

BUSH FIRES (No. 2).

12° and 13° GEO. VI., No. LXXIX.

No. 79 of 1948.

AN ACT to amend the Bush Fires Act, 1937-1945.

[Assented to 25th January, 1949.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Bush Fires Act Amendment Act (No. 2), 1948*, and shall be read as one with the Bush Fires Act, 1937-1945 (Act No. 55 of 1937 reprinted with amendments to and including Act No. 16 of 1942, incorporated, pursuant to the provisions of the Amendments Incorporation Act, 1938, in Volume 2 of the Reprinted Acts of the Parliament of Western Australia, 1943, and further amended by Act No. 53 of 1945), hereinafter called the principal Act. Short title.

2. The principal Act, as amended by this Act, may be cited as the Bush Fires Act, 1937-1948. Citation of principal Act as amended by this Act.

Amendment
of s. 5.

3 Section five of the principal Act is amended by deleting the interpretation "Minister" in lines twenty-five, twenty-six and twenty-seven.

Amendment
of s. 8.

4. Section eight of the principal Act is amended by repealing subsection (4).

Amendment
of s. 9.

5. Section nine of the principal Act is amended by—
(a) substituting for subsection (3) the following:—

(3) The Minister, from time to time, may suspend the operation of any declaration made under the provisions of subsection (1) of this section so far as the declaration extends—

(a) to any land used for railway purposes, subject to such conditions as may be prescribed, or as may be imposed by the Minister, for any period expiring not later than the twenty-fourth day of December in any yearly period;

(b) to any land under the control of the Conservator of Forests, for any period not exceeding eight weeks in any yearly period;

(b) substituting for subsection (3a) the following:—

(3a) (a) For the purposes of this subsection—

(i) section eleven, subsection (1), paragraph (c) of this Act shall be construed and given effect as if the words "a width of at least six feet" were substituted for the words "a width of at least ten feet" in lines five and seven;

(ii) "common boundary" means the boundary common to railway land and contiguous land;

(iii) "contiguous land" means land contiguous to railway land;

- (iv) "contiguous occupier" means an occupier of contiguous land;
- (v) "fire break" means the width of at least six feet referred to in subparagraph (i) of this paragraph;
- (vi) "railway land" means land used for the purposes of a railway;
- (vii) "railway occupier" means an occupier of railway land.

(b) When, during the operation of a suspension granted pursuant to the provisions of the last preceding subsection, a railway occupier is setting fire to the bush on railway land, it shall be lawful for the contiguous occupier, subject to the provisions of this subsection, to set fire to the bush on the contiguous land, between the common boundary and the fire break hereinafter referred to, for the purpose of protecting his pasture or crop from damage by fire.

(c) Before setting fire to the bush on the contiguous land, the contiguous occupier shall—

- (i) notify the local authority, constituted in respect of the municipal district or the road district, as the case may be, in which the contiguous land is situated, of his intention to do so, and obtain the approval in writing of that authority to his doing so;
- (ii) prepare a fire break, the boundary of which, nearer to, and parallel, or approximately parallel, with, the common boundary, shall not, at any point, be of a greater distance than three chains from the common boundary.

(d) The contiguous occupier shall comply with and observe the provisions of this Act generally and of the conditions referred to

in section eleven of this Act, as modified by the provisions of this subsection particularly.

(e) The contiguous occupier and the railway occupier shall, insofar as is reasonably practicable, co-operate with each other in setting fire to the bush on the contiguous land and the railway land.

Amendment
of s. 10.

6. Section ten of the principal Act is amended by—
- (a) inserting after the word “for” in line two of paragraph (a) of subsection (3), the words “and pay the prescribed fee”;
 - (b) inserting after the word “section” in line three of paragraph (ii) of the proviso to paragraph (g) of subsection (3) the words “, or may, on refunding to the owner or occupier who paid the fee in respect thereof, cancel any permit already issued or granted thereunder,”.

Amendment
of s. 11.

7. Section eleven of the principal Act is amended by—
- (a) substituting for the word “March” in subsection (1), paragraph (a), subparagraph (iii), line seven, the word “April”;
 - (b) deleting from subsection (3) all words between the word “any” second time occurring in line two and the word “payment” in line six.

New s. 12A
added.

8. The principal Act is amended by adding after section twelve a section as follows:—

12A. On and after a day fixed by the Minister and notified in the *Gazette*, it shall be unlawful to operate, during prohibited times, and at any time between the first day of October and the ensuing thirtieth day of April in any yearly period, any tractor unless—

- (a) there is carried on the tractor a fire extinguisher as prescribed;
- (b) the exhaust pipe is vertical and the exhaust system, including pipes, is maintained in sound and efficient condition;

- (c) the exhaust pipe is fitted with a spark arrester as prescribed.

9. Section thirteen of the principal Act is amended by substituting for paragraph (b) of subsection (1) the following:—

Amendment
of s. 13.

- (b) The bush fire is not part of the burning operations being carried on upon the land—
- (i) with the permission and in compliance with the conditions referred to in section eight of this Act;
 - (ii) in compliance with the provisions of this Act relating to those operations during the operation of any suspension or postponement referred to in section nine of this Act;
 - (iii) declared to be lawful by subsections (2) and (3) of section ten of this Act, subject to the compliance with the conditions and observance of the provisions of this Act referred to in those subsections;
 - (iv) in compliance with the conditions and observance of the provisions referred to in sections eleven, sixteen and seventeen of this Act, as excepting those operations from the prohibition, contained in those sections, of setting fire to the bush or of lighting or using any fire, as the case may be;
 - (v) with the authority, and in accordance with the provisions of the regulations, referred to in section eighteen of this Act.

10. The principal Act is amended by adding after section thirteen a section as follows:—

Section 13A
added.

13A. When a bush fire occurs or is burning on any land at any prohibited time and is not part of burning operations being carried on upon the land in accordance with the provisions of sections sixteen and seventeen of this Act, which except those

operations from the prohibition of lighting or using any fire, the provisions of the last preceding section shall apply as if repeated with appropriate adaptations in this section.

11. Section fifteen of the principal Act is amended by substituting for paragraph (d) the following:—

(d) No person shall dispose of any burning cigarette, cigar, tobacco or match—

(i) by throwing it from a vehicle, under any circumstances whatever;

(ii) by disposing of it, otherwise than throwing it from a vehicle, in any circumstances that are likely to set fire to the bush.

Penalty—Ten pounds.

Amendment
of s. 21.

12. Section twenty-one of the principal Act is amended by adding after subsection (4) a subsection as follows:—

(4a) A local authority may, at the request of the owner or occupier of any land in the municipal district or the road district, as the case may be, in respect of which the local authority is constituted, carry out on the land, at the expense of the owner or occupier, any works for the removal or abatement of any fire danger, and the amount of the expenses of carrying out the works may, if not paid on demand, be recovered from the owner or occupier by the local authority in any court of competent jurisdiction as a debt.

Amendment
of s. 22.

13. Section twenty-two of the principal Act is amended by adding after the word "Governor" in paragraph (g), line five, the words "or authorised otherwise by the provisions of this Act."

Amendment
of s. 34.

14. Section thirty-four of the principal Act is amended by adding after subsection (1) a subsection as follows:—

(1a) Every local authority shall send to the Minister in the month of June in each year particulars of losses caused by fire in the municipal

district or road district, as the case may be, in respect of which the local authority is constituted, in the form prescribed.

15. Section thirty-nine of the principal Act is repealed and substituted by the following:—

Repeal and re-enactment of s. 39 as amended.

39. (1) Any person who acts in contravention of, or fails to comply with, any of the provisions of this Act or any regulation or by-law made thereunder shall be guilty of an offence against this Act and shall be liable, if no other penalty is prescribed, to a penalty not exceeding twenty pounds.

(2) Notwithstanding the provisions of section one hundred and sixty-six of the Justices Act, 1902-1942, and of sections nineteen and six hundred and sixty-nine of the Criminal Code, 1913, the minimum penalty for any offence against this Act shall, if no other minimum penalty is prescribed, be one tenth of the maximum penalty for that offence.

(3) When as the result of an offence against this Act, any expense is incurred by any forest officer, bush fire control officer, or any officer or member of any bush fire brigade registered under the provisions of this Act, or by any other person acting under those provisions in the performance of any duty imposed, or the doing of anything which he is empowered or required to do, by those provisions or any regulation or by-law made thereunder—

the Conservator of Forests—

(when the expense is incurred by a forest officer), or
any local authority concerned—

(when the expense is incurred by a fire control officer employed by the local authority, or by any officer or member of a bush fire brigade established and maintained by the local authority), or

the Minister—

(when the expense is incurred by any other person acting pursuant to the provisions of this Act or any regulation or by-law made thereunder)—

(i) may recover the amount of any expense so incurred from the person committing the offence as a debt due in any court of competent jurisdiction; or

- (ii) may apply to any court of summary jurisdiction convicting the person of the offence for an order for payment by that person of the amount of the expense when that amount does not exceed one hundred pounds in addition to any penalty inflicted in respect of the conviction and that court may grant the order wholly or in part or refuse the order, and payment of any amount specified in the order may be enforced in the same manner as payment of a pecuniary penalty. Refusal of the Court to grant an order for payment of the whole or part of the expenses shall be no bar to proceedings to recover that whole or part, as the case may be, in any other court of competent jurisdiction; or
- (iii) may issue a certificate that the expense was incurred and as to the amount of the expense, and the certificate, shall be *prima facie* evidence of those facts in all courts.

Cf. No. 28 of
1906, s. 23.

(4) When proceedings are brought against the person committing the offence for the recovery of the amount of the expenses as a debt, a certificate containing the substance and effect only (omitting the formal parts) of the conviction for the offence, signed or purporting to be signed by the Clerk of Petty Sessions of the court where the offender was convicted, shall, upon proof of identity of the person, be sufficient evidence of the conviction without proof of the signature, appointment or status of the person by whom the certificate is or purports to be signed.

New s. 45
added.

16. The principal Act is amended by adding after section forty-four a section as follows:—

45. When any person sets fire to the bush, or conducts burning operations or lights, or uses any fire in compliance with the provisions of this Act and without negligence, he shall not be liable in damages resulting from his doing so, any law or rule of law to the contrary notwithstanding.