



# WESTERN AUSTRALIA.

ANNO DECIMO QUARTO

VICTORIÆ REGINÆ.

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No. XX.

**An Ordinance for the establishment of further Precautionary Regulations for the Port of Fremantle.**

**W**HEREAS the establishment of a station for convicts in the town of Fremantle, renders it necessary to adopt some precautionary regulations tending to insure the safety of the shipping at the port thereof, and to prevent the escape of convicts therefrom

Preamble.

by the facilities afforded by such shipping: Be it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that it shall be lawful for the Governor, or officer administering the Government of this colony for the time being, from time to time, by warrant under his hand, to appoint such and so many fit and proper persons as he may deem necessary to act as Superintendents and Constables of a Water Police force at the Port of Fremantle, or such other ports, harbours, or anchorages, within the said colony, as the provisions of this Ordinance may be extended to by the said Governor.

Governor may appoint Superintendents and Constables of Water Police.

Vessel may be boarded and searched.

II. AND be it enacted, that it shall be lawful for any such Superintendent, or for any Justice of the Peace or Constable of the said Water Police, with such assistants as they respectively may require, to enter on board and search any ship or vessel entering or being within or departing from any of the ports, harbours or anchorages, as aforesaid, when and so often as he or they shall have reasonable ground for believing such search to be necessary in the execution of the duties imposed upon them.

Master to deliver list of crew and passengers.

III. AND be it enacted, that the Master or Commander of every ship or vessel about to leave any of the ports, harbours or anchorages, where this Ordinance shall be in operation, shall, before clearing out at the custom-house, deliver to the Superintendent of Water Police a true list in writing containing the names of the crew, the place where the same were engaged, the names of the passengers and all other persons intended to proceed to sea in such ship or vessel; and such list shall also shew the disposal of such of the crew who arrived in such ship or vessel as may not then be proceeding to sea in such ship or vessel; and in case such master shall refuse or neglect so to furnish such list within the time aforesaid, or in case such list shall not contain a full and true statement of the particulars aforesaid, he shall be liable to forfeit and pay any sum not exceeding twenty pounds.

Penalty.

Person found on board may be detained.

IV. AND be it enacted, that if after the clearance of any such ship or vessel at the customs, any person shall be found on board of such ship or vessel, whose name shall not be contained in such last mentioned list, and who shall not be able satisfactorily to shew that he does not intend to proceed to sea in such ship or vessel, it shall be lawful for

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any Superintendent of Water Police, Justice of the Peace, officer of Customs, or Constable, or Master, or person in charge of such ship or vessel, with such assistants as they respectively may require, to detain any such person and lodge him in safe custody until he shall be dealt with according to law.

V. AND be it enacted, that if a master or commander of any ship or vessel proceeding to sea shall knowingly suffer any person to embark on board such ship or vessel whose name shall not be contained in such last-mentioned list, he shall forfeit and pay for every such offence, any sum not exceeding Fifty Pounds. Suffering persons to embark; penalty.

VI. PROVIDED always and be it enacted, that in order to prevent injury to passengers, seamen, mariners, or others whose names may happen to be omitted in such last-mentioned list, it shall be lawful for the Superintendent of Water Police, or for any Resident Magistrate, to grant to any passengers, seaman, mariner, or other person whose name shall not be contained in such list, a special license to depart from the said colony, if it shall be shewn to the reasonable satisfaction of such Superintendent or such Magistrate that the names of such passengers, seaman, mariner, or other person ought to have been, or to be inserted in such list; and for every license so granted there shall be paid by the person applying for the same the sum of ten shillings; Provided further, that nothing herein contained shall be held or construed to release the master of any ship or vessel from furnishing to the proper officer such lists of their crews and passengers as may be particularly specified in, and required under, the provisions of any Ordinance which may be in force for the regulation of the Customs of this Colony. Special license to depart may be given. Fee for license. List of crew and passengers to be given under Customs Regulations.

VII. AND be it enacted, that no master of a ship or vessel about to proceed to sea from any port, harbour, or anchorage within the operation of this Ordinance, shall weigh anchor between the time of sunset and sunrise, without special permission from the Colonial Secretary or the Resident Magistrate of such port, harbour, or anchorage, nor without having given previous notice thereof to the Superintendent at least one hour after sunset; nor until such ship or vessel shall have been duly examined and searched, and having weighed anchor, after such examination, such master or pilot in charge shall not suffer such ship or vessel to be brought up or laid to nor to deviate from her course within the limits of any such port, harbour, or Anchor not to be weighed without permission, And notice, And examination.

No deviation from anchorage, unless compelled by stress of weather or other unavoidable cause; nor to be boarded by any boat or vessel whatever except Harbour Master or Pilot boats, or Water Police or Custom Boats, or any boat or boats belonging to any such ship or vessel, unless in cases of unavoidable necessity, the proof whereof shall lie on such master or pilot and every master or pilot who shall offend against any of the provisions of this clause shall for every such offence, forfeit and pay a penalty or sum not exceeding Fifty Pounds.

Penalty.

Obstructing Officers.

VIII. AND be it enacted, that if a master of any ship or vessel, or any other person, shall resist or wilfully obstruct any Superintendent of Water Police, Justice of the Peace, Officer of Customs, water policeman, constable, or any of their respective assistants, whilst searching for or endeavouring to secure any person on board, or reasonably suspected to be on board, such ship or vessel, or in any house or place on shore, at any town or place to which the provisions of this Ordinance shall have been extended, or shall rescue, or attempt to rescue, or assist any such person, such person so offending shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall suffer such punishment by fine and imprisonment; with or without hard labour, or by fine, or by imprisonment, without hard labour, for any term not exceeding two years, as the Court before which such conviction shall be had shall determine.

Punishment.

Deck-watch to be kept.

IX. AND be it enacted, that the master or other person having or being in charge of any ship or vessel within any such port, harbour, or anchorage as aforesaid, shall at all times, as well by day as by night, have at least one seaman or mariner in charge of the deck of such ship or vessel; and if such master or other person or the seaman or mariner so in charge of the deck as aforesaid, or if any person having the charge of, or being on board any boat belonging to such ship or vessel, or having the charge of, or being on board any shore or other boat, shall not answer to the challenge of the Superintendent of Water Police for such port or harbour, or any Justice of the Peace, Officer of Customs, Water policeman or constable, such master or other person having or being in charge of such ship or vessel, shall, whether such offence shall have been committed by him, or by such seaman or mariner in charge of the deck of such ship or vessel as aforesaid or by any person having the charge or being on board such ship's boat as aforesaid, on conviction thereof, forfeit and pay for every such offence, a penalty or sum of not less than ten

Challenge to be answered.

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shillings, nor more than five pounds; and every person having the charge or being on board any shore or other boat so offending as aforesaid, shall for every such offence, forfeit and pay any sum not exceeding £5. Penalty.

X. AND be it enacted, that if any person shall wilfully destroy or damage, or attempt or endeavour to destroy or damage, or shall be in any way concerned in destroying, or damaging, or in any attempt or endeavour to destroy or damage, any vessel or boat belonging to, or hired, or employed by the Superintendent of Water Police for any such port, harbour, or anchorage, as aforesaid, or by any Justice or Justices of the Peace, or Officer of Customs, Water Policeman or constable, or by any one acting for or under, or by authority of him, them, or any of them, or the sails, oars, tackle or other gear or furniture, or the stores, goods, or other articles or things contained in, or belonging to such vessel or boat, or any part thereof, such person so offending, shall, on conviction thereof before any two or more Justices of the Peace, forfeit and pay for every such offence, any sum not exceeding ten pounds, and shall also make good the damage so done, together with the reasonable costs and charges attending the recovery of the same, or, at the discretion of such Justices, shall, in lieu of such fine or damages, suffer imprisonment, with or without hard labour, for any time not exceeding three calendar months. Damaging boats, &c.;  
Penalty.

XI. AND be it enacted, that if any person or persons not being in the service of the Water Police or Customs, or not being otherwise duly authorised, shall go on board, or be and remain alongside any ship or vessel in any such port, harbour, or anchorage, as aforesaid, at any time after sunset and before sunrise, without the permission of the master or other person then having, or being in charge of such or ship vessel, it shall be lawful for any Superintendent of Water Police, Justice of the Peace, Officer of Customs, Water Policeman, constable, or the master, or the person having or being in charge of such ship or vessel as aforesaid, to lodge, or keep, or cause to be lodged and kept in safe custody, any person so offending, until he shall be brought before the Superintendent of Water Police for such port, harbour, or anchorage, or some Justice or Justices of the Peace, on the following morning; and such Superintendent or Justice or Justices shall have power to remand and detain in custody such person for such reasonable time as may be necessary to prepare an information, and procure the attendance of the witnesses necessary to sup- Persons going on  
board, &c., at night  
without permission;

port such information; and such Superintendent or Justice or Justices is and are hereby authorised and required to hear and examine into the matter of such information, and on conviction, such person shall forfeit and pay for every such offence of which he shall be so convicted, any sum not exceeding Fifty pounds, unless it shall be made to appear to the satisfaction of the Superintendent of Water Police, or Justice or Justices of the Peace before whom such conviction shall be had, that such person or persons was or were so on board or alongside such ship or vessel, by unavoidable accident or for some lawful purpose.

Penalty.

Governor to appoint places for landing or embarking at night.

Penalty for landing or embarking at other place;

Penalty for not giving notice.

XII. AND be it enacted, that it shall be lawful for the Governor, by notice in the Government Gazette, to appoint a place at any port, harbour, or anchorage within the operation of this Ordinance for landing from or embarking in boats between sunset and sunrise; and any person who shall without lawful excuse, land or embark between sunset and sunrise at any other place in any such port, harbour, or anchorage as aforesaid than the place so appointed, shall, on conviction thereof before any two Justices of the Peace, forfeit and pay any sum not exceeding ten pounds; and every person so landing or embarking between sunset and sunrise, shall report immediately the fact of such landing, or the intention of such embarkation, to the Superintendent of Water Police, and any person neglecting or refusing so to do shall be liable to a penalty not exceeding ten pounds.

Guns to be unshotted.

Penalty.

XIII. AND be it enacted, that the master or commander in charge of any ship or vessel carrying guns, entering or arriving at any such port, harbour, or anchorage, as aforesaid, shall cause the shot to be taken out of such guns; and any master or commander acting contrary to the provision of this section, shall be liable to a penalty not exceeding five pounds.

Not to apply to vessels of war

XIV. PROVIDED always that nothing in this Ordinance contained shall apply to Vessels of War.

Limitation of proceedings.

XV. AND be it enacted, that all informations and proceedings for offences against this Ordinance shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed, and shall be heard and determined, and the forfeitures and penalties in respect of the same shall be awarded, enforced, and appropriated, in a summary manner, where not otherwise provided for, before any two or more Justices of the Peace, according

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to the provisions of an Ordinance passed in the 14th year of the reign of Her present Majesty, intituled "An Ordinance to facilitate the performance of the duties of Justices of the Peace out of Sessions within the Colony of Western Australia with respect to summary Convictions and Orders."

XVI. AND be it enacted, that no action shall lie against any Superintendent of Water Police, Justice of the Peace, Officer of Customs, water policeman, constable, or other Peace Officer, or any person acting for or under them or any of them, on account of any act, matter, or thing whatsoever done or to be done or commanded by him, them, or any of them, in carrying the provisions of this Ordinance into effect against any party or parties offending, or suspected to be offending, against the same, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any person shall be sued for any act, matter, or thing, which he shall have so done, or shall so do, in carrying the provisions of this Act into effect, he may plead the general issue, and give the special matter in evidence: and in case of judgment after verdict, or on demurrer, being given for the defendant, or of the plaintiff discontinuing or becoming nonsuit in any such action, the defendant shall be entitled to and have treble costs. Limitation of actions.

XVII. AND be it enacted, that this Ordinance shall extend to, and be in force in, such ports, harbours, and anchorages, within this colony, other than the said port of Fremantle, as the Governor shall from time to time, by notice published in the Government Gazette, declare to be within the operation thereof. Where Ordinance to be in force.

XVIII. AND be it enacted, that the Port of Fremantle shall, for the purposes of this Ordinance, be deemed to include all waters on the coast within fifteen miles of Arthur's Head, and within the Swan River from the Bar thereof as far as the Ferry Jetties at and opposite Preston Point. Definition of term "Port of Fremantle."

CHARLES FITZGERALD,  
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Council,* }  
*16th May, 1851.* }

A. O'GRADY LEFROY,  
Acting Clerk of the Council.