if he deem it necessary cause the neighbouring buildings to be properly shored up, and shall cause notice in writing to be given to the owner of such building or wall if he be known and resident within the municipal district, and shall also cause such notice to be put on the door or other conspicuous part of the said premises or otherwise to be given to the occupier thereof (if any) requiring such owner or occupier forthwith to take down secure or repair such building wall or other thing as the case may require.

Justices may limit time for removal repair &c.

6. If such owner or occupier do not begin to take down repair or secure such building wall or other thing within the space of three days after such notice has been given or put up as aforesaid, and complete such taking down repairs or securing as speedily as the nature of the case will admit, such officer may make complaint thereof to two justices, and it shall be lawful for such justices to order the owner or in his default the occupier (if any) of such building wall or other thing to take down rebuild repair or otherwise secure to the satisfaction of such officer the same or such part thereof as appears to them to be in a dangerous state

FIFTEENTH SCHEDULE—*continued.*

within a time to be fixed by such justices; and in case the same be not taken down rebuilt repaired or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the council shall with all convenient speed cause all or so much of such building wall or other thing as is in a ruinous condition and dangerous as aforesaid to be taken down rebuilt repaired or otherwise secured in such manner as may be requisite; and all the expenses of putting up every such hoard fence and props and of shoring up such buildings and of taking down rebuilding repairing or securing such building wall or other thing shall be paid by the owner thereof, and any two justices may order such payment.

And in default &c. council may do act.

7. If any building or wall as aforesaid or any part of the same be pulled down by virtue of the powers aforesaid, the council may sell the materials thereof, or so much of the same as has been pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such building or wall, and the council shall restore any overplus arising from such sale to the owner of the building or wall on demand.

Materials may be sold.

8. If such owner cannot be found within the municipal district or sufficient distress of his goods and chattels within the municipal district cannot be made, and the said expenses or any part thereof remain unpaid, the council, after giving twenty-eight days' notice of their intention to do so by posting a notice in a conspicuous place on such building or wall or on the land whereon such building or wall stood may take such building or land, provided that such expenses or so much as remains due be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land as provided by sections thirty-two or thirty-four of the *Lands Compensation Act* 1958 (which shall be applied with such alterations modifications and substitutions as are necessary). The council shall be entitled to deduct out of such compensation the amount of the expenses so unpaid as aforesaid and as to the balance shall be deemed to be a trustee thereof under the provisions (so far as applicable) of section sixty-nine of the *Trustee Act* 1958 and the rules thereunder and subject as aforesaid the council may sell or otherwise dispose of the said building or land for the purposes hereof.

Land may be taken and sold in certain cases.

PART VI.—BUILDINGS ETC. FOR PUBLIC MEETINGS ETC.

1. Every occupier of any hall or other building used for public meetings, or of any building, or any ground in which public amusements are conducted shall in each year register at the office of the council such building or ground, together with the situation and description thereof, and the purpose being such as aforesaid for which the same is to be kept, and the name of such occupier and every person who causes and every occupier of any such premises who permits any public meeting to be held or any public amusement to be conducted in or on any such premises not being registered for the purpose or without such certificate of registration as hereinafter mentioned having been obtained for the same shall forfeit for every such offence a sum not exceeding Ten pounds.

Public buildings &c. to be registered.

2. The council, upon the written application of any such occupier as aforesaid stating the particulars aforesaid, may if upon inspection by the proper officer the premises have been found to be secure and proper for the purpose stated, and if the council see fit, cause the premises to be registered in a registry book to be kept for that purpose, and shall thereupon grant to the applicant a certificate of such registration of such premises in the appointed form, and the council may at any time suspend for a stated period the effect of or cancel any such registration, and shall forthwith give notice of such suspension or cancellation to the occupier of the registered premises, and during such suspension or after such cancellation such premises shall be deemed to be unregistered in respect of the purpose mentioned in the certificate of registration, and such certificate shall be of no force or virtue.

Certificate of registration &c.

3. The proper officer of the council may at all reasonable times enter and inspect any such registered premises as aforesaid.

Inspection.

4. It shall be lawful for the council from time to time to make regulations for appointing the times and hours during or at which respectively any such registered building or ground shall be used for the purpose for which it is registered or shall be closed; and every occupier of any such premises who permits the same to be used for such purpose during or at any other time or after any such hour respectively shall for every such offence forfeit a sum not exceeding Ten pounds.

Regulations.

FIFTEENTH SCHEDULE—*continued.*

PART VII.—FIRE PREVENTION.

(1) *Foul Chimneys.*

Wilfully setting fire to chimneys.

1. Every person who wilfully sets or causes to be set on fire any chimney flue, smoke-vent, or stove-pipe, herein called in common "chimney," shall forfeit a sum not exceeding Five pounds: Provided always that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be informed against or prosecuted before any court having criminal jurisdiction for such act as for an indictable offence.

Negligently suffering chimney to be on fire.

2. If any chimney accidentally catches or be on fire, the person occupying or using the premises in which such chimney is situated shall forfeit a sum not exceeding Forty shillings: Provided always that such forfeiture shall not be incurred if such persons prove to the satisfaction of the justice before whom the case is heard that such fire was in no wise owing to the omission, neglect, or carelessness, whether with respect to cleansing such chimney or otherwise, of himself or his servant.

(2) *Deposit &c. of Inflammable Materials &c.*

Regulations.

3. It shall be lawful for the council from time to time to make regulations for all or any of the purposes following (that is to say):—

For prescribing the distance from any adjoining land or from any building within which it shall not be lawful to make or keep any stack of hay corn straw or other produce if not placed under roof or cover, and the like where placed under roof or cover, and for prohibiting or restraining the use for such covering of such inflammable materials as shall be described in such regulation;

For prescribing the distance from any adjoining land, or from any street or public place, or from any building, within which it shall not be lawful to deposit such combustible materials as shall be specified in the regulation, or save in some properly constructed fireplace within some building, to make or light any fire.

And every such regulation may be made to apply to the whole or separately to any part or parts of the municipal district described by boundaries in such regulation, and may provide as to the subject-matter thereof either absolutely or with relation to the consent of the council or of the proper officer of the council to be given or withheld in any case to be in question under such regulation.

Stacks or covering &c. in violation of or otherwise than required by regulation.

4. Every person who makes or places any stack of hay corn straw or other produce, or places as or for the covering of any such stack any inflammable material, or deposits any combustible material, or lights any fire contrary in any such case to any regulation under this subdivision, and every occupier of any premises whereon any stack or any such covering of a stack may be or any combustible materials have been deposited, if the same, though lawfully made placed or deposited before the coming into force of any such regulation be there contrary to the tenor of such regulation, who does not within seven days after notice from the council so to do remove such stack covering or materials, or who suffers to remain any such stack covering or materials unlawfully made placed or deposited before the coming into force of such regulations, shall forfeit on conviction for such offence a sum not exceeding Five pounds, and in every such case a further sum not exceeding Forty shillings for every day after any such conviction during which such stack covering or materials so continue.

Setting fire to matter without notice.

5. Every person who wilfully sets fire to any inflammable matter whatsoever in the open air without having given notice in writing to the occupiers of the land adjoining to the land upon which such matter is, and also to the municipal clerk, of his intention so to do, or within twenty-four hours after giving the last given of such notices, or between the hours of Four in the afternoon of any day and Eight in the morning of the following day, shall forfeit a sum not exceeding Five pounds.

Fireworks &c.

6. Every person who lights any bonfire tar barrel or firework upon or within sixty yards of any public or private street or any public place shall forfeit a sum not exceeding Five pounds.

Brush fences.

7. It shall not be lawful for any person to make or place or to keep or continue any fence of brushwood bushes or other like material, and every person who makes or places any such fence, and every owner or occupier of any premises who for seven days after notice from the council to remove any such fence thereto appertaining lawfully made or placed before the coming into operation of this

FIFTEENTH SCHEDULE—*continued.*

subdivision suffers any such fence or any part thereof to remain, or who suffers to remain any such fence unlawfully made before such coming into operation, shall forfeit on conviction for such offence a sum not exceeding Five pounds, and in every such case a further sum not exceeding Forty shillings for every day after any such conviction during which such offence continues.

(3) *Water Tanks on Private Premises.*

Occupier of house to keep water.

8. For the extinguishing of fires the occupier of every dwelling-house warehouse or shop or other building shall at all times keep therein or upon the land appertaining thereto in some fit butt or tank water in quantity not less than fifty gallons, and every such occupier who makes default contrary to this section shall forfeit a sum not exceeding Twenty shillings for every day of such default.

PART VIII.—GOATS.

Keeper of goats to register name and address.

1. Every owner or keeper of any goat usually kept within the municipal district shall once in every year register with the municipal clerk his name and address as a keeper of goats and shall at the time of such registration pay to such clerk the sum of Sixpence for every goat owned or kept by him within such municipal district and shall place and keep upon the neck of every goat so owned and kept a collar bearing the name and address so registered; and if any person without lawful excuse offend in any respect against this section he shall for every such offence be liable to a penalty not exceeding Two pounds.

Goats to be presumed to be kept by persons named on collar.

2. If any goat be found having on its neck a collar purporting to bear the name and address of a person registered as aforesaid, such goat shall *prima facie* be presumed to be owned and kept by such person.

Place for custody of goats seized hereunder.

3. The council from time to time shall provide one secure enclosure for the keeping and custody of goats for the purposes of this subdivision, and forthwith when any such enclosure has been provided shall notify the same and the situation thereof in some newspaper generally circulating in the neighbourhood.

Goats at large may be seized.

4. Every goat found at large in any street road or public place may by the proper officer of the council be forthwith seized and confined in such enclosure as aforesaid until dealt with as hereinafter provided.

Notice of seizure to registered owner.

5. Whenever a goat having on the neck a collar purporting to bear the name and address of a person resident within the municipal district registered as aforesaid is seized hereunder, the proper officer of the council shall forthwith cause notice of such seizure to be given to such person or left at the place of such address.

Goats seized may be destroyed after certain time.

6. Subject to the provisions hereinafter in this by-law contained, every goat so seized and confined as aforesaid which has not upon the neck a collar purporting to bear the name and address of some person registered as aforesaid, may by the proper officer of the council be destroyed at or after noon of the day following the day of seizure, and every such goat which has on the neck such a collar as aforesaid may by the said officer be destroyed at or after noon of the day following next but one the day of such seizure.

Owner may apply to a justice to have goat restored.

7. The owner of any goat which has been seized as aforesaid may apply *ex parte* to any justice that such goat be restored to such owner, and such goat shall, if a justice shall so order and not otherwise, be, unless the same has been destroyed, restored to such owner accordingly, and such order of a justice or any minute thereof under the hand of such justice shall for all purposes of this subdivision be conclusive evidence that the person so applying was the owner of such goat.

Owners of all goats found at large to be liable to penalty.

8. The owner, whether registered hereunder or not, of every goat found at large in any street road or public place shall, whether such goat be destroyed or not or be restored or not, forfeit and pay a penalty of Five shillings.

PART IX.—MISCELLANEOUS MATTERS.

Regulations as to bathing.

1. Where any part of the sea-shore or strand of any river creek or sheet of water used as a public bathing-place is within the municipal district or within three hundred yards of the boundary thereof, and not within any other municipal district, the council may make regulations for and with respect to the time and place of bathing at or within such part, and according to the sex of the persons bathing or otherwise, and also as to persons resorting to or passing by such part whether by land or water, and for the stands of bathing machines, and otherwise for securing reasonable privacy for bathers and the observance of decency and for regulating or controlling spear fishing at or within such part.

FIFTEENTH SCHEDULE—*continued.*

Damaging or removing trees.

2. If any person wilfully, and without the authority of the council, cut break bark root up or otherwise destroy damage or remove the whole or any part of any tree sapling shrub underwood or timber in or upon any street road or place under the management of the council, although the injury done be not to the amount of One shilling, he shall be liable to a penalty of not less than Five pounds and not more than Twenty pounds.

Removing soil &c. from public places.

3. If any person, without the authority of the council, break displace or remove the surface or soil of any land belonging to or under the control or management of the council, he shall be liable to a penalty not exceeding Five pounds.

Exclusion of rats from borough.

4. Whosoever wilfully and knowingly, save by the authority hereinafter in this section contained, conveys into or through the municipal district or within the municipal district has in his possession or on his premises or receives any rats, shall be liable to a penalty not exceeding Forty shillings for every such rat, and any person may seize and forthwith destroy any rat found in the municipal district whether confined or not.

Sparrows and minahs.

5. The council may employ any person or persons to destroy sparrows and minahs and may make regulations for the effectual destruction of such birds.

PART X.—CARRIAGE OF PERSONS AND GOODS.

(1) *Carts and Carters.*

Prescribed space for licensing &c.

1. The words "prescribed space" shall for the purposes of this subdivision mean for any borough the space within the circumference of a circle whose radius is five miles from the principal post office of such borough; and for any shire the space within the circumference of a circle whose radius is five miles in length from any post office in such shire and where any group of two or more municipalities whether this subdivision is in force in all of them or not is so situated that any portion of the prescribed space as hereinbefore defined of each of them is also portion of the prescribed space of some other or others of them, the prescribed space for each such municipality hereafter called occasionally with respect to such municipalities "common prescribed space" shall be the whole area comprised by the prescribed space of all such municipalities.

Interpretation.

2. The word "cart" shall for the purposes of this subdivision include every waggon dray van or other such carriage whatever be its construction drawn by horses or other animals, used wholly or chiefly for the carriage of burthens or heavy goods; the word "woodcart" shall mean a cart used in the hawking of firewood for sale; the word "watercart" shall mean a cart used in the hawking of water for sale; and the word "nightcart" shall mean a cart used in the carrying or removing of night-soil offal or other offensive refuse.

Licences for carts.

3. The council may if they see fit from time to time license to ply for hire within the prescribed space for the municipality such carts as respectively, after inspection had by the authority of the council, are found fit for public use, and also such carts to be used within the prescribed space in hawking wood or water for sale respectively, or both wood and water, and also such carts to be used and ply for hire or to be employed as nightcarts within the prescribed space as after the like inspection are found fit for such purposes respectively; and for every such licence there shall be paid to the council granting the same such sum not exceeding Twenty shillings as may with respect to each kind of cart aforesaid be directed by some regulation in that behalf.

Application for licence.

4. Every such licence shall be granted on the written application for the same of the owner, or if there be more owners than one of some one owner of the cart to be licensed; and in every such application shall be set forth truly the name and surname and place of the abode of the applicant, and the like shall be set forth in the licence when granted; and any person who wilfully omits from any such application any particular hereby required to be stated therein or wilfully states anything falsely touching any such particular, shall forfeit a sum not exceeding Twenty pounds.

Numbering &c. of licences and parts.

5. Every such licence shall be numbered so that no two or more licences granted under this subdivision by the council of any municipality shall bear the same number, and shall be registered with such number by the municipal clerk in a registry book to be kept for the purpose, and shall be in force for one year only from the date thereof, or until the next general licensing day (if any) which has been appointed by the council; and the owner named in any such licence shall cause to be painted or marked and to be kept so painted or marked on some conspicuous place on the right or off side of the cart thereby licensed the name of the municipality the council of which has granted such licence, with the number

FIFTEENTH SCHEDULE—*continued.*

of such licence, in legible letters and figures one inch in length and of a proportionate breadth, and the words "licensed cart" in the like letters; and every such owner who omits or fails to comply with the provisions of this section shall forfeit a sum not exceeding Forty shillings.

Contents of licence for nightcart.

6. In every licence granted for any nightcart in addition to the particulars hereinbefore required to be set forth there shall be set forth the hours between which it is lawful as herein provided that such nightcart be used as such, and the places at which it is lawful as aforesaid to deposit the night-soil offal or offensive refuse or matter.

Licence for cart may be extended to hawking of wood or water.

7. The clerk of any municipality, by the council of which any cart (not being a nightcart) has been licensed to ply for hire as aforesaid, may and shall from time to time, upon application by the owner named in such licence, make and sign with his name without fee or reward an indorsement on such licence being still in force authorizing, during the currency of such licence or for such less time as may be stated in such indorsement, the use of such cart for the hawking for sale within the prescribed space for the municipality of wood or of water, or of both wood and water, and forthwith upon making such indorsement shall make an entry thereof in a proper column of the registry book aforesaid against the entry of such licence; and every authority so indorsed upon any such licence shall while the same is in force have the effect of and be deemed for all purposes to be a licence of the like tenor granted under this subdivision.

Plying for hire &c. without licence &c.

8. If any owner of any cart permits the same to stand or ply for hire or to be used as a woodcart or as a watercart or to ply for hire or to be used as a nightcart within the prescribed space for any municipality without having a licence in force for such cart licensing or authorizing such standing plying for hire or use respectively within such prescribed space, or if any person be found within any such prescribed space standing or plying for hire with any cart or using any woodcart or watercart or plying for hire or using any nightcart for which respectively no such licence is in force, or without having the name of the municipality by the council of which the licence for such cart has been granted and the number of such licence and the words "licensed cart" displayed upon such cart openly and in manner herein provided, every such person so offending shall forfeit a sum not exceeding Forty shillings.

Registration of private carts.

9. The owner of every cart kept within the municipality and not used within the prescribed space thereof in standing or plying for hire or for any other of the purposes hereinbefore in this subdivision mentioned, shall in each year apply to the clerk of the municipality that such cart be registered, and shall truly state at the same time to the said clerk the name and place of abode of such owner and if such cart has been previously registered in the municipality the number of such registration; and such municipal clerk shall forthwith register the said cart and enter the said particulars in a register book to be kept for the purpose, numbering all such entries with a number, but so that in no case shall any two such entries bear the same number save in the case of such previous registration in which case the second and all subsequent entries of the cart shall bear the number of the said previous registration; and the municipal clerk shall issue to such owner a certificate signed by such clerk of such registration, bearing the number thereof, and the name and place of abode of such owner; and every such registration shall be of effect until such day in each year as the council by general order for that purpose have appointed and no longer; and every such owner shall cause such number to be painted or marked on such cart and kept so painted or marked in the like position and manner as is herein required in the case of licensed carts.

Penalty for not registering.

10. Every owner of any such cart as in the last preceding section aforesaid who in any year keeps any such cart within any municipal district without having registered the same in such year in the manner therein aforesaid, or without having caused such number to be so painted or marked as aforesaid and keeping the same so painted or marked on such cart, shall for such default forfeit a sum not exceeding Forty shillings, and a further sum not exceeding Five shillings for every day during which such default continues after any conviction for the same under this section.

Driver to hold and produce licence.

11. The driver of every licensed cart shall hold the licence for such cart, and shall when required by any constable or by any officer of the council of any municipality within the prescribed space for which such cart then is, or by any person wishing to hire or having hired such cart if licensed to stand and ply for hire, produce, for inspection of the person so requiring, such licence, and also a copy of the table of rates and charges appointed as herein provided; and every such driver who on being so required refuses or neglects so to produce such licence or copy shall forfeit a sum not exceeding Forty shillings.

FIFTEENTH SCHEDULE—*continued.*

Owner to cause driver's name to be written on licence.

12. Every owner of a cart licensed under this by-law who employs any other person to drive the same, shall cause to be truly written upon the licence for such cart the name of the person so employed, and shall keep such name so written while such person remains so employed and thereafter forthwith shall erase or deface such writing; and if any such owner wilfully makes default in causing such writing to be made or to be erased or defaced respectively when and as herein required, or if any person so employed as aforesaid, without reasonable excuse, refuse or neglect when required by such owner to produce or return to such owner such licence, every person so offending respectively shall forfeit a sum not exceeding Forty shillings; and any justice may order such production or return.

Abusive language by driver.

13. Every owner or driver of any cart who uses any abusive or insulting language to any person who wishes to hire or has hired such cart, or if the same be then employed as a woodcart or watercart who is dealing with such owner or driver for the purchase of or has immediately before purchased of him any wood or water of the loading of such cart respectively, shall forfeit a sum not exceeding Five pounds.

Omission to carry when required.

14. Every owner or driver of any cart licensed to stand or ply for hire which stands upon any standing appointed for the purpose, or is in any street who, when required by any person who, after sunrise and before sunset any day, wishes to hire or has hired such cart, refuses or neglects without reasonable excuse to carry for a single load such weight as has been appointed as herein provided or any less weight to any place within the prescribed space for the municipality; and

Exacting excessive hire.

every such owner or driver who demands and takes for the hire of such cart a greater sum than that appointed as herein provided, or who without reasonable excuse refuses or neglects to load or unload such cart when hired, so far as he can without assistance, or who stands or plies for hire with such cart elsewhere than

Plying elsewhere than on stand.

at some standing or place appointed as aforesaid, shall for every such offence forfeit a sum not exceeding Forty shillings.

Leaving cart unattended &c.

15. If the driver of any cart leaves the same unattended in any street whether public or private, or goes for a distance or more than two yards from the side of such cart being in any such street without passing through the near wheel or wheels thereof a suitable chain or chains so as effectually to prevent the rotation of such wheel or wheels, whether in any such case such cart be hired or not, such driver shall in every such case forfeit a sum not exceeding Forty shillings for such offence; and where such cart has been so left unattended, any constable may drive away such cart and deposit the same with the horses harnessed thereto at some neighbouring place of safe custody; and in default of payment of the said penalty on conviction for such last-mentioned offence, and of the expenses to be awarded by the adjudicating justices of taking and keeping the said cart and horses, the same together with the harness belonging thereto or any of them may by order of such justice be sold and after deducting from the produce of the said sale the amount of the said penalty and costs (if any), and of the said expenses so awarded and expenses of the said sale, the surplus (if any) shall be paid to the owner of the said cart.

Feeding horses in streets &c.

16. No driver of any cart in any street whether public or private or in any public place shall feed any horse attached to such cart, save by means and out of a nose-bag containing the forage and attached to the head of such horse, or shall remove the blinkers of any such horse; and every driver of any cart to which any vicious horse is attached shall keep such horse while standing on any stand or in

Muzzles.

any such street or place as aforesaid properly muzzled; and every driver offending against this section shall forfeit a sum not exceeding Forty shillings.

Wood or water cart standing at improper places.

17. Every owner or driver of any licensed woodcart or watercart for the time being employed as such respectively who stands with such cart, save for such reasonable time as may be necessary for loading or unloading the same elsewhere than at some standing appointed for woodcarts or watercarts (as the case may be), shall forfeit a sum not exceeding Forty shillings.

Watercarter to have name &c. marked on premises.

18. Every owner of a licensed watercart shall cause his name and the words "licensed watercart" to be painted or marked and kept painted or marked in legible letters one inch in length and of a proportionate breadth in white on black ground, or in black on white ground, in some conspicuous place outside the premises where such cart is kept; and if any such owner fails to comply with the provisions of this section he shall forfeit a sum not exceeding Forty shillings.

FIFTEENTH SCHEDULE—*continued.*

Watercarters to attend at fires.

19. Every owner and driver of a licensed watercart shall keep such cart loaded with water during all times after sunset and before sunrise. and shall, if any building premises or property be on fire within the district of the municipality the council whereof have granted the licence attend at the place of such fire with such cart loaded with water, and shall continue to cart water by full loads to such place, and shall deliver such water in such manner as may be required by any constable or officer of the council or fireman authorized by the council then present for extinguishing such fire; and every such owner or driver who without reasonable excuse fails to comply with the provisions of this section shall forfeit a sum not exceeding Ten pounds.

Compensation for attendance at fires.

20. There shall be paid out of the municipal fund to the owner of every licensed watercart who has attended with any water at the place of any fire as herein provided, and delivered the same as required for extinguishing such fires, such reasonable compensation as the council of the municipality by regulation have appointed in that behalf, and also to such owners as have first and second in order attended with loads of water at any such place such sum by way or reward as such council in like manner have appointed, and every such payment shall be be made if the council be satisfied on the certificate of some officer of the council authorized in that behalf that the conditions contained in this section have been fulfilled.

Rewards.

Suspension or revocation of licence.

21. The council having granted any licence under this subdivision may at any time if it be proved to their satisfaction that the owner of the cart thereby licensed has been convicted of any offence against this Act, or of any offence in respect of any property intrusted to him as such owner, suspend for any stated time, or on the like proof of a second such conviction or of any two such convictions suspend for any stated time or revoke as seems to them fit, such licence; and no licence while suspended under this section or otherwise shall be deemed to be of any force or virtue hereunder.

Lights for carts.

22. The driver of every cart, during the hours after sunset of any day and before sunrise of the following day, in any street or public place within the prescribed space for any municipality or other place where this by-law is in force, shall keep a light attached to or suspended from the off or right side of such cart so as to be plainly visible to the driver of any carriage proceeding along or through such street or place in a contrary direction to that in which such first-mentioned cart is directed, and in the case of a nightcart only such light shall be such and be so disposed as to appear white in front and red at the outer side; and every driver who fails to comply with this section shall forfeit a sum not exceeding Forty shillings.

Removing night-soil &c.

23. Every owner or driver of any cart who uses or employs the same in loading carrying removing or depositing any night-soil offal or other offensive refuse or matter within the municipal district, save between such hours of the night or deposits the same save at such places as respectively have been appointed by some regulation in that behalf, shall forfeit a sum not exceeding Five pounds.

Regulations.

24. The council of every municipality in which this subdivision is in force and which is not within any common prescribed space, may from time to time make regulations for all or for any of the purposes following (that is to say):—

For appointing the several sums to be paid for licences for carts:

For appointing the weight to be carried for a single load by any cart licensed to stand or ply for hire:

For appointing the standings for carts licensed to ply for hire, not being nightcarts, and for woodcarts and watercarts respectively:

For appointing the rates and charges as well for time distance or weight or all or any of these to be paid for the hire of any licensed cart:

For appointing the amount or rate of compensation and of rewards respectively to be paid to watercarters attending at fires under this subdivision:

For appointing the places at which and the hours, not other than between seven o'clock in the evening and six o'clock on the following morning, between which hours it shall be lawful to load carry remove or deposit night-soil offal or other offensive refuse or matter.

FIFTEENTH SCHEDULE—*continued.*

Joint regulations.

25. The councils of all municipalities to which this subdivision applies and which are within one common prescribed space may, from time to time, together make joint regulations to be in force within such space for all or any of the purposes in the last preceding section mentioned, save so far as the same extends to the appointing places for the standing of carts within any municipal district; and each council may in manner in the said section mentioned severally make separate regulations for appointing such standings within the limits of the municipal district.

(2) *Boats and Boatmen.*

Licences for boats.

26. The council may, from time to time, upon any navigable water being a public highway within the municipal district or adjoining the boundaries thereof, and not within the boundaries of any other municipal district, and to or from any accustomed wharf jetty or other landing place for boats along or in any such water if it seem fit license to ply for hire such boats for the conveyance of passengers and luggage as after inspection had as herein provided have been found together with the tackle and gear thereof seaworthy and fit for such conveyance and for public use; and for every such licence there shall be paid to the council granting the same such sum not exceeding Five pounds as may be directed by some by-law in that behalf.

Application for licence.

27. Before any such licence is granted a written application for the same shall be made to the council, and every such application shall be in the appointed form and shall be signed with his name by an owner of the boat to which the same relates, and in every such application the name surname and place of abode of the applicants and all the owners of the boat to which the same relates and the name of the said boat shall be duly stated, and every such application shall have annexed thereto such certificate as next hereinafter mentioned; and every person so applying who in such application states untruly or wilfully omits any of the particulars hereby required to be stated, shall be liable to a penalty not exceeding Ten pounds.

Inspector of boats.

28. The council may and shall from time to time appoint a fit person as and to be inspector of boats, and may from time to time remove such person from his office; and any person desirous of obtaining a licence hereunder for any boat may, upon payment to such inspector of such sum not exceeding Five shillings as may be appointed by some by-law in that behalf, require such inspector to inspect such boat and the tackle and gear thereof, and such inspector shall thereupon inspect the same respectively: and if he find the same respectively to be seaworthy and fit for the conveyance of passengers and luggage and for public use, he shall deliver

Certificate.

to the person so requiring a certificate to that effect in the appointed form; and every such inspector who makes default contrary to this section shall forfeit a sum not exceeding Forty shillings, and every such inspector who knowingly and wilfully states any matter falsely in any such certificate shall be guilty of a misdemeanour.

Contents of licence.

29. In every such licence shall be specified the name surname and place of abode of every owner of the boat thereby licensed, the name of the said boat, the name of the municipality by the council of which the same is granted, and also the number of such licence but so that no two such licences issued by such council shall bear the same number, and the number of passengers which such boat is licensed to carry; and every such licence shall be signed by the municipal clerk, and be duly entered by him in a register book to be kept for that purpose, together with the particulars aforesaid contained in the licence in proper columns of the said book; and every such licence shall be in force for one year only from the date thereof, or until the next general licensing day (if any) which has been appointed by the council; and the owner named in every such licence shall cause to be painted or marked, and to be kept painted or marked, on some conspicuous part of such boat the name of the licensing municipality and the name and number of the licence of the said boat, and the number of passengers which such boat is licensed to carry in form following that is to say "Licensed to carry passengers," and the same respectively shall be so painted or marked in legible letters and figures at least one inch in length and of a proportionate breadth; and every owner of any licensed boat upon which there is not so painted or marked the several matters aforesaid shall forfeit a sum not exceeding Five pounds.

Plying without licence.

30. If any owner of any boat permit the same to ply for hire for the conveyance of passengers or luggage as aforesaid on any water or to from or alongside of any landing place, as aforesaid, or on any water adjacent to such landing place, such boat not being then in any of such last-mentioned cases within

FIFTEENTH SCHEDULE—*continued.*

some other municipal district, without having a licence in force for such boat from the council; or if any person be found plying for hire on any water, or so plying to from or alongside of any such landing place, or on any water adjacent thereto as aforesaid, with any boat for which no licence granted by the council is in force, or without having the name of the licensing municipality, and the name of such boat, the number of the licence for the same, and the number of passengers as aforesaid, painted or marked in legible letters and figures at least one inch in length and of a proportionate breadth upon some conspicuous part of such boat, such boat in any of such last-mentioned cases not being within some other municipal district every person so offending shall be liable to a penalty not exceeding Five pounds.

Occasional inspection of boats.

31. The council who have licensed any boat under this subdivision may from time to time as they may see fit cause an inspection of such boat and of the tackle and gear thereof to be made by the inspector of boats aforesaid; and if upon such inspection or otherwise the council be satisfied that such boat or any such tackle or gear thereof is not in a seaworthy condition, or not fit for the conveyance of passengers or luggage or for public use, they shall cause notice in writing to that effect to be given to the owner or one of the owners named in the licence for such boat; and if after such notice any owner of any such boat ply for hire or permit any other person to ply for hire with such boat while the same or the tackle or gear thereof are so not seaworthy or not fit for such conveyance and use as aforesaid, the council may suspend for a stated time the licence for such boat; and every boatman or person who knowingly plies for hire in any such water, or to or from or alongside of any such landing place as aforesaid, with any boat which is or the tackle or gear whereof is unseaworthy or unfit for such conveyance and use as aforesaid, shall forfeit a sum not exceeding Twenty pounds.

Suspension of licence for unseaworthy boat.

Transfer of licence for boat lost or under repair.

32. If any boat licensed as aforesaid be lost or be under necessary repair, it shall be lawful for the council having granted the licence by indorsement thereon under the hand of the municipal clerk to transfer such licence to some other boat, if the council after inspection had of such boat be satisfied of the like matters concerning such boat and the tackle and gear thereof and in the like manner respectively as is herein required with respect to the grant of a licence for a boat; and such licence shall on such indorsement cease to be in force with respect to the boat previously licensed thereby, and shall be deemed for all purposes to be a licence according to the tenor of such indorsement for the boat to which the transfer is made until the council shall, as they are herein empowered to do if it seem fit on application of the owner of the boat previously licensed not being lost, and being satisfied of the matters and in the manner aforesaid touching such boat, cause the said indorsement to be erased or defaced, whereupon and not before the licence shall be in force for such last-mentioned boat and cease to be in force for the boat to which the transfer was made: Provided that in every such indorsement the number of passengers to be carried by the boat to which any transfer is made shall be stated.

Boatman's licence.

33. No person shall act as a boatman in any boat plying for hire in any such water or to or from or alongside any such landing place as aforesaid, such boat not being at the time within any other municipal district, whether or not he be the owner of such boat, without having a licence so to act from the council; and if any person desiring to obtain such licence make written application for the same and produce to the council a certificate signed by five ratepayers of the borough that the applicant is a person of good character and of proper skill and fitness for being so licensed, the council if satisfied of the truth of the matters contained in the said certificate and if it seem fit may grant such licence upon payment by the applicant to the council of such sum not exceeding Ten shillings as has been appointed by some regulation in that behalf, and every such licence and certificate may be in the appointed forms respectively; and every such licence shall be signed by the municipal clerk, and be registered together with the particulars therein contained by him in a registry book to be kept for that purpose.

Omission to convey &c. when required.

34. Every owner or boatman in charge of a licensed boat who plies for hire in any such water or from or alongside any such landing place as aforesaid, and without reasonable excuse refuses or neglects when required by the person wishing to hire or having hired such boat to carry with reasonable expedition to any place or for any distance appointed as herein provided the full number of passengers and the full quantity of luggage appointed as herein provided in that behalf or any less number or quantity, or who if he so plying for passengers at separate fares without reasonable excuse refuses or neglects to carry with reasonable expedition to any such place or for any such distance as aforesaid any passenger offering

FIFTEENTH SCHEDULE—*continued.*

himself as such or any luggage of any such passenger, such passenger or luggage respectively not forming together with any passengers or luggage already received to carry an excess of the number and quantity respectively appointed as herein provided, or who carries in such a boat a greater number of persons or a greater quantity of luggage than the number and quantity so appointed as aforesaid, or who demands and takes for the hire of such boat or for the conveyance of any passenger or luggage a greater sum than that appointed as herein provided, shall forfeit a sum not exceeding Ten pounds.

Carrying excessive number &c.

Exacting excessive hire.

Boatman to produce licence and table of fares.

35. Every licensed boatman shall when required by any constable or by any person wishing to hire or having hired any boat in which such boatman is plying, or by any passenger or person intending to be a passenger or having immediately before been a passenger in or by such boat, produce for the inspection of such person the licence of such boatman, and also a copy of the table of fares and charges appointed as herein provided; and every such boatman who on being so required refuses or neglects so to produce such licence or copy, and every boatman plying for hire with any boat who uses any abusive or insulting language to any person who wishes to hire or has hired such boat, or to any passenger or person intending to be a passenger or having immediately before been a passenger in or by such boat, shall forfeit a sum not exceeding Five pounds.

Abusive language &c.

Suspension and revocation of licence.

36. The council having granted any licence under this subdivision may at any time if it be proved to their satisfaction that any owner of the boat thereby licensed or any person thereby licensed to act as a boatman (as the case may be) has been convicted of any offence against this by-law, or in respect of any property intrusted to him as such owner or boatman respectively, suspend for any stated time, or on the like proof of a second such conviction or of any two such convictions suspend for any stated time or revoke as seems to them fit, such licence; and no licence while suspended either under this section or otherwise or when revoked shall be deemed to be of any force or virtue hereunder.

Regulations.

37. The council may from time to time make regulations for all or any of the purposes following (that is to say):—

For appointing the several sums to be paid for licences for boats and for boatmen:

For regulating the conduct of owners of licensed boats and of licensed boatmen in the exercise of their several employments, and for determining whether they wear any and what badges:

For regulating upon what part of the boat the several particulars herein required to be painted or marked thereon shall be so marked:

For regulating by proportion to the beam and dimensions of boats, or in other like manner, the number of passengers and the amount of luggage to be carried by licensed boats: and

For fixing the rates or fares both for time and distance to be paid for the hire of any licensed boat, or for the conveyance of passengers or luggage by any licensed boat, and the places and the extreme distances to which licensed boats shall be compelled to go.

(3) *Porters.*

Porters' licences.

38. The municipal clerk shall from time to time issue to every person who may desire to ply for hire as a porter and deliver to him a written application for a licence so to do together with a certificate signed by two ratepayers that the applicant is of good repute and a fit person to receive such licence and who pays to such municipal clerk such sum not exceeding Ten shillings as has been appointed by some regulation in that behalf a licence to be called a porter's licence numbered so that no two such licences may bear the same number and containing the name and address of the applicant, and the said municipal clerk shall forthwith enter in a registry book to be kept for that purpose the number of and other matters contained in such licence, and shall deliver to the person thereby licensed a table of the rates and fares appointed for porters as herein provided, and a badge upon which shall be engraved the initial letter or letters of the words expressing the name of the municipality and the number of such licence.

Plying as porter without licence.

39. No person shall ply for hire as a porter within the municipal district or shall wear any badge as a licensed porter unless he have a licence in force under the provisions hereof licensing him as such porter, and every licensed porter when required by any constable or any officer of the council or by any person

FIFTEENTH SCHEDULE—*continued.*

wishing to hire or having hired such porter shall produce for the inspection of the person wishing to hire or having hired such porter shall produce for the inspection of the person so requiring the same his licence and also the table of rates and fares aforesaid, and shall whilst plying for hire keep and wear upon his person so as to be plainly visible the badge aforesaid, and no licensed porter shall part with or transfer his licence or badge to any person whomsoever, and every person offending against any of the provisions of this section shall for every such offence forfeit a sum not exceeding Forty shillings. Production of licence &c.

40. Every person plying for hire as a licensed porter within the municipal district who is required by any person who after sunrise or before sunset of any day not being Sunday wishes to hire or has hired such porter to do within such district any proper work as such porter and without reasonable excuse refuses or neglects so to do such work, and every person plying for hire as a porter who demands and takes for hire as a porter any greater sum than that appointed as herein provided, or who uses any abusive or insulting language to any person wishing to hire or having hired such porter, shall forfeit a sum not exceeding Forty shillings. Omission to convey &c. when required.

41. It shall be lawful for the council at any time, if it be proved to their satisfaction that any porter licensed for the municipality has been convicted of any offence hereunder or in respect of any property intrusted to him as such porter, to suspend for a stated time, or on the like proof of a second such conviction or of any two such convictions to suspend for a stated time or revoke as seems to them fit, the licence of such porter; and no licence while so suspended or when so revoked shall be deemed to be of any force or virtue hereunder; and any justice may order that the badge of any person whose licence is so revoked be delivered up to the municipal clerk. Suspension and revocation of licence.

42. The council may from time to time make regulations for appointing the sum to be paid for a porter's licence, and the rates and fares to be taken by licensed porters. Regulations.

PART XI.—REGULATION OF PROCEEDINGS OF COUNCIL, OFFICERS, ETC.

1. In all cases not herein provided for resort shall be had to the rules forms and usages of Parliament, which shall be followed so far as the same are applicable to the proceedings of the council. General conduct of business.

2. At every meeting of the council the first business thereof shall be the reading and putting a question for the confirmation of the minutes of the proceedings at the preceding meeting, and no discussion shall be permitted thereon except as to their accuracy as a record of the proceedings, and the said minutes of the proceedings at the preceding meeting shall then be signed as by this Act required; and the rough minutes of the proceedings of the council at any meeting shall be read at the close of such meeting. Minutes of meeting to be read at next subsequent meeting.

3. After the signing of the minutes as aforesaid the order of business of an ordinary meeting shall be as follows, or as near thereto as may be practicable, but for the greater convenience of the council at any particular meeting thereof it may be altered by resolution to that effect:— Order of business at meetings.

(I.) Resumption of debate on motions or orders of the day lapsed at previous meeting.

(II.) Reading of copies of letters sent by the authority of the council.

(III.) Reading letters received, and considering and ordering thereon.

(IV.) Reception and reading of petitions and memorials.

(V.) Presentation of reports.

(VI.) Payments.

(VII.) Ordinary business not elsewhere included.

(VIII.) Orders of the day, including subjects continued from proceedings of former meetings.

(IX.) Extraordinary business not elsewhere included.

(X.) Other motions of which previous notice has been given.

(XI.) Notices of motion.

And the order of business at a special meeting shall be the order in which such business stands in the notice thereof.

FIFTEENTH SCHEDULE—*continued.*

Divisions.

4. Whenever a division is demanded by any councillor, the councillors voting in the affirmative shall first hold up their hands, and then those voting in the negative shall hold up their hands, and the result be declared by the chairman.

Addresses to Governor.

5. All addresses to the Governor shall be presented by the chairman and the clerk of the municipality unless otherwise ordered by the council.

Motions.

6. All notices of motion shall be dated and numbered and given by the intending mover to the municipal clerk at the close of the meeting of council, or at such time before the next meeting of the council as will permit the municipal clerk to give notice thereof in the manner and in the time required for special meetings, and such clerk shall enter the same in the notice of motion book in the order in which they may be received.

Notice of motion to be given.

7. No member shall make any motion initiating a subject for discussion but in pursuance of notice given as prescribed in the last preceding clause.

Petitions.

8. No motion except that for receiving the same shall, unless under what the council considers urgent circumstances, be made on any petition memorial or other like application until the next ordinary meeting of the council after that at which it has been presented.

Order of moving motions.

9. Except by leave of the council, motions shall be moved in the order in which they have been received and recorded by the municipal clerk in the notice of motion book, and if not so moved or postponed shall be struck out.

Absence of councillor giving notice.

10. No motion entered in the notice of motion book shall be proceeded with in the absence of the councillor who gave notice of the same, unless by some other councillor producing written authority from him to that effect.

Motions for address or petition.

11. No motion for an address or petition shall be entertained unless the mover at some previous meeting have submitted a draft of the same.

Order &c. of debate.

12. Any councillor desirous of making a motion or amendment or taking part in discussion thereon shall rise and address the chairman, and shall not be interrupted unless called to order, when he shall sit down until the councillor (if any) calling to order has been heard thereon and the question of order disposed of, when the councillor in possession of the chair may proceed with the subject.

Nature of motion to be stated.

13. Any councillor desirous of proposing an original motion or amendment must state the nature of the same before he addresses the council thereon.

Motion how withdrawn.

14. No motion or amendment shall be withdrawn without the leave of the council.

Motion to be seconded.

15. No motion or amendment shall be discussed or put to the vote of the council unless it be seconded, but a councillor may require the enforcement of any standing order of the council by directing the chairman's attention to the infraction thereof.

Mover of motion.

16. A councillor moving a motion shall be held to have spoken thereon, but a councillor merely seconding a motion shall not be held to have spoken upon it.

Designation of councillors.

17. The councillors in meeting of council shall designate each other by their official titles, namely, that of mayor president chairman or councillor as the case may require.

Priority of councillors.

18. If two or more councillors rise to speak at the same time the chairman shall decide which is entitled to priority.

Chairman addressing council.

19. The chairman shall rise when addressing the council to discuss any question, and shall not leave the chair on such occasions.

Councillor not to speak twice.

20. No councillor shall speak a second time on the same question, unless entitled to reply or in explanation when he has been misrepresented or misunderstood.

Points of order.

21. The chairman when called upon to decide on points of order or practice shall state the provision rule or practice which he deems applicable to the case without discussing or commenting on the same, and his decision as to order or explanation in each case shall be final.

Councillors not to digress &c.

22. No councillor shall digress from the subject-matter of the question under discussion, or comment upon the words used by any other councillor in a previous debate; and all imputations of improper motives and all personal reflections on councillors shall be deemed highly disorderly.

Councillors to apologize for disorderly &c. expression.

23. Whenever any councillor makes use of any expression disorderly or capable of being applied offensively to any other councillor, the councillor so offending shall be required by the chairman to withdraw the expression and to make a satisfactory apology to the council.

FIFTEENTH SCHEDULE—*continued.*

Councillor called to order.

24. A councillor called to order shall sit down unless permitted to explain.

Councillor guilty of offence.

25. Any councillor using offensive or disorderly language, and having been twice called to order or to withdraw or to apologize for such conduct and refusing so to do, shall be guilty of an offence.

Strangers.

26. Any person not being a councillor who, having been admitted to any meeting of the council, is guilty thereat of any improper or disorderly conduct, or who does not leave when lawfully requested by the chairman so to do, shall be deemed guilty of an offence.

Removal of disorderly stranger.

27. Any such person who being lawfully requested by the chairman to leave any such meeting may be forthwith removed; and any constable or peace officer or any person requested by the chairman so to do may remove such person.

Councillor may demand documents.

28. Any councillor may of right demand the production of any of the documents of the council applying to the question under discussion.

Voting.

29. The council shall vote by show of hands, and any councillor present and not voting not being disabled by law from so doing shall be guilty of an offence.

Question how declared.

30. The chairman shall in taking the sense of the council put the question first in the affirmative, then in the negative, and the result thereof shall be recorded in the minutes.

Motions &c. to be in writing.

31. At every meeting of the council all motions, whether original motions or amendments, shall be reduced into writing, signed by the mover, and delivered to the chairman immediately on their being moved and seconded.

Second amendment.

32. No second or subsequent amendment, whether upon an original proposition or on an amendment, shall be taken into consideration until the previous amendment is disposed of.

Effect of rejection of words in original motion.

33. If any words of an original question be rejected, the insertion of other proposed words shall form the next question, whereupon any further amendment to insert other words may be moved.

Effect of negativing amendment.

34. If an amendment be negatived, then a second may be moved to the question to which the first-mentioned amendment was moved, but only one amendment shall be submitted to the council for discussion at a time.

Mover of motion to have right of reply.

35. The mover of every original proposition, but not of any amendment, shall have a right to reply, immediately after which the question shall be put from the chair; but no councillor shall be allowed to speak more than once on the same question unless permission be given to explain or the attention of the chair be called to a point of order.

Motion for adjournment.

36. No discussion shall be allowed on any motion for adjournment of the council; but if on the question being put the motion be negatived, the subject then under consideration or the next on the notice paper shall be discussed, or any other that may be allowed precedence, before any subsequent motion for adjournment be made.

Protests.

37. Any councillor may protest against any resolution of the council, and notice of intention to protest shall in every case be given forthwith on the adoption of the resolution protested against; and the protest shall specify the reasons for protesting, and shall be entered three days at least before the next ordinary meeting of the council by the protesting councillor in a book to be kept for that purpose in the office of the municipal clerk, and signed by such councillor and shall be also entered in the minutes of the meeting at which notice of the intention to protest is given previously to the confirmation thereof; but such protest may be expunged from the minutes if declared by a majority of the council to be not in accordance with truth or in its terms disrespectful to the council.

Lapsed questions.

38. If a debate on any motion moved and seconded be interrupted by the number of the councillors present becoming insufficient for the transaction of business, such debate may at the next meeting of the council be resumed at the point where it was so interrupted.

Lapsed order of the day may be restored.

39. If a debate on any order of the day be interrupted by such insufficiency of number as aforesaid happening, such debate may at the next meeting of the council be resumed at the point where it was so interrupted.

Committees.

40. Minutes of all proceedings of committee shall be entered in the committee's minute book, and signed by the chairman of the committee, and the municipal clerk when practicable shall attend all meetings of committees.

FIFTEENTH SCHEDULE—*continued.*

Meetings of the committee.

41. The municipal clerk shall convene every committee within ten days of its first appointment, or at any other time thereafter by order of the council, or on the written order of the chairman of the committee or of any two members of the committee.

Petitions.

42. No petition shall be presented after the council has proceeded to the orders of the day.

Petitions to be respectful.

43. It shall be incumbent on every councillor presenting a petition to acquaint himself with the contents thereof, and to ascertain that it does not contain language disrespectful to the council, and that the contents do not violate any by-law or any provision hereof.

Councillors to affix their names.

44. Every councillor presenting a petition to the council shall write his name at the beginning thereof.

Petitions to be in writing.

45. Every petition shall be in writing and not printed or lithographed, and shall contain the prayer of the petitioners at the end thereof, and be signed by at least one person on every skin or sheet on which it is written.

To be signed by petitioners.

46. Every petition shall be signed by the persons whose names are appended thereto by their names or marks, and by no one else except in cases of incapacity by sickness.

No letters &c. to be attached.

47. No letters affidavits or other documents shall be attached to any petition.

Presentation of petition.

48. Every councillor presenting a petition to the council shall confine himself to a statement of the persons from whom it comes, of the number of signatures attached to it, of the material allegations contained in it, and to the reading of the prayer thereof.

Appointments &c. of officers.

49. No appointment to any permanent office at the disposal of the council shall take place until seven clear days' public notice has been given by advertisement in one of more newspapers circulating in the municipal district inviting applications from qualified candidates for the same.

Salaries of officers &c.

50. The salary or allowance attached to all offices and places at the disposal of the council shall in all cases be fixed before it proceeds to appoint any person to fill the same and before the advertisement inviting applications as aforesaid, and shall be specified in such advertisement.

No councillor &c. to be surety for officer.

51. No councillor or officer of the council and no auditor of the municipality shall be received as a surety for any officer appointed by the council or for any work to be done for the council.

Plans &c.

52. All the plans and specifications for any public work shall be laid before the council at least six days prior to the same being considered and ordered upon, and be open for inspection of any ratepayer during that time.

Treasurer to disburse moneys in certain cases

53. It shall be lawful for the treasurer of the municipality from time to time, on the written order of the municipal clerk, to disburse such moneys as have been appropriated by the council for the purposes of this clause, and as are required for any necessary occasion, not exceeding in the whole in any interval between two ordinary meetings of the council the sum of Five pounds.

Common seal.

54. The common seal of the municipality shall be kept in a box having two locks, of one of which locks the chairman of the municipality shall have a key and of the other of which locks the key shall be kept by the municipal clerk; and the corporate seal shall not be affixed to any document unless the chairman of the municipality and one other member of the council or in the absence of such chairman unless two councillors be present.

Suspension of rules.

55. Any one or more of the rules or regulations contained in this subdivision may be suspended for a special purpose on motion upon notice duly given; and shall not otherwise be suspended except by a unanimous vote of the council.

Penalty.

56. If any person be guilty of any wilful offence or misfeasance or wilful or negligent act of commission or omission contrary to any provision contained in this subdivision, he shall forfeit a sum not exceeding Five pounds.

SIXTEENTH SCHEDULE.

Sections 199, 828.

Power to appoint referees. No. 5745 s. 5; No. 5843 s. 42, No. 5988 s. 5 (6) (*d*).

1. (1) In the case of any municipality the council of which under the powers conferred by the *Local Government Act* 1958 or any corresponding previous enactment has made any by-laws for regulating restricting restraining or prohibiting the erection construction use occupation conversion and alteration of and any addition to buildings or erections or regulating restraining or prohibiting the erection and construction of hoardings there may be appointed as hereinafter provided two persons as referees for the purposes of such Act and the said by-laws.

By whom appointed.

(2) One of such referees shall be appointed by the Governor in Council and the other by the council of such municipality.

Qualification.

(3) Every person so appointed—

(*a*) shall be an architect engineer or surveyor of known ability; and

(*b*) shall not be a member or officer of the council.

Removal.

(4) Subject to the provisions hereof the Governor in Council or the council (as the case may be) may remove any referee appointed under this regulation and appoint another qualified person in his place.

Referee not to act when interested.

2. (1) A referee shall not act as such with respect to any building of which he is the owner architect or builder or in which he is in any manner whether directly or indirectly interested.

(2) In the event of any referee being so disqualified the Governor in Council or the council (as the case may be) shall appoint another qualified person to act in such manner instead of such referee.

Duties of referees.

3. The referees—

(*a*) shall perform the several duties respectively imposed upon them whether expressly by these regulations or the said by-laws or at the instance of any builder or owner who requires any matter to be referred to them as provided in these regulations or in any such by-law;

(*b*) subject to these regulations shall determine any matters arising for their determination; and

Referees to have powers of arbitrators.

(*c*) subject to and for the purposes of these regulations shall have and may exercise the powers of arbitrators under the *Arbitration Act* 1958.

Jurisdiction of referees.

4. If any doubt difference or dissatisfaction in respect of any matter as to which provision is made by or under the said by-laws arises between any parties concerned, or between any party and the surveyor for the municipality as to—

(*a*) any act done, or to be done, in pursuance of the said by-laws;

(*b*) the effect of the provisions of the said by-laws in any case;

(*c*) the mode in which the provisions and directions of the said by-laws are or ought to be carried into effect;

(*d*) whether the requirements implied in terms of qualification applied to sites to soils to materials or to workmanship or otherwise, and denoting good sound fire-proof fit proper or sufficient, are fulfilled in certain cases;

(*e*) the expenses to be borne by the respective owners of premises parted by the same party walls or the proportions thereof;

(*f*) the proportions of the expense to be borne by the occupier or by the owner of premises in respect of any works executed; or

(*g*) any other matter whatever—

any party concerned may require the referees on appeal to determine such matter, upon a requisition by notice in writing to the municipal clerk, setting forth, either generally or otherwise, the matters in respect of which the determination of the referees is required; and the referees shall, subject to these regulations, hear and determine the same.

5. (1) The determination of the referees shall be final and conclusive; but where the referees differ in opinion as to any matter the same shall be referred by them to the final arbitrament and decision of an umpire who shall be some qualified person appointed by the referees.

(2) Such umpire shall have and may exercise all or any of the powers of the referees or either of them and the provisions of these regulations with regard to referees shall so far as applicable and with such alterations modifications and substitutions as are necessary extend and apply to any such umpire.

(3) No member or officer of the council shall be appointed an umpire.

SIXTEENTH SCHEDULE—*continued*

Referee acting singly.

6. (1) When any matter is by or under these regulations required directed or permitted to be done by the referees the same may with the assent of all the parties thereto be done by either of them unless express provision to the contrary is made; and if done by any one of them with such assent it shall be as valid and effectual as if done by both of them.

Inquiries and surveys.

(2) Subject to such restrictions and regulations as are made in that behalf by the council the referees may appoint one of their number under their hands to make any inquiry or any survey which appears to them either necessary or expedient in order to enable them to determine any matters in reference.

Power to modify by-laws in special cases.

7. (1) Where in the case of any particular building proposed to be altered or erected in the municipal district the owner or builder or architect thereof lodges with the surveyor for the municipality an objection in writing to the effect that with respect to that building any of the provisions of the by-laws aforesaid are inapplicable or will needlessly affect with injury the course and operation of business or will defeat the objects of such by-laws or that by the adoption of a modification of such provisions such objects will be attained either better or as effectually, the objection shall be considered by the surveyor and the referees.

(2) If the surveyor and referees are of opinion that the objection is well founded they may direct with respect to such building such modification of any such provisions to be made as will give effect to the purposes of the said by-laws.

Powers of referees.

8. The power and authority of the referees shall not be revocable by any party to any matter without the consent of all the parties thereto; and although any party does not attend upon the hearing of any such matter, the referees may proceed with the same and make their award.

Referees to keep minutes.

9. The referees shall keep proper minutes of all their proceedings.

Awards.

10. (1) Every award of the referees shall be given in writing and shall be signed by the referees and lodged with the municipal clerk and shall be filed by him in the office of the council.

Effect of awards.

(2) Every such award—

(*a*) may by leave of the Supreme Court or a judge thereof be enforced in the same manner as a judgment or order of the said Court to the like effect; and

(*b*) shall together with the costs charges and expenses of the reference be binding upon and conclusive against the parties thereto and all persons whomsoever.

Copies of awards.

(3) Any person on payment to the municipal clerk of a fee of Two shillings and sixpence may inspect any such award and take a copy thereof or make any extracts therefrom.

Copy of award to be *prima facie* evidence.

(4) In any proceedings in any court or before any judge or justice a copy of an award of the referees signed by the referees or sealed with the seal of the municipality shall be *prima facie* evidence of the matters therein contained.

Fees.

11. (1) Every referee shall receive for his own use and benefit a fee of One guinea for his time and trouble in determining any reference objection or appeal made under these regulations or any of the said by-laws, whether in conjunction with the surveyor for the municipality or not.

(2) Such fee shall be paid in the first instance by the party making lodging or demanding the reference objection or appeal before the same is entered upon considered or decided.

Declaration of referees.

12. Before any referee acts in pursuance of his appointment he shall make the following declaration to be administered by a justice:—

I, A.B., do solemnly and sincerely declare that I will diligently faithfully and impartially execute the duties of a referee under the *Local Government Act* 1958.

SIXTEENTH SCHEDULE—*continued*

13. The municipal clerk shall— Duties of municipal clerk as to referees.

(*a*) keep a register of all matters referred to the referees;

(*b*) keep and preserve all documents connected with the duties of the referees; and

(*c*) receive all notices provided for pursuant to these regulations or the said by-laws requiring any act to be done by the referees and file and number the same in the order in which they are received.

SEVENTEENTH SCHEDULE.

Sections 214, 215.

FORM "A."

By-law.

A by-law of the shire of made under section* of the *Local Government Act* 1958, and numbered† for [suppressing nuisances (*or as the case may be*)].

* Insert number of section (*or* of Part *or* subdivision *as* the case may be).

In pursuance of the powers conferred by the *Local Government Act* 1958, the President, Councillors, and Ratepayers of the Shire order as follows:—

1. (*Set out the by-law.*)

2. This by-law shall apply to and have operation throughout the whole of the municipal district [*or* throughout the following part or parts of of the municipal district, that is to say:—(*describing them*)].

† Insert number of by-law.

Resolution for passing this by-law agreed to by the council, the day of 19 ; and

Confirmed the day of 19 .

[*In cases where the by-law is confirmed by the Governor in Council, add*]:

Confirmed by the Governor in Council, the day of 19 .

FORM "B."

Regulation.

A regulation of the shire of numbered* made under section of Part of the Fifteenth Schedule to the *Local Government Act* 1958, in force in the shire by virtue of a by-law of the above-named shire numbered† for [regulating the distance from any other building at which it shall be lawful to construct any building (*or as the case maybe*)].

* Insert number of regulation.

† Insert number of by-law.

In pursuance of the powers conferred by the *Local Government Act* 1958, the President, Councillors, and Ratepayers of the Shire of make the following regulation which shall apply to and have operation throughout the whole of the municipal district [or (*as the case may be*) throughout the following part or parts of the municipal district, that is to say:—(*describing them*).]

(*Set out regulation.*)

Resolution for passing this regulation agreed to by the council, the day of 19 .

Confirmed the day of 19 .

SEVENTEENTH SCHEDULE—*continued.*

FORM "C."

Joint Regulation.

A joint regulation of the shires of and numbered* made under section of Part of the Fifteenth Schedule to the *Local Government Act* 1958 in force in such shires by virtue of a by-law of the shire of numbered† (and a by-law of the shire of numbered†) for appointing the several sums to be paid for licences for carts (*or as the case may be*).

* Insert number of joint regulation.
† Insert number of by-law.

In pursuance of the powers conferred by the *Local Government Act* 1958, the President, Councillors, and Ratepayers of the Shire of and the President, Councillors, and Ratepayers of the Shire of make the following joint regulation which shall apply to and have operation throughout [*State whether throughout the whole or any part or parts (describing them) of the municipal districts of the above-named municipalities.*]

(*Set out joint regulation.*)

Resolution for passing this joint regulation agreed to by the council of the shire of the day of 19 , and confirmed by such council the day of 19 .

Resolution for passing this joint regulation agreed to by the council of the shire of the day of 19 , and confirmed by such council the day of 19 .

[*In cases where the joint regulation is confirmed by the Governor in Council, add*]:

Confirmed by the Governor in Council the day of 19 .

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

EIGHTEENTH SCHEDULE.

Section 262.
No. 5843 s. 4 (*e*).

FORM OF VALUATION AND RETURN.

Municipal district of

Valuation by me [*or* us] a valuer [*or* valuers] for the city, town, borough, or shire of of the undermentioned rateable properties therein situated, and particulars of information obtained by me [*or* us] in respect of such several properties.

No. of Assessment.	Surname of occupier, and if more than one, the annual value sufficient to entitle more than one to be enrolled, and the surname of each one seeking to be enrolled.	Christian or other names of every such occupier	Nature of calling or occupation of each.	OWNER.			Residence of each enrolled owner or occupier and name of post town or office.	Ward or riding in which property is situate.	Description and situation of rateable property.	If let, for what time and in what manner.	Net annual value.	Province and electoral district and division.	Total number of persons living on the property rated
				Surname.	Christian or other names.	Nature of calling or occupation.							

Returned by me [*or* us] this day of 19 .

Valuer.
Valuers.

NINETEENTH SCHEDULE.

Section 271.

To the Council of the Shire of

We, the undersigned councillors returned for the riding of the above-named shire, hereby request you to make and levy an extra rate of in the pound (*or* not exceeding in the pound) in respect of the above-named riding of the above-named shire.

The total amount proposed to be raised by such extra rate is:

(*Set out amount.*)

The purposes in respect of which it is proposed to expend or apply such rate are the following:—

(*Specify the purposes.*)

Dated this day of 19 .

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 298. No. 5843 s. 4 (1).

TWENTIETH SCHEDULE.

FORM OF RATE.

An Assessment to the General Rate for the Shire of , made this day of in the year 19 , after the rate of pence in the pound, by virtue of the *Local Government Act* 1958, for the period ending the day of 19 .

Number on the Rate.	Surname of Person Rated.	Christian or other Name of Person Rated.	Trade or Occupation.	Name of Owner of Rateable Property.	Description and Situation of Rateable Property.	Division for Separate Rating by reason of Special Benefit.	Net Annual Value.	Reduced to on Appeal.	Initials of Chairman or Initials of Judge or Stipendiary Magistrate (as the case may be).	Number of Assessment.	Amounts Due.			Amounts Paid.					Rates Abandoned.		Arrears carried forward.		Remarks.
											Current Rate at ——in £1.	Arrears brought forward.	Number on last Rate.	Current Rate.	Number of Report or Date of Payment.	Arrears.	Interest.	Number of Report or Date of Payment.	Amount.	Date of Minute.	Amount.	Number on next Rate.	

Signed by us this day of in the year 19 .

A.B.
C.D.
E.F.
} Members of the Council of the Shire of

NOTE.—In the case of a city, town, or borough, and in the case of a separate or extra rate, make the necessary adaptations of the Form; and in the latter case *add* description of the portion of the district for which such separate or extra rate is made.
In case the rate is payable in instalments *add* the necessary columns for the amounts.

TWENTY-FIRST SCHEDULE.

Section 327.

Local Government Act 1958.

PART XI.—RATING ON UNIMPROVED VALUES.

PROPOSAL FOR ADOPTION OF PART XI.

City, town, borough, or shire (*as the case may be*) of

Proposal that Part XI. (Rating on Unimproved Values) of the *Local Government Act* 1958 be adopted in the (*name of municipality*) and that rates shall (subject to the provisions of the said Part) be made and levied in respect of rateable property on the basis of the unimproved capital value thereof.

Are you in favour of the said Part being adopted?

"Yes."

"No."

If you are in favour of the proposal strike out the above word "No."

If you are against the proposal strike out the above word "Yes."

The ballot-paper so marked is to be dropped by the voter into the ballot-box.

The voter is not permitted to take the ballot-paper out of the ballot-room or polling booth.

Local Government Act 1958.

PART XI.—RATING ON UNIMPROVED VALUES.

PROPOSAL FOR RESCINDING ADOPTION OF PART XI.

City, town, borough, or shire (*as the case may be*) of

Proposal that the adoption of Part XI. (Rating on Unimproved Values) of the *Local Government Act* 1958 (*or as the case requires the title of any previous Act*) in the (*name of municipality*) be rescinded.

Are you in favour of the adoption of the said Part [*or* Acts] being rescinded?

"Yes."

"No."

If you are in favour of the proposal strike out the above word "No."

If you are against the proposal strike out the above word "Yes."

The ballot-paper so marked is to be dropped by the voter into the ballot-box.

The voter is not permitted to take the ballot-paper out of the ballot-room or polling booth.

TWENTY-SECOND SCHEDULE.

Sections 371, 380.

[*Name of municipality.*]

NOTICE REQUIRING PAYMENT OF RATES AND INTEREST UNDER THE LOCAL GOVERNMENT ACT 1958.

Where the land is not under the Transfer of Land Act 1958—

To A.B., the registered proprietor of the land hereinafter described, and

To C.D. [and E.F.], a person [*or* persons] appearing by the Register Book to have an estate or interest in the said land.

Where the land is not under the Transfer of Land Act 1958—

To A.B., the owner or the person appearing by the last memorial of registration in the office of the Registrar-General to be the owner of the land hereinafter described, and

To C.D. [and E.F.], a person [*or* persons] appearing by a memorial of registration in the office of the Registrar-General to have an estate or interest in the said land.

TAKE NOTICE THAT—

1. Default has been made in the payment to the municipality above named of a rate charged on the land hereinafter described and such default has continued since the day of [*insert date on which rate became payable*];

2. The total amount owing to the municipality in respect of rates charged on the land is [*state amount in figures*] and the amount owing for interest thereon up to the date of this notice is [*state amount in figures*];

3. Payment of these amounts is hereby required; and

4. In default of payment thereof, together with interest at the rate of Six pounds per centum per annum on the first-mentioned amount up to the time of payment, the said land will be offered for sale by public auction after the expiration of three months from the date hereof at a time appointed by the council of the municipality.

The land in respect of which the rates and interest are owing is:—

[*Specify the land by a sufficient description.*]

Dated the day of 19 .

(Signed) [*Signature of municipal clerk.*]

Municipal Clerk.

Section 371.

TWENTY-THIRD SCHEDULE.

[*Name of Municipality.*]

NOTICE REQUIRING PAYMENT OF RATES AND INTEREST UNDER THE LOCAL GOVERNMENT ACT 1958.

To the several registered proprietors or owners or persons appearing by the last memorial of registration in the office of the Registrar-General to be owners respectively of the several pieces of land described in the fifth column of the Schedule hereto and persons appearing in the Register Book or by memorial of registration in the office of the Registrar-General to have respectively an estate or interest in such land, and whose names appear in the first column of the said Schedule.

TAKE NOTICE THAT:—

1. Default has been made in the payment to the municipality above named of a rate charged on the several pieces of land described in the fifth column of the Schedule hereto, and such default has continued in respect of each separate piece of land since the date in the second column of the Schedule hereto set opposite the description of such piece of land;

2. The total amount owing to the municipality in respect of rates charged on each piece of land is in the third column of the Schedule hereto set opposite the description of such piece of land; and the amount owing for interest thereon up to the date of this notice is as stated in the fourth column of the Schedule hereto;

3. Payment of these amounts is hereby required; and

4. In default of payment thereof together with interest at the rate of Six pounds per centum per annum on the amounts mentioned in the third column of the Schedule hereto in respect of each piece of land to the time of payment the said several pieces of land will be offered for sale by public auction after the expiration of three months from the date hereof at a time appointed by the council of the municipality.

The pieces of land in respect of which the rates and interest specified in the third and fourth columns respectively of the Schedule hereto are owing are those severally described in the fifth column of the said Schedule and set opposite the respective amounts so specified.

Dated the day of , 19 .

(Signed) [*Signature of municipal clerk.*]
Municipal Clerk.

SCHEDULE HEREINBEFORE REFERRED TO.

Names of Registered Proprietors or Owners, and also of all other Persons having an estate or interest in the land.	Date since which the default has continued.	Amount owing.		Descriptions of the several pieces of land referred to.
		Rates.	Interest.	

Section 376.

TWENTY-FOURTH SCHEDULE.

TRANSFER OF LAND.

The [*insert name of municipality*] in exercise of the power of sale conferred on the council of the said municipality by the *Local Government Act* 1958 and in consideration of the sum of [*state amount in words and figures*] paid to it by the transferee hereinafter mentioned hereby transfers to E.F. [*insert name of transferee*] of for an estate in fee simple [*or if the registered proprietor is not registered as the proprietor of an estate in fee simple substitute the estate for which he is registered*] freed from all registered mortgages and charges but subject to the encumbrances notified hereunder in all that piece of land, &c. [**describe the land*] being the land [*or* part of the land *as the case may be*] more particularly described in the grant [*or* certificate of title *as the case may be*] entered in the Register Book Vol. Fol. [*insert numbers*].

* If part only of the land in a certificate of title or Crown grant is transferred a specific description of the land sought to be transferred will be necessary either by plan or technical description.

Dated the day of

The seal of the said municipality was affixed hereto by in the presence of

Signed by the said E.F. at in the presence of

ENCUMBRANCES REFERRED TO:

TWENTY-FIFTH SCHEDULE.

Section 401.

Shire of

Proposal to borrow money for permanent works and undertakings in accordance with the notice of intention published in the *Government Gazette* on the day of 19 .

Are you in favour of the proposal?

"Yes."
"No."

If you are in favour of the proposal strike out the word "No".

If you are against the proposal strike out the word "Yes".

Directions.

The ballot-paper so marked is to be dropped by the voter into the ballot-box.

The voter is not permitted to take the ballot-paper out of the ballot-room or polling booth.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

TWENTY-SIXTH SCHEDULE.

Sections 411, 421, 453.

FORM "A."

No. Debenture £

Issued by the President, Councillors, and Ratepayers of the Shire of under the provisions of the *Local Government Act* 1958.
Transferable by Delivery.

This debenture was issued by the above-mentioned municipality in pursuance of a notice published in the *Government Gazette* of the day of in the year and is to secure to the bearer a principal sum of £ payable at on the day of in the year .

Interest at the rate of £ per centum per annum on such principal sum in the meanwhile is payable by equal half-yearly payments on the day of and the day of and a coupon is annexed for each payment which entitles the bearer thereto.

Such principal sum and interest are payable at (*place of payment*) and are charged in accordance with the provisions of the above-named Act upon the municipal revenues of the President, Councillors, and Ratepayers of the Shire of and are not otherwise secured.

[*In case the loan is to be liquidated by the formation of a sinking fund, say*]: £ per centum on the amount of the loan will be invested every year in accordance with the said Act to form a sinking fund.

[*In case the loan is to be liquidated by periodical repayments of the principal money thereof, say*]:

The total amount of the loan is £

The said loan will be liquidated by periodical repayments of the principal sum at (*place of payment*) on the several days and in the several amounts following, that is to say:

(*Set out the particulars of such days and amounts.*)

Dated this day of in the year

A.B. President.
K.L. Clerk.
G.H. Treasurer.

TWENTY-SIXTH SCHEDULE—*continued.*

FORM "B."

No. Debenture £

Issued by the President, Councillors, and Ratepayers of the Shire of under the provisions of the *Local Government Act* 1958.

Transferable by delivery.

This debenture was issued by the above-named municipality in pursuance of a notice published in the *Government Gazette* of the day of in the year and is to secure to the bearer a principal sum of £ payable at on the day of in the year .

Interest at the rate of £ per centum per annum on such principal sum in the meanwhile is payable by equal half-yearly payments on the day of and the day of and a coupon is annexed for each payment which entitles the bearer thereto.

[*In case the money is borrowed on the security of a separate rate or special improvement charge, say*]:

Such principal sum and interest are payable at (*place of payment*), and are charged in accordance with the provisions of the above-named Act upon a separate rate (*or* special improvement charge) made by the President, Councillors, and Ratepayers of the Shire of by resolution of the Council dated the day of in the year , and (*when such is the case*) confirmed by order of the Governor in Council published in the *Government Gazette* the day of in the year .

[*In case the money is borrowed on the security of the whole or any part of the "income" of the municipality as defined in section three hundred and ninety-seven of this Act, say*]:

Such principal sum and interest are payable at (*place of payment*) and are charged in accordance with the provisions of the above-named Act upon the whole or (*if such is the case*) the following part (*specifying the part of such income*) of the "income" of the above-mentioned municipality as defined in section three hundred and ninety-seven of such Act.

[*In case the loan is to be liquidated by the formation of a sinking fund, say*]:

£ per centum on the amount of the loan will be invested every year in accordance with the said Act to form a sinking fund.

[*In case the loan is to be liquidated by periodical repayments of the principal money thereof, say*]:

The total amount of the loan is £

The said loan will be liquidated by periodical repayments of the principal sum at (*place of payment*) on the several days and in the several amounts following, that is to say:

(*Set out particulars of such days and amounts.*)

Dated this day of in the year

(L.S.)

A.B., President.
K.L., Clerk.
G.H., Treasurer.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

TWENTY-SIXTH SCHEDULE—*continued.*

FORM "C."

Loan No. Shire of Debenture No.

£ DEBENTURE £

Payable on the day of

Issued by the President, Councillors, and Ratepayers of the Shire of under the provisions of the *Local Government Act* 1958.

Transferable by Delivery.

This debenture was issued by the above-named municipality in pursuance of a notice published in the *Government Gazette* of the day of in the year and is to secure to the bearer a principal sum of Pounds (£) payable at on the day of in the year

Interest at the rate of per centum per annum on the amount of the loan, viz:— pounds hereinafter mentioned, in the meanwhile is payable by half-yearly payments on the day of and the day of and is to be computed on so much of the amount of the said loan as is unpaid from time to time. A coupon is annexed which entitles the bearer thereto.

Such principal sum and interest, payable as aforesaid, are charged in accordance with the provisions of the above-named Act upon the municipal revenues of the President, Councillors, and Ratepayers of the Shire of and are not otherwise secured.

The total amount of the loan is pounds (£)

The said loan will be liquidated by periodical repayments of the principal thereof, together with the interest from time to time accruing due on so much of the total amount of the said loan as is unpaid at the on the several days and in the several amounts specified in the schedule of payments indorsed on the back hereof.

Dated this day of One thousand nine hundred and

A.B., President. (SEAL)
K.L., Clerk.
G.H., Treasurer.

Transferable by Delivery.

Loan No. Shire of Coupon No.

Warrant for pounds (£) half-year's interest upon so much of the said loan as is unpaid, payable on the day of One thousand nine hundred and at the

Dated this day of One thousand nine hundred and

G.H., Treasurer.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 442.

TWENTY-SEVENTH SCHEDULE.

By virture of the *Local Government Act* 1958 and in pursuance of a notice published in the *Government Gazette* of the day of in the year we, the President Councillors and Ratepayers of the Shire of in consideration of the sum of paid to the Treasurer of the said shire by A.B., of for the purposes of the said Act, do grant and assign unto the said A.B., his executors, administrators, and assigns, such proportion of the moneys arising or accruing by virtue of the said Act from the "income" of the above-mentioned shire, as defined by section three hundred and ninety-seven of the said Act, [*or* from the following part of the income of the above-mentioned shire as defined by section three hundred and ninety-seven of the said Act (*specifying such part of the income*)] [*or* from a separate rate or special improvement charge (*as the case may be*) made by the President, Councillors, and Ratepayers of the said Shire by resolution of the Council dated the day of in the year and (*when such is the case*) confirmed by order of the Governor in Council published in the *Government Gazette* the day of in the year] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said "income" or "part of income" or "separate rate" or "special improvement charge" (*as the case may be*) to hold to the said A.B., his executors, administrators, and assigns from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same shall be fully paid and satisfied.

[*In case the loan is to be liquidated by the formation of a sinking fund, say*]:

£ per centum on the amount of the loan will be invested in every year in accordance with the said Act to form a sinking fund.

And it is hereby declared that the said principal sum shall be repaid at (*place of payment*) on the day of in the year .

[*In case the loan is to be liquidated by periodical repayments of the principal sum, say*]:

The total amount of the loan is £ .

And it is hereby declared that the said principal sum shall be repaid by periodical repayments at (*place of payment*) on the several days and in the several amounts following (that is to say):

(*Set out particulars of such days and amounts.*)

Dated day of in the year .

[*To be sealed with the common seal of the municipality.*]

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

Section 443.

TWENTY-EIGHTH SCHEDULE.

I, A.B., of in consideration of the sum of paid to me by C.D., of do hereby transfer to the said C.D., his executors, administrators, and assigns a certain mortgage bearing date the day of in the year and made by the President, Councillors, and Ratepayers of the Shire of by virtue of the *Local Government Act*, 1958 for securing the sum of and interest thereon, at per centum per annum [*or if such transfer is by indorsement on the mortgage insert instead of the words immediately following the word "assigns"* the within security] and all my right, estate, and interest in and to the money thereby secured and in and to the "income" [*or* separate rate, *or* special improvement charge] thereby assigned. In witness whereof I have hereunto set my hand and seal this day of in the year .

(L.S.) A.B.

NOTE.—In the case of a city, town, or borough, make the necessary adaptations in the Form.

TWENTY-NINTH SCHEDULE.

Section 527.

APPLICATION UNDER THE PROVISIONS OF THE LOCAL GOVERNMENT ACT 1958 TO AMEND CERTIFICATE OF TITLE (OR CROWN GRANT OR CROWN LEASE).

To the Registrar of Titles.

(1) I (*) hereby apply under the provisions of the *Local Government Act* 1958 to have the certificate of title (*or* Crown grant *or* Crown lease, *or as the case may be*) entered in the Register Book volume folium amended in the following particulars:—

(*) Give name address and occupation of applicant.

(*a*) So as to include in the description of the land comprised therein all that piece of land (*describe portion of road or street to be added*).

(*b*) So as to exclude from the description of the land comprised therein all that piece of land (*describe portion to be excised*).

(2) The names and addresses so far as known to me of all persons other than myself having any registered interest in the land described in such certificate of title (*or* Crown grant *or* Crown lease, *as the case may be*) are as follows:—

Dated the day of 19 .

Made and subscribed at
in the presence of

THIRTIETH SCHEDULE.

Section 569.

NOTICE AND REQUEST.

I (*or* "We") of
hereby give notice of my (*or* "our") intention to lay out a road street lane or passage (*or* "to subdivide land into allotments," *or both as the case may be*).

1. Situation of land—
2. Name and address of registered proprietor of land—

A plan with the required particulars set out thereon together with a copy of such plan to be retained by the council, and the fee of £ are submitted herewith and I (*or* "we") request the council to cause the said plan to be sealed with the seal of the municipality.

Dated this day of 19 .

To the Municipal Clerk,

Signature(s).

THIRTY-FIRST SCHEDULE.

Section 846.

FORM OF ISSUE BY WAY OF APPEAL FROM ARBITRATOR TO JUDGE OF SUPREME COURT.

In the Supreme Court,

In the matter of an appeal upon the question of the amount of compensation under Part XLIV. of the *Local Government Act* 1958.

Claimant and [*the Council of the, &c.*].

The day of in the year of our Lord, 19

Whereas [*name of claimant*] affirms and the [*name of council*] denies that the compensation to be paid by the said council to the said for the injury likely to result to the [*here describe the property of the claimant to which he alleges the works of the council may cause injury*] the property of the the said by the exercise of the powers of the said Part of the said Act amounts to the sum of £ [*here state the amount claimed as compensation*]: Now in pursuance of the provisions of the said Part of the said Act the question of the amount of compensation to which the said or the several other persons (if any) having estates or interests in such property is or are entitled is submitted to His Honour Mr. Justice or such other Judge of the Supreme Court before whom this case may be set down for hearing for his final decision in the terms of the said Part of the said Act; and the several parties interested are commanded to appear before His Honour the said Judge accordingly.

Witness His Honour at Melbourne the day and year first above written.

Section 871.

THIRTY-SECOND SCHEDULE.

I, A.B., of do solemnly and sincerely declare that I served the within named with a notice [*or* order *or* demand] of which the within writing is a true copy by [*state manner of service*] at [*place of service*] on the day of 19 . And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

(Signed) A.B.

Made and subscribed at this day of 19
Before me C.D.,
A Justice of the Peace for the Bailiwick of the State of Victoria.
[*or as the case may be.*]

Section 929.
No. 5988 s. 5 (5).

THIRTY-THIRD SCHEDULE.

1. In this Schedule—

Interpretation. "Committee."

"Committee" means the Building Regulations Committee under Part XLIX. of this Act.

"Regulations or by-laws."

"Regulations or by-laws" means—

(*a*) regulations under Part XLIX. of this Act; and

(*b*) by-laws regulations and joint regulations under any other Part of this Act or any other Act which relate to the regulation restriction restraint or prohibition of the erection or construction of buildings erections and hoardings.

Referees.

2. The members of the Committee or a quorum thereof or, with the consent of the parties in any case, one or more members of the Committee shall be the referees for the purposes of this Schedule.

Referee not to act when interested.

3. A member of the Committee shall not act as referee with respect to any building of which he is the owner architect or builder or in which he is in any manner directly or indirectly interested.

Duties and powers of referees.

4. (1) The referees—

(*a*) shall perform the several duties respectively imposed upon them whether expressly by this Schedule or the regulations or by-laws or at the instance of any builder or owner who requires any matter to be referred to them as provided in this Schedule or the regulations or by-laws;

(*b*) subject to this Schedule shall determine any matters arising for their determination;

(*c*) subject to and for the purposes of this Schedule shall have and may exercise the powers of arbitrators under the *Arbitration Act* 1958.

THIRTY-THIRD SCHEDULE—*continued.*

(2) The power and authority of the referees shall not be revocable by any party to any matter without the consent of all the parties thereto; and although any party does not attend upon the hearing of any matter, the referees may proceed and make their award.

Jurisdiction of referees.

5. (1) If any doubt difference or dissatisfaction in respect of any matter as to which provision is made by or under the regulations or by-laws arises between any parties concerned, or between any party and the surveyor for the municipality, as to—

(*a*) any act done or to be done in pursuance of the regulations or by-laws;

(*b*) the effect of the provisions of the regulations or by-laws in any case;

(*c*) the mode in which the provisions and directions of the regulations or by-laws are or ought to be carried into effect;

(*d*) whether the requirements implied in terms of qualification applied to sites soils materials or workmanship or otherwise, and denoting good sound fire-proof fit proper or sufficient, are fulfilled in certain cases;

(*e*) the expenses to be borne by the respective owners of premises parted by the same party walls or the proportions thereof;

(*f*) the proportions of the expense to be borne by the occupier or by the owner of premises in respect of any works executed; or

(*g*) any other matter whatever—

any party concerned may require the referees on appeal to determine such matter upon a requisition by notice in writing to the Committee setting forth, either generally or otherwise, the matters in respect of which the determination of the referees is required; and the referees shall, subject to this Schedule and after hearing any party that wishes to be heard, and the council of the municipality if it wishes to be heard, determine the matter.

(2) The determination of the referees shall be final and conclusive.

Inquiries and surveys.

6. The referees may appoint one or more of their number to make any inquiry or survey which appears necessary or expedient in order to enable them to determine any matter.

Power to modify regulations or by-laws in special cases.

7. Where in the case of any particular building proposed to be altered or erected the referees, after consultation with the surveyor, are satisfied that any provision of the regulations or by-laws is inappropriate, or that a modification or variation of any regulations or by-laws might reasonably be made without detriment to the public interest, the referees on the written application of any party concerned may direct that such provision shall not apply to that building, or that any regulations or by-laws shall apply to that building with such modifications or variations as the referees determine.

Awards.

8. (1) Every award of the referees shall be given in writing signed by the referees and shall be filed by the Committee.

(2) Every such award—

(*a*) may by leave of the Supreme Court or a judge thereof be enforced in the same manner as a judgment or order of the said Court to the like effect;

(*b*) shall together with the costs charges and expenses of the reference be binding upon and conclusive against the parties thereto and all persons whomsoever.

(3) Any person on payment to the Committee of a fee of Two shillings and sixpence may inspect any such award and take a copy thereof or make any extracts therefrom.

(4) In any proceedings in any court or before any judge or justice a copy of an award of the referees signed by the referees or by the secretary of the Committee shall be *prima facie* evidence of the matters therein contained.

THIRTY-THIRD SCHEDULE—*continued.*

Fees.

9. (1) Every referee shall receive such fees as are from time to time determined by Order of the Governor in Council.

(2) The party making lodging or demanding the reference objection or appeal or seeking any modification of any regulation or by-law shall before the reference objection appeal or modification is considered pay to the Committee such fees as are from time to time determined by Order of the Governor in Council.

Minutes and records.

10. The Committee shall—

(*a*) keep proper minutes of all proceedings of the referees;

(*b*) keep in a form approved by the Minister a register of all matters referred to the referees or which come under their cognisance in pursuance of this Schedule and on payment to the Committee of a fee of Two shillings and sixpence permit any person to inspect such register and take copies of or make extracts from any item therein;

(*c*) keep and preserve all documents connected with the duties of the referees;

(*d*) receive all notices provided for pursuant to this Schedule or the regulations or by-laws requiring any act to be done by the referees and file and number them in the order in which they are received.