

Legislative Assembly

Tuesday, 21st September, 1954.

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The SPEAKER took the Chair at 4.30 p.m., and read prayers.

QUESTIONS.

WESTERN AUSTRALIAN EXPORTS.

As to Overseas Agents and Commodities Values.

Mr. McCULLOCH asked the Premier:

(1) How many Western Australian trading agents represent the W.A. State Government in the 65 main countries of the world?

(2) What was the export value of all Western Australian produced commodities exported to countries outside Australia for the year ended the 30th June, 1954?

The PREMIER replied:

(1) Apart from the Agent General in London, the State has no overseas representatives. The Commonwealth has trade representation in most overseas countries.

(2) Exports identified as of Western Australian origin—£65,794,946.

Other exports described as of Australian origin, and including those not identifiable as of Western Australian origin—£2,255,235.

BUILDINGS ON GOVERNMENT PROPERTY.

As to Local Authority Approval and Standard of Design.

Mr. COURT asked the Minister representing the Minister for Local Government:

(1) Has he seen the report in "The West Australian" of the 14th September regarding buildings objected to by the Perth City Council?

(2) Was the council's concurrence sought and refused for these structures even though approval might not be legally necessary?

(3) Is it the Government's intention to take any action to overcome the council's objections?

(4) Does he agree that it is desirable for Government departments to set a good standard of design and construction in conformity with appropriate local authority requirements and avoid dissatisfaction on the part of local authorities and local residents; also to avoid constructing buildings which will eventually be an eyesore, and possibly involve costly demolition and replacement?

The MINISTER FOR RAILWAYS replied:

(1) Yes.

(2) (a) Railways: The Railways standard lease agreement includes a clause which sets out that the lessee shall comply with the requirements of the local authority.

(b) Main Roads: Approval was not obtained.

(3) (a) Railways: This is a matter for agreement as between the lessees and the local authority.

(b) Main Roads: Action will be taken with a view to meeting the council's requirements.

(4) Yes.

COLLIE COAL.

As to Coking and Plant.

Mr. MAY asked the Minister for Industrial Development:

(1) Is there any substance in the rumour that Collie coal has now been successfully coked suitable for commercial requirements?

(2) If the answer is in the affirmative, what steps does the Government propose to take to establish a coking plant at Collie?

The PREMIER (for the Minister for Industrial Development) replied:

(1) Yes. Collie coal has been successfully coked in a form suitable for commercial requirements.

(2) A pilot plant is at present under construction to establish the economics of the coking process. It will be appreciated that it is not difficult to produce a coke from sub-bituminous coals: the difficulty is to produce it cheaply. It might be expected that, if pilot plant investigations indicate that a commercial plant could be operated profitably, private interests would build a plant.

HOUSING.

(a) *As to Tenders for Flats, Manning Park.*

Mr. WILD asked the Minister for Housing:

(1) How many tenders were received by the State Housing Commission for the erection in Manning Park of two blocks of three-storey brick flats?

(2) Who was the successful tenderer?

The MINISTER replied:

(1) One.

(2) Tender still under consideration.

(b) *As to Tenders for Maniana Project.*

Mr. WILD asked the Minister for Housing:

(1) How many tenders were received for the Maniana housing project in Queen's Park?

(2) Who was the successful tenderer?

(3) What were the amounts of the highest and lowest tenders?

The MINISTER replied:

(1) Two.

(2) Jennings Construction (W.A.) Pty. Ltd.

(3) Highest £629,200, and lowest £584,984 (reduced after negotiation to £569,984).

(c) *As to War Service Homes, Allocation and Expenditure.*

Mr. WILD asked the Minister for Housing:

(1) How much money was allocated to the State Housing Commission under the War Service Homes Act during the financial year 1953-54?

(2) What amount as in No. (1) was expended—

(a) by ex-service personnel erecting their own homes.

(b) by State Housing Commission erecting single homes or in group construction;

(c) in purchase of houses already erected?

(3) What amount of money was not availed of by the State Housing Commission under the War Service Homes Act during the last financial year?

The MINISTER replied:

(1) Allocation September, 1953—£3,902,300.

Amended allocation January, 1954—£4,080,000.

Revised estimate April, 1954—£3,864,000 following experience with tenders and a delayed rate of completion of homes.

(2) (a) Figures not available but 32 per cent. of single homes were owner-builders.

(b) Single homes—£2,377,795 14s. 3d.
Group homes—£644,352 13s. 1d.

(c) £692,451 7s. 1d.

(3) £47,354 5s. 7d. The reason for not spending all the funds allocated was due to a change of procedure by the war service homes director in restricting the number of contracts to be signed in the early part of the financial year. This restriction was lifted too late to permit the commission to spend the full amount allocated.

(d) *As to Calling of Tenders or Alternative System.*

Mr. WILD asked the Minister for Housing:

(1) Is it the intention of the State Housing Commission to continue calling tenders for houses to be erected on their behalf, or is some other system contemplated?

(2) If some other system is contemplated, what form is it to take?

The MINISTER replied:

(1) Yes.

(2) In addition to calling tenders, the commission is negotiating with the Master Builders' Association and the Builders' Guild to erect houses at fixed negotiated prices.

(e) *As to Painting of Austrian Prefabs, Scarborough.*

Mr. NIMMO asked the Minister for Housing:

(1) Is he aware that many of the Austrian prefabs (on a rental basis) at Scarborough need painting?

(2) Will this matter receive attention?

The MINISTER replied:

(1) Yes.

(2) This matter is receiving attention. All houses are painted and renovated in turn, but where bad cases occur these are treated out of turn.

(f) *As to Killarney and Western Park Estates, Scarborough.*

Mr. NIMMO asked the Minister for Housing:

(1) What was the cost of building the—

(a) "M" class small unit house;

(b) "M" class large unit house at Killarney and Western Park, Scarborough with respect to—

- (i) material;
- (ii) labour;
- (iii) administration?

(2) When was the land for these houses resumed?

(3) What was the cost of resumption per block excluding expenditure on roads and administration?

The MINISTER replied:

(1) The costs were as follows:—

	"M" Class Small Unit Dwelling 2 Types	17B Large Unit
	£	£
Material	765	875
Labour	642	656
Administration	35	38
	<u>1442</u>	<u>1569</u>
		1879

These figures exclude cost of footpaths, fencing and value of land.

(2) Lots were either purchased or resumed at various times, from May, 1947, to May, 1950.

(3) Varying amounts up to £100.

(g) As to "M" Class Home Construction.

Mr. NIMMO asked the Minister for Housing:

Was the "M" class house in the Scarborough area built by Government day labour?

The MINISTER replied:

Both by day labour and contract.

(h) As to Capital Cost of Scarborough Home.

Mr. NIMMO asked the Minister for Housing:

(1) Is it a fact that notices have been issued to tenants of the small unit class house in the Scarborough area advising them of the capital cost of the house?

(2) Is it also a fact that the average capital cost of this house is £1,750 or thereabout?

(3) Does he consider that this is a reasonable price, and if not, would he have further surveys made to reduce the price to £1,200-£1,300, which figure the tenants believe would be the value, and charge to them?

The MINISTER replied:

(1) Yes, in the majority of cases.

(2) Average capital cost, including land and fencing, £1,660.

(3) Eight days after assuming the portfolio of Minister for Housing, I decided that no more of these types of dwellings

should be erected after the completion of the contract, owing to the unsatisfactory nature of the structures. It is impossible to reduce the price as this represents actual costs, plus value of land.

ROYAL SHOW WEEK.

As to Adjournment of House.

Hon. Sir ROSS McLARTY (without notice) asked the Premier:

Can he give members an indication as to what the sitting days will be during Royal Show week?

The PREMIER replied:

This matter has not yet been decided. My own view would be that the House would not sit at all on People's Day during Royal Show Week, which would, of course, be Wednesday. We might sit on the other two days; but whether we would meet at 4.30 on Tuesday, or a bit later, I cannot say. I will, however, advise the House when it meets next Tuesday of the Government's intention.

BILL—TRAFFIC ACT AMENDMENT (No. 2).

Introduced by the Minister for Police and read a first time.

BILL—LOCAL GOVERNMENT.

Message.

Message from the Lieut.-Governor received and read recommending appropriation for the purposes of the Bill.

First Reading.

Introduced by the Minister for Railways and read a first time.

BILL—WORKERS' COMPENSATION ACT AMENDMENT.

Message.

Message from the Lieut.-Governor received and read recommending appropriation for the purposes of the Bill.

First Reading.

Introduced by the Premier (for the Minister for Labour) and read a first time.

BILL—FACTORIES AND SHOPS ACT AMENDMENT.

Returned from the Council with an amendment.

BILL—BUSH FIRES.

In Committee.

Resumed from the 7th September. Mr. Moir in the Chair; the Minister for Lands in charge of the Bill.

Clause 18, Restricted burning times (partly considered):

Mr. MANNING: I move an amendment:

That Subclause (5), page 16, be struck out.

The clause is a drastic one and introduces a principle unknown before in bush fire-fighting control. It has been the practice previously when a person is in difficulty with a fire for everyone, including the Forests Department's fire-fighting team, the local authority's bush fire brigade and the neighbours, to go to his assistance.

This subclause proposes that where a person starts a fire on land, and it spreads from the block or if the fire is, in the opinion of a bush fire control officer or an officer of a bush fire brigade, out of control on the land, the person shall pay to the local authority or to the Forests Department, as the case may be, any expenses up to a maximum amount of £200 incurred by it in preventing the extension of, or in extinguishing, the fire. There are a host of requirements laid down in the measure which it is necessary for a landholder to comply with before he starts to burn.

Apart from that, if the fire gets out of control on the landholder's property and assistance is rendered by a local authority's fire-fighting team or a forestry team, the man is required, under this subclause, to pay the expense, although no offence has been committed, and the man has met all the requirements of the Act, and possibly extra requirements in the permit to burn. Under the old Act, a man was liable for expenses if an offence had been committed; but in this instance payment must be made even though there has been no offence.

Hon. L. THORN: I support the amendment. This is a very harsh subclause, and I think the member for Harvey made a good point when he said that it was unfair that a man should be liable to pay up to £200 even though he had carried out all the requirements of the Act.

Mr. HILL: I support the amendment, because this provision is altogether too drastic. On my property I have two miles of river frontage. Straight opposite was a freehold block, which was unoccupied and neglected, and a menace to the whole Kalgan district. It ran north and south. The occupier on the east was frightened to light a fire with an easterly wind for fear that the farm on the west would be burnt out; and the position was reversed when there was a westerly wind. My block is "U" shaped, and I gave notice to my neighbours on one occasion that I intended to burn off, secured permission from the road board and set fire to the land.

The fire got away from me on the east portion of the "U." I sought the assistance of neighbours, and together we made things safe on the east side. I then said we would go up north and watch the

position there. My brother-in-law said that was perfectly safe, because there was a good break. But we found that the fire had jumped the break and gone across the river, which was 80 yards wide, and into the block that was an absolute menace. Trying to extinguish the blaze knocked me up properly.

There was a meeting a few days later; and my neighbours said, "We are going to send in a bill for fighting your fire." I replied, "I will send in mine for making the district safe." They agreed with me. I concede that we should have no mercy on people who deliberately start fires under dangerous conditions. At the same time, we must realise that we can only clean up our country by fire, and there should be some discretion. It is no use having an Act that makes people absolutely frightened to light a fire. If we do not have controlled fires, we will have uncontrolled fires, as was the case on the day to which I referred.

The MINISTER FOR LANDS: I hope the Committee will not agree to the amendment. This limits to £200 the amount that can be recovered by way of expenses. The principle is one that has been followed through the years, but previously the amount has been unlimited.

Hon. A. V. R. Abbott: Legally?

The MINISTER FOR LANDS: It must be remembered that this applies to a case in which a man optionally lights a fire to suit his own convenience. In such circumstances, if the fire got away, the full amount of damages and expenses could be claimed under common law. When the fire-fighters of a local authority or a forestry team are called out to do certain work in connection with extinguishing a fire that has got out of control, considerable expenditure is often involved, but bills have not been submitted for the recovery of the money. We think it is only fair that such expenses, up to a limit of £200, should be recoverable. The full sum would not necessarily be claimed. Normally it is probable that no more than £10 or £20 would be sought.

No man is compelled to light a fire; and when he does so, he lights it for his own convenience. It is true that a local authority can order firebreaks to be established, but there is no stipulation that it should be done by fire. There are alternative methods. If a man, for the sake of quickness or convenience, chooses to light a fire, it is entirely unfair to say that, in the event of that fire getting away, another person who suffers damage thereby should not be able to recover the cost. That is provided for under common law.

Mr. Ackland: Why not leave it at that?

The MINISTER FOR LANDS: We find that under common law no accounts have ever been presented by the Forests Department and others for putting out fires or

assisting to do so. We are limiting the amount which can be claimed in such circumstances, and that is something that has not been done before. If this provision is deleted, we will be faced with the position in which either the Forests Department will decide not to utilise its manpower and machinery to put out fires, or those responsible for them will be up for an unlimited amount of money. We say the maximum should be £200. On the strength of that, I have no alternative but to oppose the amendment.

Mr. MANNING: I am even more anxious now that the subclause should be struck out because it in no way refers to damages, but to a fire which is out of control on a person's own property, and to the fact that those who assist in putting it out, whether they be a forestry team or a local authority bush fire brigade, shall be paid. That is the part I object to. The whole Bill inflicts restrictions on a person who desires to burn. He is expected to meet a host of requirements, many of which have not been known before.

In particular there is provision for the appointment of a bush fire warden who will inspect the fire precautionary measures. That is a step forward. But if we retain this subclause in the Bill, we will turn people off burning altogether. I want to prevent that, because the longer the bush is left unburnt, the greater becomes the fire hazard. The subclause does not refer to damage done to a person's property.

The Minister for Lands: No, but it could have that effect.

Mr. MANNING: No. Whether a fire is on the person's own property or has gone on to the next door property, the provision is that the cost of putting it out must be borne by the person who lit it. That principle has never applied before. The forestry officers and the local authorities' bush fire brigades come to the assistance of the landholders.

The Minister for Lands: Do not you think they should be empowered to recover some of the expenses?

Hon. A. V. R. Abbott: Why? You do not, as far as the railways are concerned.

The Minister for Lands: Do not be silly!

Mr. MANNING: I have on many occasions assisted people to put out fires, but I have never expected to get expenses; nor do those who belong to the bush fire brigades expect to be paid. Everyone helps the other.

Mr. Nalder: It is a neighbourly act.

Mr. MANNING: That is so. The Forests Department has never asked for expenses.

Hon. D. Brand: It must be to the interests of the Forests Department to help put out fires.

Mr. MANNING: When the department is in difficulties with a fire, it expects the local authority's firefighting team or the farmers round about to assist, and they always do.

Mr. Nalder: It is all voluntary.

Mr. MANNING: That is so. There has never been any suggestion of payment.

Hon. J. B. SLEEMAN: I do not like the subclause. It seems to me that if a man does everything that is necessary before lighting a fire, and then by some act of God the fire gets off his property, he should not be held up for this amount. We should provide that negligence should be shown. This is a bit harsh.

Mr. ACKLAND: I am amazed at the Minister. We all admitted that we wanted a new Act, but there are some clauses in the Bill—and this is one—which will nullify all the good provisions in it. This means that the preceding clauses will not be given effect to, because the majority of people will be frightened of making themselves liable, with the result that they will not take any precautions, and fires will be starting up in a most mysterious manner. We do not want that, but we do want co-operation. What the member for Harvey said is perfectly true. When a fire starts, and every precaution has been taken, the whole district—Forests Department, townspeople and farmers—turns out to do the job. The Minister says the idea is to restrict the amount that a man is responsible for.

The Minister for Lands: No, it is not.

Mr. ACKLAND: The Minister wants to restrict it to £200. If a man fails to do certain things, then, under common law, those affected can recover from him; but if the Minister insists on this clause, he will nullify a great deal of the good that the Bill sets out to achieve. If Ned Kelly clauses are put into the measure, fires will start in a mysterious manner. The Minister said that a man lit a fire at his own convenience. Well, he certainly does; but this country wants millions more fires yet to clear millions more acres.

Mr. OWEN: I, too, support the deletion of the clause for the reasons given by the previous speakers. In addition, I point out that it is not necessary for the fire to be out of control, because the provision is that it is out of control if, in the opinion of the bush fires control officer, it is. I have not complete faith in the judgment of some of these officers. They could panic, or it could very well be a case of victimisation, because the control officer is the sole arbiter as to whether it is out of control. If he says it is out of control—and it might still be on the person's own property—he can put in a team of fire fighters and the person who lit the fire can be charged up to £200.

Mr. HEARMAN: I am a little disappointed at the attitude the Minister has taken on this clause. The idea of securing costs against completely irresponsible individuals might be a good one, without the necessity of laying charges against them, but there are occasions when fires are lit in an effort to stop other fires—a matter of burning back against a fire. In these circumstances, it is impossible to take full precautions.

The Minister for Lands: That would not apply, and you know it. When you light a fire back, you do so because the fire is already out of control.

Mr. HEARMAN: It is not always easy to determine the origin of a fire. A man might try to burn back, and subsequently the fire he lights is the one that causes the trouble. He might be the only person who can give evidence of the actual lighting of the fire. Under this clause he could be penalised when he, perhaps, acted in complete good faith.

I would like the Minister to give way a little. If he cannot accept the complete deletion of the subclause he might go part of the way towards meeting the member for Harvey. He might agree to inserting such words as "where a person starts a fire in contravention of the provisions of the Act." We would then get the person who definitely commits a breach. I have no objection to seeing that a man who contravenes the Act is made to pay, but not the person who complies with every requirement of the law.

Under this subclause a farmer might say to himself, "I cannot afford to run the risk of carrying out all these requirements because I can do everything and still be gone a million." In addition, he still has all the risk at common law. Where people comply with the law, we should try to give them some protection. The damages that can be inflicted under common law are pretty considerable. I do not know whether this will override common law or not, but, as the Minister says it will, I suppose that is the position.

Mr. NALDER: Whenever assistance is required in the country, not only the farmers, but the townspeople, too, are willing to help to the fullest extent. Only recently we had a fire in our district, and within 10 minutes of the fire starting—it was caused by accident—about 200 people were on the spot with fire-fighting equipment to help put it out. A lot of damage was done, and those who helped to put the fire out even went a step further and offered to assist in repairing the damage.

If the Minister continues with the subclause, I feel he will cut across the voluntary effort that is made today. Whenever a bush fire gets away and the alarm is sounded, people drop everything and go to the assistance of those requiring it. This provision is undermining a principle

that exists in the country, and I hope the Minister will give every consideration to accepting the suggestion put forward by the member for Harvey, because it will assist the country people to continue with the good work that they are renowned for doing.

The MINISTER FOR LANDS: If I insist on this provision, I do so because I think it is only fair to give the department an opportunity to recover some of its outlay in this regard. I do not think the Act obliges officers of the department to go to a fire more than two miles from a State forest, yet they do all they can, just as everyone else does, to endeavour to put out any fire within reach. Why should we not ask the person concerned to pay a portion of the expense involved in fighting a conflagration and perhaps preventing it spreading over very many miles of country? Any suggestion by the member for Harvey that this provision is something new is entirely wrong.

Mr. Nalder: But the money would go to the local authority or the department, not to the men concerned.

The MINISTER FOR LANDS: Whoever was responsible for putting out the fire would submit an account for the amount involved.

Mr. Owen: But the volunteers would receive nothing out of it.

The MINISTER FOR LANDS: What expense do they incur if they are farmers in the vicinity? They are protecting themselves.

Mr. Yates: They are protecting other people's property also.

The MINISTER FOR LANDS: Yes, they are protecting the whole country. Is it not reasonable that this department should recover some of its outlay? I repeat that there is nothing new in this provision and would refer the member for Harvey to Subsection (3) of Section 11 of the original Act. The committee is trying to limit the amount of liability of £200. I see nothing wrong with that and hope the Committee will not agree to the amendment. A road board conference was held this year at Calingiri—where I do not think there is any State forest and no opportunity to call on forestry officials or machinery—and this recommendation came from it. The road boards concerned there felt that this provision should be included in the Bill.

Hon. L. THORN: The Minister has indicated that the main purpose of the subclause is to see that the Forests Department is reimbursed for services rendered. What about the farmers and other volunteers? They fight fires and the department assists in order to protect the forests.

The Minister for Lands: You know that departmental officers fight fires which are burning away from forest country.

Hon. L. THORN: Yes, but the principle in fire-fighting is self-preservation. I have known farmers assist the department in fighting forest fires for the same reason. If a road board's team fights a fire on railway property, after it has been started by a locomotive, will the department reimburse the road board? Members on this side, together with the member for Fremantle, think the subclause should be deleted. Subclause (6) provides for the person who commits an offence, and I have already stated, during the debate on the second reading, that I have no sympathy with those who light fires and have no objection to the penalties provided, but I do not think that those who comply with the law should have to contribute towards the expenses of the Forests Department in perhaps preventing a fire entering a State forest.

Hon. Sir ROSS McLARTY: Every member who represents a rural constituency is opposed to this subclause. I believe the Minister wants a workable Act which will be to the general benefit, but I hope the Government will not insist on the retention of this subclause. I, like the member for Fremantle, can see how grave hardship could be inflicted on persons who burned off, having complied fully with the law, if the fire got away. Such a person might be up for a maximum penalty of £200.

The Minister for Lands: It is not a penalty.

Hon. Sir ROSS McLARTY: It is a payment and amounts to the same thing. I think this is a contribution which the Government might well make.

The Minister for Lands: Do you not think the road board conference knew what it was talking about?

Hon. Sir ROSS McLARTY: In a measure such as this, there are certain points which such a conference could miss.

The Minister for Lands: It requested this provision.

Hon. Sir ROSS McLARTY: Then I think the request was wrong. Surely it is to the benefit of a local authority to assist in putting out a fire, and the call on the department is not great! Sometimes, of course, forestry officers are called on to assist in putting out a fire—really in the national interest. I think the Minister would be well advised to agree to the amendment.

Mr. HEARMAN: Will the Minister amplify his statement that the provision was asked for by those attending a meeting of local authorities at Calingiri? Did they wish to limit the amount they could claim or to make it clear that they had the right to claim? There is a big difference between the two. It seemed to me that the Minister implied that farmers who help to fight fires do it in their own

interests and apparently do not incur expenses and are not deserving of any payment for what they do. I have known of a fire burning away from my property and towards a State forest and the forestry official rang to ask if I could do something about it because the departmental officers had other commitments to attend to fires in other areas. Of course I did everything I could.

I think a farmer incurring expense in handling a fire is as much entitled to compensation as is the local authority or the Forests Department. Apart from that we are protecting the interests of the Forests Department, but of course, we do not expect payment. In many instances, farmers provide far more vehicles and men than the Forests Department, which could only supply a limited number of men and units of equipment. If local authorities are to be entitled to some payment for what they do, I suggest that a good many other people would be also. The forestry workers and the farming community generally would be satisfied to abide by the principle of live and let live, as long as the job is done properly.

Mr. HILL: I am extremely disappointed with the Minister and the department he represents. The subclause stipulates that the farmer "shall" pay. I wonder whether the Minister remembers April, 1950: the time of the last election. Ten days before that, I rang the secretary of a road board in my electorate and told him that we had better stand by because it was a bad day for fires. The electorate of Warren also had a bad day for fires at that time, but where was the member for Warren on that day?

The Minister for Lands: Fighting fires at Denmark.

Mr. HILL: He was fighting me at the election. On that day, men from Albany jammed every available car and went to the Kalgan. It was just one large fire, and every able-bodied man went to help, but not one of them sought payment. Yet, the Minister, by this subclause, says that if the Forestry Department goes out to assist with a fire, the farmer is liable for the expense.

The Minister for Lands: For that matter, then, why should a bush fire brigade go out, either?

Mr. HILL: There is such a thing as Christianity in my electorate. Any farmer in the Albany district who needs help is assisted by the local authority which provides gear and men, but it does not ask for payment. I have no time for anyone who wilfully starts a fire, but, when there is one raging, it is a case of everyone going out to help.

Before the last election, I went out 23 miles from Denmark. The railwaymen were playing cricket. I put a call through

advising that there was danger. The railwaymen immediately pulled up their stumps and went to assist. While I was helping an old couple to fight a fire, I saw a motorcar coming from the Minister's electorate in which there were two men and two women. When I told them that there was a fire, they asked if they could help. The Minister must realise that when a fire is raging, everyone must help. During the early part of 1950, they were fighting fires for five weeks around Denmark, and during that time there was not one man in the town. If a man wilfully lit a fire, it would be a different proposition; but this subclause is altogether too drastic.

Hon. A. V. R. ABBOTT: I have listened to the debate with considerable interest, and there is something in what the Minister contends. However, the ordinary principle of the law says that we have to take risks in everyday life. If we walk down the street, or if we drive a motorcar, it is a risk.

The Minister for Justice: Life is a risk.

Hon. A. V. R. ABBOTT: Yes, our whole life is a risk. One is not responsible for damage in the ordinary way unless one is negligent. It is on that principle that a Government railway is not liable for the damage it does. I have always defended that principle, because the Government has to run the railways. If it runs them efficiently and properly, the law says the Government is not responsible for any damage. However, that is not the principle underlying this subclause.

If a man desires to work his farm efficiently, he has to light a fire. He can take all the precautions that the law requires and yet, if by chance the fire goes beyond his boundary, or someone considers it is out of control, he has to pay all this expense. He has no option whether he desires the assistance of the road board or not. If he requested the road board's help, it would be a different matter, but if an officer of a local authority, or the Forests Department, turned up, regardless of whether his presence was wanted or not, the farmer is up for £200.

Apart from that, the road board might say, "That is quite all right; we do not want this money," but the law says that the local authority is a trustee body, and it would have to receive the money from the farmer. If it sent officers to fight the fire, it would be bound to render an account.

Hon. Sir Ross McLarty: The farmer would also be liable for civil damages.

Hon. A. V. R. ABBOTT: Of course he would. Under another clause, he is liable for all damage to any other farm.

The Minister for Lands: He would not be, if you had your way.

Hon. A. V. R. ABBOTT: No, I do not believe in that, either.

The Minister for Lands: That is the sort of man you are!

The Minister for Works: If expense is incurred, who should pay?

Hon. A. V. R. ABBOTT: The usual thing is that the people who pay are those who request that the services shall be rendered.

The Minister for Works: If expense is incurred by somebody, who should pay it?

Hon. A. V. R. ABBOTT: Under our law, no one.

The Minister for Works: Then someone must suffer.

Hon. A. V. R. ABBOTT: Yes, someone must suffer.

The Minister for Works: The man who has paid suffers.

Hon. A. V. R. ABBOTT: If there is a motorcar accident, the man who is injured suffers, but if there is no negligence, each party pays his own damages. If I did £200 worth of damage to Government property as a result of an act of God, the Government could not collect anything from me.

The Minister for Lands: What about if, in the meantime, the Government comes to your aid and incurs some expense?

Hon. A. V. R. ABBOTT: Well, it does it, but it cannot recover the money. If the Minister wants to argue along that line, why does the Railway Department free itself of responsibility to local authorities for the damage it does? It will say, "This is an accident and we are not liable." If a fire escapes and it is regarded as an act of God, the same principle applies. The Minister has not yet said that he would be prepared to recommend the Minister for Railways to recoup any expense a road board had been put to as a result of a fire caused by the railways, because the Government is not negligent. The Government has never compensated a road board.

Hon. Sir Ross McLarty: Not if the road board fought it for a week.

Hon. A. V. R. ABBOTT: No; that is quite right. A collection of men would naturally protect their own organisation in every way. If help is rendered, it should be paid for by someone. The road board need not go out to fight a fire. The Minister would not provide that the Forests Department should attend every fire. If we were to be fair, we would provide that all road board officers should attend fires. However, this subclause proposes that, whether the officers attend a fire or not, the road board shall be compensated. It is unreasonable.

Mr. MANNING: I appeal to the Minister to delete this subclause. I have had considerable experience in fighting fires, both as a farmer and as a member of a bush fire brigade. In recent years I have spent a great deal of time trying to foster a good

feeling between farmers and forestry officials with regard to bush fire control work. This subclause could easily have the effect of undoing all the good work and understanding which exists between the Forests Department and the farmers bordering forest areas. The South-West railway line runs right through my electorate, and the Forests Department controls an area also running through it. Most of the bad fires have been started by the railways, but that department has accepted responsibility only in very rare instances.

In most cases fires break out some distance away from, and well clear of, railway property, mainly through sparks from locomotives. It seems that under this provision those who live adjacent to the railway lines are expected to pay all those who assist to fight fires started on their properties by locomotives. I am most anxious to continue the goodwill which exists between farmers and forestry officers. At present the practice is for farmers to assist the Forests Department to fight fires in its area, and vice versa.

This subclause will tend to create ill-feeling because only the Forests Department will be paid expenses; farmers assisting will not be paid. Farmers will feel that they cannot be expected to assist because they are not paid. I appeal to the Minister to delete the provision. It introduces a new principle not known before in bush fire control work.

The Minister for Lands: The same principle has operated for about 13 years.

Mr. MANNING: I have fought fires all my life, but never one under this principle.

Mr. OWEN: I support the amendment and the need to continue the spirit of co-operation between the Forests Department and nearby settlers. In my own electorate there is very good feeling between those parties, and I would not like to see it spoiled. This subclause mentions only the Forests Department and the local authority. Presumably any employer who sends his staff out to assist to fight a bush fire cannot claim any expenses. Throughout the State this principle has applied: If a fire breaks out, most of the people in country towns turn out to fight it.

In Forrestfield the management of one engineering works has time and again sent its staff out to assist in fire fighting, but it has never been paid any expenses. It does not expect it, nor should any local authority or the Forests Department. The Darling Range Road Board's employees have been sent out on a number of days and nights to fight fires during this year. For this work, in excess of ordinary time, they were paid overtime rates, and I am sure the ratepayers have no objection. I am not sure of the meaning of this subclause. Does it mean that the Forests Department and the local authority can each claim £200 expenses?

Hon. D. BRAND: I cannot understand the Minister adhering to this provision when members with direct interest in it have advised us that electors in both the forest and agricultural areas desire to delete it. I agree that the bush fires board has presented the basis of a Bill for open discussion by both sides. The Minister will not budge from the argument he has put forward in this case.

The Minister for Lands: Do you wish me to delete the subclause?

Hon. D. BRAND: Because it is the general wish of all those vitally interested to delete it, I would ask the Minister to agree. If as a result of experience after the Bill has become law for 12 months it is necessary to include this provision, then I have no doubt that members on both sides will agree to its inclusion. Regarding expenses incurred by the Forests Department, no one envisaged when the fire-fighting organisation was set up that expenses would have to be paid by other people, because any fire fighting, no matter how far removed from the State forests, is some form of insurance.

For the protection of the huge capital investment in the States forests, both pine and natural, surely the organisation set up to fight fires should take all steps to prevent the outbreaks from reaching the forests rather than wait until they have spread to them. If the argument of the Minister is based on the fact that the Forests Department should be recompensed for any fire fighting carried out adjacent to forest areas, then it is a very poor one and one which cannot be upheld. I hope that the Minister will accept the arguments put up by members representing electorates in the forests and agricultural areas.

The Minister for Forests: What action can then be taken against the odd person who does not care two hoots for any damage he may cause?

Hon. D. BRAND: I doubt whether such a person would have sufficient to pay any expenses incurred. Has there been any claim by the Government against any party for such expenses? The Forests Department would be only too anxious to put the fires out whether they were travelling to or from the forest.

Hon. Sir Ross McLarty: Hundreds of men and women in this State have fought fires caused by the railways, and they have not been paid a penny in expenses by the Government.

Hon. D. BRAND: The Minister must agree that it is difficult to justify his argument if it is related to fires started by locomotives. If we are to agree to this subclause, then it is high time that all members should consider again the policy of compensation by the Railway Department as a result of fires emanating from railway property. The provision under

discussion is not sound and the general tenor of the debate has proved this to be so.

Hon. J. B. SLEEMAN: There is a way of overcoming this difficulty by amending the subclause. It may be possible for the consideration of this provision to be postponed until a later stage so as to enable the Minister to introduce a suitable amendment. Under the subclause, if a fire escapes from the property of the person who lights it, he is liable for expenses. I consider that the words "through negligence on the part of the person lighting the fire" should be inserted.

It is wrong in principle that a person should be compelled to pay for damages where a fire escapes from his property through an act of God and through no negligence on his part. In the case of a person being run over by a vehicle and killed on the road, the driver of the vehicle is not liable for expenses unless it is shown that he has been negligent, and the same principle should apply in this case.

The MINISTER FOR LANDS: In some respects the subclause has been badly worded. If it had provided that bush fire brigades, which are composed mainly of farmers, were to be the recipients of expenses when they are out fighting, I feel that we would have the support of Country Party members. At the Calingiri meeting referred to, no amount was mentioned. The farmers advocated adopting the provision in the subclause so that a penalty could be imposed on other farmers in their own district who were careless in carrying out burning-off operations. Many members have spoken on this provision as it affects the Forests Department, but equally important is the fact that under the subclause some expenses can be recovered from careless and irresponsible persons.

Mr. Owen: Then why include those people who have not even been negligent?

The MINISTER FOR LANDS: The subclause does not exclude those who have not been negligent.

Mr. Owen: That is the trouble.

The MINISTER FOR LANDS: There are always a certain number of people in each district who do not care whether any fire they light will get out of control.

Mr. Nalder: Such cases are covered by other portions of the Bill.

The MINISTER FOR LANDS: Not so far as the claiming of expenses is concerned. The subclause is specifically designed to permit of the recovery of expenses for work undertaken by the Forests Department, local authorities and bush fire brigades. I agree with the principle, but am not wedded to the amount of £200 mentioned in the Bill. If the provision is passed in its present form, I shall be

prepared to have the measure recommitted at a later stage to enable the point to be more fully considered.

Hon. A. V. R. Abbott: Why not strike it out now and, if necessary, have it re-inserted on recommitment?

The MINISTER FOR LANDS: No. For the reasons I have given, I consider that it should be included in the Bill. The hon. member should be satisfied with my undertaking to have the measure recommitted, if desired. The subclause is the result of experience of men who consider it necessary.

Hon. J. B. SLEEMAN: The offer of the Minister to recommit the Bill will afford an opportunity to consider the framing of a suitable amendment. I cannot understand why the Forests Department should be intent on recovering expenses. As a volunteer fireman, I attended hundreds of fires, but never received anything.

Mr. MANNING: The Minister has missed a couple of points. As a member of a bush fire brigade for years, I say that we do not want these expenses.

The Minister for Lands: Are you speaking on behalf of all the bush fire brigades in the State?

Mr. MANNING: For all of those in my area.

The Minister for Lands: That is all you are doing.

Mr. MANNING: We do not want this provision.

The Minister for Lands: There are plenty that do want it.

Hon. D. Brand: I do not think that is so.

Mr. MANNING: The only ones likely to claim are the officers of the Forests Department.

The Minister for Lands: How will you get over the decision of the conference of local authorities?

Mr. MANNING: We have long been trying to build up co-operation with the Forests Department and have just about achieved it. The provision is contrary to the principles of bush fire brigades and should be deleted.

The MINISTER FOR LANDS: I said that I am prepared to refer this matter back to the board for further consideration. If the hon. member will not accept that, I shall have to insist on retaining the provision.

Mr. Manning: I did not hear you say that.

Hon. Sir Ross McLarty: Why not postpone the clause? Surely that is a fair request!

The CHAIRMAN: Order!

Mr. MANNING: We must consider the overall picture. The Bill contains new and far-reaching provisions, one of the most important of which is payment for the board to travel and inspect fire precautions. We have set down a list of requirements that a farmer must observe before lighting a fire. Now a new principle is proposed, namely, that a farmer shall pay up to £200 if a fire gets out of control. If ever there was a clause designed to kick a man when he was down, this is it.

The MINISTER FOR FORESTS: I move—

That further consideration of the clause be postponed.

Mr. HEARMAN: I do not oppose the motion to postpone further consideration of the clause, but I had hoped that the Minister for Forests would state his view of the matter.

The Minister for Lands: On a point of order, may a motion for postponement be discussed?

The CHAIRMAN: Yes.

Mr. HEARMAN: It would be helpful if the Minister for Forests gave his views so that those who wish to consider the matter further may know the attitude of the department. The question of co-operation between the Forests Department and the local authorities is important, and I hope it will continue.

The Minister for Forests: I am told that the clause is desired by the department.

Motion put and passed; the clause postponed.

Clause 19—Mode of service of notice:

Mr. ACKLAND: I move an amendment—

That the word "fourteen" in line 36, page 16, be struck out with a view to inserting the word "eighteen."

Paragraph (b) provides that the requisite notice may be given to an owner or occupier by delivering it at the premises, or by leaving it with a person who is apparently over the age of 14 years and who resides or is employed on the premises. A child of 14 would scarcely be responsible enough to be entrusted with important papers.

The MINISTER FOR LANDS: A child of 14 should be of sufficient age to carry out this duty. The smallness of the duty would not warrant our increasing the age to 18.

Hon. A. V. R. Abbott: It is a very important matter.

The MINISTER FOR LANDS: Children of that age are entrusted to carry messages almost daily. I oppose the amendment.

Mr. NALDER: If it is not a very important matter, why should the Minister object to the amendment? How would the person delivering the notice to a child tell its age? When an officer of the department issues a notice of intention to burn on railway land adjoining a farmer's property, he must deliver the notice to the owner of the property. My experience has been that the officer in charge would push a bicycle for miles in order to deliver the notice to the owner, and if it is important in that instance, it is just as important here. The amendment would ensure that the notice was handed to a responsible person, and is quite a reasonable proposal.

The Minister for Lands: I will meet the member for Moore half way if he is willing.

Hon. Sir Ross McLarty: You mean to make the age 16?

The Minister for Lands: Yes.

Mr. ACKLAND: Half a loaf is better than none, and I am prepared to accept the age of 16.

Amendment (to delete word) put and passed.

Mr. ACKLAND: I move an amendment—

That the word "sixteen" be inserted in lieu of the word struck out.

Amendment put and passed.

Sitting suspended from 6.15 to 7.30 p.m.

Mr. HEARMAN: I move an amendment—

That after the word "posting" in line 3, page 17, the words "not less than eight days prior to the first day on which it is intended to burn the bush" be inserted.

I discussed this matter with the Parliamentary Draftsman and he agreed with me that this clause could be misinterpreted and a layman, after reading it, might think it is sufficient if he merely posts the letter four days before he intends to burn. There are cases on record, of which I have a personal experience, where such a mistake has been made. People have thought that if they posted a letter it was sufficient.

Apart from owners of land in agricultural areas, who might be absentee owners, this clause must also apply to people who own cottages in seaside resorts and who do not live there permanently. Such owners might want to make some provision to protect their properties. As they are not residing in such homes permanently, they will require four full days' notice in order to take the necessary action to look after their own interests, or to get somebody else to do it for them. This amendment does not detract from the intention of the clause, and I am not trying to water it down.

The MINISTER FOR LANDS: I can appreciate the need to give as much notice as possible, but I do not think this amendment will achieve the results the hon member desires. I think his intention is to give eight days' notice.

Mr. Hearman: No. It is merely to ensure that an owner receives the letter.

The MINISTER FOR LANDS: The four days' notice is clearly laid down on page 13 and there is no way of circumventing that. If the hon. member's amendment is agreed to, it may take a letter five days to get to its destination and that would allow only three days' notice of the intention to burn. The Bill clearly lays down on page 13 that not less than four days' notice must be given. In cases where the letter had to go long distances it might take more than eight days to get there and in such instances no notice would be given. Does the hon. member think this is a worth-while amendment?

Mr. HEARMAN: I still feel disposed to persist with the amendment although I agree with what the Minister has said and I know what is laid down on page 13 of the Bill. But I would draw the Minister's attention to the preamble to this clause and it is quite conceivable that people would think that so long as they posted the letter four days before they intended to burn, it would be sufficient. While I agree with the Minister that a period of eight days may not ensure that service will occur, in every instance, four days before the fire is intended to be lit, the amendment at least goes part of the way and makes it clear that if a person posts a letter it must be posted at such a time that the owner will get reasonable notice. I would be happy to agree to any other amendment such as one which would state that the letter shall be received in sufficient time to give an owner four day's clear notice. My amendment is merely an endeavour to ensure that these people get reasonable notice.

The Minister for Lands: It must be four days.

Mr. HEARMAN: I know that. But all sorts of people will be reading this legislation. I cannot see any objection to the amendment. The Minister may be quite right in saying that the amendment will not fully cover the position; but at least it goes part of the way and it is better to do that than not go any distance at all.

The MINISTER FOR LANDS: If the hon. member persists with his amendment, I do not think it will be of any value. I have no objection to it, but the operative clause is the one on page 13 to which the Committee has already agreed.

Mr. Hearman: I agree with you.

The MINISTER FOR LANDS: I have no objection to it, but I do not think it is of any value.

Amendment put and passed; the clause, as amended, agreed to.

Clause 20—Regulations:

Mr. NALDER: I move an amendment—

That the words "permitting burning under the provisions of Section 18 of this Act on Sundays or" in lines 11 and 12, page 17, be struck out.

I do not consider it necessary for anyone to set alight to any bush or do any work of this nature on Sundays. Ever since we have had a Bush Fires Act it has clearly stated that no one shall set alight to any portion of timber or any clearing to be burned, on a Sunday. I see no reason why we should depart from that. I think every member recognises the position. Sunday is recognised as the day in the week set aside for those who wish to have a period of rest, and I do not see why Parliament should depart from what has been common practice for so long. There is still plenty of time and opportunity for those who want to burn off during the burning-off season to carry out the work on other days.

The MINISTER FOR LANDS: I hope the Committee will not agree to the amendment. As the hon. member knows, the Act provides that no fire shall be lit on a Sunday and that principle is observed in the existing legislation. Unfortunately, however, fires are no respecters of persons or days, and provision must be made for the necessary action to be taken, irrespective of the day involved.

Mr. Nalder: I agree with you.

The MINISTER FOR LANDS: If the amendment is carried it will not permit any local authority to determine when a fire should be lit. There may be special conditions, when the farmers and the bush fire brigades are ready to start and the day is favourable, whereas perhaps the previous day was not. Under such conditions it might be most desirable for the burning to take place. There is, of course, the religious angle, but everybody does not observe Sunday as we do, and I do not think it is fair to inflict a provision such as this on those who hold other religious principles. Apart from the fact that Sunday might be the most suitable day to burn, I feel that from the religious angle alone the amendment should be rejected.

Amendment put and negatived.

Clause put and passed.

Clauses 21 and 22—agreed to.

Clause 23—Burning during prohibited burning times:

Hon. Sir ROSS McLARTY: I move an amendment—

That the words "six o'clock in the evening" in line 22, page 21, be struck out, and the words "four o'clock in the afternoon" inserted in lieu.

I mentioned this during the debate on the second reading and the Minister agreed to accept the amendment. I move this amendment because when burning a road or certain firebreaks, six o'clock in the evening is often too late to get an effective burn. If there is a log or a tree on the road, there is a much better chance of dealing with it if one has a couple of hours of extra daylight than there would be if it were burnt from 6 o'clock onwards.

The Minister for Forests: You also have a better chance of setting the countryside alight.

Hon. Sir ROSS McLARTY: The local authority must be notified.

The Minister for Forests: That is when the fire hazard is high.

Hon. Sir ROSS McLARTY: I have had a lot of experience with burning firebreaks and there is no danger if precautions are taken; if there were, the local authority would not permit the burning.

The MINISTER FOR LANDS: I have no objection to the amendment. It is entirely in the hands of the local authority; it can give the permission or withhold it. In some parts of the lower South-West permission could be given where perhaps on the wheatbelt permission could not.

Amendment put and passed; the clause, as amended, agreed to.

Clauses 24 to 31—agreed to.

Clause 32—Offences of lighting or attempting to light a fire likely to injure:

Hon. J. B. SLEEMAN: I have an amendment on the notice paper but I do not wish to move it as it stands. This is a very serious offence if it is done wilfully, and I think we must be careful when amending the clause. I move an amendment—

That after the word "who," in line 1, page 30, the word "wilfully" be inserted.

Amendment put and passed.

Hon. A. V. R. ABBOTT: I move an amendment—

That after the word "caused" in line 10, page 30, the words "and with the intent to cause a fire" be inserted.

Certain things may be done without the intention of doing them at all. Paragraph (b) of Subclause (1) refers to other inflammable or combustible substances being placed in a position where they may directly or indirectly be ignited by the rays of the sun. There are a great number of inflammable substances like petrol that may be ignited by the rays of the sun. The whole essence of my contention is that the action may not be done with intent to cause a fire; it may be done for any other purpose. One must be careful where the penalty involved is £500 or five

years' imprisonment. The marginal note to Section 455 of the Criminal Code refers to attempts to cause explosions likely to do serious injury to property. The provisions are similar; one refers to explosions and the other to fires being caused. Subsections (1) and (2) of Section 455 of the Criminal Code contain provisions similar to those in the Bill. Inflammable material might be placed wilfully but not with intention to cause a fire. A bottle of petrol might be placed in a position where it might be exploded by the sun's rays; that has been known to happen. I think the intention is to do something with the purpose of causing a fire.

Hon. J. B. Sleeman: Would not "wilfully" cover that?

Hon. A. V. R. ABBOTT: Not necessarily. It may be done wilfully, but not with the intention of causing a fire. The penalty in the Bill is for the man who intentionally goes out to cause a fire.

The MINISTER FOR LANDS: I cannot see the need for the amendment. It seems to me that the insertion of the word "wilfully" at the beginning of the clause covers the position. A man "wilfully" places something down, knowing that he is taking a risk.

Hon. A. V. R. Abbott: Not knowing; it does not say that.

The MINISTER FOR LANDS: It does not say what the hon. member read from the Criminal Code.

Hon. A. V. R. Abbott: The cases are almost parallel.

The MINISTER FOR LANDS: No. Let the hon. member have another look. The cases are not parallel.

Hon. A. V. R. Abbott: One refers to causing an explosion; and the other to causing a fire.

The MINISTER FOR LANDS: The point is that a person might be negligent in doing something that could cause a fire, though he did not wilfully intend to do so. Should he not be punished for negligence?

Hon. A. V. R. Abbott: I do not think he should get five years.

The MINISTER FOR LANDS: The provision does not say that he will.

Hon. A. V. R. Abbott: It says that is the penalty.

The MINISTER FOR LANDS: That is the maximum penalty. My reasoning tells me that this amendment is of no value. However, if it will please the hon. member, I will raise no objection, because it will do no harm.

Hon. A. V. R. ABBOTT: I disagree with the Minister's view. Every criminal act has to be done wilfully. It was not necessary, in my view, to add the word "wilfully." The intention in this case is not

to cause a fire but to place an inflammable substance somewhere that may directly or indirectly be ignited by the rays of the sun. That is what a man could be charged with. I know that the question of negligence comes in, but my view is that a man should not be punished in this severe fashion for negligence. Probably there is some provision in the Act—

The Minister for Lands: You do not know where it is.

Hon. A. V. R. ABBOTT: If it is to be a question of negligence, that should be dealt with in another manner. I have not found such a provision, either, but I have not looked for one. Practically any spirit in a bottle may be ignited, and there are hundreds of highly inflammable materials that could be ignited. If one puts such a material on the grass in the sun, one commits an offence. That is why I want this provision limited to people who deliberately do something for the purpose of causing a fire.

Amendment put and passed.

[Mr. Brady took the Chair.]

Hon. A. V. R. ABBOTT: I move an amendment—

That the words "an offence" in line 13, page 30, be struck out with a view to the words "a misdemeanour" being inserted in lieu.

I do not think that an offence of this seriousness should be dealt with by a magistrate. I have proposed the insertion of the word "misdemeanour" because that is what is used in the Criminal Code, and where it is so used a person cannot be tried summarily; in other words, he has to be tried in the Supreme Court.

Hon. J. B. Sleeman: I am with you there.

Hon. A. V. R. ABBOTT: When a man can be given five years' imprisonment or fined £500, I think he should have the right to be tried by a jury.

The MINISTER FOR LANDS: I hope the Committee will not agree to the amendment. The hon. member has been quite honest in stating that his intention is to take this from the Justices Act and place it under the Criminal Code. I notice that he has a further amendment by which he seeks to reduce some of the penalties. Has the hon. member looked at the position from this point of view: If we want this to come under the Criminal Code, we should accept the penalties in the Criminal Code?

Hon. A. V. R. Abbott: Yes, I have looked at it from that point of view.

The MINISTER FOR LANDS: Yet the hon. member wants to reduce the penalties.

Hon. A. V. R. Abbott: I may not move that amendment if this one is carried.

The MINISTER FOR LANDS: We have to assume that the hon. member will do so, because the amendment is on the notice paper. In any event, that does not alter the situation so far as I am concerned. Most offences are handled by local authorities, and justices of the peace operate in a judicial capacity in most of these cases. But when it comes to a charge that we think is so serious as to warrant a sentence of five years' imprisonment, we consider the case should be taken from a justice of the peace and put in the hands of a competent magistrate.

Hon. A. V. R. Abbott: Could you state any other offences which merit five years' imprisonment and which are dealt with by magistrates?

The MINISTER FOR LANDS: Under this Bill?

Hon. A. V. R. Abbott: No, under any Act.

The MINISTER FOR LANDS: I do not know. I am not familiar with every Act. To have a judge and jury try these offences would be a most cumbersome method of handling very simple cases.

Hon. A. V. R. Abbott: Do you think a case is simple when a man can be given five years' imprisonment?

The MINISTER FOR LANDS: I think these cases are simple enough to determine.

Hon. A. V. R. Abbott: I do not.

The MINISTER FOR LANDS: A magistrate would be quite competent to deal with them. If a fire occurred in the lower South-West, a judge and jury might have to sit at Bunbury instead of allowing the magistrate there to go to the scene of operations and determine the matter. After all, this provides only the maximum penalty. One would think that some of the provisions in the Criminal Code, to which the hon. member referred, had been copied from the Bush Fires Act, because they deal with arson, not only on city or suburban properties but also in connection with lighting fires in the bush, and maximum sentences of 14 or 15 years are provided for in that Code. But when a serious offence, which is simple enough to be dealt with by a magistrate, has to be determined, why should we employ the cumbersome method of trial by jury?

Hon. A. V. R. Abbott: You do not believe in trial by jury?

The MINISTER FOR LANDS: Yes. But not in this case.

Hon. A. V. R. Abbott: This is the one exception.

The MINISTER FOR LANDS: Not necessarily.

Mr. HEARMAN: I support the amendment. The Minister has said these matters are comparatively simple and procedure would be simplified if they were dealt with by a magistrate. I will concede that a magistrate might deal with them much more expeditiously than would a judge and jury, but I am not certain that all these cases are as simple as the Minister would have us suppose. The whole of this clause is designed to catch the man who goes to a great deal of trouble to try to cause a fire without taking the blame for it—the sort of person who leaves a candle burning in a sheltered spot, gets into his car, and rushes off so that by the time the fire breaks out he is miles away.

Such cases are extremely difficult to deal with. They are very complicated and rarely can a case of this kind be made out against a man because of the difficulty of proving anything. One has to depend on circumstantial evidence. Usually, the only time a man is caught is when there is a breakdown and the candle is extinguished and someone subsequently finds it. These cases are anything but simple and it is extremely rare for them to be brought to court because of the difficulty of obtaining proof. I suggest that such a case would occur only once in ten years.

If the Minister wants to challenge that, let him quote the number that have been dealt with. I have no recollection of any such case going before a court, because of the extreme difficulty of obtaining evidence. If the Minister thinks such cases are frequent, let him quote some, and that might alter my opinion. The question of inconvenience does not come into it. I agree that the penalty should be severe, and I do not regard £500 as being too much. But there should be trial by jury. The member for Mt. Lawley is on fairly sound ground.

Hon. J. B. SLEEMAN: A person who is liable to be gaol for five years or fined £500 is entitled to be tried by a jury. The Minister mentioned arson. I have known people to be convicted of arson but not get more than five years. A farmers' wife who was convicted of arson was let off on a bond. The charge here is most serious and people so charged are entitled to be tried by their peers.

Hon. A. V. R. ABBOTT: I agree with the Minister when he says there would be more difficulty. Of course there would, and much more expense, but it is a question of principle. Under the present law if a person is liable to be sentenced to gaol for five years he is entitled to be tried by his peers or, in other words, by a jury, and it is on that ground that I bring this matter forward. If the Minister would make the maximum penalty six months imprisonment or £100 fine, I would withdraw the amendment; but he will not.

With the member for Fremantle, I agree that what we have to look upon here is the right of the individual. That is the principle that is at stake, and not the expense or convenience of the Crown. A person charged under this provision is entitled to be tried by a jury as he would be if he were charged with indecent dealing or any other offence for which he might not get as much as five years.

The MINISTER FOR LANDS: One member wanted to know something about the figures that the department has been able to accumulate over the years to indicate the seriousness of the offence and the number of times it has occurred.

Hon. A. V. R. ABBOTT: I agree it is serious.

The MINISTER FOR LANDS: I have some figures here of fires that are known by the Forests Department to have been lit by firebugs over a five-year period. In 1949-50 there were 70; in 1950-51 there were 25; in 1951-52 there were 41; in 1952-53 there were 40 and in 1953-54 there were 21.

Mr. Hearman: How many were taken to court?

The MINISTER FOR LANDS: I do not know.

Mr. Hearman: That is the point I was getting at.

The MINISTER FOR LANDS: I am only concerned about the seriousness of this offence and the number of times it occurs. These figures show that there were 197 offences by firebugs in five years. Yet, the hon. member wants to reduce the penalty to an almost negligible one. I know how difficult it is to prove that someone has done something wilfully—such as light a fire to cause damage—but we should not make it easy by Act of Parliament for such a person. In view of the small amount of money that has been collected in fines from people who have committed offences against the Act, we ought to take strong action by passing a Bill that will be an absolute deterrent for all time.

As to whether the matter should come under the Criminal Code and necessitate trial before a judge and jury, what difference is there between deliberately burning out many farms and a great slice of countryside, and burning down a metropolitan building with the possibility of getting 15 years from a trial by judge and jury? Section 447 of the Criminal Code relates to arson as it applies to country districts, and it provides a penalty of hard labour for 14 years. That penalty is for something for which we are now providing a penalty of five years, and because five years is too much for the member for Mt. Lawley, he invokes the Criminal Code which provides a penalty of 14 years.

Hon. A. V. R. ABBOTT: The offender is tried by jury.

The MINISTER FOR LANDS: Where is the logic in the hon. member's argument?

Hon. A. V. R. Abbott: I have not moved my amendment yet.

The MINISTER FOR LANDS: If we allow this amendment to go through, we will experience more difficulty in finding out the real strength of things than the member for Blackwood imagined when he spoke a few moments ago. What chance have 12 honourable men, drawn from all walks of life, of determining the details of a crime of this nature?

Hon. A. V. R. Abbott: Just the same as a magistrate.

The MINISTER FOR LANDS: I do not think so. A magistrate is more mobile and has nothing to clutter him up. We could not find a more cumbersome method to establish the guilt of a person than that suggested in the amendment. The magistrate is competent in every way to deal with an offence of this character. I shall not argue any more about it. I have a principle in mind, and I shall stand by it.

Mr. HEARMAN: The Minister has misunderstood me. I did not suggest that there were not firebugs in the State. I am aware that there are plenty of them. What I said was that it was difficult to bring them to book. I cannot recall any case that has gone to court. I asked the Minister if he could remember any, and he said he could not. The Minister is not entitled to assume that I have any objection to the penalty of five years if the accused is to be tried by a judge and jury, but I object to a magistrate having the right to impose a penalty of five years. The member for Mt. Lawley has intimated that he may not go on with his further amendment. It is only rarely that this clause would be invoked, and when it is invoked there should be a severe penalty if the chap concerned is caught out; and a judge and jury should try the case.

The MINISTER FOR LANDS: Does the Committee think it is worth while going to the trouble and expense of getting a judge and jury into session for the purpose of giving either a £50 fine or imprisonment for six months?

Hon. A. V. R. Abbott: You do when it is arson.

The MINISTER FOR LANDS: The penalty mentioned here is the maximum, not the minimum, which is six months or £50.

Hon. A. V. R. Abbott: You undertake to reduce the penalty and I will withdraw my amendment.

The MINISTER FOR LANDS: I am not undertaking anything at this stage, but am dealing with the best method of handling the offence. We do not want it tried by a judge and jury.

Hon. A. V. R. Abbott: You do when the penalty is five years.

The MINISTER FOR LANDS: I think it is asking too much to have a judge and jury to determine an offence which might mean a penalty of six months or only £50. The magistrate could handle such a matter and we ought to be satisfied with that.

Hon. A. V. R. ABBOTT: This is a most illogical argument because it could be applied to 90 per cent. or 100 per cent. of offences in the Criminal Code. It is always in the discretion of the magistrate. Where a man's liberty is in danger and he is in risk of being incarcerated for five years, he is surely entitled to be tried by a judge of the Supreme Court and a jury.

Mr. YATES: A person accused under this provision should be given the right, when he is taken before a magistrate, of saying whether he desires to be dealt with summarily or by a judge and jury. That right is given to the person accused of some small misdemeanour, but it is being taken away in this particular case. If the penalty of imprisonment for five years or a fine of £500 is retained, the accused should be given the right to be tried by jury.

Mr. Lawrence: Who said that anybody charged in the Police Court has the right to be tried by a judge and jury?

Mr. YATES: The magistrate always asks the accused whether he desires to be dealt with summarily or by a judge and jury.

Mr. Lawrence: That is not correct.

Mr. YATES: That is what occurs in most cases.

The Minister for Lands: There are scores of cases dealt with summarily under our Acts of Parliament.

The CHAIRMAN: Order! The member for South Perth will address the Chair.

Mr. YATES: In a case like this, where such high penalties are provided, the accused should have the right to be dealt with either before a magistrate or by a judge and jury. I do not think the Minister can point to another instance where a magistrate can impose such severe penalties or has such wide powers.

The Minister for Lands: I have not gone into that.

Mr. YATES: The Minister said that a magistrate would have a better knowledge of the position than would a jury.

The Minister for Lands: I said he would be better able to assess the facts.

Mr. YATES: That is different from what was said when we were dealing with the jury legislation. We were then told how wonderful it would be to have women on juries. If 12 handpicked people heard the evidence of both sides, one would expect them to make a reasonably fair

assessment of the case. I think the accused person should have the right to decide whether he will be tried by a magistrate or by a judge and jury. If that is agreed to, I do not think any member would object.

Amendment (to strike out words) put and a division taken with the following result:—

Ayes	16
Noes	14
Majority for	2

Ayes.

Mr. Abbott	Mr. Nimmo
Mr. Ackland	Mr. North
Mr. Cornell	Mr. Owen
Mr. Hearman	Mr. Sleeman
Mr. Hill	Mr. Thorn
Mr. Manning	Mr. Wild
Sir Ross McLarty	Mr. Yates
Mr. Nalder	Mr. Hutchinson

(Teller.)

Noes.

Mr. Andrew	Mr. McCulloch
Mr. Hawke	Mr. Moir
Mr. Heal	Mr. Norton
Mr. Hoar	Mr. Nulsen
Mr. Jamieson	Mr. O'Brien
Mr. Johnson	Mr. Rhatigan
Mr. Lawrence	Mr. May

(Teller.)

Amendment thus passed.

Hon. A. V. R. ABBOTT: I move an amendment—

That the words "a misdemeanour" be inserted in lieu of the words struck out.

Amendment put and a division taken with the following result:—

Ayes	16
Noes	14
Majority for	2

Ayes.

Mr. Abbott	Mr. Nalder
Mr. Ackland	Mr. Nimmo
Mr. Brand	Mr. North
Mr. Cornell	Mr. Owen
Mr. Hearman	Mr. Sleeman
Mr. Hill	Mr. Thorn
Mr. Manning	Mr. Wild
Sir Ross McLarty	Mr. Hutchinson

(Teller.)

Noes.

Mr. Andrew	Mr. McCulloch
Mr. Hawke	Mr. Moir
Mr. Heal	Mr. Norton
Mr. Hoar	Mr. Nulsen
Mr. Jamieson	Mr. O'Brien
Mr. Johnson	Mr. Rhatigan
Mr. Lawrence	Mr. May

(Teller.)

Amendment thus passed.

Hon. A. V. R. ABBOTT: I move an amendment—

That the words "five years" in line 15, page 30, be struck out with a view to inserting the words "one year."

There are many offences of a similar nature dealt with in the Criminal Code and the Minister read them out, the penalty there being 14 years. The majority of offences under this measure would also be offences under the Code and the Crown would have discretion whether to charge the accused under this legislation or under the Code. I take it that the legislation is to deal with occurrences where the Crown does not think fit to charge the accused with arson. I believe the term of five years imprisonment is too severe. In view of the provision for a fine of £500, I think one year's imprisonment would be sufficient. Perhaps the Minister would accept provision for three years—

The Minister for Lands: I would not.

Hon. A. V. R. ABBOTT: If he would, I would be prepared to agree to that for the time being.

The MINISTER FOR LANDS: I ask the Committee to allow the penalty to remain as set out in the Bill. If the member for Mt. Lawley knew how difficult it was for the local authorities to get magistrates or justices of the peace to impose a penalty greater than £2, I do not think he would wish to whittle down the penalty proposed in the measure. The Committee has already agreed that these offences can go before a judge and jury for trial. In that case, the maximum penalty of 14 years can be imposed under the Code. The maximum under this measure is five years and the minimum six months.

Personally, I think there is no more dastardly crime than wilfully lighting a fire to cause damage to other people, and I will do all I can to prevent such happenings. The hon. member seeks to reduce the penalty to something ludicrous. With a maximum of one year, the minimum would be five weeks' imprisonment for this offence and that would be ridiculous.

Mr. HEARMAN: In this instance I support the views of the Minister. As provision has been made for trial by jury, I think the penalty should remain as set out in the Bill.

Hon. A. V. R. ABBOTT: I realise the seriousness of this offence, but think the punishment should be kept consistent. Under the Criminal Code many offences are punishable by three years' imprisonment or less. Indecent dealing, one of the most serious offences, is one of them. A man who throws a match down with the intention of starting a fire can be imprisoned for five years.

Mr. Heal: It could affect the lives of many people.

Hon. A. V. R. ABBOTT: Yes, I agree. However, if a man goes out in the bush and lights a fire to boil his billy, he would be liable to the same penalty and in such circumstances it would be too severe.

The Minister for Lands: A man lighting a fire to boil his billy would not be liable to a penalty of five years' imprisonment.

Hon. A. V. R. ABBOTT: Such a person would be liable to a penalty of five years' imprisonment, but I agree that possibly he might not get five years. A woman travelling by car to Northam who stopped at the side of the road and lit a fire would be liable to a penalty of five years' imprisonment.

Mr. Lawrence: You know that ignorance of the law is no excuse.

Hon. A. V. R. ABBOTT: That is so, but in this case I think the term of imprisonment should be less.

The Minister for Justice: This is only in the case of an act that is deliberate or wilful.

Hon. A. V. R. ABBOTT: That is so. However, I think the penalty of imprisonment for five years is too severe. I consider 12 months would be sufficient, but I would willingly agree to a term of three years' imprisonment.

The Minister for Lands: This penalty does not apply to a man who lights a fire to boil a billy.

Hon. A. V. R. ABBOTT: Why does it not?

The Minister for Lands: It applies to a man who wilfully lights a fire that would be likely to injure persons or cause damage to buildings and so on.

Hon. A. V. R. ABBOTT: If a man lit a fire to boil a billy alongside a paddock high with dry grass, would he not be likely to cause a fire?

The Minister for Lands: Yes.

Hon. A. V. R. ABBOTT: In such circumstances, even if a man does not start a bush fire, he is responsible under this clause. I thought that if the penalty had been 12 months, and the man was tried without a jury, it would be sufficient, but as applied to a man or a woman charged with the offence of lighting a fire alongside a road in order to boil a billy, the penalty is too great.

Mr. HILL: I support the Minister in this clause. The member for Mt. Lawley talks about a person who lights a fire to boil a billy near a paddock of dry grass. No person has the right to light a fire near an area of dry grass.

The Premier: They do not grow any grass in Mt. Lawley.

Mr. HILL: No, they do not. They have plenty of water to grow nice green lawns. A person who lights a fire at the side of a road to boil a billy deserves all he gets.

Amendment put and negatived.

Hon. A. V. R. ABBOTT: I move an amendment—

That Subclause (2) be struck out.

This is really a consequential amendment.

Amendment put and passed; the clause, as amended, agreed to.

Clause 33—Local authority may require occupier of land to plough or clear fire-break:

Mr. HEARMAN: I desire to move the amendment which appears on the notice paper in the name of the member for Roe. I move an amendment—

That the words "in writing to an owner or occupier" in lines 25 and 26, page 30, be struck out and the words "by notice in the Gazette and advertisement in a paper circulating in the area to owners or occupiers." inserted in lieu.

This is an endeavour to save local authorities trouble and expense on postages, stationery, etc. The clause provides that a local authority shall issue instructions in writing to farmers with regard to ploughing of firebreaks, etc. This is following what has become an accepted custom of giving notice on farming matters to farmers and other people concerned. The method of giving such notice, as suggested by the amendment, would be preferable to sending out separate notifications to each farmer in writing. I think it has been the practice of local authorities to include such intimations with rate notices, which very often could have been received months before. The member for Roe considered it would be better to publish the information in the "Government Gazette" and in the local newspaper.

The MINISTER FOR LANDS: I can understand the desire of the member for Roe to achieve something in addition to what is provided in the Bill. However, I do not think the best way of achieving his objective is to delete the words mentioned in the amendment. What I propose is to leave the existing words in the clause and then, by another amendment, include most, if not all, of what the hon. member desires by adding further words after the word "authority" in line 27. This will achieve all that the hon. member desires and at the same time maintain the right of doing what the Bill has been designed for.

Mr. HEARMAN: In view of what the Minister has said I ask for leave to withdraw the amendment.

Mr. NALDER: I draw the Minister's attention to the fact that I consider the words "Government Gazette" should be used. I understand that there is another newspaper published which is called "The Gazette."

The CHAIRMAN: Before the hon. member continues further, I wish to remind him that I have to put the question as to whether the hon. member has leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The MINISTER FOR LANDS: I move an amendment—

That after the word "authority" in line 27, page 30, the words "or shall give notice to all owners and occupiers of land in its district by publishing a notice in the "Government Gazette" and in a newspaper circulating in its area," be inserted.

Amendment put and passed.

The MINISTER FOR LANDS: As a result of that, I will now have to move two consequential amendments. I move an amendment—

That after the word "him" in line 27, page 30, the words "or them, as the case may be" be inserted.

Amendment put and passed.

The MINISTER FOR LANDS: According to Crown Law opinion there is a further amendment needed in line 25, page 31. I move an amendment—

That after the word "land" in line 25, page 31, the words "who has received notice" be struck out and the words "to whom a notice has been given" inserted in lieu.

To me the different wording does not seem to make much difference, but according to the Crown Law Department the amendment is necessary.

Amendment put and passed; the clause, as amended, agreed to.

Clause 34—Burning on Crown lands:

Mr. HILL: I move an amendment—

That the words "not more than ten chains in width from the boundary of the land or reserve" in lines 34 and 35, page 32, be struck out.

My reason for moving this amendment is that land in the southern portion of the State is heavily timbered and if there is no control of fires in that area, then under adverse conditions there will be uncontrolled fires. There is also another amendment to the clause standing in my name on the notice paper. That seeks to delete certain words in paragraph (c).

In the Denmark district where the danger of bush fires is very great, there are large tracts of heavily timbered country, and a much wider firebreak could be burned. To leave the maximum width at 10 chains will have little effect. I have seen flying bark and sparks from trees travelling over half a mile. There was the

instance of a hay shed which was burnt through a fire breaking out two miles away. The sparks were carried by the wind to the hay shed.

The MINISTER FOR LANDS: There is provision in the Bill for the bush fire control officer to exercise his discretion in many directions without having to pass judgment as to the width of firebreaks. The Act provides for a firebreak of only 12ft., but the Bill proposes to increase that to 220 yards if necessary. The width is determined by the local fire control officer. I agree with the hon. member that controlled burning should be permitted in the South-West, and wider firebreaks should be provided.

I have also seen similar fires to the one he described. If we do not limit the area which may be burnt at the discretion of the fire control officer, then everyone will have an open go. I can imagine greater fires breaking out in the Albany zone in future than any which the hon. member has seen. The Committee must agree that the difference between the 12ft. and the 220 yards now proposed is a vast improvement, and I hope the Committee will reject the amendment and the one following.

Mr. HILL: I am surprised that the Minister considers 10 chains sufficient for a firebreak. It is a good plan at this time of the year to let everyone have an open go. If my amendment is defeated, the danger from fires will still exist. I assure the Minister that every person in the Denmark district supports my amendment.

Amendment put and negatived.

Mr. HILL: I move an amendment—

That the words "width to which a firebreak may be burnt up to a maximum of ten chains in width from the boundary of the land or reserve" in lines 7 to 9, page 33, be struck out, and the words "extent to which a firebreak may be burnt" inserted in lieu.

I have already given my reasons previously.

The MINISTER FOR LANDS: Had the hon. member dealt with this amendment first, the other would have been redundant. It would have been contradictory in the same way as the present amendment is contradictory because the Committee has already passed paragraph (a) in this clause, which lays down that the maximum width shall be 10 chains. The amendment seeks to alter a provision which has already been agreed to.

Amendment put and negatived.

Clause put and passed.

Clause 35—Powers of Minister on default by local authority:

Mr. HEARMAN: I move an amendment—

That the following subclause be added:—

“(5) (a) Where, in the opinion of the Board, a local authority fails or neglects to carry out its duties, exercise its powers or perform its functions under the provisions of this Part of this Act, the Board may, if it deems it necessary, instruct a bush fire warden to take such action as he considers necessary to remedy the default or neglect.

(b) The Board may recover in a court of competent jurisdiction the amount of the expenses incurred by the warden in remedying the default or neglect of the local authority as a debt due by it to the Board.”

Unfortunately on occasions local authorities have not paid as much attention to the administration of this Act as they should. Many of the provisions have to be administered by local authorities, and if they fail to carry out their functions, the Act becomes ineffective. The other provisions in this clause give the Minister power to remedy defects covering individuals, but they do not provide a blanket power to deal with a local authority which is completely negligent. My amendment seeks to give the board the power to take certain action if, in its opinion, a penalty is warranted. Where a local authority falls down on its job and thus creates a distinct hazard in that district, then it is desirable that some action should be taken, and my amendment will give the warden the opportunity to take it.

The Bush Fire Control Board consists of 10 members, five of whom are nominated by local authorities, and the chairman is not one of them. Therefore the majority of its members represent local authorities. If, in the opinion of the board, a local authority is so negligent that action envisaged under this amendment is necessary, it means that the board can take the course indicated, and it can recoup itself for any expenses incurred by the warden. This can scarcely be regarded as a penalty; it merely gives the opportunity for a recoup of expenses.

The MINISTER FOR LANDS: There is a good deal of commonsense in this amendment. In the past quite a number of bush fire control officers have complained that they did not receive all the support they desired from local authorities. Seeing that the Bush Fire Control Board would be given the right to take action against a local authority, and seeing that the local authorities are represented by a majority on the board, the local authorities would be protected from any injustice. I do not oppose the amendment.

Amendment put and passed; the clause, as amended, agreed to.

Clauses 36 to 49—agreed to.

Clause 50—Coroner to hold inquiry when requested by certain persons:

Mr. NALDER: I move an amendment—

That the following subclause be added:—

(2) Where upon an inquiry held by the Coroner as provided by subsection (1) of this section, he finds that the cause and origin of the fire is due to any act done, or omitted to be done, by a Government instrumentality, then such Government instrumentality shall, notwithstanding the provisions of any Act to the contrary, be liable for damage, loss or injury suffered by any person as a result of the fire.

The subclause is self-explanatory and little need be said in support of it beyond emphasising the need for making everybody fire-conscious. The Bill imposes a responsibility on individuals for lighting a fire, but so far it is all one-sided. It is not necessary to detail the number of fires that have been started by employees of the Government. Reference has been made to nine fires in one area in the Harvey electorate.

The Minister for Lands: Were they proved? There were only nine in the whole State at that time.

Mr. NALDER: The Minister should check up on his information.

The Minister for Lands: I took it from the annual report of the Forests Department.

Mr. NALDER: I know of two in my electorate and one in Beverley.

Mr. Ackland: And there were some between Toodyay and Moora.

Mr. NALDER: I think the number must have been nearer to 99.

The Minister for Lands: No, it was nine.

Mr. NALDER: A ganger employed by the Railway Department admitted having set fire to a heap of sleepers in December when the fire hazard was dangerous. The fire got away and burnt thousands of acres of country. Probably he acted through ignorance, but the farmers had to bear the loss. Main Roads Department employees and telephone linesman should be required to accept responsibility.

The Minister for Justice: Would not your amendment mean a discontinuance of the railway service in your district?

[Mr. Moir took the Chair.]

Mr. NALDER: No, but it would bring home to those employees the need for exercising care. I believe that if the amendment were adopted the occurrence of fires would be reduced to such an extent that the measures provided in the Bill would not have to be resorted to.

The MINISTER FOR LANDS: The amendment is most unfair as it would put a Government department in an entirely different position from that of an ordinary individual.

Mr. Nalder: It would put them both on the same footing. Now, the departments take no responsibility.

The MINISTER FOR LANDS: No individual could be called upon to pay penalties as a result of a coroner's inquiry. Under the amendment, however, the matter would not have to go before a court, but on the say-so of a coroner, a Government instrumentality could be required to pay damages. I feel sure that the Leader of the Opposition would not approve of a department being placed in the position of having to pay damages and costs arising out of a fire in respect of which it was innocent because there might have been contributing factors.

Hon. A. V. R. Abbott: It would be liable now for negligence.

The MINISTER FOR LANDS: That is not the point. Government departments have acknowledged responsibility where it could be established.

Mr. Nalder: You say that a department has accepted responsibility?

The MINISTER FOR LANDS: Yes, where it could be proved that the department was responsible for damage. I repeat that this would place a Government department in an entirely different position from that of an individual under the measure, and therefore I cannot accept the amendment.

Mr. ACKLAND: The objective of the member for Katanning is to bring home to some Government employees a sense of responsibility. We have had too many instances of fettiellers and telephone linesmen burning during the time of severe hazard. Last year I had letters on two or three occasions from the Victoria Plains Road Board complaining that it could get no co-operation from the linesmen on the railways, who were causing fires. The same thing happened along the Amery-Northwards railway just before last Christmas, long after the burning period should have ceased. Unless the Minister can show some way to meet this difficulty, we ought to accept the amendment.

The MINISTER FOR LANDS: Mr. Chairman, would it be legally sound to provide in the measure power for taking action against the Crown?

Hon. A. V. R. Abbott: That is quite right. Look at Section 46 of the Constitution Acts Amendment Act.

Amendment put and a division taken with the following result:—

Ayes	14
Noes	15

Majority against 1

Ayes.

Mr. Abbott	Mr. Nalder
Mr. Brand	Mr. Nimmo
Mr. Cornell	Mr. North
Mr. Hearman	Mr. Owen
Mr. Hill	Mr. Thorn
Mr. Manning	Mr. Wild
Sir Ross McLarty	Mr. Hutchinson

(Teller.)

Noes.

Mr. Andrew	Mr. McCulloch
Mr. Brady	Mr. Norton
Mr. Hawke	Mr. Nulsen
Mr. Heal	Mr. O'Brien
Mr. Hoar	Mr. Rhatigan
Mr. Jamieson	Mr. Sleeman
Mr. Johnson	Mr. May
Mr. Lawrence	

(Teller.)

Pairs.

Ayes.	Noes.
Mr. Mann	Mr. J. Hegney
Mr. Bovell	Mr. Styants
Mr. Watts	Mr. Sewell
Mr. Yates	Mr. W. Hegney
Mr. Perkins	Mr. Kelly
Mr. Doney	Mr. Guthrie
Mr. Oldfield	Mr. Lapham
Dame F. Cardell-Oliver	Mr. Graham
Mr. Court	Mr. Tonkin

Amendment thus negatived.

Clause put and passed.

Clause 51—agreed to.

Clause 52—Saving of remedies:

Hon. A. V. R. ABBOTT: I mentioned this matter during my second reading speech.

The Minister for Lands: This is the wicked thing!

Hon. A. V. R. ABBOTT: I think it is. This is something which the Minister would not accept in the last amendment; he would not accept the responsibility of the Crown without negligence, but he says that private individuals should do so. I could never understand how farmer members could accept this responsibility. There was a case in South Australia where a man was sued for up to £50,000 for damages and, as a result, he went bankrupt. He was a substantial farmer but unfortunately, he lit a fire and, although he complied with all the provisions of the law in South Australia, the wind changed and, with a hot day following the lighting of the fire, it swept through a large area and he was held responsible for all the damage caused.

Hon. J. B. Sleeman: There must have been some negligence.

Hon. A. V. R. ABBOTT: No. If a man wants to burn clover and he obtains permission and takes every precaution but through some unfortunate act of God the fire escapes and sweeps through some ten miles of country, he is, in my view, liable for all damage caused. Why members want to preserve that common law right, I do not know. It is something inherited from the laws of England, which is quite a different country. It is not customary for farmers there to burn their holdings as part of their business; but as the member for Albany said, a farmer in this country has to burn and it is part of the ordinary risks a farmer has to take. So why should he have to insure the whole countryside against damage? I represent a city electorate and I am doing my best to protect any farmer who may be living in it.

Mr. May: There are some St. George's Terrace farmers.

Hon. A. V. R. ABBOTT: Yes, and there are some in Parliament, too. How any member, who represents a country electorate, can light a fire knowing that if he is unlucky—although he has complied with the law to the last degree—he can be liable for all consequent damage, I do not know.

Hon. J. B. Sleeman: What affect has Clause 64 on this?

Hon. A. V. R. ABBOTT: I do not know, but it would not help in this case.

The Minister for Lands: Have you always taken this attitude?

Hon. A. V. R. ABBOTT: Yes. As a matter of fact, on one occasion I repealed this particular provision but next year the Government reinserted it.

The Minister for Lands: They did indeed. And you were Attorney General.

Hon. A. V. R. ABBOTT: That is so.

The Minister for Lands: Then why do you want to strike it out now?

Hon. A. V. R. ABBOTT: I have given my reasons. One of them is that some unfortunate farmer could be absolutely ruined.

The Minister for Lands: I cannot see it.

Hon. A. V. R. ABBOTT: One of them will be unlucky one day.

The Minister for Lands: Have you any sympathy for the other farmers?

Hon. A. V. R. ABBOTT: I have.

The Minister for Lands: Then what are you going to do about it?

Hon. A. V. R. ABBOTT: I have a great deal of sympathy for a man who is run down by a motorcar and injured, but the driver is not responsible if there is no negligence on his part. It is just one of the risks that a person must take according to our way of life. If a farmer lights

a fire in his kitchen he does not have to take any precaution; he does not even have to burn around his house. Sparks can go up the chimney and burn out the whole countryside and no one can claim damages against him. But if he goes outside and lights a fire, after complying with every provision in the Act and taking every precaution, he is liable to be ruined. How any farmer can want that in the Act I do not know. There are heavy and savage penalties for those who take no precautions at all. But we still want to retain a provision that can absolutely crucify someone—and will, sooner or later.

The MINISTER FOR LANDS: I do not think it is a matter of crucifying anyone; it is a matter of justice for the poor chap who is on the receiving end of the stick.

Hon. A. V. R. Abbott: Is not that a risk he takes being a farmer and knowing that his neighbours have to burn?

The MINISTER FOR LANDS: Seeing his family put out in the bush and himself ruined because someone lights a fire which gets away? It is not a question of crucifying anyone. It is a question of getting some sort of justice and compensation for the man who is on the receiving end.

Mr. Nalder: You were not worried about that when we were discussing Clause 18.

The MINISTER FOR LANDS: That dealt with the question of accidents and had nothing to do with the principle of a claim at law for damages as the result of a fire.

Mr. Nalder: The farmer has to pay.

The MINISTER FOR LANDS: It has nothing to do with damages.

The CHAIRMAN: Order! The Minister is discussing Clause 52 and not Clause 18.

The MINISTER FOR LANDS: That is so; or I am supposed to be. When the member for Mt. Lawley was Attorney General his Government struck out this common law provision. It said that, in its opinion, the man who suffered damage should not have an opportunity of going to law to recover damages, provided the person concerned had done everything required of him under the Act. There was such an uproar from country districts that the following session that was altered and the provision was reinserted in the Act. That is what is contained in this Bill.

Hon. A. V. R. Abbott: That is so.

The MINISTER FOR LANDS: The member for Murray will remember that when Premier he went so far as to suspend Standing Orders on the 21st September, 1949, to pass a Bill with this provision. That was after 12 months' experience of the provision being struck out.

Mr. May: Who was Attorney General in those days?

The MINISTER FOR LANDS: I think it was the member for Mt. Lawley.

Hon. A. V. R. Abbott: Quite correct. He was.

The MINISTER FOR LANDS: The then Premier, in moving for the suspension of Standing Orders, said—

The Bush Fires Act Amendment Bill is to make provision for an amendment in regard to the lighting of fires and certain damages that might arise from fire lighting.

The then Minister for Lands, who introduced the Bill, had this to say—

The main purpose of the Bill is to reinsert in the Act certain provisions which were deleted by amendments passed last year.

He further went on to say—

I refer to the fact that, notwithstanding that a person complied with all the provisions laid down in the Act, he was still liable for a civil action against him for damages as a result of his action, even though he acted within the law and was not negligent in any way.

Further on he said—

It has been found that the provisions which were deleted from the Act last year provided some deterrent to those persons who are always inclined to take a risk, and who light fires on an unsuitable day, notwithstanding the fact that they have complied with the provisions of the Bush Fires Act.

He also said—

Local authorities, the Rural Fires Prevention Advisory Committee, and farmers' organisations generally, have requested that the deterrent—the liability to a claim for damages—should again be included in the Act.

The member for Stirling at that time was well up with the actual position, because on the 1st August, 1949, he requested the Under Secretary for Lands to take steps to have provisions reinserted in the Act, as the result of his having been present at a largely attended meeting of delegates from various parts of the Great Southern districts from Katanning to Mt. Barker and eastwards and westwards thereof. That was the experience of the previous Government and I think it made a sound decision when it decided to put this provision back.

Hon. L. Thorn: Did I say what you read out just now?

The MINISTER FOR LANDS: Yes, and for once the hon. member knew what he was talking about. It would be a retrograde step to strike out something

that would prevent a man from appealing under common law, which is his birthright, for the recovery of damages. If members consider the position, they will agree that it would be a deterrent to a man who was careless or negligent or had criminal intent.

Hon. A. V. R. Abbott: It would not.

The MINISTER FOR LANDS: It would if he knew his victim could sue him under common law for the recovery of damages. Somebody ought to pay for the lighting of a fire that gets away and does untold damage.

Mr. HEARMAN: I mentioned this matter during the second reading. Had the previous amendment been accepted, I would have agreed to this. But, by some peculiar method of reasoning, the Minister while he seems to be concerned about the victim of a fire, thinks it apparently makes a great deal of difference if it is the Railway Department men that start the fire. What is sauce for the goose is sauce for the gander. We ought either to bring Government instrumentalities into line with the responsibilities of the private individual or, if we are not prepared to do that, we should not ask the private individual to accept greater responsibilities than the Government is prepared to shoulder.

The Minister for Lands: I do not think we should confuse the issue.

Hon. A. V. R. Abbott: It is not confusing it, but making it clearer.

Mr. HEARMAN: Had the Minister said, "It is good enough for the Government to be put on the same footing as the individual," we could have left this clause alone. But seeing the Committee has decided the Government is not to be responsible for any damage it may do—

The Minister for Lands: We never decided that.

Mr. Ackland: That is the effect of it.

Mr. HEARMAN: If the Minister wishes he can split the hair. If that is not what the Committee decided, I would like to know what it did decide. The victim does not care who lights the fire; he is concerned about the loss of his property and wants to be indemnified. I cannot understand the Minister's crocodile tears on behalf of the victim. The Minister's argument is not consistent. The Government should accept the same responsibility as a private individual.

Mr. ACKLAND: The Minister is very anxious to tell the Committee of the action that was taken by the previous Government in this matter. He forgets, however, that the Act with which we are dealing now is entirely different from the one that was being administered at the time. This measure lays down some stringent conditions for those who light fires. Previously

a break of 10ft. was necessary, but now it must be 10 chains wider than it was before. Clause after clause provides that anyone who lights a fire must make provision by doing certain things. If this clause remains, it will stop progress.

The Minister for Lands: We are trying to stop fires.

Mr. ACKLAND: If the provisions of the Act are complied with, it is an admission of guilt if the fire gets away, and the people concerned will not do it. They will make provision for a fire and let it get away at any time. It is difficult to police. If the Minister insists on this, he will bring about something he does not intend to.

The Minister for Lands: I must insist.

Mr. ACKLAND: On numerous occasions in answer to questions I have asked, I have been told that the policy of the previous Government is being carried out. I wonder why there should be a change of government at all if the policy of the previous Government is to be continually carried out. Conditions under the proposed measure are entirely different, and there is justification for our wanting this vicious clause taken out.

Hon. A. V. R. ABBOTT: Why does the Minister exempt Government employees from the provisions of this clause? In the last subclause mention is made that the provisions of the last preceding subsection "shall not apply to Section 64 of this Act." Clause 64 says that certain Government officials may light fires, but the Minister does not want them to make any provisions. Let us look at the clause in a commonsense way. I do not want to protect the man who is negligent and is evading his responsibilities; I wish to protect the man who takes every precaution and carries out the provisions of the Act. In doing so, he is not negligent, but by some act of God the fire gets away and does tremendous damage and as a result he is completely ruined. The nature of the damage is so great that the Government will not take this responsibility.

Perhaps there should be an insurance scheme but I do not think the Government railways should be forced to insure any more than the private individual should be forced to insure. There is already sufficient deterrent in this measure to provide for firebugs and if a man does not comply with the terms of the measure he is liable to five years' imprisonment. Is not that sufficient deterrent? As the member for Moore points out, the Act and the Bill are not comparable. There was no provision relating to five years' imprisonment in the previous Act.

Mr. Ackland: And no conditions like it.

Hon. A. V. R. ABBOTT: A man may get permission to burn clover, a strong east wind blows up and the fire gets away.

Under this measure, he is liable for the whole of the damage. When a farmer drives his motorcar along the road and meets with an accident, he knows he cannot recover damages if there was no negligence on the part of the other party. That is a risk that must be taken. It is an old archaic law and stems from a man who brought tigers on to his property, and though he did everything to keep them under lock and key they got away, and he was liable. That principle should not be followed in this measure. There is provision made for sufficient deterrent.

The MINISTER FOR LANDS: Because we have increased the penalties in this Bill, members think that the whole measure is vicious. I do not apologise for increasing the penalties. The previous Government and the Bush Fire Advisory Committee had experience over the years of the courts imposing the lowest possible fines on the defendants in almost every case. Accordingly all those interested in the matter said that the Act was no good because it was no longer a deterrent. That had been the experience of the previous Government over six years.

Hon. A. V. R. Abbott: I doubt if they understand the risk; they think they are liable if they are negligent.

The MINISTER FOR LANDS: We have done everything possible to provide a deterrent, as the hon. member knows. The whole experience in the past has been contrary to that. While we are making provisions to deal with people who light fires, members opposite want no precautions to be taken to ensure that the person who suffers as a result of a fire has a right to approach the court.

Hon. A. V. R. Abbott: Whether there is any negligence or not.

The MINISTER FOR LANDS: That does not matter. Damage has been caused; but it does not mean to say that the damage would automatically be recouped.

Hon. A. V. R. Abbott: Why not?

The MINISTER FOR LANDS: For the simple reason that there might have been some contributory cause on the part of the man. There are facets which the court would have to determine; and it would have to decide whether to charge a small or a large sum by way of damage or expenses, as the case might be. It is laid down that the person on the receiving end should have an opportunity of presenting his case at law. The hon. member wants to take that right away from him.

Hon. A. V. R. Abbott: No, I do not.

The MINISTER FOR LANDS: What does the hon. member want to do? He wants to strike out this provision, which is the only one that enables a man who is the victim of a fire to approach the court.

Hon. A. V. R. Abbott: He can approach the court if there has been any negligence.

The MINISTER FOR LANDS: That is a different matter altogether. This clause makes provision that under no circumstances shall we take away from a man his right to approach the court. That is good enough for me. It was good enough for the committee. It was also good enough for the hon. member's Government to reinsert such a provision in the quickest possible time after it had had experience of the Act when the provision was not contained in it.

Mr. Ackland: Under an entirely different set of conditions.

The MINISTER FOR LANDS: They are altered only in so far as the severity of the penalties is concerned. There is no difference in principle. The only difference is in regard to the circumstances, and the penalties provided as a deterrent. Whether we decide to strike out this clause has to be determined on a matter of principle, and not on the relationship of this Bill to the old Act. We have to decide whether it is right and proper for any person who suffers as a result of a fire to have the opportunity to approach a court to have some sort of claim established by way of damages.

I am not so surprised at the member for Mt. Lawley wanting to strike this out; but I am surprised at the support he may be getting from country members whose own farms may be in danger, and who may some day be on the receiving end of the stick. They are going to say, "That is all right by me. The chap who lit this fire complied with the Act, and I am happy about it." I think that the matter should go before some authority to determine how much, if anything, can be recovered by way of damages. Surely that is a man's birthright.

Mr. HEARMAN: The Minister has stated what would be the position if a member such as I had his property burnt out. I think I mentioned earlier that for three years running fires spread from my neighbour's property to my own. I have not attempted to take action. I would ask the Minister to be realistic and state just what chance I would have of obtaining damages even if this clause were agreed to, in view of the fact that my neighbour does not admit having lit the fires.

The Minister for Lands: You should have the opportunity.

Mr. HEARMAN: Unless one can prove that a man has lit a fire, one has no claim against him. The only man one can prove lit a fire is the one who has complied with the requirements of the Act. Against the man who does not do so, there is very little protection.

Clause put and passed.

Clauses 53 to 56—agreed to.

Clause 57—Duties of police officers, bush fire control officers, etc.:

The MINISTER FOR LANDS: There is a slight mistake in the printing of the Bill. Members will observe that the marginal note refers to the duties of police officers, bush fire control officers, etc. In the clause there is no mention of members of the Police Force, as had been intended. I therefore move an amendment—

That the words "a member of the Police Force" be inserted at the beginning of paragraph (a) in line 2, page 51.

Amendment put and passed; the clause, as amended, agreed to.

Clauses 58 to 65—agreed to.

Progress reported.

House adjourned at 10.10 p.m.

Legislative Council

Wednesday, 22nd September, 1954.

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The PRESIDENT took the Chair at 4.30 p.m., and read prayers.

QUESTIONS.

EDUCATION.

As to Schools, Tuart Hill-Mt. Yokine Area.

Hon. A. F. GRIFFITH asked the Chief Secretary:

(1) In view of the rapid growth of the Tuart Hill-Mt. Yokine area, can the Minister inform the House what plans the Government has for the provision of new schools in this locality?