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BEGIN TRANSCRIPTION

Western Australia

Anno Decimo Tertio

Victoriae Reginae

No. 1

An Ordinance to provide for the due custody and discipline of Offenders transported to Western Australia; and of certain classes of Offenders sentenced therein to Transportation.

<Preamble> Whereas by an Order in Council, bearing date at Buckingham Palace, the 1st day of May, 1849, Her Majesty, in pursuance and exercise of the powers vested in Her Majesty by a certain Act of Parliament therein recited, and by and with the advice of Her Privy,

Council, did order that upon and from the 1st day of June, in the said year, Her Majesty's settlements in Western Australia should be places to which felons and other offenders in the United Kingdom, there being, or thereafter to be, under sentence or order of transportation or banishment, should be conveyed under the provisions of the said recited Act. And whereas, Her Majesty's Principal Secretary of State for the Colonies has formally notified to His Excellency the Governor, that a number off such offenders as are referred to by the said Order in Council, are shortly to be conveyed to this colony in pursuance of the said Order, and has transmitted special instructions whereby such offenders are to be exempt in the first instance, and during good behaviour, from imprisonment and forced labour; but are to be subject to strict supervision, and in the case of misbehaviour, to such summary penal discipline as is lawfully and usually exercised over transported convicts in the Penal Settlements in other parts of Her Majesty's dominions. And whereas, the Island of Van Dieman's Land is the only part of the said dominions to which offenders sentenced in this colony to Transportation beyond the seas can lawfully be transported, and it has been officially notified by the Governor of the said island that offenders of the Aboriginal Race of this colony, sentenced here to transportation beyond seas, will not be received or admitted into the said island; and whereas it is expedient to provide for the due custody and discipline within this colony of such offenders as may be transported thereto under the authority of the said recited Order in Council, and also such offenders of the said Aboriginal Race, and of other descriptions hereinafter specified, as may be sentenced in this Colony to transportation therefrom:- Be it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent <Terms "Class A" and "Class B" defined> of the Legislative Council thereof, that in order to avoid frequent repetition, the word and letter following, that is to say, "Class A", shall be deemed and taken throughout this Ordinance to mean and comprise all offenders transported into this colony under the authority of the said Order in Council, whose respective sentences, under which they shall

have been so transported, shall not have expired or been remitted; and that the word and letter following, that is to say "Class B", shall be deemed and taken, in like manner, to mean and comprise all offenders of the said Aboriginal Race sentenced in this colony to transportation beyond the seas; all persons who being or having been offenders of "Class A" shall be sentenced in the said colony to transportation: and all other persons who shall be a second time, or oftener, sentenced in the said colony to transportation; and all persons, of whatever class or description, who shall be ordered by the said Governor to be transported in lieu of capital punishment, whose said respective sentences or orders of transportation shall not have expired or been remitted.

<Governor to grant "Tickets-of-leave" to offenders of Class A> II. And be it enacted, that it shall be lawful for the said Governor to grant to any offender of Class A, immediately after the arrival of such offender in the colony, a "Ticket-of-leave", or written permission to employ himself within the said colony for his own benefit, subject to the due observance by such offender of all such rules and regulations as are next hereinafter mentioned.

<Governor to make rules and regulations for holders of tickets-of-leave> III. And be it enacted, that it shall be lawful for the said Governor, with the advice of the Executive Council of the said colony, from time to time, to make and publish by notice in the Government Gazette, and from time to time to rescind and alter by like notice, Rules and Regulations, not being repugnant to an enactment herein contained, as to time and place of muster, district of residence, change of district, and generally for securing a due supervision of and over the holders of such "ticket-of-leave" as aforesaid.

<Holders of tickets-of-leave to have the benefit of all summary remedies> IV. And be it enacted, that all summary remedies provided under the authority of any local Ordinance of this colony, for the recovery of wages or damages, or for securing any civil rights therein, shall extend and be applied to all cases in which any holders of such tickets as aforesaid shall be concerned.

<Offender of class A absenting himself before he has obtained a ticket-of-leave, or refusing or neglecting to proceed to his assigned district after he has obtained such ticket, may be kept to hard labour for 3 months> V. And be it enacted, that if any offender of class A shall, before he shall have obtained a "ticket-of-leave", absent himself from the building or place of detention or residence of such offender on landing in this colony, without the previous permission of the Superintendent or person in charge of such building or place, or having obtained a "ticket-of-leave", shall refuse or fail to proceed within the time thereby limited, or within a reasonable time to the district thereby assigned for his residence, every such offender, in any of the said cases, shall be deemed to be illegally at large, and may be apprehended without warrant by any Constable or Peace Officer, and conveyed to the nearest Justice of the Peace, or until such offender can with reasonable dispatch be taken to the said Justice of the Peace, or the nearest gaol or lock-up house, the keeper whereof is hereby required and authorised to receive every such prisoner; and every such offender being summarily convicted before any one or more

Justice or Justices of the Peace, of being so illegally at large as aforesaid, shall be kept to hard labour on any of the Roads or Public Works of the said colony, for any time not exceeding three calendar months.

<Governor may revoke ticket-of-leave> VI. And be it enacted, that it shall be lawful for the said Governor to revoke any such "ticket-of-leave" on account of any conviction of the holder thereof duly reported to him, as hereinafter provided, or for any such immoral or disorderly conduct as, though not amounting to an offence cognizable under the summary jurisdiction hereinafter established, may yet seem to justify or require such a measure of severity.

<How the holder of a revoked ticket is to be dealt with> VII. And be it enacted, that on such revocation of any ticket as aforesaid, notice thereof shall be published in the Government Gazette; and in case the offender, whose ticket shall be so revoked, shall not at the time of such revocation, be in custody in execution of any sentence of any competent Court or authority, it shall be lawful for the Colonial secretary to issue a warrant or warrants for the apprehension of such offender, as a transported convict illegally at large, and for the conveyance of such offender to such gaol, road-gang, or public work as shall be appointed by the Governor in that behalf, there to be kept to hard labour for the then unexpired residue of any sentence of transportation which may have been passed upon him in England; [DOCUMENT FIRST PAGE ENDS HERE]

but in case such offender shall, at the time of such revocation, be in custody in execution of any such sentence as aforesaid; then it shall be lawful for the Colonial Secretary to issue a detainer against such offender, and to lodge or cause the same to be lodged, with the Gaoler or Superintendent or other person in whose charge and custody such offender shall then be, and by virtue of such detainer such offender shall be liable to be kept to labour in like manner and for the like term as under any such warrant, in addition to and independently of, the sentence in execution whereof such offender shall be in custody at the time of issuing such detainer.

<After revocation, Governor may grant a fresh ticket> VIII. And be it enacted, that after any such revocation of ticket as aforesaid, it shall be lawful for the said Governor to grant to any such offender as aforesaid, a fresh ticket on any grounds which shall seem to him meet and sufficient to warrant the same.

<Offender of class A, deemed unworthy of a ticket on account of misconduct, may be kept to hard labour for 12 months> IX. And be it enacted, that in case any offender of class A shall, by reason of any misconduct during his passage from England to this colony or immediately subsequent to his arrival therein, be deemed unworthy of a "ticket-of-leave", without some previous probationary discipline, it shall be lawful for the Governor, by any order in writing issued under his authority by the Colonial Secretary, to cause such offender to be forthwith conveyed to, and kept to hard labour at, any of the roads or public works of the said colony, for any term not exceeding twelve calendar months.

<No license to keep a public house to be issued to offender of class A> X. And be it enacted, that no license to keep a public house or to retail spirituous or fermented liquors, shall be issued to any offender of class A, and if any such license shall at any time, either by inadvertence or otherwise, be issued to any such offender, such license shall be utterly null and void.

<Offenders of class A not to carry firearms without permission> XI. And be it enacted, that it shall not be lawful for any offender of class A to carry firearms, without the previous written permission of the Colonial Secretary, or of a Justice of the Peace of the district in which such offender may lawfully reside, and every such permission shall remain in force for any period therein mentioned not exceeding three calendar months; and any offender found with firearms in his possession contrary to this Ordinance, shall be deemed to be guilty of a misdemeanor, and being thereof summarily convicted before any one or more Justice or Justices of the Peace, shall be kept to hard labour, in or without irons, on the roads or nay public works for any time not exceeding twelve calendar months.

<Holder of ticket-of-leave violating any of the rules and regulations, may be kept to hard labour for 12 months> XII. And be it enacted, that any offender of class A holding a ticket-of-leave not duly attending at the appointed time and place of muster, or being found knowingly beyond the bounds of the district prescribed by his "ticket-of-leave", without the written permission of a Justice of the Peace authorising such absence for any period not exceeding fourteen days, or contrary to the terms of such permission; or knowingly violating any of the rules or regulations made and issued by the authority of the Governor as aforesaid, for the time being in force relative to holders of "tickets-of-leave", shall be deemed to be guilty of a misdemeanor, and being thereof summarily convicted before any one or more Justice or Justices of the Peace, shall be kept to hard labour, in or out of irons, on any of the roads or other public works of the said colony, for any term not exceeding twelve calendar months.

<How crimes and misdemeanors, not punishable with death, committed by offender of class A, may be tried and punished> XIII. And be it enacted, that it shall be lawful for any Court of General or Quarter Sessions, and for any one or more Justice or Justices of the Peace of the said colony, to take cognizance in a summary way of all crimes and misdemeanors, not punishable with death, committed by any offender of class A, either within the limits of this colony or on board any ship or vessel during the voyage hereto, and the same to punish, if such Court or Justice or Justices shall see fit, by transportation, or by hard labour, in or without irons, on any of the roads or public works of the said colony, for any time not exceeding three years; or by whipping not exceeding one hundred lashes; and it shall be lawful for any such Court, or Justice or Justices, to award such punishment by whipping in addition to any sentence of hard labour. Provided, that such Court, or Justice, or Justices, shall transmit a report of every sentence by it, him, or them respectively imposed under the authority of this Ordinance, together with a brief statement of the offence leading thereto, as soon as reasonably may be after the passing

thereof, to the Colonial Secretary. Provided also, that no power, authorities, or Jurisdiction as aforesaid, in any case where any Court of General or Quarter Sessions shall be appointed to be held within one week after the complaint shall be preferred against any such offender, at any place not more than twenty miles distant from the place at which the offence shall be charged to have been committed.

<Certified copy of "Indent" to be transmitted to Chairman and Resident Magistrates> XIV. And be it enacted, that the "Indent", or instrument in writing commonly called an "Indent", transmitted from England, together with any offender or offenders of class A, purporting to contain the name, offence, sentence, and personal description of any such offender or offenders, shall be deposited and kept in the office of the Colonial Secretary, and a copy thereof, certified to be a true copy under the hand and official seal of the said Secretary, shall be by him transmitted to the Resident Magistrate or Chairman of the bench of Magistrates of every district of the said colony.

<How identity is to be proved> XV. And be it enacted, that as often as any question shall arise in any Court, or before any Justice of the Peace in the said colony, whether any person is an offender of Class A, the production of such certified copy as aforesaid, together with evidence to the satisfaction of such Court, or of the Jury, or of such Justice respectively, of the identity of such person, with any individual named in such certified copy, shall be received and admitted as sufficient evidence that such person, touching whom such question shall arise, is an offender of Class A, and transported for the term set opposite in the said copy to the name of the individual with whom such person shall have been so identified.

<Governor may appoint places of penal settlement within the colony for offenders of class B> XVI. And be it enacted, that it shall be lawful, for the said Governor, with the advice of his Executive Council, to appoint any one or more Penal Settlement, or Penal Settlements, on the mainland, or on any of the adjacent islands of this colony, for the reception of offenders of Class B, and for the detention of such offenders at hard labour during the terms of their respective sentences of transportation.

<Governor to appoint Superintendent of penal settlement, road-gang, or working party. Power of Superintendent> XVII. And be it enacted, that every such Penal Settlement and every road-gang or working party shall be under the management of a Superintendent appointed by the Governor, who shall have the same powers as are incident to the office of Sheriff or Gaoler, or Visiting Justice of a Gaol, and that it shall be lawful for the Governor, with the advice of the Executive Council, to make and publish, and from time to time to rescind or vary rules and regulations for the general treatment, discipline, employment, and safe custody of all offenders detained at any such settlement, or in any such road-gang or working party.

<Persons holding intercourse with such penal settlement without permission, to be subject to fine or imprisonment> XVIII. And be it enacted, that any person who shall touch at, or hold intercourse with any such settlement as aforesaid, without the previous

permission of the Governor, or some person duly authorised to give such permission, shall be deemed to be guilty of a misdemeanor, and being thereof convicted before any Court of General or Quarter Sessions, shall be subject to a fine not exceeding One Hundred Pounds, or imprisonment not exceeding Twelve calendar months.

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<Offenders subject to same summary jurisdiction as class A> XIX. And be it enacted, that all offenders at such settlement, or of the Class B, in any part of the said colony, shall be subject to the same summary jurisdiction as hereinbefore provided for Class A.

<Governor may withdraw or remove offenders> XX. And be it enacted, that it shall be lawful for the Governor to withdraw any such offender from any such settlement, and to employ him on the roads or other public works, and to remove an offender from one such settlement to any other such settlement, or from one part of the said colony to any other part of the same, as occasion may require.

<Offender absconding, how to be punished> XXI. And be it enacted, that any offender of Class A or Class B, who shall be summarily convicted before any one or more Justices of the Peace, of having absconded from such penal Settlement, or from a road-gang or public work, or any appointed place of employment or confinement in any part of the said colony, shall be sent back to the settlement, road-gang, public work, or other appointed place of employment or confinement, there to receive the punishment to which he shall have been sentenced, and shall be detained until he shall have served the full term of his sentence or sentences, as well as of the time during which he shall have been absent by escape; and if a male, shall be punished in addition, by whipping, not exceeding one hundred lashes; and every such offender shall be liable to be apprehended and punished, in manner aforesaid, for any such escape at any time after, as well as before, the expiration of the sentence of transportation which consigned him to Class A or Class B.

<Convict unlawfully at large, may be apprehended> XXIII. And be it enacted, that any convict who shall wilfully disable himself from working on roads or other public works, or shall designedly prevent or protract the cure of any disease in order to evade labour, shall, on summary conviction thereof before any one or more Justice or Justices of the Peace, on the certificate of the attendant Surgeon certifying such offence, be compelled to serve for further time as he shall have been absent at Hospital or otherwise disabled.

<Punishment for harbouring a convict illegally at large> XXIV. And be it enacted, that any free person who shall knowingly harbour any convict under sentence of transportation, who shall be illegally at large, shall, on summary conviction for such offence before any two or more Justices of the Peace, forfeit and pay any sum not exceeding fifty pounds; and if the person guilty of such offence be himself a convict on ticket-of-leave, he shall on summary conviction before any one or more Justice or Justices of the Peace, be punished with whipping not exceeding one hundred lashes, or, at the discretion of the convicting Justice or Justices, with hard labour in or out of irons on the

roads or other public works of the said colony for any term not exceeding twelve calendar months.

<Convict found on board ship, with intent to escape, or without some lawful authority-how punishable> XXV. And be it enacted, that any convict under sentence of transportation who shall be found on board of any ship or vessel about to leave the colony with intent to escape therefrom, shall be deemed to be guilty of a misdemeanor, and on conviction thereof before any Court of Quarter Sessions shall be transported for fourteen years; and any such convict found on board any ship or vessel in any port or harbour of the said colony, without lawful authority, shall, on summary conviction before any one or more Justice or Justices of the Peace, be liable to be kept to hard labour in irons on the roads or other public works of the said colony, for any term not exceeding twelve calendar months.

<Person taking a convict on board a ship about to sail from the colony-how punishable> XXVI. And be it enacted, that any boatman or other person knowingly and without lawful authority taking any convict under sentence of transportation on board of a ship about to sail from the colony aforesaid, shall on summary conviction for such offence before any two or more Justices of the Peace, forfeit and pay any sum not exceeding Fifty pounds; and if such boatman or other person be himself a transported convict on "ticket-of-leave", he shall be liable on summary conviction of such offence before any one or more Justice or Justices of the Peace, to be sentenced to hard labour in irons on the roads or other public works for any term not exceeding two years, and to whipping not exceeding one hundred lashes.

<Master of vessel failing to give notice of, or to deliver up convicts, guilty of aiding and abetting escape> XXVII. And be it enacted, that any master of a ship or vessel who shall know that a convict under sentence of transportation is concealed on board, and shall fail to give immediate notice thereof to the nearest magistrate or constable, and to deliver up such convict into the charge of a constable, and to deliver up such convict into the charge of a constable, or shall offer any obstruction to a constable searching such ship or vessel for any such convict suspected to be therein, shall be deemed to be guilty of aiding and abetting in the escape or intended escape of such convict.

<Offence of aiding and abetting escape deemed a misdemeanor-how punishable> XXVIII. And be it enacted, that any person guilty of aiding and abetting the escape or intended escape from the colony of a convict under sentence of transportation, shall be deemed guilty of a misdemeanor, and on conviction thereof before a Court of General or Quarter Sessions, shall be liable to a fine not exceeding Five Hundred Pounds, or to imprisonment not exceeding two years, or to both, at the discretion of the Court.

<Purchasing any Government property from a convict> And be it enacted, that any person purchasing, bartering, or receiving any article supplied by Government from any convict, shall on summary conviction before any two or more Justices of the Peace of such offence, forfeit and pay any sum not exceeding Ten Pounds, or be imprisoned with or

without hard labour for any term not exceeding three calendar months, and for a second offence shall be sentenced to imprisonment with hard labour for any time not exceeding twelve calendar months, and in case the offender be a male, with whipping not exceeding fifty lashes.

<Letters to and from convicts, to be exempt from colonial postage; such letters going from the colony, to be superscribed by Colonial Secretary or Resident Magistrate> XXX. And be it enacted, that all foreign letters from, and all inland and foreign letters to a convict under sentence of transportation, detained at any penal settlement or elsewhere in the said colony on the public account, shall be free of any colonial postage. Provided that all such letters from any such convict to any person in parts beyond the sea, shall be transmitted open under cover to the Colonial Secretary, or to the Resident Magistrate of the Port from which the same shall be intended to be despatched beyond sea; and the said Secretary or Magistrate shall superscribe the same with his signature, and cause the same to be forwarded through the post. [DOCUMENT THIRD PAGE ENDS HERE]

<Offenders when sentenced are to be conveyed or placed how and where Governor may appoint> XXXI. And be it enacted, that a sentence of transportation passed in the said colony on any offender of Class A, or which shall have the effect of consigning the offender on whom the same shall be passed to Class B, and every order of the said Governor for transportation in lieu of capital punishment, shall subject the offender to be conveyed to such penal settlement within the said colony, at such time and in such manner as the said Governor shall direct and appoint; and every sentence to labour on the roads or public works, shall subject the offender to be placed on such road or work in the said colony as the said Governor shall direct and appoint.

<Sentences passed upon convicts are to be in addition to, and not concurrent with, former sentences> XXXII. And be it enacted, that the term of any sentence passed in this colony under this Ordinance on any convict under sentence of transportation, shall be in addition to and not concurrent with any former sentence passed on the same offender, who shall be detained until he shall have served the full term and time of both sentences, and so on, as often as he shall be convicted under this Ordinance, and shall be liable to be dealt with in all respects as a transported convict.

<Limitation of proceedings> XXXIII. And be it enacted, that all informations and proceedings in respect of any such offences against the provisions of the Ordinance, as are hereby made summarily triable before Justices of the Peace, and as are committed by a person not being an offender of Class A or Class B, shall be commenced within six calendar months after the offences respectively charged shall have been committed, and shall be heard and determined, and the forfeitures and penalties <Recovery and appropriation of penalties> in respect of the same shall be awarded, enforced, and appropriated in a summary manner before any two or more Justices of the Peace, according to the provisions of an Ordinance passed in the 7th year of the reign of Her present Majesty, intituled "An Act to regulate summary proceedings before Justices of the Peace."

<Right of appeal in certain cases> XXXIV. And be it enacted, that in all cases where, on any summary conviction under this Ordinance of any person not being an offender of Class A or Class B, the sum adjudged to be paid shall exceed 5 Pounds, or the imprisonment adjudged shall exceed one calendar month, any person who shall think himself aggrieved by such conviction, may appeal to the next Court of General or Quarter Sessions which shall be holden not less than twenty days after the day of such conviction, at Perth, in the said colony, unless such conviction shall take place within one hundred miles of Albany, in the said colony, in which case any appeal from such conviction, shall be to the next Court of General or Quarter Sessions holden not less than ten days after the day of such conviction, at Albany aforesaid.

<Governor may commute sentences> XXXV. And be it enacted, that when any prisoner in the colony, not belonging either to Class A or Class B, shall be sentenced to transportation beyond the seas for life, or for any term of years, it shall be lawful for the said Governor, with the advice of the Executive Council, by an order in writing registered in the office of the Secretary of the said colony, to commute such sentence, for imprisonment with hard labour, in or without irons, on the roads or public works in any part of the said colony, for a term of years having reference to the nature and magnitude of the crime perpetrated by such offender, and the duration of the sentence passed upon him - that is to say:- where the sentence was transportation for life, then for a term not exceeding six years; and when the sentence was passed for any term of years, then for a term not exceeding four years; and every such order shall have the same effect of a conditional pardon, and shall subject the offender whose sentence shall be thereby commuted, to be conveyed to such part of the said colony as is therein mentioned, and to be dealt with during the time mentioned in such order in like manner as persons duly sentenced by any competent Court or authority to hard labour, in or without irons, on the roads or public works of the said colony; and all the authorities and jurisdictions, regulations and provisions contained in this Ordinance, for the safe custody, treatment, and punishment of offenders of class A or class B, duly sentenced hereunder to hard labour in or without irons on the said roads or public works, shall extend and be applied to every person whose sentence shall be so commuted, during the period fixed by such commutation. Provided always, and be it declared, that nothing herein contained shall be held to affect in any way the exercise of Her Majesty's prerogative of mercy.

Charles Fitzgerald
Governor and Commander-in-Chief

Passed the Legislative Council
29th day of December, 1849

T.N. Yule
Clerk to the Council

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