Archives Office of Tasmania

GUIDE TO THE PUBLIC RECORDS OF TASMANIA

SECTION THREE

CONVICT DEPARTMENT

by

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HOBART

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INTRODUCTION

FROM the very beginning of white settlement in Tasmania convicts under sentence of transportation were among the colonizers. Bowen's party at Risdon had twenty-four, Collins's at Sullivan's Cove 294 and Patterson's at Port Dalrymple twenty. In 1812, 199 men arrived direct from England, but otherwise the only additions to the convict population, to 1818, were small irregular shipments from Sydney, mainly of secondarily convicted men. From 1818 direct arrivals were continuous, and by 1820 the annual influx had reached 1200, which was the annual average until 1829 when it almost doubled; about 2000 a year were arriving during the 'thirties and in 1830 this level began to climb towards the peak of 5300 in 1842; there was a gradual decline to 1846 and from then until cessation (1853) the average dropped again to the level of the 'thirties (see Appendix 5). The total number of convicts sent to the colony was more than 74,000, of whom between 12,000 and 13,000 were women (see Appendix 4). Transportation to Tasmania therefore represents a considerable movement of people.

Collins, who had had experience in New South Wales, took simple but effective measures for the control of his small band of prisoners; he made it clear to them that they were Crown servants, to be employed at its representative's pleasure; they could be imprisoned only by a civil magistrate,[1] whose jurisdiction was limited to minor offences (an elastic category) punishable by confinement and the lash. Capital offences could be tried only in Sydney, and those offenders found guilty were returned to the settlement for execution.[2]

The majority of the convicts in Collins's settlement must have been thrown largely on their own resources, as they were in New South Wales until 1819; they were victualled from the public store but those who were not assigned to the free settlers had to find their own accommodation. Collins made it clear that assignees were the complete responsibility of the master, with whom they were wholly to reside, and who could not hire them out or exchange them;[3] likewise the convicts were warned about quitting their master's service, "for the service, that is due from them to the Crown, is vested in the Master during the Time they remain with them and they would be equally liable to Punishment as if they had absented themselves from Public Labour."[4] Assignment, then, was early established in Tasmania as a means of convict maintenance and discipline.

A rudimentary police force, known as the "Night Watch", had been set up by Collins before he abandoned the Port Phillip settlement; by 1806 this body, which probably consisted largely of well-conducted convicts, was found inadequate to enforce discipline, and Collins set up a "Military Patrole" of a sergeant, a corporal and six privates from his force of Marines "to form a Police, that can be depended upon and which will carry with it a responsibility that the present Night Watch cannot command...." They patrolled the settlements of Hobart and New Town during the night, apprehending any convicts found at large.[5] A pass system was begun for those who had to travel between the two settlements.[6]

A hint of more systematic arrangements for a police force appears in Governor Macquarie's instructions to Lieutenant John Murray, who administered the settlement in succession to Edward Lord after Collins's death in 1810, and to Thomas Ritchie at the northern settlement. "You are to establish as good a Police in the Settlement under your Command as your means will admit with a view to preserve the Peace and Tranquillity of it". It is unlikely that any very great changes took place but in September 1815 Davey submitted that a Police Magistrate was essential; he recommended A.W.H. Humphrey, a member of Collins's original party;[8] though he was not officially appointed Superintendent of Police until January 1818, Humphrey had acted for some time previous to that.[9] It is largely in his evidence before the Bigge Commission that we get a glimpse of police and convict matters in this pre-independence period. Police regulations had been published by Davey in April 1816 [10] and as the head of the department Humphrey was responsible for the discipline of all assigned convicts; in his magisterial capacity he held a court to hear complaints of petty offences from both masters and those in charge of convicts on public works. The constabulary consisted of as many free men as possible, but strength was made up from well-conducted convicts.

Humphrey in 1817 had begun an alphabetical register of all convicts in the southern division of the island, Buckinghamshire, to record their physical description, native place, trade, details of trial and sentence, assignment or employment in public works, and emancipation. He had also improved Collins's pass system and made it depend on "a chain of constables" throughout the settled district. As Superintendent of Police he conducted a general muster, of both bond and free, and his opposite number in the northern division of Cornwall was P.A. Mulgrave.[11]

For those convicts not assigned but under the direct control of the Government the Inspector of Public Works was more particularly responsible. Major Thomas Bell, in his evidence before Bigge, said that he kept an alphabetical list of all convicts arriving at Hobart, with details of the ship, the date of arrival and of the convicts' appropriation. Bell was notified when any change in assignment was made, and he kept a register of prisoners on public works and of those put on or taken off the store; a weekly list of these was signed by the Lieutenant-Governor as an authority for the Commissary to issue rations.[12]

The Lieutenant-Governor's Secretary, H.E. Robinson, kept the indents, originals in the case of convicts arriving direct from Europe and attested copies if from Sydney, "carefully locked in drawers"; they were used frequently as no comprehensive register was kept.[13]

In the north, Sorell took steps to see that similar measures were taken to control and record the convicts.[14] The Chief Constable was to be notified of all assignments,[15] but Thomas Massey said in his evidence to Bigge that he kept no general lists of convicts assigned, not being allowed for it.[16] However, Lenehan stated that since Cimitiere's arrival as Northern Commandant a general register of all persons, free and bond, had been kept.[17]

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Such, briefly, was the sketchy system which George Arthur found when he succeeded to the administration in 1824; its object, said Sorell, was "a perfect unity of management throughout the Island respecting convicts, so as to hold a perfect check upon their locomotion."[18] This referred mainly to the pass system, which had been developed by Davey and Sorell in an effort to cope with the bushranging problem. Arthur, very conscious that he had been put in charge of a colony whose main purpose, for the British Government, was to be a large gaol, and the biggest single element of whose population was an increasing body of convicts, paid particular attention to the administration of convict discipline in his thorough overhaul of the departments of government.

In his General Order setting out the functions of his various officers (April 1826) Arthur gave his Principal Superintendent of Convicts the general oversight of the appropriation of all convicts, but more especially of those employed by the government and of the women confined in the Factory. All applications for assigned servants would be made to him, and on these he was to report weekly to the Colonial Secretary, to enable the Lieutenant-Governor to reach a decision; the assignment would then be made through the Colonial Secretary's Office; similarly, all convicts' memorials for indulgence were to be made through the Principal Superintendent, who would report on each case for the Lieutenant-Governor's information (see CON 44).

The 1826 General Order also set out the functions of the Police Magistrates, then called Superintendents of Police. They were to sit daily to adjudicate on cases brought before them; to grant travel passes, to certify to the Principal Superintendent as to prisoners' conduct, and to make recommendations on the appointment and dismissal of constables. The Superintendent of Police in Hobart would report personally to the Lieutenant-Governor, and would be responsible for the general muster of the colony and for the recording of arrivals and departures, births, deaths and marriages of both bond and free.

But it was not until the early months of 1828 that Arthur applied himself fully to the reorganization of the Police; at its head he placed the Chief Police Magistrate, with an Assistant. The island was to be divided into nine districts, with sub-divisions as necessary; each district would be in the charge of a Police Magistrate who was to have such an establishment of constables and field police as local circumstances warranted. The Police Magistrates would exercise the functions of justices, coroners and Commissioners of the Court of Requests; they would grant travel passes to convicts and keep detailed registers of the free and convict population; all applications for indulgence from convicts were to be sent through them to the Chief Police Magistrate, and they were expected to add supporting information, and to make recommendations on the appointment and dismissal of constables. Similarly, all applications for assigned servants were to go through them so that they could add information to enable the Lieutenant-Governor to reach a decision.

Each district was to have a Chief District Constable who would be immediately in charge of the constabulary under the Police Magistrate. Each subdivision would be in the charge of a Division Constable, and at the base of the pyramid would be the Field Police.[19] These latter Arthur considered a most important part of the system; they were themselves convicts and through them "a mistrust and jealousy has already been infused into the Prisoner Population which gives a security to the Free Inhabitants...."[20]

Arthur reflected his training when he wrote that he considered

> that every convict should be regularly and strictly accounted for, as Soldiers are in their respective Regiments, and that the whole course of their Conduct, - the Services to which they are sent, - and from which they are discharged - the punishments they receive, as well as instances of good conduct they manifest - should be registered from the day of their landing until the period of their emancipation or death.[21]

To this end Edward Cook, a law-stationer who arrived in 1825 under a life sentence, was put to work to compile a series of "Black Books" containing particulars of convicts who had arrived since the Calcutta: 12,305 separate entries, three to a page. Cook worked at the Chief Police Magistrate's residence at New Norfolk, for "14 or 15 hours a Day and very frequently on Sundays" under the direction of Josiah Spode, the Muster Master.[22]

To this officer the duty of maintaining these key records, now to be found in CON 31, was confided. In March, 1827 the Chief Police Magistrate, Humphrey, had asked for Spode's appointment as Muster Master attached to his department. Arthur had already made the appointment when the Secretary of State raised objections,[23] and he insisted that it would be impossible for the functions to be discharged in an existing office; however he was prepared for the Muster Master also to be a magistrate,[24] The British Government accepted the compromise.[26]

Arthur's instructions to the Muster Master give point to his insistence on a separate office. On the arrival of convict ships he had to accompany the Principal Superintendent on board to take the prisoners' descriptions and other particulars; to keep alphabetical registers of the population under various categories (such as those free by servitude, those under sentence, ticket-of-leave holders); to keep his "black books" posted with marriages, deaths, pardons and other degrees of emancipation, particulars from the hulk lists, Surgeon's reports and other accompanying documents, prisoners' confessions, and previous offences; to make, with the assistance of the Police Magistrates, the general musters; to keep the general population registers, and separate ones for Hobart; to make weekly lists of passes for the Police Magistrates; to keep an alphabetical register of absconders, and publish monthly lists of them; and to add certifications of character to all memorials for indulgence. In addition he had his judicial duties as Assistance Police Magistrate,[27] though in 1841 he was able to hand over to the Immigration Agent his functions with respect to free people.[28]

Appendices

In March 1829 in further instructions, Arthur emphasized the Principal Superintendent's role as a custodian of discipline, particularly in respect of all those who were not assigned and of those in and around Hobart. In his examination of the convicts before disembarkation he was enjoined to record "such information as can be collected respecting them", and to take charge of their possessions. He was to attend to all complaints, either by convicts or their overseers; and to investigate all offences by convicts in public works: "The Principal Superintendent shall frequently put himself in communication with the Convicts generally, in order to ascertain that no grievances or oppression exists." He was personally to see that their food was good and sufficient, to inspect their accommodation, and to ensure that punishment should be prompt, appropriate and consistent.[29]

From at least as early as Sorell's administration it was the practice of the Lieutenant-Governor to parade the convicts on arrival and to exhort them to good behaviour; Sorell considered this one of his most important duties.[30] At this time the Inspector of Public Works would go on board "to muster them, and take down their trades and callings, and mark such as I consider fit for Government employ...." The Secretary would then muster them on board, and the Chief of Police would take a description of each man. They would then usually be kept on board until the next day when they would be landed and marched to the gaol yard; here those intended for public works would be separated from those whom the settlers could choose; those not assigned were put to public works.[31]

The arrival procedure became more complicated after 1825. First to board the transport was the Naval Officer to receive the mail; then the Colonial Secretary, to whom the Surgeon-Superintendent would report. Surgeons-Superintendent were responsible not only for the health of the convicts during the voyage, but for their conduct. They were required to furnish, on arrival, a nominal list of their charges, corresponding with the hulk list, indicating their conduct on board, as well as lists of free passengers, and of goods and money belonging to the prisoners.

Complaints about the lack of information sent with the convicts had a long history; Phillip had no record to determine whether some of the prisoners who arrived in the First Fleet had served their sentences or not.[32] The basic list supposed to be sent was that attached to the Deed Poll, the instrument assigning the property in the services of the convicts first to the ship's master and secondly to the Colonial Governor (see CON 13). Normally this list included particulars of the Court passing sentence and the term. But Arthur demanded more information than this. In 1825 he complained, for example, that the hulk list in respect of the women convicts on the Henry had not been received, "so that my judgment of the character of the Prisoners must be entirely formed from their own account of themselves, and upon their conduct on board the Transport, which cannot be depended upon;" he wanted details of their crime, former history and convictions.[33]

In June 1824 the British Transportation Act was passed, and it included a provision that there should be delivered to the contractor (or shipping agent)

a certificate specifying concisely the Description of his or her Crime, his or her Age, whether married or unmarried, his or her Trade or Profession, and an account of his or her Behaviour in Prison before and after Trial, the Gaoler's observations on his or her temper and Disposition, and such information concerning his or her Connexions and Former Course of Life as may have come to the Gaoler's knowledge.....[34].

But by October 1827, no such document had been sent with any convicts. Arthur wrote, "At present we stand in the extraordinary predicament in a Penal Colony of not being able to prove that the offenders transported from England are Convicts."[35] The Secretary of State replied that the Surgeons were given a list combining such information as could be obtained on these points, and that positive instructions would be given that this list should be delivered.[36]

One of the reasons Arthur advanced for convict ships not to be allowed to berth elsewhere than at Hobart was the need to record "their descriptions, and every other particular respecting them";[37] not the least arduous of the Muster Master's duties was

> to examine the person of every Convict before landing ... to take down their description - History of their former modes of life - names of Relations, and connections, and the exact nature of the crime which they have been previously convicted of, and which led to their Transportation.[38] (See CON 14 - 21).

In evidence before the Molesworth Committee Arthur himself described the procedure on the arrival of a convict ship:

> ... a signal is made that there is a transport with male and female prisoners, as the case may be, on board. The Port Officer immediately proceeds... out to sea, to board her; he makes enquiries whether there are any complaints, examines into the state of prisoners on board, into the state of the ship...; no boat but the boat with the Colonial Secretary on board is to be suffered to go alongside, nor is any person to be suffered to leave the vessel except the Surgeon-Superintendent, who comes on shore and brings the despatches with him, and reports to the Governor... then the Colonial Secretary, accompanied by the Colonial Surgeon... goes on board. All the prisoners are drawn up for the Colonial Secretary to examine them; he enquires if there are any complaints.... These enquiries are not of a very minute nature, but general enquiries as to the state of the ship.... The Surgeon-Superintendent presents what I think is called the hulk list; however, it is a return of all the prisoners who are on board, drawn up by himself.... He minutely marks down every occurrence during the voyage.... The Surgeon-Superintendent delivers in a return showing the name, the number, the age, the birth-place, the crime, the period of conviction, when and where the sentence, whether married or single, whether he can read or write, or whether he can only read, or whether he can do neither, where taught, his trade, the character he brought from the gaoler, the character from the hulk, the alleged qualifications, what he is able to do and

then his behaviour on board the transport. In addition... the Surgeon-Superintendent presents a despatch from the Secretary of State, which includes the indent, which is a nominal return of all the prisoners on board, their period of sentence, and some few other particulars connected with them, and the crime for which they have been transported, having the signature of the Secretary of State. Then... the Colonial Secretary transmits copies of these papers immediately to the Muster-master.... The Muster-Master... immediately prepares two large abstracts, and in those abstracts are inserted such particulars as he wishes to have before him on making his inspection on board the transport; he then on the following day... proceeds on board accompanied by the Principal Superintendent of Convicts; he then makes a most minute examination of every prisoner on board. With the information which he had collected from the Surgeon-Superintendent and from the hulk list he has already some part of the history of the convict before him, and with that information he generally draws from him many more particulars. The man perceives at once that the officer who is examining him does know something of his history; and not being quite conscious how much of it is known, he reveals, I should think, generally a very fair statement of his past life, apprehensive of being detected in stating what is untrue.[39]

The regulations governing the mechanics of assignment had accumulated by Arthur's time, into a body of laws which needed codification. The emphasis was for the protection of the prisoner who, by the assignment system, was being placed beyond the physical control of authority into the hands of private individuals. Very early it was laid down that masters should not beat their men, but have recourse to a magistrate when they had complaints against them. And, because the tiny administration had to protect itself against settlers constantly returning their servants to government, the master had to undertake "the due maintenance and good treatment of the servant for one year" before an assignment would be made, and only a magistrate's order could render this bond void.[40] In 1816 it was ordered that settlers should pay their servants £10 a year for a man and £2 for a woman if slop clothing were not provided, and for such wages the settler had a right to the convict's "extra time"; convicts in Government employ could earn two shillings a day if required to work in their own time. But on pain of having all servants taken away, settlers could not allow them to hire themselves out in return for a proportion of their earnings (1818). With few exceptions servants had to live on their mater's premises, and were not allowed to be at large at night (1820). After three years' good conduct and with his employer's testimonial supported by a magistrate, an assigned servant could apply for a ticket-of-leave.[41] In August 1822 a New South Wales Government Order (4 July) was published in Van Diemen's Land directing that every land grantee was to agree to be responsible for the maintenance of one convict servant for each 100 acres.[42]

Before 1821 a clerk in the Lieutenant-Governor's office would receive, each Thursday, settlers' applications for assigned servants; the Lieutenant-Governor would then signify his approval of the convict's being taken off the store,[43] but only after the Government had taken its pick of the best men would the Lieutenant-Governor give "written or verbal orders" for assignment.[44] In Launceston, a notice was posted about

two days before convicts were expected from Hobart: settlers made their applications and the Commandant or one of his subordinates would distribute them; no records of applications were kept.[45] After October 1821 distribution of convicts was made quarterly, except in the case of new settlers or when servants had been lost. Settlers in Launceston or the country had to nominate agents in Hobart who would be responsible for taking the convicts off government hands immediately.[46] Arthur, in July 1824, reverted to a weekly distribution,[47] but in April 1826 it was directed that all applications should be made to the Principal Superintendent who would send his list weekly to the Colonial Secretary accompanied by such information as would enable the Lieutenant-Governor to make a decision, when the assignment would be made by the Principal Superintendent.

But Arthur felt that

> To give entire satisfaction to a whole community in a matter in which their Personal interests are in daily collision is quite hopeless, but it is certainly desirable, indeed essential, that the disinterestedness of the Government should be made as apparent as possible.[48]

He therefore followed a New South Wales precedent and established an Assignment Board, which consisted of the senior military officer (later replaced by the Colonial Treasurer), the Chief Police Magistrate, the Principal Superintendent and a clerk.[49] They met twice a week to receive applications[50] and were responsible both for the appropriation of mechanics to the Government and for assigning servants to settlers.[51] On the arrival of a ship the Board would prepare the assignment list relating convicts to their destination and the Lieutenant-Governor, together with the members of the Board, the Surgeon, the ship's master, the officer of the Guard and the Colonial Surgeon would examine the men in the penitentiary; any "responsible persons" who wished could be present. After going through the list with the Principal Superintendent the Lieutenant-Governor would sign it and the men would be disposed of accordingly.[52]

Fortunately for his administration Arthur was barely troubled by the legal complexities with which the New South Wales Chief Justice, Forbes, embarrassed Governor Darling in 1827. Forbes held that the British Acts regulating transportation gave the Governor no power to control convicts once they had been assigned and become, in fact, a settler's property for the period of the sentence.[53] The difficulties arising from this interpretation only appeared in Tasmania with the Jane New case, in which the New South Wales Supreme Court had ruled in accordance with Forbes's interpretation, that the Governor had no power to revoke assignment. The questions were settled, in favour of the status quo, by a British Act. (For a discussion of the Jane New case and its consequences, see Section Two of the Guide, pp. xviii-xix.)

In private service convicts were not allowed wages, but masters were bound to provide food, clothing, bedding and lodging according to a standard; there were not set hours of labour and, since the moment a convict was assigned the Government lost its direct control over him, abuse of the regulations was not difficult. The lending of convicts by one master to another was forbidden,[54] but many masters gave indulgences of various kinds to get more work from their men.[55]

Summary jurisdiction over convicts was exercised by Quarter Sessions for all except capital offences. The consolidating Act regulating these proceedings[56] delimited the jurisdiction of courts presided over by one or more justices, defined crimes and laid down standard penalties. Though expressly intended for the control of convicts, free persons could be tried under the Act for such crimes as harbouring. According to the Chief Police Magistrate there were eight categories of punishment: reprimand, treadwheel, hard labour by day and solitary by night, solitary confinement on bread and water, hard labour on the roads, the lash, work in a chain gang and confinement at a penal settlement.[57] It was intended that there should be a standard punishment for each offence, and that no complaint should be heard more than forty-eight hours after the offence, unless the offender could not be found.[58] Thus, as far as punishment went, an attempt was made to meet one of the main criticisms of assignment, that because it made use of a relatively unknown factor, the private master, it was bound to be unequal in its application, and therefore often too lenient.

Under his system Arthur distinguished seven degrees of discipline, from incarceration at a penal settlement in chains to the holding of a Ticket-of-leave: in between these was confinement at a penal settlement, work in a chain gang, work in a road party, other service in public works and assigned service.[59] Tickets-of-leave could be applied for by men after four years of good behaviour in a seven year term, six in a fourteen or eight in a life term, and once won it entitled the holder to work for his own benefit and acquire property; but he was still subject to convict law, could not change his residence without permission and had to attend musters and church parades.[60] Men serving fourteen year terms and those serving life normally had to wait ten and twelve years respectively before they could apply for any kind of pardon.[61] Wives were assisted to travel from Europe to join convict husbands as a reward for good behaviour. If he was in private service, she would go to the same master; if in government service, he would be allowed to find lodgings. Assurances that the man was in a position to provide for a family were required by the British Government. Marriage, found to improve discipline in both men and women convicts, was not discouraged[62] (see CON 50-54)

Arthur recognized that self-interest alone would make assignment work; he was therefore concerned to see that it was sufficiently to the free settler's advantage for them to put up with its inadequacies and social offensiveness. But since convicts were the basic and almost the only labour supply, he also knew that his power to refuse or confiscate servants was a trenchant weapon in inducing settlers to obey the regulations; free land, until 1831, also played an important part in the balance. Even though assigned labour was mostly unsatisfactory, demand for it was nearly always greater than the supply.

It was largely as a result of abuses in New South Wales, where the wide dispersal of assigned convicts made control so difficult, that the assignment system came under attack in the mid-1830s. The British Government set up the Molesworth Committee to study the whole subject of transportation (April 1837 - March 1838),.and it was recognized in its report that systematic colonization and assignment were not

compatible, and that transportation to New South Wales would have to cease. But well before the Molesworth Report the system had come under criticism; in August 1833, the Secretary of State told Arthur that he had always entertained grave doubts about it;[63] and when, in April 1837 the British Government was contemplating the end of assignment and the end of transportation to New South Wales, changes were being proposed simultaneously in the Colony.

Forster, the Chief Police Magistrate, in May 1837 foreshadowed a modified probation system. He proposed that convicts on arrival should go straight on to the roads or other public works for a period, and that after this they should be employed by settlers at fixed wages; that there should be two classes of ticket-of-leave: the second class to be equivalent to the existing indulgence, for servants only; and the first class to be almost equivalent to a pardon, the only condition of which would be that the holder would have to muster annually. Then there would be conditional and finally free pardons.[64]

The proposals were discussed in the Executive Council and though Franklin could not advise the total abolition of assignment he approved four modifications: on arrival all convicts should go into gangs; there should be no further assignment in towns for purposes of luxury; convicts should wear a distinguishing badge; and there should be two grades of ticket-of-leave, the lower allowing the holder to receive a proportion of current wages and to choose his employment and residence within a district, and the higher allowing him to demand full wages, to engage in trade and to have freedom of movement.[65] The Home Government approved.[66] In putting the proposals into effect the Chief Police Magistrate and the Principal Superintendent recommended that the convicts should be sent to the gangs (under free overseers), for four, eight or twelve months, with progress from one to another according to conduct; that hours of labour should be fewer than in the punishment gangs; that spare time should be devoted to scholastic and moral instruction. They pointed out that since there are no free immigrants to replace them, it would be a hardship to deprive town dwellers of their assigned servants; and that a distinguishing badge would serve no useful purpose.[67] It was finally decided to delay the introduction of the new arrangements until July 1839,[68] and that assignment in Hobart and Launceston should cease finally a year later.[69]

The Assignment Board would be dissolved after June 1840, the Principal Superintendent alone discharging its diminishing functions; loans of mechanics, except where already promised, would cease, and all convicts in assigned service who were punished three times would go into probation gangs.[70]

It is clear that Franklin and his advisers, though they acknowledged that some changes were necessary, were very disinclined to abandon the old system altogether, or to have it replaced too quickly. Their conservatism may partly have been founded on inertia, but later events justified it.

The British Government's decision on the future of transportation, after it had ceased in New South Wales, was a logical development of a penal policy that had tried, and found wanting, the systems of assignment, imprisonment on the hulks, imprisonment in

the prisons of local authorities, and the Millbank penitentiary experiment. To send criminals out of the country, under an improved system designed both to have the reformatory and deterrent aspects that assignment was believed to lack, and to benefit the colony, seemed a preferable alternative.[71]

In May 1841, after he had received instruction from the Secretary of State, Franklin emphasised to his Executive Council the importance of separating the convicts arriving under the new system completely from those under the old. Accepting Forster's advice on the way to carry the instructions into effect, Franklin decided to appoint him Director of the Probation System, in addition to his office of Chief Police Magistrate; and to create the office of Registrar of the Probation System.[72] Forster proposed that this officer (James Thomson) should have duties similar to those of the Muster Master, but that he should also make regular reports on the conduct and character of the convicts.[73] The Colonial Secretary stressed that the distinction between the old and the new convicts should be complete, and that all records should be separate;[74] James Thomson, the new Registrar, described his duties:

> Upon the arrival of a ship with Convicts the Registrar will be required before the men are landed to take a correct individual description - to record the general character, and conduct of each Man - during the voyage and ascertain, if during that period any instances, of marked, good or bad conduct, have occurred and classify, the Convicts according to character, Crime at home, and conduct on board, to report to the Director on all their points, and assist him in naming the term of Probation.
>
> The office duty of the Registrar will be to keep a correct Register of Probationary Convicts, to record the Crimes for which they were transported and the period of Probation appointed for <u>each</u>, and keep a record <u>also</u> of the offences, committed during that period - of the Punishments inflicted, and the general conduct. He, will also, be required to keep a record of the manner in which the Men are disposed of upon the expiration of the term of Probation, and of their conduct, Crimes and punishments, during the remainder of their term of Transportation. This Record will include the indulgences granted, the reasons for granting these indulgences, and the general conduct and employment of those who have received indulgences.

Thomson worked out the form on which these various particulars were to be recorded, the form of the volumes in CON 33; it is clear that the idea of reform, one of the theoretical features of the probation system, was prominent in Thomson's mind in designing the form of these records.[75]

The term of the first period of probation was related to the original sentence according to the following scale:[76]

7 years or under 10	- 2 years
10 years or under 14	- 2½ years
14 years or under 20	- 3 years
20 years or less than life	- 3 years
Life	- 4 years

In August 1842 Franklin decided that the great increase in convict arrivals since the beginning of the new system made it necessary to separate its administration from the Police Department. In September he appointed Joseph Milligan Inspector of Convict Discipline, and a board of three to administer the distribution of convicts, in the second stage of probation, to settlers on wages.[77] Simultaneously, however, Lord Stanley was sending directions that there should be a new official, appointed and paid from England, to be known as the Comptroller-General of Convicts, who would take charge of the whole convict administration and its officers and whose relationship with the Lieutenant-Governor would be roughly equivalent to the Colonial Secretary's.[78]

Stanley's nominee for the post was Forster, and in March 1843 he ordered his reinstatement to the charge of the probation system, but now as Comptroller-General, and stated that a new appointment would be made of Chief Police Magistrate.[79] At the same time Stanley modified the system and laid down four stages in a convict's progress to freedom: (1) detention at the penal settlement of Norfolk Island (to be handed back to Tasmania) for men on sentences of fifteen years or more: (2) one to two years in a probation gang (each of which was to be of 250-300 men, in an unsettled area); (3) probation passholder stage: there were to be three classes of pass varying in the degree of restriction and wages, but a passholder could enter private service on wages; if he could not find employment he would have to work for the Government without wages; (4) ticket-of-leave stage: this was attainable only after half the sentence had expired and after some time as a passholder.[80]

It fell to Lieutenant-Governor Eardley-Wilmot to put these directions into effect; Forster, combining the functions of Director of the Probation System and Principal Superintendent, took up his duties in September 1843.

A combination of factors, economic and administrative, coupled with the inescapable pressure of convict numbers, spelt failure for the system. Earl Grey, the Secretary of State, partly recognized this in September 1846 and proposed a scheme whereby convicts would found villages, have opportunities to acquire small holdings at low rental, and be able to send for their families after half their sentence had expired; meanwhile transportation would cease for two years;[81] then four months later, he told Denison that transportation of males would not be resumed after the two years.[82]

But a year later a despatch arrived from Grey in which he referred to the mass of information on transportation which had been considered by the 1847 Select Committee on the Execution of the Criminal Law and to the failure of the variety of schemes that had been tried since assignment: Russell's probation system, Stanley's elaboration of it, agricultural schemes to make the convicts self-supporting, his own village scheme; his Government was nevertheless still convinced that transportation could be a deterrent and a means of reformation, and had therefore decided to re-introduce it in the form of yet another system; whereby a convict, after half his sentence had been served at home, would be given a ticket-of-leave and sent to the colony where he could be allocated to a district according to the local demand for labour. Such a convict would be required to repay the cost of his transportation and this money would be paid into a free immigration fund; part of the cost of a passage for his wife and family to join him would be paid by the British Government.[83]

Grey saw his proposal as a compulsory immigration scheme to benefit the colony, not transportation in its old form; but the colonists were not inclined to recognize such distinctions. They saw only a promise broken. The decision caused consternation in the colony and hardened the anti-transportationist forces. Lieutenant-Governor Denison, though he opposed cessation, did not like the Ticket-of-leave system and wanted the full term to be served in the colony;[84] Grey criticized Denison for virtually attempting to re-establish the assignment system. A compromise was reached: the best-conducted men of all sentences would receive a ticket-of-leave on arrival, short-sentence men would enter private service as passholders, and long-sentence men would spend a period of compulsory labour on public works; a few incorrigibles would go to Norfolk Island.[85] The idea of requiring repayment of transportation costs was dropped as being unfeasible.[86]

But the time had come when transportation was no longer practical politics. The Australasian League expressed the unity of the eastern colonies against it, and the discovery of gold gave them a powerful argument: how could it be regarded as a deterrent when it gave a man a free passage "to an island in the immediate neighbourhood of the Gold Colonies"? In December 1852 the Secretary of State informed Denison that transportation would end,[87] and the last ship arrived on 26 May 1853.

Since the peak year of 1847, when it was 30,701, the convict population had been falling steadily; in 1852 it was 19,105, and from then on the decline followed a steady curve until by the end of 1861, the strength was just over 1000 (see Appendix 5). The business of the Convict Department declined accordingly.

In 1856 the introduction of responsible government made the position of a large Imperial department in the Colony an uneasy one; at the end of 1855 the Deputy Commissary-General, the colonial representative of the British Treasury, wrote:

> At present the whole system as regards the control and management of the Convicts is disorganised. An embarrassing antagonistic feeling exists between the Governor and the Legislative body as to the "power of the latter to interfere with the Convict Department as an Imperial Establishment ... The only remedy for this appears to be a prompt transfer of the Establishment to the Colony, and thus to remove the Imperial officers from the double control under which they are now placed.

It was therefore proposed in the Colony that the control of the department should be transferred, costs to be shared by the Imperial and Colonial governments in proportion to the numbers of convicts each was responsible for (i.e., whether they were convicted in the colony or Britain). Property would be transferred and its value set against the Imperial liability, and officers would have the option of transferring.[88] Although the Home government was willing to transfer,[89] no finality was reached on the details. As their functions dwindled the Imperial establishments (the various penal stations, the General Hospital, the New Norfolk Asylum, the Queen's Orphan School) were transferred piecemeal and by 1861 the Convict Department consisted only of the office

of the Comptroller-General (with two clerks and a messenger), the Prisoners' Barracks, the Cascade Female Factory and Port Arthur. In August of that year the Comptroller-General urged that it was time Port Arthur was transferred, and if that were done the others would have to follow.[90]

But not until 1867 did Governor Gore-Browne propose final transfer, with the British Government remaining responsible for the cost of the convicts recognized as chargeable to it. The Colonial Parliament refused to agree and countered with the proposal that about 300 of the worst prisoners should be sent to the penal settlement in Western Australia, leaving the remainder as the Colony's responsibility. But the British Government decided this course was impractical and asked Gore-Browne to put his suggestion to his Ministers again.[91] Du Cane, who had succeeded as Governor, did so; and when the Comptroller-General (Nairn) became ill in May 1869 he recommended the abolition of the office, and appointed Belstead (acting Comptroller-General) to the new office of Governor's Secretary for the Penal Establishments.[92] The British Government approved.[93]

The colonial government, towards the end of 1869 accepted the recommendation for the transfer of Port Arthur, including all property and stores at a valuation, and stipulated that the British Government should maintain its contribution towards the cost of British convicts, pay a lump sum of £8000 towards new accommodation, and continue for twelve years the annual payment of £6000 towards the cost of Police and Gaols; the Governor recommended the proposal.[94] The British Government would agree, with minor adjustments,[95] the Treasury acquiesced,[96] and the transfer took place on 31 May 1871.[97] It became known was the Colonial Penal Establishment, Port Arthur. On 1 November of that year there were 271 prisoners there, 216 on colonial and fifty-five on Imperial funds.[98]

In 1877 the Government decided finally to abandon the settlement and to transfer the Imperial convicts to the Cascades Factory and the others to the Hobart Gaol, both under the control of the Sheriff.[99] Evacuation was complete in September 1877.[100]

For a time the central records were maintained in the office of the Administrator of Charitable Relief (within the Chief Secretary's Department),[101] but in 1887 the Deputy Sheriff complained of their filthy condition and asked that they should be entirely under the Sheriff's care.[102] This was evidently agreed to, for the great bulk of the records comprising this Record Group were still in the custody of the Sheriff when they were transferred to the State Archives in 1951.

CORRESPONDENCE

GENERAL CORRESPONDENCE RECORDS CON 1
14 Mar 1844-Sep 1867. 1 folder. ¼".

A great accumulation of the correspondence files of the Convict Department is held in the Mitchell Library, Sydney; this series merely consists of miscellaneous and scrappy estrays which have become separated from the main body of records. Some letters bear registration numbers.

INWARD CORRESPONDENCE RELATING TO THE DISPOSAL OF CONVICTS CON 2
23 Apr 1855-27 Jul 1864. 1 bundle. 1".

The letters, which are largely from Port Arthur, are addressed or referred to the Comptroller-General and concern remissions of sentence, conduct, and the disposal of prisoners; also present are returns of inquests and returns of men discharged from Port Arthur.

MEMORANDA FROM THE SUPERINTENDENT, PRISONERS' BARRACKS TO THE PRINCIPAL SUPERINTENDENT OF CONVICTS CON 3
3 Jan-27 Apr 1840. 1 vol. 1".

The building of the Prisoners' Barracks in Campbell Street was commenced in 1820 and became a depot for convicts newly-arrived or awaiting re-assignment; for the housing of public works and the loan gangs; for the distribution of convicts to various stations for punishment; and for short terms of imprisonment.

This volume, apparently one of a large series, is made up of instructions from the Principal Superintendent to dispose of convicts in one or other of the ways listed, most of the men having been convicted of offences and returned to the Barracks for distribution to various stations.

JUDGES' AND CHAIRMEN'S REPORTS ON CRIMINAL CASES IN THE SUPREME COURT AND COURT OF QUARTER SESSIONS CON 4
1849-1857. 10 vols. 10".

This series has been bound in an order which can be separated into three parts: Judges' Reports, 1851, 1854, 1855 and 1857; Chairmen's Reports, 1852, 1854-1857; and Judges' and Chairmen's Reports together, 1849-1850. They were made by the judges and chairmen at criminal trials, give an outline of the evidence and their reasons for the verdict, were submitted by them to the Governor for confirmation, and finally returned to the Comptroller-General after instructions were issued to the Chief

Police Magistrate and the Sheriff for execution of the sentence. Both capital and other cases are included. Petitions for remission of sentence and other associated papers are sometimes present. After 1863 they were finally forwarded to the Sheriff, and are to be found in SC 33.1. Similar reports are classified in GO 44/1 (1840-1841).

RETURNS FROM VARIOUS STATIONS OF CONVICTS RECEIVED AND DISCHARGED CON 5
Jan 1849. 1 vol. 2".

In the main these are printed forms providing columns for: police number of convict, name, ship, date received, where from, date discharged, where to. Probation stations, hiring depots and gaols throughout the colony are represented.

RETURNS OF CONVICTS RECEIVING MAGISTERIAL SENTENCES SINCE AWAITING DISPOSAL AT HOBART CON 6
3 Mar-7 May 1851. 1 folder. ¼".

The tabulation of this printed form provides for: name, ship, place and date of trial, magisterial sentence / original sentence and date, when eligible for a ticket-of-leave, total period under punishment, remarks. The details before the stroke are supplied by the police of the district from which the return come; the details after it are supplied in the Convict Department. The returns are from Ross, the Prisoners' Barracks, the Male Convict Establishment, Launceston and the Brown's River Hiring Depot.

COMPTROLLER-GENERAL'S LETTERBOOK CON 7
3 Jan 1850-22 Jan 1854. 1 vol. 2".

The memoranda entered in this volume are chiefly formal, relating to claims by passholders for wages and associated matters. The memoranda are entered alphabetically by addressee and there is an index to convicts. This is the third volume of a series.

ASSISTANT COMPTROLLER-GENERAL'S LETTERBOOK CON 8
14 Jun 1844-22 Jul 1845. 1 vol. 1½".

During this period William Nairn was Assistant Comptroller-General. His letters are addressed to Police Magistrates, superintendents of various convict establishments and settlers, and deal with the details of convict administration, the employment of passholders by settlers, and the disposal of particular convicts. There is an index to addresses.

MUSTER-MASTER'S LETTERBOOK CON 9
30 Apr-19 Nov 1832. Part of 1 vol.

This officer was appointed in 1827; for details of his functions, see the Introduction. The Muster-Master was also Assistant Police Magistrate in Hobart, and these letters, which are entered in part of the Chief Police Magistrate's letterbook, were written mostly in his latter capacity. For letters from the Colonial Secretary to the Muster-Master, 1829-1836, see CSO 42.

REGISTRAR'S LETTERBOOK CON 10
27 Jan-22 Dec 1843. 1 vol. 1".

In September 1842, the Department of Convict Discipline was created, and James Thomson took the title of Registrar of that Department; the duties of the office are described in the Introduction. The volume consists of copies of Thomson's memoranda to the Superintendents of various probation and other stations with particulars of men being forwarded, or with instructions to vary sentences.

DRAFTS AND COPIES OF THE COMPTROLLER-GENERAL'S ANNUAL REPORTS AND SEMI-ANNUAL RETURNS CON 11
23 Jan 1858-18 Aug 1862. 1 vol. ½".

The Comptroller-General, who had direct access to the Lieutenant-Governor, made reports to him on the working of the penal system in accordance with instructions from the Secretary of State. Originals of reports, 1847-1849 and 1851-1847, are to be found in GO 46, to which this series is almost identical in form.

REGISTER OF DOCUMENTS RECEIVED AND SENT CONCERNING CONVICTS CON 12
1836-1841. 1 folder. ¼".

In 1833 Arthur wrote that he had often "perceived that sentences have been passed on Convicts to which I consider they never would have been subjected had the Magistrates been aware of their previous character," and he asked the Muster-Master to devise a system whereby Police Magistrates might be so informed. Thomas Mason proposed that "police characters" should be prepared in his office, each being a copy of the assigned convict's entry in the conduct register (see CON 31), with his physical description on the back; when a convict was assigned his "character" would be sent by the Muster-Master to the Police Magistrate of the district in which the master lived, and in the local Police Office each offence would be entered on it; the parchment would accompany the convict wherever he was sent.[103] See CON 70 for examples.

This is probably a register of the transmission of these "characters"; details given are: convict's police number, name, ship, date document received, where from, where and date sent. Entries are alphabetical.

ASSIGNMENT LISTS

ASSIGNMENT LISTS AND ASSOCIATED PAPERS CON 13
1810-1826, 1830-1836, 1845-1852. 11 vols. 1'4".

Under the British Transportation Acts[104] a property in the services of the convicts was conveyed by the Crown to the contractor responsible for transporting them to the place of transportation, and on arrival from the Contractor to the Governor; the nominal lists known as assignment lists were the enclosures in the deed poll by which this conveyance was made. After the Act of 1824 the list as it was received by the Colonial Office from the Home Office was merely sent to the Governor, without any covering document.

The first three volumes (1810-1826) contain as well as assignment lists, various other lists and covering letters relating to convicts; the characteristic common to all is that they give information to the Lieutenant-Governor about the prisoners being conveyed to him. As well as coming to the Colony direct from Great Britain, convicts could come (in the period covered by these three volumes) from New South Wales as a result of secondary conviction, to supply labour for the island, to accompany settlers as their servants, or to join relatives. Details regularly given are: name, where and when convicted, sentence.

Many assignment lists are known to be held elsewhere than the State Archives, and others are bound in other Record Groups (see Appendix 6).

INDENTS

INDENTS OF MALE CONVICTS CON 14
Nov 1827, Aug 1831 Aug 1835, Feb 1841-May 1853. 47 vols. 4'10".

The term "indents" is a contemporary one and seems to have had varied meanings. Its application to the documents of legal significance which conveyed a property in the services of the convicts is clear, as these were legal indentures;[105] but the documents in this series, which were bound up after compilation, and the volumes entitled "Indents", were compiled on board the transports before the convicts disembarked; their purpose appears to have been to provide the basis for the "pre-arrival" information, certain parts of which were, after 1827, entered on the conduct records (CON 31).

The information regularly given includes number, name, when and where convicted, sentence, trade, native place, some details of personal appearance (always age and height) and some information on crime and relatives at the native place and elsewhere. After approximately 1828 information is usually given on literacy, religion, number of children. The "confession", or statement made by the convict on arrival of the offence for which he was transported and of previous record, appears regularly after 1841, and this information corresponds with the statement copied into the conduct records.

The indent papers were prepared on a ship's arrival,[106] and the procedure seems to have been for the details on the Assignment List to be copied first and the rest added from personal questioning. Each volume usually contains lists for several ships often arranged in approximate alphabetical order by the ship's name, and each convict's entry is made under printed headings covering two pages.

Many volumes of indents have found their way out of official custody and are at present held elsewhere; others are in other Record Groups (see Appendix 7).

INDENTS OF FEMALE CONVICTS CON 15
19 Apr 1842-21 Apr 1853. 8 vols. 11".

These are precisely similar to the foregoing series, though the information given on relatives at the native place is often fuller.

INDENTS OF CONVICTS LOCALLY CONVICTED OR TRANSPORTED FROM OTHER COLONIES CON 16
Feb 1835-Mar 1853. 5 vols. 8".

The format of these volumes is the same as in CON 14. The convicts to whom they relate include those locally sentenced to transportation (including persons formerly both free and time-expired) and those transported from other British colonies; a few come from Europe. Women are included.

INDENTS OF MALE CONVICTS ARRIVING FROM NORFOLK ISLAND CON 17
6 Jun 1844-7 Sep 1852. 3 vols. 5".

From September 1844 until 1856, when it closed as a penal settlement,[107] Norfolk Island was under the jurisdiction of the Tasmanian Government, and was staffed by the Tasmanian Convict Department. Throughout this period, male convicts were being transferred from there to Tasmania, as a result of their sentences there having expired; some had been sent there from Tasmania, others had been sent direct from Great Britain.

These volumes contain indents of the same pattern as in CON 14; the convicts are often grouped according to the ship in which they were transported to Norfolk Island. The ships making the transfers concerned in this series were Lady Franklin (twenty-six voyages), Governor Phillip (five) and Pestonjee Bomanjee (two).

DESCRIPTION LISTS

DESCRIPTION LISTS OF MALE CONVICTS CON 18
1828-1853. 59 VOLS. 8'6".

Particulars of the physical appearance of convicts who arrived before this series begins are sometimes available in other series (e.g., the first three volumes of CON 13, and in CON 23). But from 1828 the following details are fairly regularly available: trade, height, age, colour of complexion, hair, whiskers, eyebrows and eyes, shape of head, visage, forehead, nose, mouth and chin; and information of tattoos, deformities, scars, speech impediments, pigmented spots, birthmarks, etc. Native place is also usually given.

These documents, which before 1841 are loose sheets bound together after the manuscript details have been entered against the printed headings, were compiled on board ship from individual examination before the convicts were disembarked; there is evidence that both male and female convicts were required to strip to the waist. After 1841 the details are entered into bound volumes and in both cases the names of convicts are arranged alphabetically by initial of surname, according to ship, which are arranged alphabetically by initial (up to 1841) and chronologically (after 1841).

From the introduction in 1840 of the new form of conduct register which included space for recording physical description, the details are duplicated (CON 33).

The descriptions recorded in this and related series were used by the Convict Department to reduce the risk of confusion of identity: they were copied on the back of the parchment "characters" (see CON 12 and CON 70) and on such instruments as tickets-of-leave and pardons, and used in notices of absconders. Considerable care was taken to record unusual or unique features, such as tattoos and deformities.

DESCRIPTION LISTS OF FEMALE CONVICTS CON 19
1841-1853. 11 vols. 1'6".

These are of the same form as the male Description Lists (CON 18) and the same remarks apply.

DESCRIPTION LISTS OF CONVICTS ARRIVING ON MINOR SHIPS OR CONVICTED LOCALLY CON 20
c.1832-1853. 5 vols. 8".

Included in this series are men and women who were sentenced to transportation by colonial courts having been free, either by servitude or having arrived free in the