

## No. XIV.

### An Act for preventing certain Nuisances in the City of Sydney and other Municipalities. [11th August, 1875.]

NUISANCES  
PREVENTION.

WHEREAS it is expedient to make more effectual provision for improving the sanitary condition of the City of Sydney and its Suburbs and other Municipalities by the suppression of certain nuisances prejudicial to the public health Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly in this present Parliament assembled and by authority of the same as follows (that is to say) :—

1. This Act may be cited in all legal proceedings as the Short title. "Nuisances Prevention Act 1875."

2. This Act shall come into operation in the City of Sydney and all other municipalities at such dates respectively as the Governor with the advice of the Executive Council shall from time to time appoint by proclamations published in the *Gazette*. Commencement of Act.

3. The Governor may at any time by proclamation exempt for a stated period or otherwise any municipality from the operation of any sections or clauses contained in this Act and specified in such proclamation. The Governor may exempt municipalities from operation of specified sections.

#### *Interpretation of terms.*

4. In the construction of this Act the following words within inverted commas shall have the meanings assigned to them respectively unless inconsistent with the context (that is to say) :— Interpretation of terms.

"Council"—The Municipal Council of Sydney or of any other municipality or combined municipalities;

"Municipality"—A municipal borough or municipal district;

"Governor"—The Governor with the advice of the Executive Council;

"Inspector

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- “ Inspector of Nuisances ”—The inspector of nuisances of any municipality or other officer who may be appointed by the Municipal Council to execute any powers or duties vested in the said council or inspector of nuisances by this Act ;
- “ Owner ”—The proprietor landlord or person at the time receiving the rent whether on his own account or otherwise or who shall claim to be the owner ;
- “ Occupant ”—The tenant or other person occupying the premises except a *bona fide* servant of the owner ;
- “ Premises ”—Any land whether any building be erected thereon or not ;
- “ Closet ”—Any privy water-closet earth-closet or place used for the reception of fæcal matter or urine or earth mixed therewith ;
- “ Cesspit ”—Any cesspit tank box or other receptacle for fæcal matter or urine not discharged by water ;
- “ Night-soil ”—Fæcal matter or urine ;
- “ Earth-closet ”—Any mechanical contrivance by which fæcal matter may be received and deodorized by the agency of dry earth or ashes without being discharged by water ;
- “ Boxes ”—The receptacles used in earth-closets ;
- “ Night-soil depôt ”—The place appointed for the deposit of night-soil removed from cesspits.

*Local authorities for the execution of this Act.*

Municipal Councils to execute the several powers &c. of this Act.

5. Within the boundaries of the City of Sydney and within the boundaries of every municipal borough or municipal district the Council of each municipality respectively shall exercise and execute the several powers authorities and duties requisite for carrying into effect the intentions of this Act.

Adjoining municipalities may combine for the purpose of carrying out this Act.

6. Whenever two or more municipalities adjoin or are adjacent to each other and the several Councils thereof deem it expedient to combine for the purpose of carrying into effect the objects and intentions of this Act it shall be lawful for each of them to nominate an alderman (but the Council of Sydney in such case may nominate two aldermen) who shall together with the several mayors jointly form a Board of Councillors who shall thereupon be authorized —

And thereupon may make by-laws.

(1.) To make all necessary by-laws for the purposes aforesaid which after approval by the Governor and publication in the *Gazette* shall have the same effect and validity and may be enforced as if the same had been separately made by each Council as hereinafter provided And the said Board of Councillors shall alone have the power at any time of repealing or altering such by-laws with the approval of the Governor ;

And also make any contracts.

(2.) And also to contract upon such terms and conditions as they may see fit with any persons for doing any work matter or thing authorized to be done by any Council under this Act ;

And also make any appointments.

(3.) And also to appoint an inspector of nuisances or other officers to act for any such combined municipalities in the performance of any of the duties imposed upon the inspector of nuisances or other officers by this Act or by any by-laws which may be made by the said Board of Councillors ;

And also manage all matters.

(4.) And also generally to control and manage all matters and things which the Councils or the said officers respectively are by this Act required or empowered to do and perform.

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7. The Council of Sydney or of any other municipality may contract from time to time with the Council of any other municipality for the performance of any duty or work imposed by this Act upon any such last-mentioned Council or its officers.

The Council of Sydney &c. may contract with any other Council to carry this Act into effect.

8. If the Council of any municipality (after the Governor shall by his proclamation have declared this Act to be in force within the same municipality) shall neglect for two months—

If any Council neglects to make by-laws;

- (1.) To make proper and sufficient by-laws for carrying into effect such duties as are by this Act imposed upon it;
- (2.) Or to appoint an inspector of nuisances or other necessary officers;
- (3.) Or shall in the opinion of the Governor have wilfully failed to comply with such provisions of this Act as the said Council shall not have been exempted from as hereinbefore provided for;

Or to appoint an inspector of nuisances &c.;  
Or shall wilfully fail to comply with the provisions of this Act;

It shall be lawful for the Governor thereupon—

- (1.) To make regulations for carrying into effect the aforesaid provisions which after publication in the *Gazette* shall within the said municipality have the same force and validity as any by-law made under the authority of this Act;
- (2.) And to appoint an inspector of nuisances and other officers for performing the aforesaid duties and thereupon such inspector and other officers shall be entitled to demand and recover from the said Council such reasonable salary or wages as the Governor may have assigned to each officer respectively on making the appointment and such inspector and other officers shall or may severally exercise all the powers and authorities vested in such officers respectively by this Act in the same manner and to the same extent in all respects as if such inspector or other officers had been appointed by any Council under the authority of this Act.

The Governor may make regulations;

To have the validity of by-laws;

And may appoint an inspector of nuisances &c.

Whose salaries shall be paid by the Council.

*The Cleansing of Cesspits.*

9. From and after the time when by the Governor's proclamation this Act shall be declared to have come into operation in any named municipality the owner or occupant of any premises within the same shall not empty or cause to be emptied any cesspit which may be included in his premises without the sanction in writing of the Council or inspector of nuisances. Provided however that such sanction shall not be given unless the officers of the said Council are by accident or unforeseen circumstances at the time unable to empty such cesspit with the proper night-carts and appliances appointed to be used by them whether supplied by a contractor or by the Council. And any such owner or occupant so offending shall be liable to a penalty not exceeding ten pounds.

Owners or occupants of premises not permitted to empty their own cesspits.

10. The Council in each municipality shall cause its own servants or contractors under the direction of the inspector of nuisances or other officers appointed in that behalf to empty all cesspits within the same municipality once at least every six months if necessary in the opinion of the inspector of nuisances. And such Council shall cause to be used such implements and appliances and shall take all such other measures in the performance of the work as shall be deemed best adapted for the suppression of offensive smells or the suppression of other nuisances.

Municipal Councils to cause cesspits to be emptied.

11. If at any time the cesspit in any premises shall overflow or burst or cease to be water-tight or if from any other cause its contents are liable to escape or the effluvia arising therefrom becomes excessive or any other nuisance in connection therewith occurs the occupant

The occupant of premises to give notice of any nuisance occurring in connection with the cesspit;

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or he shall be liable to a penalty of £10.

or the owner (in case the premises shall not be occupied by any other person than the owner's *bonâ fide* servant) of the premises shall within twenty-four hours give notice thereof to the inspector of nuisances otherwise such occupant or owner as the case may be shall be liable to a penalty not exceeding ten pounds.

*Miscellaneous Clauses.*

No sewer or drain to be allowed to connect with cesspits &c.

12. It shall not be lawful for any person to construct in any manner a gutter or drain whether above or below the surface of the ground on premises in any municipality which shall communicate with a street sewer or gutter in any manner so that the contents of any cesspit whether in the case of an overflow or otherwise may be discharged into such street sewer without the express written sanction of the Council first obtained And whoever offends against this enactment shall be liable to a penalty not exceeding twenty pounds and not less than one pound and a further penalty not exceeding two pounds for every day during which the offence is continued after notice in writing shall have been given to the owner or occupant or other person as the case may be by the inspector of nuisances in that behalf.

Under a penalty not exceeding £20 nor less than £1; and not exceeding £2 per diem during continuance of the offence.

Any drain &c. now or hereafter constructed contrary to this Act may be filled up &c.

13. The Council may fill up remove alter or otherwise deal with any existing gutter drain closet cesspit or well or any such respectively which may be hereafter made or constructed and which shall be adjudged by the said Council to be either—

- (1.) Injurious to the health;
- (2.) Or opposed to decency by exposure or otherwise;
- (3.) Or which may present obstacles to the emptying or cleansing of cesspits;
- (4.) Or may afford insufficient closet accommodation;
- (5.) Or which may hereafter be made or constructed or placed contrary to the provisions of this Act or of any by-laws made under its authority.

All reasonable expenses incurred by Councils to be repaid by owners &c.

14. All reasonable expenses incurred by any Council in carrying into effect any of the provisions of this Act upon or in respect of any premises shall be repaid to the Council by the owner or occupant within one week after a written demand of the amount made by the Council or inspector of nuisances shall have been served upon him otherwise the same may be recovered by the Council after the service of the notice next mentioned by summary proceedings in the manner hereinafter set forth.

One week's written notice to be first served on the owner or occupant.

15. Before commencing any such works or operations the Council or inspector of nuisances shall give at least one week's notice in writing to the owner or occupant of the premises (when such delay is not considered by the Council or inspector of nuisances to be injurious to the public or in other respects inexpedient in which case three days notice shall be sufficient) requiring him to perform the work therein specified and notifying that in default of his compliance therewith during the time which may be allowed by any by-law made for the purpose of dealing with such cases the Council will cause such specified work to be done at his expense.

The occupant may recover from the owner any sums paid to the Council under the authority of this Act.

16. If the occupant of the premises be not also the owner and shall not himself have caused the subject matter complained of and specified in the notice mentioned in the last section and shall forthwith after the delivery of such notice serve the same on the owner of the premises and if such owner does not within the time mentioned in the last preceding clause perform the work as before-mentioned such occupant may thereupon comply with the terms of the said notice and after defraying the necessary expense occasioned thereby he may deduct the amount from any rent then due by him or accruing

or

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or at his option sue for and recover the same with costs of suit from the owner as for money paid to his use in an action brought in any Court of competent jurisdiction.

17. Whoever refuses to obey an order of a Justice as hereinafter provided for the admission of the inspector of nuisances or other officer or persons authorized to carry into effect any operations or measures under the authority of this Act or their respective workmen or labourers upon any premises or who wilfully obstructs any person acting under the authority or employed in the execution of this Act shall be liable for every such offence to a penalty not exceeding ten pounds nor less than one pound.

Persons obstructing officers in execution of this Act liable to a penalty.

*Power to make By-laws.*

18. As soon as this Act shall come into operation in any Municipality the Council thereof is hereby required and authorized to make all such by-laws as may be necessary for carrying into effect the several provisions of this Act. Provided that a copy of all such by-laws sealed with the seal of the said Council shall be sent to the Governor for confirmation and when so confirmed shall be published in the *Gazette*. Provided also that copies of all such by-laws after confirmation and publication as aforesaid shall forthwith be laid before both Houses of Parliament if at the time in Session otherwise within one month after the commencement of its then next Session.

Municipal Councils to make by-laws.

19. All by-laws when so confirmed and published but not before shall have the same force and effect when made in accordance with the provisions of this Act until repealed or altered as if each respectively had formed a part of this Act and the production of the *Gazette* containing them shall be sufficient evidence upon any trial or proceeding in any Court of every such by-law having been duly made and promulgated.

By-laws to have the force of law and *Gazette* to be evidence.

20. Every Council may make by-laws in the manner provided for all or any of the subjects following (that is to say)—

The subjects of by-laws.

- (1.) The regulating the construction in all respects the dimensions and situation of cesspits and closets to be hereafter made ;
- (2.) Prescribing the degree of closet accommodation to be supplied for dwelling-houses factories or any other places of business ;
- (3.) Providing for such alterations as may be requisite in the opinion of the inspector of nuisances or any officer appointed by any Council in that behalf for preserving public health or decency in the case of existing cesspits and closets ;
- (4.) To appoint a place with the approval of the Governor either within or without the municipality as a general depôt for the deposit of night-soil ;
- (5.) The method to be employed in the removal of night-soil from cesspits and also whether by contract or otherwise ;
- (6.) The manner of its disposal whether by burying in the earth or casting it into the sea or otherwise ;
- (7.) If sold or given away making all necessary conditions and stipulations for the proper transit of the night-soil and its ultimate disposition ;
- (8.) To regulate the height above the surface of the ground and the depth beneath of all cesspits respectively intended to be constructed varying or not according to the nature of the ground and the probable number of persons for whom it is intended ;
- (9.) To appoint the days and hours for the inspection of premises or for doing any work authorized by this Act therein ;

(10.)

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(10.) To frame any other regulation for carrying into effect the intentions and objects of this Act.

By-laws may state *maximum* and *minimum* penalties.

21. Every by-law made in accordance with the provisions of this Act may state some *maximum* and *minimum* penalty for any neglect or breach thereof. Provided that no penalty shall exceed twenty pounds.

Councils may purchase or rent land for night-soil depôts.

22. Every Council is hereby authorized to purchase or rent for any term of years or otherwise so much land as may be deemed sufficient for the purpose of forming a depôt for the reception of night-soil whether the situation of the said land be within the boundaries of the municipality or otherwise.

*The construction and situation of Closets and Cesspits.*

No person hereafter allowed to form a cesspit in any spot unauthorized.

23. No person shall hereafter place any closet or make or place any cesspit in any unauthorized spot upon his premises or construct the latter of any unauthorized materials or dimensions. And any person so offending shall be liable to a penalty not exceeding twenty pounds nor less than two pounds. And if the closet be removed or the cesspit filled up as the case may be by the inspector of nuisances (and which he is hereby authorized to do) the person offending as above-mentioned shall also be liable to pay all the expenses incurred thereby and which may be recovered by summary proceedings in the manner hereinafter provided.

Councils may incur expenditure for preparing depôt &c.

24. Every Council of a Municipality in the neighbourhood of the sea-coast on determining either to dispose of the night-soil by casting it into the sea or to provide a depôt as hereinbefore authorized is hereby empowered to incur all needful expenditure in enclosing or otherwise preparing such depôt and providing all proper plant and appliances for dealing with the night-soil therein whether by burying the same in the ground or otherwise and also for making and repairing any roads leading either to the salt water or to the depôt as the case may be.

*Proceedings for removal of Nuisances.*

Power of entry on premises for inspector of nuisances &c.

25. Whenever the inspector of nuisances has reasonable grounds for believing that there exists on any premises in the municipality a foul closet whether occasioned by the blocking-up of water-closet pans or of their discharge pipes or the surcharge of cesspits or of earth-closet boxes or insufficient closet accommodation or any concealed drain connected with the closet or any other nuisance in connection with the closet cesspit or well such inspector may demand admission on the premises from the owner or occupant to inspect the same at any time between the hours of ten o'clock a.m. and four o'clock p.m. except on Sundays.

Inspector of nuisances may give notice to owner or occupant to remove any nuisance.

26. Such inspector on discovering the existence of any such nuisance as above mentioned or any other of a like kind may thereupon give a notice in writing to the owner or occupant to remove the same forthwith or within a time to be therein stated according to the exigency of the case and to purify the locality by cleansing and the application of disinfectants or otherwise. And if the owner or occupant shall not have complied with such notice before the expiration of the time limited he shall be liable to a penalty not exceeding twenty pounds nor less than two pounds and also to pay any reasonable expenses incurred by the Council in removing the said nuisance (and which the Council is hereby empowered to do) which expenses may be sued for and recovered in a summary way as hereinafter provided.

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27. If the owner or occupant shall refuse permission for the inspector of nuisances to enter as before mentioned or shall prevent his entry upon the premises any Justice on an affidavit made before him of the said inspector's belief in the existence of any nuisance to be expressly stated in such affidavit may by order under his hand require the owner or occupant to admit the said inspector upon the premises who may thereafter enter and examine and remove such nuisance and take all such measures as are authorized by section fifteen.

If admission be refused inspector of nuisances may obtain an order from any Justice.

28. If the occupant of any premises prevents the owner thereof from obeying or carrying into effect the provisions of this Act any Justice to whom application is made on affidavit made before him in this behalf shall by order in writing require such occupant to desist from such prevention or to permit the execution of the work required to be executed provided that such work appears to such Justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act and if within three days after the service of such order the occupant against whom it is made do not comply therewith he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such non-compliance.

Occupant of premises obstructing owner liable to a penalty.

*Legal Proceedings.*

29. All penalties imposed by this Act or by any by-law made under its authority for offences committed and all sums of money ordered to be paid thereby may be recovered and all complaints heard in a summary way before any two Justices according to the provisions of the Act fourteenth Victoria number forty-three and the English statutes thereby adopted and shall when recovered be paid over to the Council interested to be applied in aid of its expenses under this Act.

All penalties imposed &c. to be paid to the Council fund for purposes of this Act.

30. Any notice summons order or other legal document may be served personally upon any owner or occupant of premises or may be delivered to any person being apparently above the age of fourteen years resident on the premises.

Service of notices &c.

31. Nothing in this Act shall be construed to affect any of the provisions of the "Municipalities Act of 1867" other than such as relate to the class of nuisances for which this Act is intended to provide or of any other Act as to matters included in this Act nor to impair any power of abating nuisances at common law and all municipal officers or other persons may respectively proceed for the abatement of nuisances within any municipality or in respect of any other matter or thing hereinbefore provided for referred to under the before-mentioned Act or any other Act conferring jurisdiction in respect of the several nuisances matters and things referred to in this Act or any by-laws framed under any such Act as they may think fit.

This Act not to affect the provisions of the "Municipalities Act of 1867" &c.

32. All complaints or other legal proceedings for the breach of this Act or of any by-laws made under its authority may be laid and taken by the inspector of nuisances or any other officer appointed by the Council in that behalf against any person for non-compliance with or any breach of this Act.

All legal proceedings may be taken in the name of the inspector of nuisances.

33. Any person feeling himself aggrieved by any conviction or penalty or charge imposed under the authority of this Act where the penalty or sum exceeds five pounds may appeal against the same to the next Court of Quarter Sessions holden in the district where the subject matter thereof arose unless such Quarter Sessions shall be held within fourteen days from the date of such conviction or judgment and in that case to the Court of Quarter Sessions then next following

Appeal allowed to Quarter Sessions.

And

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And such Court shall have power to hear and determine the matter in a summary way and shall have and exercise all other powers vested in them by the third section of the Act fifth William the Fourth number twenty-two and the decision of such Court shall be final and conclusive in respect to the subject matter of such appeal Provided always that the person so appealing shall have given written notice seven days at the least before the hearing of such appeal of his intention to appeal and stating the grounds thereof to any one of the convicting Justices and to the inspector of nuisances or other officer duly appointed by the Council and who prosecuted the matter before the Justices in Petty Sessions and provided also that such person (in case a penalty shall have been awarded against him) shall pay into the hands of the convicting Justices the full amount thereof together with the costs awarded within one week next after conviction and shall within the same period enter into a bond with two sureties approved by such Justices conditioned to prosecute such appeal with effect and to abide the event of such appeal and to pay the full amount of all such costs as may on such appeal be awarded against him.

Forms in Schedule  
may be used.

34. The forms contained in the Schedule to this Act annexed or any other forms to the like effect but varied as circumstances may require may be used for legal instruments under this Act and shall be sufficient for the purpose intended.

Proceedings not to  
be quashed or set  
aside for want of  
form.

35. No order nor any other proceeding matter or thing done or transacted in relation to the execution of this Act shall be vacated quashed or set aside for want of form nor be removable by *certiorari* or otherwise into the Supreme Court.

## SCHEDULE OF FORMS.

## FORM A.

*Order of Justice for admission of Inspector of Nuisances or other officer to inspect premises.*

To Mr. G.H. or the owner or occupant of the premises [*here describe the same as in the body of the order.*]

WHEREAS A.B. the inspector of nuisances for the municipality of [if acting for any combined municipalities add and other combined municipalities] has made oath before me E.F. Esquire one of Her Majesty's Justices of the Peace of his belief that a nuisance within the meaning of the "Nuisances Prevention Act 1875" exists on premises situate in street [describe the number or name and the situation of the premises so as to identify them] of which premises you are said to be either the owner or occupant and that demand of admission to such premises for the inspection thereof has been duly made and refused Now therefore I the said E.F. do hereby require you to admit the said A.B. with or without his workmen or assistants for the purpose of inspecting and examining the said premises under the provisions of the said Act.

Given under my hand this                      day of                      18 .  
E.F.  
J.P.



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## FORM B.

*Summons for a Nuisance.*

To Mr. G.H. or the owner or occupant of the premises [*here describe the same as in the body of the summons.*]

*Sydney* [*state name of Police District*] to wit.

You are hereby summoned to appear before two of Her Majesty's Justices of the Peace at the Petty Sessions holden at the Police Office [*insert place*] on the day of \_\_\_\_\_ next at the hour of \_\_\_\_\_ in the forenoon to answer the complaint this day made to me by A.B. the inspector of nuisances for the municipality of [*if acting for any combined Municipalities add and other combined municipalities*] that in or upon certain premises situate in \_\_\_\_\_ street [*describe the number or name and the situation of the premises so as to identify them*] the following nuisance exists [*describing it as the case may be as nearly as convenient in the words of the Act or by-law*] and that the said nuisance is caused by the act or default of the owner or occupier of the premises or by yourself G.H.

Given under the hand of me E.F. Esquire one of Her Majesty's Justices of the Peace [*or Police Magistrate for the City of Sydney*] this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

E.F.  
J.P.

## FORM C.

*Order to permit execution of works by owner or by the Inspector of Nuisances.*

*Sydney* [*state name of Police District*] to wit.

To Mr. G.H. or the owner or occupant of the premises [*describing them as in Form B.*]

WHEREAS C.D. the owner of the said premises within the meaning of the "Nuisances Prevention Act 1875" [*or Mr. A.B. the inspector of nuisances for the Municipal Council of \_\_\_\_\_*] having appeared before me E.F. Esquire one of Her Majesty's Justices of the Peace [*or Police Magistrate*] and having made oath to me of his belief that a nuisance within the meaning of the aforesaid Act existed on the premises above-mentioned of which you are said to be the occupant and that you the said G.H. being such occupant have prevented the said C.D. [*or the said A.B.*] from obeying and carrying into effect the provisions of the said Act that is to say that you the said G.H. prevented [*here describe the act of prevention generally for instance thus: prevented the said C.D. from repairing a cesspit or removing a closet or digging up a drain connected with the cesspit which is a nuisance and injurious to health*] And whereas you the said G.H. having been summoned this day to answer the said complaint and not having shewn sufficient cause against the same [*or having failed to attend as the case may be*] and it appearing to me that it is necessary that [*here describe the act or work to be done, for instance thus: that the said cesspit should be repaired or that the said closet should be removed or that the said drain should be dug up*] for the purpose of enabling the said C.D. [*or the said A.B.*] to obey and carry into effect the provisions of the said Act I do hereby order you the said G.H. to permit the said C.D. [*or the said A.B.*] to do and perform the aforesaid duty and works according to the provisions of the said Act and by-laws.

Given under my hand and seal at Sydney this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

E.F.  
J.P.

## OTHER FORMS.

Any other legal instrument requisite may readily be adapted from the Forms annexed to the Act fourteenth Victoria number forty-three and the English statutes thereby adopted.