

**DEPARTMENT OF WATER AFFAIRS AND FORESTRY  
CHIEF DIRECTORATE: FORESTRY  
LEGISLATION PROJECT**

**GUIDE TO THE INTERPRETATION AND IMPLEMENTATION  
OF THE NATIONAL VELD AND FOREST FIRE ACT NO. 101 OF 1998**

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## INTRODUCTION

1. This document is a set of guidelines to follow when interpreting and applying the provisions of the National Veld and Forest Fire Act. These guidelines should help forest officers and others when they follow the provisions of the Act. But the guidelines also help those involved in veldfires to understand how the Act relates to other policies and laws, such as the National Disaster Management Act, and the Conservation of Agricultural Resources Act.
2. Those using these guidelines should begin by reading the whole text, preferably with a copy of the Act at hand for quick reference. After this first reading, users can find guidelines pertinent to whatever issue they may have by using the Table of Contents or the index to the document. Users should also follow the standard terminology in Appendix 1 for a consistent understanding of this document.

## GENERAL CONSIDERATIONS: THE CONTEXT

### *Constitutional considerations*

3. **The Bill of Rights** in the Constitution applies to all law and binds the legislature, the executive, the judiciary and organs of state. This includes any department of state or administration in the national, provincial or local spheres of government, or a party to which legislated powers or duties have been delegated or assigned.
4. **Freedom of association** (section 18) is a right that affects the provisions of the Act in that membership of fire protection associations (FPAs) by ordinary land-owning citizens must be voluntary.
5. The **environment right** (section 24) gives everyone the right to an environment that is not harmful to their health or well-being, and to have the environment protected, while promoting justifiable economic and social development. This is an important consideration for veldfire management.
6. The **right to just administrative action** (section 33) gives everyone the right to administrative action that is lawful, reasonable and procedurally fair, and everyone is entitled to a written explanation in cases where their rights have been adversely affected. This means that official actions and decisions must be carefully considered and all relevant principles and obligations taken account of in decisions affecting individuals.
7. The chapter on **co-operative government** requires all spheres of government to adhere to the principles of co-operative government. These include (i) providing effective, transparent, accountable and coherent government for the Republic as a whole (ii) respecting the constitutional status, institutions, powers and functions of government in the other spheres (iii) not assuming any power or function except those conferred on them in terms of the Constitution (iv) that organs of state will exercise their powers and duties in a manner that does not encroach on the integrity of government in another sphere and (v) organs of state will co-operate with one another in mutual trust and good faith. This chapter clearly has important implications with respect to the implementation of the Act.
8. **Schedule 4** determines that fire fighting services is a functional area of competence in the local government sphere.

## ***Why a new Act was passed***

### **Veldfires in South Africa**

9. Veldfires (that is, veld, forest and mountain fires – in terms of the Act) are a persistent problem in South Africa. They frequently cause emergencies, and often grow to disastrous proportions. At the same time, veldfires are natural – they occur as part of the normal process of events in grassland, woodlands and fynbos, and even sometimes in natural forests. They have occurred since time immemorial, caused naturally by lightning and in the Cape mountains by falling rocks. The earliest humans began to use fire a million or more years ago, and modern humans have been using veldfires for hunting and for managing their environment for probably more than 100 000 years. We continue to use fire in veld and forest, to manage grazing and habitats, and as a measure to help prevent wildfires.
10. Veldfires are a problem because they pose a risk to our social, economic and environmental assets. Over time we have become more and more vulnerable to this risk. This is because urban and peri-urban human settlements steadily expand, exposing lives and homes to fires in the neighbouring veld, and simultaneously increasing the chance of veldfires being started. As our rural areas have been developed, especially through plantation forests and other plantations such as sugarcane, more economic assets have been created that are vulnerable to losses in fires. And as our people have become more urbanised, fewer of us understand veldfires, and so the chance of our starting them or becoming victims to fires, has increased.
11. But improper management of veldfires is also an environmental risk because it is likely to lead to loss of biodiversity and other forms of environmental degradation.
12. By nature, veldfires do not respect property or boundaries. Without preventive measures, veldfires will continue to burn for as long as the weather is favourable and there is vegetation to burn. Anyone owning land has the first responsibility to control fires on his or her own land. But when fires burn in severe conditions they quickly extend beyond any one property, and become a problem that cannot be handled by individuals, but can only be controlled by joint, co-ordinated efforts. Veldfires are thus a matter of common concern. For this reason, in South Africa as in other countries, effective policies and plans for preventing and combating veldfires must be clear about individual responsibility as well as about co-operative and co-ordinated roles and responsibilities.

### **Previous policy and law**

13. Khoisan and Bantu people in South Africa have had customary arrangements about the control and use of fire for centuries.
14. Very soon after their arrival at the Cape in the seventeenth century European settlers responded to the risks and mismanagement of veldfires by issuing decrees against the starting of veldfires.
15. The first statute designed to control veldfires was the Forest and Herbage Preservation Act of 1859 of the then Cape Colony. This was superseded by the Forest Act of 1888, which provided for the prevention and combating of veldfires. A series of forest and related statutes followed. Requirements for firebreaks date back to the last quarter of the nineteenth century. The Natal Act of 1895 required firebreaks 30 feet wide on either side of the common boundaries in about 40 districts. Statutory law governing veldfires broadened for example with the passage of the Soil Conservation Act of 1946 (later superseded by the Conservation of Agricultural Resources Act – see below) and the Mountain Catchment Areas Act (see also below).

16. The Forest Act of 1984 captured much of the historical developments regarding the prevention and combating of veldfires. It included provisions for example for the clearing of firebreaks on common boundaries, prohibitions on fires in the open air during periods of high fire hazard, and the establishment of fire control committees.
17. Nevertheless the provisions of the Forest Act reflected a historical situation that no longer exists. It later applied only to the then Republic of South Africa, while diverse and fragmentary legislation arose for the so-called homelands. It was written at a time when national government had substantial capacity for management, throughout most of South Africa. Since then, much of the capacity had been transferred, for example, to the provinces by devolution in 1986 and to the state South African Forestry Corporation Ltd (SAFCOL) in 1994. Current policy overall, and the relationships between the different spheres of government require legislation designed to allow authority to be exercised at the most appropriate level, in this case, locally. In addition, there is a progressive policy shift towards community-based natural resource management, to promote local sustainable development, within a framework of leadership, strategy and guidance from the national and provincial spheres. Old legislation did not support this new circumstance.

### **Modern development of forest policy and law**

18. The process of developing new forest policy that would be fit to the purpose of reconstruction and development in South Africa began in late 1994. Cabinet approved the White Paper on Sustainable Forest Development, government's policy for the forest sector, in March 1996. The goal of policy was to promote a thriving, sustainable and equitable forest sector. This required new statutory law, to conform to the requirements of the Constitution, and to provide a legal framework for sustainability, as well as bringing good order to many problems arising from previous administrations.
19. The process of developing new forest law in the new constitutional framework quickly showed that we needed a separate statute for veld and forest fires, rather than having the forest law include provisions for veldfires. At the same time, government did not want to neglect the opportunity to pass better law for the prevention and combating of veldfires and so proceeded with the National Veld and Forest Fire Act at the same time as it developed the National Forests Act.

### ***What is reasonable?***

20. This Act like others often mentions 'reasonable' requirements, for example, in section 13(a) on the requirements for firebreaks. This is because for many things it is not appropriate for legislation to prescribe detailed requirements, but rather allow for local circumstances and accepted practice to determine what may be reasonably required in any given case. For example, a court when hearing a case will ask for such things, "What would a reasonable person have done in these particular circumstances?" before reaching a decision on the case. This means that for these things the Act must be applied after careful consideration of the particular circumstances, and what is reasonable in one place may not be in another, or at another time. Box 1 summarises the guidelines followed in court.

#### **Box 1: The courts' test for reasonableness**

When a court must decide whether someone has acted reasonably, it will apply several tests. This says that the reasonable person is:-

- the average man or woman-
- not reckless or overcautious-
- aware of his or her surroundings-
- aware of the dangers inherent in certain activities.

If the person concerned also has a particular expertise (for example, a farmer who has dealt with veldfires regularly), then they are measured against the conduct of the reasonable expert.

21. The Act often employs the phrase 'on whose land a veldfire may start or burn or from whose land it may spread'. Reasonably, this means that the provisions of the Act must apply only in cases where the chance of a veldfire starting and spreading, and the risks to life, property and the environment are big enough to justify the measures intended by the Act. This level of risk is impossible to specify generally; it has to be judged for the case at hand, by the owner as person with first responsibility, and by the parties that he or she must co-operate with. This is an important reason why the Act allows for local solutions to veldfire management problems.

### **Box 2: Definition of risk**

What do we mean by risk? Defined simply, risk is the chance of some event of a certain consequence. Here, we define veldfire risk as the chance of a veldfire igniting, spreading and causing damage to one or more assets, measured in terms of likelihood and consequence.

### ***Relationship with other statutes***

#### **The Fire Brigade Services Act, No. 99 of 1987**

22. The Fire Brigade Services Act provides for the establishment, co-ordination and standardisation of fire brigade services. Local authorities, that is, municipalities, are empowered to establish and maintain a fire brigade service, intended to be employed for the following purposes
- a) preventing the outbreak or spread of a fire
  - b) fighting or extinguishing a fire
  - c) the protection of life or property against a fire or other threatening danger
  - d) the rescue of life or property from a fire or other danger
  - e) subject to the provisions of the Health Act, the rendering of an ambulance service as an integral part of the fire brigade service
  - f) the performance of any function connected with any of the matters referred to in paragraphs (a) to (e).
23. Each fire brigade service must only be employed inside the area of jurisdiction of the municipality concerned, unless the municipality is requested or in terms of a co-operation agreement has agreed to perform those services outside its area.
24. Section 12 deals with entering into mutual co-operation agreements between controlling authorities, in terms of which the parties co-operate on conditions agreed upon, including the rendering of its service inside or outside its area or inside or outside the province in which its area is situated. A controlling authority may also enter into an agreement with other persons in terms of which the controlling authority undertakes to make available its service to that person, or in terms of which that person undertakes to make available material or equipment to the controlling authority.
25. This Act enables local authorities, after consultation with the Board, to make by-laws or regulations for its area of jurisdiction regarding any matter that the local authority deems necessary or expedient to the effective employment of its service.

26. The Local Government: Municipal Structures Act, No. 117 of 1998, assigns fire fighting services to district municipalities, though a local municipality may provide the service as an agent of the district. Thus, while this Act applied previously largely to cities and towns, it now applies to whole country.

### **The Disaster Management Act, No. 57 of 2002**

27. The Disaster Management Act establishes a National Disaster Management Centre (NDMC), with the objective of promoting an integrated and co-ordinated system of disaster management, with special emphasis on prevention and mitigation, by organs of state in different spheres, statutory functionaries, and other role-players involved in disaster management, and communities. Other relevant duties and requirements are that it:
- a) must operate within the national disaster management framework
  - b) guide disaster management plans and strategies
  - c) manage the co-ordination and management of national disasters.
28. The Act requires sectoral departments to develop strategies and plans for disaster management within their spheres of competence.
29. It establishes provincial and local disaster management centres, (the latter in districts), whose purpose and function are similar to those of the NDMC, but with the obvious difference of geographical scope. They are to develop disaster management frameworks, as well as strategies and plans, on the same lines as those of the national centre, and consistent with the national disaster management framework.
30. The Act defines 'disaster management' to mean a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at—
- a) preventing or reducing the risk of disasters
  - b) mitigating the severity or consequence of disasters
  - c) emergency preparedness
  - d) a rapid and effective response to disasters; and
  - e) post-disaster recovery and rehabilitation.
31. This means that disaster management is the integrated management of the whole emergency cycle, from prevention to recovery.
32. The national disaster management framework, which the Minister will prescribe as a set of regulations, is a key instrument relevant to veldfire management, in that it will, among other things:
- a) provide a transparent, coherent and inclusive policy on disaster management appropriate for the Republic as a whole and
  - b) set out an overall approach to measures that reduce the vulnerability of disaster-prone areas, communities and households, that is, a risk assessment and management framework.
33. Key co-operative government arrangements in the provisions of the Act include:

- a) the Intergovernmental Committee on Disaster Management, which is accountable and must report to Cabinet on the co-ordination of disaster management among the spheres of government; and must advise and make recommendations to Cabinet on issues relating to disaster management and on the establishment of a national framework for disaster management;
  - b) the National Disaster Management Advisory Forum, which must make recommendations concerning the national disaster management framework to the Inter-governmental Committee on Disaster Management;
  - c) equivalent structures in the provincial and local spheres.
34. The Department of Water Affairs and Forestry will fulfil its role in the new disaster management system through representation on these structures and by contribution to the national disaster management framework, as well as the preparation of the strategy and plan for veldfires.
35. Disaster management centres are required to assess and to invoke the contingency and emergency plans in the local disaster management plan if any emergency becomes or threatens to become disaster. Note that disaster management plans can and often must take effect before a disaster happens, that is, when the authorities judge that there is a threat of one. Veldfire management strategies and plans will need to contain these contingency and emergency plans for veldfires.
36. Note also that the Disaster Management Centre will not fight veldfires. Its job is to be sure that disaster management plans are in place, to set the plans in motion, and to see to co-ordination. Owners of land, fire services, and fire protection associations actually fight the veldfires.
37. The Department of Provincial and Local Government, which administers the Disaster Management Act, has not yet deployed the Act fully. A key step is the national disaster management framework, which will give consistency to the deployment of the disaster management function; the drafting of this framework is currently underway. Without this framework there is, for example, no consistency between municipalities in the assessment of veldfire risk in each IDP [integrated development plan].
38. In the meantime, provinces and district municipalities are in different stages in the deployment of disaster management, some quite far advanced. In certain regions, a close working relationship between disaster management, fire services and the Department of Water Affairs and Forestry has been established and has led to substantial progress in the early steps for the institutionalisation of veldfire management, especially stimulating and guiding the formation of FPAs. However, the situation overall varies, from districts where this is in progress, to others, with high fire risk, where there is little or no action.

### **The Conservation of Agricultural Resources Act, No. 43 of 1983 (CARA)**

39. This Act is the principal piece of legislation regulating the conservation and use of soil, vegetation and to some extent, water, outside declared mountain catchment areas and urban areas. It provides for control over the utilisation of natural agricultural resources in order to promote the conservation of the soil, the water resources, and the vegetation and the combating of weeds and invader plants. The 2001 regulations on weeds and invader plants, that is, invasive alien plants, are stringent and affect veldfire management.
40. The Act contains provisions dealing specifically with the prevention and control of veldfires. Land users are prohibited from burning veld or grazing burnt veld without the written authorisation of the executive officer, as defined in the regulation. An application for such



permission must set out the burning or grazing motivation and be accompanied by an acceptable management plan. See Box 3 for details.

41. The agriculture authorities have issued guidelines for the burning of veld for each of several different regions within each province, which agriculture officers follow when issuing burning permits. These are closely aligned with the extant provisions of the Forest Act, and will need alignment with the National Veld and Forest Fire Act when fully implemented.

**Box 3. Regulation 12 in terms of the Conservation of Agricultural Resources Act: Prevention and control of veld fires**

12. (1) Except on authority of a written permission by the executive officer, no land user shall—
- (a) burn any veld on his farm unit; and
  - (b) utilise as grazing any veld on his farm unit that has burned.
- (2) The provisions of regulation 2 (2) and (3) shall apply *mutatis mutandis* with regard to an application for a permission referred to in subregulation (1): Provided that—
- (a) such application shall be submitted at least 30 days prior to the intended date of burning or grazing, as the case may be; and
  - (b) a permission referred to in subregulation (1) (a)—
    - 7(i) shall not be issued unless the executive officer is satisfied that the burning of veld is an accepted veld management practice in the area within which the farm unit concerned is situated, or that exceptional circumstances prevail on the farm unit concerned;
    - (ii) shall be issued only if the veld concerned is to be burned during periods of which particulars are available at the extension office concerned; and
    - (iii) shall be issued to the provisions of the Forest Act, 1968 (Act 72 of 1968).

**Definitions**

**Executive officer:** the executive officer referred to in Section 4 of CARA, that is, an officer of the department [National Department of Agriculture] designated as executive officer by the Minister [who] shall exercise the powers and perform the duties conferred or imposed upon the executive officer by or under this Act or a scheme.

**Veld:** means land which is not being or has not been cultivated and on which indigenous vegetation, or other vegetation which in the opinion of the executive officer is or can be utilised as grazing for animals, occurs.

**The Mountain Catchment Areas Act, No. 63 of 1970**

42. This Act provides for the conservation, use and management of soil, vegetation and water within land declared as a mountain catchment area. The Minister may establish fire protection committees for any mountain catchment area. The Director-General may establish a fire protection plan for any mountain catchment area. These plans must include provisions relating to the regulation or prohibition of veld burning, the prevention, control and extinguishing of veldfires and the powers and functions of the fire protection committee in relation to the execution of the fire protection plan.

43. The Department of Environmental Affairs and Tourism administers this Act, but management is assigned to the relevant provinces.

**The Atmospheric Pollution Prevention Act, No. 45 of 1965**

44. Different local authorities have declared smoke control zones in terms of Section 20 of this Act. Although the Act does not apply to the emission of smoke caused by natural veldfires, it is applied when that smoke is caused by the use of fire as a management practice e.g. when the fire is used to burn slash in forest plantations.

45. If any occupier of premises makes representations to a local authority regarding smoke emissions that cause a nuisance, the local authority is obliged to serve an abatement notice on the person responsible for that nuisance. Failure to comply with the provisions of the notice constitutes an offence.
46. A new Act is due to replace the Atmospheric Pollution Prevention Act. The current draft is called the Air Quality Management Bill.
47. The Bill provides for a national framework for achieving the object of the statute, which will bind all organs of state. It requires each national department or province to submit environmental implementation plans and environmental management plans in terms of the National Environmental Management Act. These will be used to prepare air quality management plans. It provides for the listing of activities that result in atmospheric emissions, which would then require emission licences.
48. Since smoke from veldfires is a concern in some municipalities, once enacted, this Bill would require the Department of Water Affairs and Forestry to effectively participate in the development of the national framework and its preparation of an air quality management plan for veldfire emissions that together provide a fair and workable regulatory environment for veldfire management.

### **The National Environmental Management, Act No. 107 of 1998**

49. The National Environmental Management Act (NEMA) lays down 20 principles and eight constituents of the principle of sustainable development which must be considered by an organ of state (and therefore any official) when making any decision concerning the protection of the environment and must guide the interpretation, administration and implementation of any law concerned with the protection and management of the environment (section 2 of NEMA). Clearly, this includes the National Veld and Forest Fire Act.
50. Of these principles, those requiring special attention in veldfire management include those that:
  - a) require avoiding, minimising or remedying (i) disturbance to ecosystems or loss of biodiversity, (ii) pollution or degradation of the environment, (iii) disturbance of landscapes and sites that constitute the nation's cultural heritage and (iv) require caution when negative impacts on the environment and on people's environmental rights are possible
  - b) require integrated management of the environment
  - c) require responsibility for the environmental health and safety consequences of a policy, programme or project
  - d) require participation by stakeholders in environmental governance and
  - e) require special attention to sensitive, vulnerable highly dynamic or stressed ecosystems.
51. Section 30 of NEMA deals with emergency incidents, which are defined as 'an unexpected sudden occurrence...including a fire... leading to serious danger to the public...' The Act imposes certain obligations on the person responsible for an incident and he/she is strictly liable for taking measures to contain or minimise the effects of the incident, undertaking clean-up procedures and remedying the effects of the incident.

52. It requires public authorities to authorise or oblige the taking of specific measures to reduce, minimise or rehabilitate harm caused. It provides for a hierarchy of persons who can act to respond to an emergency. A director-general of a national department may only take steps if the Director-General of the Department of Environmental Affairs and Tourism or the relevant municipal authority or provincial government has not taken them. Therefore, NEMA charges the municipality with jurisdiction as the principal public agency responsible for directing measures to remedy the effects of an emergency incident, such as a fire. This is subject to two provisos, to avoid jurisdictional conflict: first, that the local authority has jurisdiction over that area and second, if it is necessary to do so in the circumstances and no other public agency has yet taken such steps.
53. However, the relevant authority may remedy the effects of the incident only under certain circumstances. These include failure of the responsible person to comply with a directive ordering him or her to do so, or if there is uncertainty as to who the responsible person is or if any immediate risk of serious danger to the public or of potentially serious detriment to the environment arises because of the incident. In these circumstances, the relevant authority is entitled to claim reimbursement of all reasonable costs incurred. Relevant authorities are also required to prepare comprehensive reports on the incident and these must be made available to several role-players, including the relevant fire prevention service and the provincial head of department or municipality.
54. NEMA gives effect to the environmental right in the Constitution. It codifies principles of sustainable development, which must be considered in any official decision; the Minister must apply these principles when applying the National Veld and Forest Fire Act. Section 30 deals with emergency incidents, which are defined as 'an unexpected sudden occurrence...including a fire... leading to serious danger to the public...' The Act imposes certain obligations on the person responsible for an incident and he or she is strictly liable for taking measures to contain or minimise the effects of the incident, undertaking clean-up procedures and remedying the effects of the incident. It obliges public authorities to authorise or oblige the taking of specific measures to reduce, minimise or rehabilitate harm caused.
55. The subordinate statute on biodiversity, now the Biodiversity Act, No. 10 of 2004, is key in determining the way the National Veld and Forest Fire Act is implemented. The Department of Water Affairs and Forestry will need to ensure that biodiversity planning (Chapter 3 of the Biodiversity Act) takes account of veldfire management requirements, and that the veldfire management strategies of FPAs and the veldfire management elements of disaster management frameworks, strategies and plans comply with biodiversity planning.

### **Occupational Health and Safety Act, No. 85 of 1993**

56. The Occupational Health and Safety Act requires employers to meet minimum standards of occupational health and safety, including safety procedures and safety clothes and equipment.

### **Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993**

57. Section 25 of this Act provides for compensation to an employee who meets with an accident during training for or performance of any emergency service, including fire-fighting, if he or she is acting with the consent of his or her employer; this means that that FPAs should obtain standing consent from owners to engage employees in fire-fighting. This Act also requires employers to register with the Compensation Commissioner (Section 80).

### **Local authority legislation**

58. There are many by-laws administered by local authorities that have a bearing on veldfire management.

## CHAPTER 1 OF THE ACT: INTRODUCTORY PROVISIONS

### *Purpose*

59. The stated aim of the Act, that is, 'to prevent and combat veld, forest and mountain fires throughout the Republic', is plain. The fires are specified as "veld, forest and mountain fires" to distinguish the scope of the Act as excluding fires in built-up areas, and we refer to them as veldfires (see Terminology).
60. Note that section 1(2) emphasises that the Act provides for the institutions, methods and practices for achieving its purposes, that is, it is principally enabling rather than prescriptive. However, the Act does place an enforceable responsibility on each and every owner of land where there is a risk of veldfire to take certain precautions to prevent and combat veldfires.

### *Interpretation*

61. The section on interpretation gives the definitions to be followed in implementing the Act. These must be followed carefully, noting that sometimes a definition in the Act may differ from one in another statute, or from common usage.
62. In all cases the definitions are plain, but some deserve comment.
63. '**Community**' is defined in section 2(1)(ii) to include any group exercising communal rights on land, and through the definition in section 2(1)(xiii)(b), represented by their executive body as an owner in a FPA, while also carrying the obligations of landowners as set out in Chapters 4 and 5.
64. The Act defines '**fire**' as including a veldfire (defined in turn as including a veld, forest or mountain fire in section 2(1)(xix)) because the term is sometimes used to mean other fire, but must include all fires for the purposes of court actions.
65. '**municipality**' has the meaning given in the Local Government Transition Act. The important point is that all land within the Republic will fall within the jurisdiction of one or other form of municipal (local) government, whether District or local, and fires will be everywhere subject to the provisions of the Fire Brigade Services Act. The Department of Provincial and Local Government can give details of boundaries, or you can access these at [www.demarcation.org.za](http://www.demarcation.org.za)
66. Note that "**owner**" means any landowner with title deed as well as: a lessee or other person legally controlling land, a community, the manager of State land, and the chief executive officer of any local authority, or their duly appointed agents in the cases of State land (including SANDF land) and local authorities (section 2(1)(xiii)). Note also that section 2(5) allows for the case where there may be more than one owner of the land, and thus where one of the several owners may take on the duties imposed by the Act.

## CHAPTER 2 OF THE ACT: FIRE PROTECTION ASSOCIATIONS

### *Introduction*

67. The Act provides for fire protection associations as bodies that will replace the fire control committees established in terms of the Forest Act of 1984. This is because (a) fire control committees though successful in certain areas in the country, could not be established in many places where they were needed because of the perceived administrative burden attached to maintaining them, and (b) of the need to comply with the right to freedom of

association, that is, to create a supporting environment for voluntary formation of the institutions needed to collaborate locally in preventing and controlling veldfires.

68. The Act provides for FPAs for two reasons: (a) veldfires often become emergencies because they threaten life and assets on the property where they have started, or when they spread, or threaten to spread, beyond the boundaries of any one property, and (b) require co-operation to manage the conditions that determine their occurrence, to prevent and control veldfires, and to use controlled burning for environmental and other purposes. Effective management of veld-fires requires organisational structure, strategy, plans, information, networks, skills, and equipment that can seldom be provided adequately by any one landowner alone. Also, government cannot take on the duties and responsibilities of landowners for fire protection. The Act places this responsibility on the owner, where it belongs (Chapters 4 and 5). The Act intends that FPAs should be voluntary, not only because of the right to freedom of association, but also because landowners themselves need to make firm commitments to co-operation by their own joint initiatives. On the other hand, this provision in the Act does place a duty on government to effectively promote and support FPAs, including financially where this is justified.
69. FPAs are thus community-based natural resource management organisations for the collective management of veldfires, using local knowledge within the framework provided by the Act.
70. Membership of an FPA brings several advantages, directly to the member as well as through the capabilities of the FPA itself. These include:
- a) no presumption of negligence in civil claims for damage where a fire from the member's land causes damage or loss to another person (section 34(1)(b) of the Act)
  - b) the benefits of co-operation in preventing and combating veldfires through the institution of the FPA, within the framework of an agreed veldfire management strategy
  - c) the cost saving that comes from avoiding duplication with for example disaster management plans and agricultural conservation programmes
  - d) the protection that comes from the enforceable rules of the association, as established in its constitution
  - e) advice and assistance to members in meeting the statutory requirements for readiness for fire fighting, including skills development
  - f) the empowerment of FPOs to enforce the provisions of the Act and the rules of the association
  - g) improved communication among members about, for example, fire hazard conditions
  - h) free access to research commissioned by the Minister on the prevention and combating of veldfires and on the use of controlled fire in sustainable forest management (Section 30(2))
  - i) possible relief from certain prevention measures, such as preparation of firebreaks, depending on the contents of the association's veldfire management strategy
  - j) the overall benefits of progressive building of capacity within the Association and thus among its members, with overall reduction in the risks of veldfires.

71. There will be costs involved in forming a FPA, even if only the costs of the time needed for meetings. The Act also requires FPAs to report to the Minister on fire statistics and to provide the information required to prepare or maintain the National Fire Danger Rating System (NFRDS) (Section 5(1)(i) and (j)), though even this reporting is intended to be no more than what the FPA would need to do for its own good governance. The Act does not intend that FPAs should be formed in cases where its costs are greater than the benefits it provides its members. FPAs should be cost-beneficial and therefore established in areas where the risk of veldfires justifies the benefits of the costs of organising and maintaining the Association. The justifiable level of risk must be judged locally.

### ***Formation of fire protection associations***

72. Section 3 determines that any group of owners who wish to co-operate for the specific purpose of predicting, preventing, managing and extinguishing veldfires may form a FPA. The Act does not specify any detail about the scope of the area to be covered by a FPA, but does state that the area should be relatively uniform in terms of the risk of fires occurring, of climatic conditions, or types of forest or (other) vegetation, or it may simply be an area which experiences regular veldfires.
73. Bearing in mind the purpose of the Act, FPAs would be formed only in areas where they are definitely needed. Given the duties of FPAs and fire protection officers, there would need to be sufficient reason for owners to agree to these commitments before the benefits of co-operation would exceed the costs. Similarly, the extent or area within the jurisdiction must be at some optimum, depending on circumstances. At some level, the area or number of members would be too big for the FPA and the FPO to fulfil their duties properly, or too small to justify the costs. The Act leaves this matter open, and once more each case must be judged on its particular circumstances. A reasonable approach is needed, based on the facts, common sense, and adequate planning.
74. There are various advantages to having FPA areas that coincide with local government boundaries. These include co-ordination with other initiatives, such as disaster management planning and through this, co-operation with local fire and emergency services of different kinds.
75. Each district municipality (Category C municipality) contains several local municipalities (Category B). Metropoles (Category A) do not, but note that every metropole has open veld within its boundaries. Each FPA may therefore usefully correspond with one or more local municipalities or with a metropole but this is not a prerequisite for forming an FPA. There will be many instances where FPAs for good reason include only part of the area of a local municipality. In those cases, the local disaster management plan would embody all the veldfire management strategies and plans of FPAs within the relevant district municipality.
76. Taking all considerations into account, including the fact that FPAs can be served by umbrella associations, leads to a preliminary set of priorities for the formation of FPAs in different districts as a framework for planning, as set out in Map 1.
77. The Department of Water Affairs and Forestry with the Department of Provincial and Local Government is promoting congruence between veldfire management strategies and the veldfire elements of local disaster management plans. The veldfire management strategy, or collection of strategies for each FPA within the municipality, will thus at the same time be the veldfire plan within the disaster management plan required for each district municipality or metropole by the Disaster Management Act.
78. The veldfire management strategy must also comply with the relevant provisions of the Conservation of Agricultural Resources Act (see above), and take account of the principles of the National Environmental Management Act (see above) as well as its subordinate

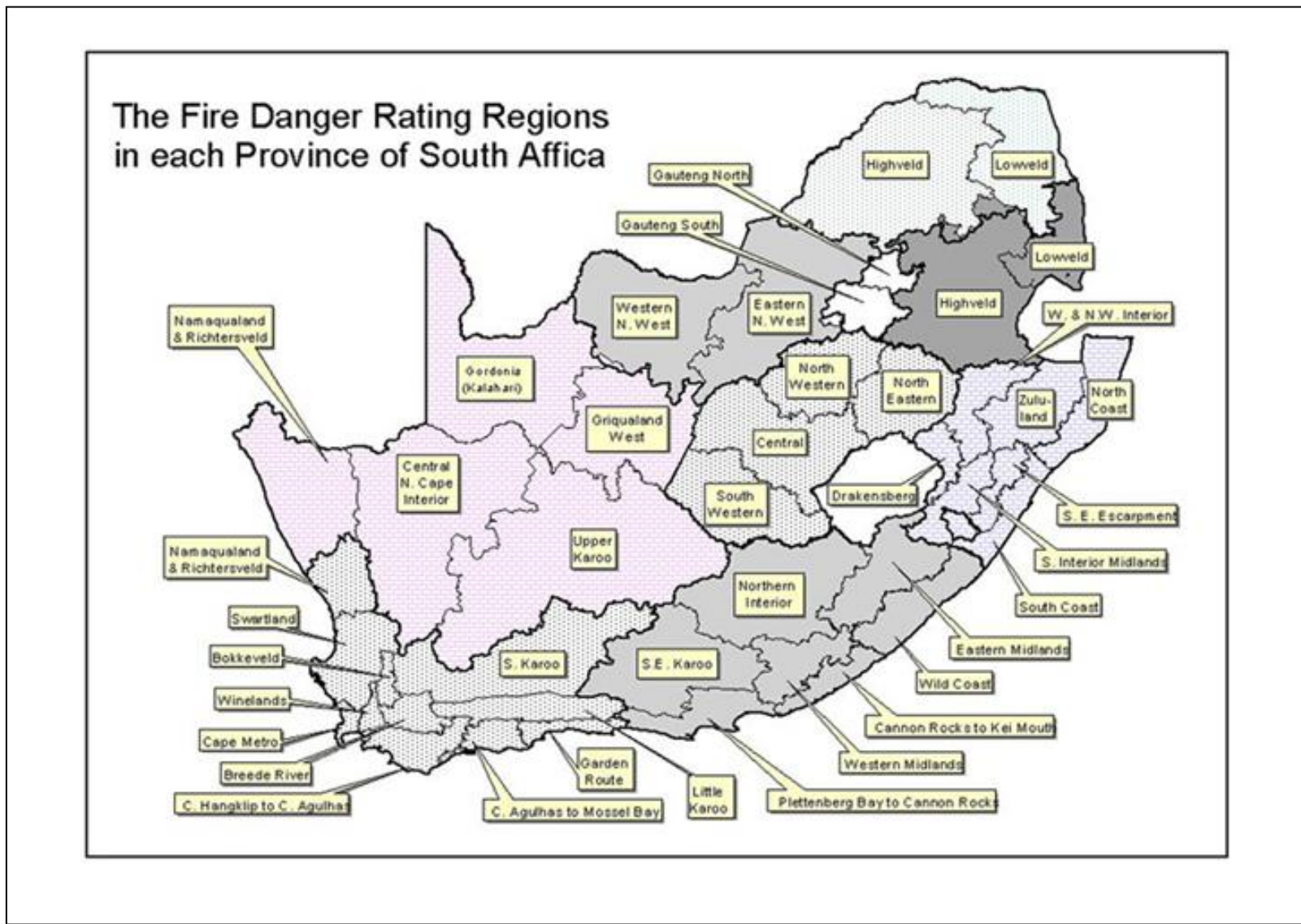
statutes for biodiversity, protected areas and air quality management. The National Department of Agriculture is implementing the LandCare initiative nationwide. Local LandCare plans address certain aspects of veldfire management. Co-ordination between LandCare plans and veldfire strategies is also needed.

79. As the Disaster Management Act requires local disaster management plans to conform with the requirements of the local authority's Integrated Development Plan, the veldfire management plan will also need to meet these requirements as well as complying with by-laws passed in terms of the Fire Brigade Services Act.
80. Section 3 provides further for the Minister to take the initiative if in any area where a FPA is needed the owners have not formed one. However, even in these cases, the Act requires that there must be support among owners before the matter can proceed. What the Minister must do is to establish the level of support for a FPA after explaining everything about the Act that owners need to know and understand, including the intended benefits of FPAs.
81. The Act then provides for the Minister to incur the costs of assisting and co-operating with owners in forming the FPA, if justifiable.

### ***Registration of fire protection associations***

82. FPAs must be registered if they are to qualify in terms of the Act for assistance and receive the powers and duties that the Act provides for.
83. The Minister must register and issue a certificate to a FPA if it meets certain requirements (section 4). These requirements are that the FPA must:
  - a) be capable of performing its duties, and
  - b) be representative of the owners in its area (noting also that all owners within the area concerned must be free to join the FPA).
84. So that the Minister is able satisfy himself or herself that these requirements have been met, FPAs must apply according to a procedure set in the regulations. This procedure must address the two requirements above, but also take account of the fact that the Minister may set conditions before or after its registration, including a possible amendment of its constitution. Thus the regulations regarding applications for registration deal with criteria for capability and for representivity, but also ensure that the Minister receives enough information to judge whether conditions must be set regarding the registration of a given FPA.
85. To judge capability, the Minister will need to have information on the resources, skills and knowledge available to owners within the intended area of the FPA. Discretion will be needed in evaluating capability, since many owners, including municipalities, in certain areas will have very limited resources, but still need to form FPAs. This matter is dealt with in the guidelines for Forms 1 and 2 and explained below.
86. The existence and role of umbrella FPAs must be considered when assessing capability. Umbrella organisations will relieve FPAs of certain needs to maintain capacity. This matter is dealt with in the guidelines to complete Form 2 in the registration process.

Figure 1: Map of fire danger regions for each province of South Africa





87. The FPA will also need to show that the proposed FPO will be competent to act in this role within its area. The competence of the intended FPO is an important consideration. The FPO will need to be registered before being empowered by the Act. His or her competence will need to measure up to the demands of the veldfire management strategy for the area under the jurisdiction of the FPA. FPAs need to be configured so that these demands are balanced with available or prospective competence. This matter is dealt with in the guidelines to filling in Form 2. Criteria for capability include:

- a) evidence among owners of previous co-operation in managing the environment (e.g. previous membership of a fire control committee or a fire protection committee, participation in soil conservation committees, LandCare programmes, or ward or tribal authority development plans, or relevant land development objectives (LDOs) in integrated development plans (IDPs) that reflect collective work on environmental management, or nature conservancy planning), and
- b) evidence of common purpose and commitment to veldfire management,
- c) leadership and management skills, including financial management (of the executive committee)
- d) commitments from municipal services, for example, disaster management, fire and emergency services
- e) availability of resources (including equipment)
- f) acceptable boundaries, relative to the nature and extent of the veldfire management issues within the area of the proposed FPO
- g) collective knowledge of the area with respect to fires
- h) capacity to communicate the fire danger ratings
- i) individual and institutional (public, private and NGO) competence in veldfire management
- j) the availability of services from an umbrella organisation and
- k) the competence of the FPO.

88. These matters are covered in the guidelines for filling in Forms 1 and 2.

89. To judge representivity, the Minister will need to receive information on the boundaries of the area of the FPA, the properties within it and the owners of these properties, and the owners who have agreed to join the FPA.

90. The guidelines for filling in Forms 1 and 2 deal with this matter.

91. Criteria for representivity would include:

- a) support from a substantial proportion of individual owners within the proposed area of the FPA, or
- b) support expressed by the structures representing each of the categories of owner within the area (private title-holders, communities, State, and municipalities), including the records of consultations with communities and

- c) lack of expressed dissent and
  - d) lack of evidence of the exclusion of any owner or category of owner.
92. Box 4 contains guidelines to follow when developing an application to register an FPA.
93. Because some organisations may already exist for the same purposes as intended for FPAs, or may easily accommodate the purposes, and because it is sensible to avoid duplication of organisations, the Act provides for the Minister to recognise various kinds of organisations as FPAs (section 4(3)), on the condition that each is open to all owners in its area and, obviously, meets the requirements for registration.
94. The Act allows only one FPA in any area (section 4(5)), but allows an umbrella association to be formed where there is benefit for several FPAs to co-operate.
95. Thus, an umbrella association can provide several FPAs with certain services while still allowing each member FPA to have an optimum size and arrangement for its own purposes.
96. The Act requires any or all municipalities (or the service designated in terms of the Fire Brigade Services Act) and owners of State land within the area of a FPA to become members of the FPA. This is to ensure that the State co-operates equally with other members, especially in developing and implementing the business plan which includes the veldfire management strategy.

### ***Duties of fire protection associations***

97. In section 5(1) the Act lists the minimum of the duties to be fulfilled by the FPA. The first is to develop and apply a veldfire management strategy for its area. The FPA must consult with any municipal fire service within its area in developing the strategy. To be effective, this strategy would need to be address several things, as set out below.
98. Another important duty is to develop rules that will bind the members of the FPA. These rules must be considered especially carefully since they will establish norms that will be followed by the courts. The minimum requirements for the rules are set out in section 5(4) of the Act. These rules would need to be co-ordinated with other legislation, regulations and by-laws that apply in the area. A copy of the rules must be lodged with the Minister. In certain cases, the rules need his or her approval, for example where the rules will change the duties and obligations of owners to prepare firebreaks (section 12(10)). Thus the Minister will need to formally accept and where necessary approve the rules.
99. The FPA, through its FPO, must regularly communicate the forecast fire danger rating to its members, which will be especially important since many rules will be related directly to the fire danger rating. How regularly to communicate must be determined by local requirements, but a minimum of once a day would be reasonable anywhere during periods of high fire danger, or periods of active controlled burning, for example.
100. The FPA is required to organise and train its members in fighting, managing and preventing veldfires, and provide management services, training and support to communities. Co-ordination and management should be consolidated in the veldfire management strategy. FPAs need not develop their own capacity for training, since facilities for this are available in several training institutions. The FPA should advise members on what training to receive, and how, while ensuring that owners and their employees are sufficiently familiar with the contents of the veldfire management strategy and rules for the FPA.

101. Training strategies will need to address the capacity requirements identified for the FPA, and will include several levels of formal training according to appropriate standards, as currently being developed by the Fire Brigade Services Board and through the relevant sector education and training authorities (SETAs):
- a) firefighting for field hands: for employees of owners, at the cost of owners, and for volunteers, at the cost of the local emergency services or disaster management centre, the FPA members, or donor funds
  - b) fire incident command, at different levels: field supervisors on or managers of land, at the costs of owners, and higher-level incident commanders, at the cost of the local fire services function, the FPA, or owners depending on the case
  - c) funding sources include the Skills Development Levy, for employers, the National Skills Fund, for unemployed, the Agriculture (veld management) and Working on Fire programmes in the Poverty Relief Fund, as well as the Umsobomvu Fund in the case of young people; the sources need to be addressed according to their objectives, and often require that the training should lead to job creation; in addition the municipal basic services transfer component of the Equitable Share, which is focused upon poor residents' access to basic municipal services, may be addressed in appropriate cases.
102. The FPA must also provide statistics about veldfires in its area to the Minister, and furnish the information needed to prepare or maintain the NFDRS. This reporting should not be onerous. It should be the same information needed by the FPA for its own management purposes [details will be available once the current project on the National Fire Danger Rating System is complete].
103. The Minister may (and will) delegate various powers and duties to FPAs, once he or she has consulted with the FPA. These will be important for the functioning of the FPA.
104. The operating strategies for FPAs must indicate what powers and duties the Minister should delegate to the FPA so that it can fulfil its functions (see below), as well as addressing all duties.
105. The FPA will also deal with firebreaks in its overall veldfire management strategy, providing among other things for standards, for exemptions from boundary breaks, and the maintenance of communal, strategic breaks. This aspect of the FPA strategy needs to be evaluated in the light of their overall risk assessment and risk management strategy.

### ***Fire protection officers***

106. Where a municipality is a member of the FPA the amended Act stipulates that its chief fire officer must be appointed as FPO if he or she is willing. This is because the Constitution, for good reason, assigns fire services to the local government sphere. Where the chief fire officer is not willing, the FPA must appoint a FPO. Also, if the FPA includes more than one municipality, the FPO must be appointed from the ranks of the CFOs if there is a willing candidate. If all CFOs decline the position a member of the FPA must be appointed as FPO.
107. FPOs must apply to the Director-General of the Department of Water Affairs and Forestry for registration. An FPO must be registered to have the powers given by the Act (see also section 26(1)). Registration will be for as long as the FPO is a CFO or in the case of an appointee that person is able to effectively fulfil the function.

108. The Act sets the criterion that the FPO must be able to enforce the Act in a responsible manner (Section 6(6)). See below for the guidelines for assessing applicant FPOs according to this criterion.
109. The FPO must perform the role of chief executive officer of the FPA (section 6(1)), in other words, has the authority to manage the organisation, while taking his or her direction from the FPA or its executive committee.
110. He or she has the duties to monitor and report to the FPA and the Minister as required by the Act, and to train members on the law, in the rules and on prevention and fighting of fires (once more, in this latter case, this can be done through appropriate training institutions).
111. The FPO is empowered by the Act to take control of a veldfire on any property if it is a threat to life or property (and any owner, whether member or not, with a veldfire on his or her property that threatens life property or the environment must report it to the FPO). When taking control of the fighting of a fire, the FPO may order any person who is apparently not younger than 16 years and not older than 60 to assist in the fighting of the fire. Note however that the FPO must act reasonably and not assign tasks and duties to such a person if he or she is not fit to do them.
112. He or she is further empowered to enforce the rules of the FPA, to inspect the land of members for compliance with the rules, to enter and search property without a warrant under certain conditions (section 27(1)), to stop enter and search any vehicle and stop and search any beast of burden, under reasonable suspicion of an offence.
113. The FPO may enter the land of a member of the FPA on reasonable notice to carry out his or her duties (section 6(3)).
114. FPOs also have powers of seizure and arrest (sections 28 and 29).
115. Skills required of FPOs should be certified in terms of the National Qualification Framework. The relevant SETAs include, for example, those for Forestry, Furniture, Pulp & Paper Board, and Wood Products and for Local Government, Water and Related Services. Government will ensure that certification standards for the same skills are the same within the respective SETAs.
116. If an FPO proposed by the FPA does not meet all requirements then the person nominated should demonstrate the potential to achieve the desired competence within a reasonable period as proposed by the FPA and agreed by the Minister.
117. The FPO may delegate his or her powers and duties, except powers of arrest, search and seizure.
118. The Act allows for cases where FPAs cannot appoint a FPO, by empowering the DG to appoint an 'officer or employee of the Department' as FPO for a fixed period, which may be extended (section 6(4) and (5)).

### ***Financial and other assistance***

119. Section 7 of the Act empowers the Minister to provide financial or other assistance to FPA, without obliging him or her to do so.
120. This section also allows financial help in cases where owners (whether members of a FPA or not) prepare firebreaks on an international boundary and incur more cost than they would have if they had not been situated on such a boundary.

### ***De-registration of fire protection associations***

121. The Act allows the Minister to de-register a FPA that he or she judges to be inoperative and ineffective, and thus withdraw its powers.

### ***Umbrella fire protection organisations***

122. The Act provides for umbrella organisations to serve FPAs, but specifies no details.
123. Umbrella fire protection organisations should be formed when several FPAs would benefit from shared services from such an organisation. These FPAs need not be contiguous.
124. As noted earlier, umbrellas should ideally be formed to coincide with either (a) districts or (b) provinces, to co-ordinate with disaster management centres, but need not confine their scope in this way if circumstances require jurisdictions that cut across such boundaries.
125. Formation of an umbrella organisation may be initiated by any one FPA, the disaster management centre or by any group of people or organisations who wish to organise for the purposes of the Act.
126. Any umbrella must include within its scope at least two FPAs or proposed FPAs.
127. The Act does not require an umbrella to be registered but in order for it to carry powers under the Act the Minister will need to recognise the umbrella.
128. The Act states that the umbrella organisation may ‘... perform certain duties on behalf of a fire protection association if the Minister agrees...’ (section 4(10)). The kinds of duties that may be assigned to an umbrella organisation may include:
- a) appointment of a common FPO who would delegate certain powers and duties to the member FPAs
  - b) communicating fire danger ratings
  - c) training, in cases where training is not provided by the training industry
  - d) awareness campaigns
  - e) weather data collection for improvements to the predictions from the NFDRS, and collection and dissemination of other relevant data and information:
    - supply of fire incident command specialists or support
    - assistance to members where court cases arise, such as providing expert witness, and statistical and weather information
  - f) facilitating mutual aid agreements (between parties within the umbrella association)
  - g) management and maintenance of aerial support
  - h) co-ordination functions, such co-ordination of equipment and other resources between individual FPAs, though such measures as mutual assistance agreements and the standard operating procedures they contain

- i) overall strategic direction and planning, including the contributions to local disaster management plans
  - j) providing equipment standards, where the fires services have not provided these
  - k) helping new FPAs to establish in the area covered by the umbrella organisation, in cases where FPAs are still needed
129. A proposer of an umbrella must therefore notify the Minister of the proposed organisation, supported with the following documentation:
- a) name and address of the Umbrella Fire Protection Organisation
  - b) area of jurisdiction (District or Province or parts of districts or provinces)
  - c) FPAs to be included
  - d) statements of support from FPAs
  - e) duties to be performed on behalf of member FPAs
  - f) draft constitution and proposed legal status (some form of legal person will be needed to allow delegations from the Minister)
  - g) delegations desired from the Minister
  - h) delegations to FPAs.
130. If satisfied as to the need and desirability of the proposed umbrella, the Minister will recognise the umbrella in writing and give the required written delegations.

## **CHAPTER 3 OF THE ACT: FIRE DANGER RATING**

### ***Fire danger rating***

131. The Act requires the following elements in the National Fire Danger Rating System (Section 9):
- a) the formula or formulae to take account of the factors affecting fire danger and calculate the forecast indicators of fire danger on which ratings will be based (the fire danger index model)
  - b) the fire danger rating, in a clear format
  - c) identification of dangerous activities and precautions relevant to each rating
  - d) identify when the fire danger is rated high in any region
  - e) division of the country into regions of relatively uniform fire danger
  - f) communication of fire danger rating.
132. Section 10 requires the Minister to communicate the forecast ratings to FPAs in each defined region regularly. This means often enough to be useful, that is, at least daily. When the forecast or actual fire danger is rated high in a given region, the Act requires the Minister to publish a warning of high fire danger in all the main languages of the region on

three TV channels and three radio channels that broadcast to the region, as well as two regional newspapers, and ensure that recordings are kept of broadcasts and notices. This last requirement is in case of evidence being needed in court. (The number of media channels to be used is currently seen as too many and the section will be amended to make it more practical).

133. The Act provides for this warning to act as a prohibition on the lighting of fires in the open air in the region specified, until the period of high fire danger passes – a so-called total fire ban.

134. Section 10(3) specifies what must be said in the warning, that is, it must say that the danger is high, refer to the prohibition, and indicate how long the prohibition will be in force. Mostly, the prohibition will need to remain in force until the danger is no longer rated high.

### ***Delegation of powers and duties***

135. Section 11 allows the Minister to delegate his or her powers and duties with respect to the fire danger rating system, to the Weather Bureau or its successor or to another competent party, and to pay for those services if necessary.

## **CHAPTER 4 OF THE ACT: VELDFIRE PREVENTION THROUGH FIREBREAKS**

### ***General***

136. Chapters 4 and 5 must be read together as the provisions that determine the duties of owners in respect of preventing and combating wildfires. The Act places the primary responsibility on the owner for managing and controlling fires on his or her land but places a duty on owners to report fires that threaten to spread, to their FPO. The Act recognises several things here, most importantly, that owners can only be expected to take reasonable precautionary measures. It is also important to note that these apply only where there is a risk of a veldfire originating on or spreading from or to the owner's land.

### ***Duty to prepare and maintain firebreaks***

137. Section 12(1) requires an owner where there is a risk of veldfire to prepare a firebreak on his or her side of the common boundary with adjoining land; note that this refers to neighbours, and not to boundaries within the owner's land. The firebreak need not follow the common boundary if neighbours agree to locate it elsewhere (Section 12(7)). This offers the flexibility needed to adjust for problems such as difficult terrain.

138. Sections 12(2) and 12(3) provide for notice and co-operation between neighbours in the case of firebreaks that are to be burnt. The owner intending to burn must consult with the neighbour to find a suitable date for both, but if the owner cannot obtain agreement then he or she may simply give 14 days' written notice of the intention to burn. In either case the Act requires the neighbour to burn his or her firebreak on the same day as agreed or notified, to be present or have an agent present, and have sufficient fire fighters available to prevent the spread of the fire.

139. Owners must also notify the FPA of the intention to burn a firebreak, if there is one in the area. If the FPA objects the owner may not burn the break on the day or days chosen.

140. Similarly, owners may not burn breaks if the fire danger is forecast to be high, or if the conditions are not conducive to the burning of firebreaks, that is, if there is a danger of the fire spreading.

141. If the owner cannot burn on the days originally chosen then he or she must inform the neighbour and the FPA if any and notify both of the new dates, but need not give 14 days' notice.
142. Sections 12(8) and 12(9) provide for the case of absentee owners. First, when an owner is to be absent for more than 14 days during the season of burning firebreaks then he or she must inform all neighbours of the address and telephone number where he or she may be contacted. If an owner cannot contact a neighbour about his or her intention to burn, or if the neighbour does not show up on the designated days, then the owner may proceed to burn without the neighbour.
143. Finally, section 12(10) allows an FPA to make its own rules for firebreaks, which require the approval of the Minister and bind members to the new rules rather than the provisions of the Act.

### ***Requirements for firebreaks***

144. The Act does not specify detailed requirements for firebreaks. This is because the requirements will vary from one situation to the next. On the whole, local practice and local issues must determine what these requirements are.
145. Nevertheless, the Act does require owners to pay attention to the length and width of firebreaks. Breaks must also be reasonably free of inflammable material, and not cause erosion.
146. It is obvious to anyone with knowledge of veldfires that a firebreak can never stop every veldfire. There will inevitably be a time when conditions are so severe that a fire will cross a break, by spotting or otherwise. On the other hand, experience has shown consistently and repeatedly that firebreaks are useful in stopping many fires, in providing a line from which to combat wildfires by backburning or other measures, and for protection of property generally. The preparation of firebreaks must be seen as one essential element of fire management.

### ***Firebreaks on borders of the Republic***

147. Section 14 provides for the case of the property that borders on another state, where an owner cannot be expected to comply with all the requirements of this chapter, and they are correspondingly relaxed for such cases.

### ***Exemption from duty to prepare and maintain firebreaks***

148. This section gives the Minister the discretion to exempt an owner or group of owners from the firebreak duty, but he or she must have good reason to do so. The FPA must be consulted before making any exemption. One clear example is where the Minister approves the rules of an FPA where those rules may allow certain owners to do without firebreaks, but the veldfire management strategy in such cases would have to assure that fire risk is adequately managed without those firebreaks.

### ***Exemptions from prohibitions on damaging plants***

149. Section 16 allows the owner to make a firebreak in spite of any prohibition on damaging plants, for the obvious reason that preparing a firebreak of any kind involves some form of damage to plants. However, the owner is obliged to take certain mitigatory measures, that is, to transplant protected plants if possible, and to avoid damage to protected plants by placing the firebreak on a different alignment.



150. The requirement that firebreaks should not cause erosion also limits the means that owners may use to prepare the breaks.

151. Because of the principle in NEMA that requires biodiversity to be protected or where loss is unavoidable, minimised or mitigated, officers advising landowners on preparing firebreaks are bound to advise them to protect biodiversity as far as possible.

## **CHAPTER 5 OF THE ACT: FIRE FIGHTING**

### ***General***

152. This chapter stipulates the responsibilities that any owner of land must accept with regard to the prevention and combating of veldfires, once again, in circumstances where there is a risk of veldfires.

### ***Readiness for fire fighting***

153. Section 17 requires owners to have certain equipment and trained personnel with protective clothing available for fire fighting at all times when there is a risk of fire (in this respect, note the application of the Occupational Health and Safety Act above. What these requirements are may either be prescribed in regulations, or those that are reasonable in the particular circumstances. In the case that requirements are prescribed, these would need to be in the nature of reasonable minimum standards so that most owners can readily comply with them, that is, as a reasonable person should. Readiness requirements should be proportional to the risk that an owner must manage.

154. The section requires further that the owner if absent must always have some responsible person appointed to act on his or her behalf in case of a fire, to extinguish or help extinguish the fire, and alert neighbours and the FPA.

155. Finally, the Act allows the owner to appoint an agent to undertake his or her fire-fighting duties.

### ***Actions to fight fires***

156. Section 18 imposes on the owner the duty for stopping the spread of a fire on his or her land that threatens life, property or the environment. Thus the owner is the first fire incident commander in case of a fire on his or her land. The Act also requires the owner to stop the spread of a veldfire onto his or her land from neighbouring land. The owners must also do the best possible to inform the FPO and neighbours of the fire if it may endanger life, property or the environment – that is, threatens disaster.

157. This section further empowers a person who is not the owner to enter land to fight a fire, whether it is the land where the fire is burning or to which it may spread, if he or she judges that the fire is a threat to life, property or the environment, to extinguish the fire or prevent it from spreading.

158. An FPO acting in terms of the powers in Section 6 and so taking control of fire fighting on an owner's land may take over the fire incident command from the owner and order any person between 16 and 60 years of age to assist in fire fighting. Note here however that the FPO cannot be unreasonable in ordering people to assist. It would be unreasonable to assign untrained and ill-equipped people to dangerous fire-fighting tasks, but perfectly reasonable to have them assist in delivering supplies, for example.

159. In the case where there is no FPO, Section 18(4) provides a forest officer with the powers of the FPO for fires within 10 kilometres of a state forest.

160. Any person acting with the powers provided by this section may if he or she judges it necessary to protect life, property of the environment, prevent a fire from spreading, or extinguish a fire, do reasonable things to achieve these objectives.
161. Finally, section 18 places a duty on the FPO to report a fire that threatens to or spreads across the FPA boundary into the area of a second FPA to the FPA of the second area, and to immediately implement the appropriate co-ordination measures required by the veldfire management strategy.

### ***Agreements for mutual assistance***

162. Section 19 allows for mutual assistance agreements for fire fighting between the Minister and any other party and between FPAs. The section authorises provisions for payment of compensation. Fire-fighting mutual assistance agreements are usually quite detailed, containing for example details of agreed standard operating procedures that the parties will follow in the event that the agreement is invoked. Examples of such existing agreements should guide the contents of new ones.

## **CHAPTER 6 OF THE ACT: ADMINISTRATION OF THE ACT**

### ***Regulations and procedure for making regulations***

163. Sections 20 and 21 set out the provisions governing the passing of regulations in terms of the Act. These are standard procedures, except that the Minister must take advice on their contents from both the National Forests Advisory Council and the Fire Brigade Services Board. However, what is important is that different regulations may be passed for different regions. There will certainly be different sets of regulations for certain sections of the Act.

### ***Delegation of powers and duties***

164. Section 22 allows the Minister to delegate powers and duties (other than making regulations) to any official or organ of state, but also to other persons. The latter provision allows for delegation to a FPA and a FPO.
165. The DG may delegate powers and duties, but only to members of the Department.
166. In both cases the person to whom the delegation has gone may delegate it further, but only with the permission of the Minister or the DG.
167. When either the Minister or DG delegates or permits further delegation, it must be in writing and must specify any conditions that apply and the period for which the delegation will be valid. The delegation will not prevent the Minister or the DG, respectively, from performing the duty in question.

### ***Assignment of powers and duties***

168. Section 23 allows the Minister to assign powers and duties to provinces or other organs of state, or to other parties, indefinitely or for a fixed period, set conditions for the assignment, and withdraw an assignment. Both the giving and the withdrawing of the assignment require notice in the *Government Gazette*. Conditions may be attached to assignments. However, the Minister must consult with and consider the capacity of the party to whom the duty is to be assigned before making the assignment or withdrawing it.

169. This section allows a province to take responsibility for applying the provisions in the Act that relate to the assignment it has received within the area and for the period specified in the assignment.
170. In the case of a delegation, the party receiving the delegation is still accountable to the Minister or DG. The Minister or DG is still responsible to see that these responsibilities or duties are executed, and can be held to account for it. In the case of an assignment, the party receiving it is not accountable to the Minister, and the Minister is no longer accountable for the function.

## **CHAPTER 7 OF THE ACT: OFFENCES AND PENALTIES**

### ***Penalties and offences***

171. Sections 24 and 25 provide for three categories of offences, each with different penalties. Table 1 summarises the provisions.
172. Section 25(7) provides that anyone causing any one of these offences through neglect will be presumed guilty.

## **CHAPTER 8 OF THE ACT: ENFORCEMENT**

### ***Implementation of the enforcement chapter***

173. Section 26 gives FPOs, forest officers and chief fire officers the power to enforce the Act, as long as they have proper identification with them when doing the enforcement.

### ***Power to enter and search, seize, and arrest***

174. Sections 27, 28 and 29 give FPOs, forest officers and chief fire officers powers to enter and search, seize property, and arrest persons without warrant on the basis of reasonable suspicion of an offence in terms of the Act being committed, or an object being used in committing an offence or to gather evidence. This is especially important to allow proper collection of evidence, which currently is seldom done in the case of veldfires. These officers would need to be able to show that their suspicions were reasonable, that is, that they had sufficient grounds for their suspicions.

**Table 1: Summary of penalties and offences (see sections 24 and 25)**

Category and kind of offence	Penalty
<p><b>Category 1</b></p> <ul style="list-style-type: none"> <li>• Lighting, using or maintaining a fire in the open air when the fire danger rating is high (that is, in contravention of section 10(2))</li> <li>• Failing to take reasonable steps to extinguish a fire or prevent it from causing damage to neighbouring property, in the case of the owner of his or her agent</li> </ul>	<p>First conviction: fine or imprisonment for a period of up to two years, or both</p>
<p><b>Category 2</b></p> <ul style="list-style-type: none"> <li>• Leaving a fire before it is extinguished</li> <li>• Lights or uses or maintains a fire that spreads</li> <li>• Throws or drops a burning match etc an causing a fire to starts a fire that spread and causes damage</li> <li>• Lighting a fire in a road reserve other than in a fireplace</li> <li>• Lighting a fire in a road reserve for a purpose other than the burning of a firebreak</li> <li>• Smoking when smoking is by notice prohibited</li> <li>• Failing to prepare a firebreak when obliged to do so</li> <li>• Failing to give intention to burn a firebreak</li> <li>• Burning a firebreak when a FPA has objected</li> <li>• Failing to inform neighbours of a threatening fire</li> <li>• Refusing to take orders from a FPO or forest officer</li> <li>• Hinders or obstructs fire fighting</li> </ul>	<p>First conviction: fine or imprisonment for a period of up to one year, or both</p> <p>Second conviction: fine or imprisonment for a period of up to two years, or both</p>
<p><b>Category 3</b></p> <ul style="list-style-type: none"> <li>• Preventing a FPO, forest officer or police officer or chief fire officer from entering, searching, seizing or arresting</li> <li>• Interfering with a FPO, forest officer or police officer or chief fire officer in entering, searching, seizing or arresting</li> </ul>	<p>First conviction: fine or community service (which must if possible benefit the environment) for a period of up to six months, or both</p> <p>Second conviction: fine or imprisonment for a period of up to one year, or both</p>

## CHAPTER 9 OF THE ACT: GENERAL AND TRANSITIONAL PROVISIONS

### **Research**

175. Section 30 enables the Minister to carry out or commission research on the prevention and combating of veldfires, or on prescribed burning for sustainable forest management, as long as the results are available to FPAs free of charge.

### **Publication of notices in media**

176. Section 31(1) allows publication of the high fire danger rating in less than the mandated number of regional media if these are less than the number required by the Act.

177. Section 31(2) and 31(3) allow the courts to accept affidavits as evidence that notices have been published.

### **Notices to owners**

178. Section 32 specifies that notices on owners must be served by hand delivery or registered mail to the owner, or to a person apparently in charge of the land (that is, the person who seems to the reasonable person to be in charge) if the owner is absent, or failing this to any person on the land who is over 16 years of age and apparently living on the land. Failing all these options the notice may be left in a prominent place on the land.

### **Limitation of liability**

179. This section absolves the state of liability for loss or damage arising from the exercising of the powers and duties given by the Act, or failing to exercise these powers and duties, unless the person does so in bad faith, with respect to the fire danger rating system, or negligently or in bad faith, with respect to all other sections of the Act.

180. Negligence means failing to take action when you knew it was needed and knew what to do. Bad faith means doing something for the wrong reason and knowing that it was wrong.

### **Presumption of negligence**

181. This section allows the courts to presume negligence in cases of civil claims where someone has suffered a loss from a veldfire. The injured person (the claimant) must first prove that he or she has in fact suffered a loss before the court presumes negligence on the part of the person against whom the claim is laid (the defendant). The claimant must also prove that the defendant actually did wrong in causing the fire or allowing it to spread, that is, committed an offence under the Act. This presumption stands until the defendant is able to prove that he or she was not negligent.

182. Presumption of negligence does not apply to members of FPAs.

### **Amendment of Act 122 of 1984 and savings**

183. Section 35 repeals those parts of the Forest Act that are to be replaced by the National Veld and Forest Fire Act, except that section 36 allows officers to continue to take action in terms of the Forest Act when the action is consistent with the new Act. It allows regulations made under the old Act to remain valid until they are repealed or replaced by new regulations, again if they are consistent with the new Act. Similarly, assignments and delegations of powers and duties in terms of the old Act remain valid if they are consistent with the new.

184. To be consistent with the new Act means to be in support of the purpose of the new Act and to agree with its principles.

#### **Box 4. Guidelines for the process of forming a FPA**

Registration of FPAs takes place in two steps, that is, first the filling in of Form 1 Application to register a fire protection association Part 1 and, at a later stage, Form 2.

##### **Who takes the initiative?**

An FPA can be started by:

- landowners
- provincial and national government departments
- catchment management agencies or forums
- local farmers' associations
- local councils
- local or regional disaster management offices

- municipalities (many FPOs are likely to come from municipalities in any case)-
- nature conservancies
- land development committees
- committees of fire chiefs (in terms of the Fire Brigades Services Act such as exist for the Western Cape and Gauteng), and
- others listed in the Act.

### **Using existing structures to initiate a FPA**

In terms of the Act one has to be a landowner to be a member of the FPA. However, landowners may employ representative structures such as farmers' associations as initial bodies through which to initiate the formation of a FPA. In some cases the area of the proposed FPA may include two or more municipalities, and the FPA initiators will need to facilitate agreement among local municipalities and other structures on the initiative. The executive body of the community represents a community who occupies communal land.

### **Founding meeting**

#### ***Calling a founding meeting***

- Publish notification in the media (keep copies to attach to Form 2).
- -- Support with a promotion drive, for example, road show, posters, and lectures (with DWAF support). In Mpumalanga initiators took the following actions:
  - a DWAF Fire Advisor did a road show of 24 presentations to tribal authorities, farmers' associations and city/town councils
  - 100 posters were put up
  - a notice was published in *The Lowvelder*
  - faxes were sent to all members of the FFA (Nelspruit), as well as Eskom, the fire brigade, The Rural Action Committee, Spoornet, the Institute for Tropical and Subtropical Crops, Agri-SA and the Mpumalanga Parks Board.
- -- Ensure that all reasonable steps are taken to invite all owners.
- -- Prepare an agenda to circulate.
- Invite all chief fire officers for the area. They may authorise in writing another person to attend on their behalf.

#### ***Purpose of a founding meeting***

- To vote on establishing an FPA
- To give the FPA a name
- To confirm the FPA's boundaries
- To elect an Executive Committee
- To nominate a Fire Protection Officer
- To approve the process of applying for registration.

#### ***Agenda of a founding meeting***

- Elect chairperson of meeting.
- Explain the process and what the FPA is about.
- Allocate votes.
- Confirm support for establishing the FPA.
- Decide on a name.
- Confirm proposed boundaries.
- Elect Executive Committee.
- Assign tasks to Executive Committee.

- Nominate Fire Protection Officer.
- Get approval to prepare Form 1: Application for registration of FPA Part 1.

### ***How are votes allocated?***

- Only owners as defined in the Act can vote.
- Owners who represent themselves personally at the founding meeting get one vote each, for example, Mr Smal, a game farm owner present at the meeting, gets one vote.
- Any owner or organisation who represents another owner or owners gets one vote per owner so represented, for example, Emanzini Farmers' Union, which is representing 22 small scale farmers, gets 22 votes.
- Owners who are represented by another owner or an organisation, but who are present at the founding meeting, may not vote (because the other owner or organisation is already voting for them). Ms Mthimkulu, who is being represented by Emanzini Farmers' Union, may attend the meeting but may not vote. She has already given the Farmers' Union a mandate to vote on her behalf.

### ***Checklist of outputs from a founding meeting***

- An attendance register with everyone's contact details and property names on it, including the names of the organisations or owners representing other owners. The register must also indicate which owners were represented by them. Contact details include name, postal address, telephone numbers, cell phone numbers, fax numbers and e-mail addresses.
- Where a Chief Fire Officer has authorised in writing another person to attend on his/her behalf, a copy of that written authorisation.
- Name of the FPA.
- Address of the FPA (if known).
- Minutes indicating:
  - the number of votes for establishing the FPA
  - the number of votes against;
  - the number of abstentions.
- Confirmation of proposed boundaries.
- Names of members of the Executive Committee.
- The name of the nominated Fire Protection Officer.
- Agreement to prepare Form 1: Application for registration Part 1.

### ***Who is an 'owner'?***

The Act says that owners may form FPAs to predict, prevent, manage and extinguish veldfires.

'Owner' has its common law meaning and includes:

- any landowner with a title deed to property
- a lessee or someone renting land
- any person controlling land
- the executive body of a community set up under its constitution, law or custom
- the manager of State land
- the chief executive officer of any local authority.

### ***Is membership voluntary?***

It is not compulsory for most owners to join an FPA if one is registered in the area they live in. However, the following owners must join an FPA if one has been registered in the area:

- the owners of state land, whether it is held by the national or provincial government
- the owners of trust land, which usually means the executive body of the community exercising

control over that land

- a municipality within the area of the FPA, if it has a fire service.

### **FPA boundaries**

Section 3 says that any group of owners who wish to co-operate for the specific purpose of predicting, preventing, managing and extinguishing veldfires may form an FPA. The Act does not specify any detail about the scope of the area to be covered by an FPA, but does state that the area should be relatively uniform in terms of the risk of fires occurring, climatic conditions, or types of forest or (other) vegetation, or it may simply be an area which experiences regular veldfires.

Bearing in mind the purpose of the Act, FPAs would be formed only in areas where they are definitely needed. Given the duties of FPAs and fire protection officers, there would need to be sufficient reason for owners to agree to these commitments, that is, that the owners agree that the benefits of co-operation would exceed the costs. Similarly, the extent or area within the jurisdiction of the FPA must be optimum, depending on circumstances. At some size, the area or number of members would be too big for the FPA and the FPO to fulfil their duties properly, or too small to justify the costs. The Act leaves this matter open, and each case must be judged on its particular circumstances. A reasonable approach is needed, based on the facts, common sense, and adequate planning. There are various advantages to having FPA areas that coincide with local government boundaries. These include co-ordination with other initiatives, such as disaster management planning and, through this, co-operation with local fire and emergency services of different kinds. Agreement with municipal boundaries is useful because this will make for easier administration, including more effective access to local government funding. The same would apply if the FPA were contained within the boundaries of the municipality, even if its boundaries do not entirely coincide with the municipal boundary. However, there are often important considerations relevant to effective veldfire management that dictate a departure from municipal boundaries. It would be wrong for an FPA to include too wide a range of ecological conditions, or to be configured in such a way that the veldfire management strategy becomes impractical. The validity of the reasons given will be judged by DWAF and will be assessed by discussion with the applicant, but should carry the support of the Chief Fire Officer where there is a municipal fire service. An FPA boundary that crosses from one municipality to another will require a mutual assistance agreement between neighbouring fire services, as provided for in the Fire Brigade Services Act, and this should be part of the documents for the FPA business plan.

### **Municipal boundaries**

Each district municipality (Category C municipality) contains several local municipalities (Category B). Metropoles (Category A) do not contain other municipalities. Each FPA may usefully correspond with one or more local municipalities, but it is not essential for them to do so. The Municipal Demarcation Board has demarcated a total of 284 municipalities: six metropolitan municipalities, 47 district municipalities, and 231 local municipalities. Details of the boundaries of municipalities are available from the Board: [www.demarcation.org.za](http://www.demarcation.org.za); Private Bag X28, Hatfield 0028, Pretoria; tel: 012 342 2481; fax: 012 342 2480; e-mail [info@demarcation.org.za](mailto:info@demarcation.org.za)

### **Umbrella FPAs**

The Act provides for umbrella FPAs for a number of FPAs (section 4(9)). The intention is that an umbrella would provide a variety of defined services to the FPAs that fall within its area. Umbrellas, obviously, are required only where more than one FPA exists and require supporting services in common with other FPAs to be served by the umbrella. Umbrella FPAs should therefore be formed when several FPAs would benefit from shared services from such a body. FPAs served by a single umbrella need not be contiguous with, or neighbour each other. Umbrellas should ideally be formed to coincide with either (a) districts or metropoles, or (b) provinces, to co-ordinate with disaster management centres, but need not confine their scope in this way if circumstances require jurisdictions that cut across such boundaries.



Formation of an umbrella association may be initiated by any FPA, the disaster management centre or any group of people or organisations that wish to organise for the purposes of the Act. Any umbrella must include within its scope at least two FPAs or proposed FPAs. An umbrella should not include more than a manageable number of FPAs within its scope.

The Act does not require an umbrella to be registered but, in order for it to carry powers under the Act, the Minister will need to recognise the umbrella. If satisfied as to the need and desirability of the proposed umbrella, the Minister will recognise the umbrella in writing and give the required written delegations. The kinds of services that may be performed by an umbrella FPA include:

- strategic policy and planning for the common area administered by several FPAs, for example, for prescribed burning, common standards, common rules, joint fire preparedness and response plans, and the protection of common assets
- appointment of a common FPO who would delegate certain powers and duties to the member FPAs
- liaison and co-ordination with the provincial and local disaster management centres
- communicating fire danger ratings to FPAs and others
- weather data collection for improvements to the predictions from the National Fire Danger Rating System (NFDRS), and collection and dissemination of other relevant data and information
- providing input data for fire danger ratings on behalf of its FPAs, such as veld curing information (the rate at which veld dries)
- training, in cases where training is not provided by the training industry
- communication to landowners and the public regarding veldfire management in the area
- supply of fire incident command specialists or support and co-ordination between FPAs and other fire fighting agencies in escalating fire conditions
- assistance to members of FPAs where court cases arise, such as providing expert witness, and statistical and weather information
- facilitating mutual aid agreements (between parties within the umbrella association)
- management and maintenance of aerial support service
- co-ordination functions, such co-ordination of equipment and other resources between individual FPAs, through such measures as mutual assistance agreements and the standard operating procedures they contain
- overall strategic direction and planning, including the contributions to local disaster management plans
- providing equipment, personnel and training standards, where the fires services have not provided these
- helping new FPAs to establish themselves in the area covered by the umbrella organisation, incases where FPAs are still needed.

## **The FPO**

### ***Who will be the FPO?***

Where a municipality is a member of the FPA the amended Act states that its chief fire officer (CFO) must be appointed as FPO if he or she is willing. This is because the Constitution, for good reason, assigns fire services to the local government sphere. If there is more than one Fire Service within the area of the FPA, then the FPO must be appointed from among the willing candidate CFOs. Where the CFO is not willing, the FPA must appoint a FPO from other possible candidates. The regulations state that the FPO must be a member of the FPA.

### ***Term of office of an FPO***

The term of office is for as long as the FPA is satisfied with the FPO's performance. But if the FPO is the CFO, then the term of office continues for as long as the CFO holds that position. If FPO has stopped performing his or her duties or there is a vacancy in the office of FPO, then FPA Executive Committee must call a special general meeting within 14 days to appoint a new FPO, unless the

vacancy arises within 60 days of the AGM in which case the FPO will be appointed at that meeting.

### ***Duties of the FPO***

The FPO must perform the role of chief executive officer of the FPA, in other words, the FPO has the authority to manage the organisation, while taking his or her direction from the FPA or its Executive Committee. He or she has the duties to monitor and report to the FPA and the Minister as required by the Act, and to train members on the law, in the rules, and on the prevention and fighting of fires (once more, in this latter case, this can be done through appropriate training institutions). The FPO is empowered by the Act to take control of a veldfire on any property if it is a threat to life or property (and any owner, whether a member of the FPA or not, with a veldfire on his or her property that threatens life property or the environment must report it to the FPO). When taking control of the fighting of a fire, the FPO may order any person who is apparently not younger than 16 years and not older than 60 to assist in the fighting of the fire. Note, however, that the FPO must act reasonably and not assign tasks and duties to such a person if he or she is not fit to do them.

He or she is further empowered to enforce the rules of the FPA, to inspect the land of members for compliance with the rules, to enter and search property without a warrant under certain conditions, to stop enter and search any vehicle or any beast of burden, under reasonable suspicion of an offence. The FPO may enter the land of a member of the FPA on reasonable notice to carry out his/her duties. FPOs also have powers of seizure and arrest (sections 28 and 29). The FPO may delegate his or her powers and duties, except powers of arrest, search and seizure.

If an FPO proposed by the FPA does not meet all requirements then the person nominated should demonstrate the potential to achieve the desired competence within a reasonable period as proposed by the FPA and agreed by the Minister.

The Act allows for cases where FPAs cannot appoint an FPO, by empowering the DG to appoint an 'officer or employee of the Department' as an FPO for a fixed period, which may be extended (section 6(4) and (5)).

### ***Registration of FPOs***

FPOs must apply to the Director-General of the Department for registration. An FPO must be registered to have the powers given by the Act. The DG must register an FPO who is able to enforce the Act in a responsible manner. The level and kind of competence required of an FPO should measure up to the needs of the FPA. For example, if the FPA has many plantation forests in it, then competence in fighting forest fires would be a prerequisite.

### ***Criteria that the DG may take into account in deciding whether to register an FPO***

Please note: the DG is under no legal obligation to take the following considerations into account when making his or her decision. These are simply guidelines that the Department has drafted to assist by providing clarity. Criteria that may be used by the DG are:

- whether the curriculum vitae or the testimony of the referees or both confirm that the proposed fire protection officer has or will within a reasonable time have:
- adequate knowledge of veldfire conditions, behaviour and control within the area of the FPA;
- adequate skills and experience in the management and fighting of veldfires;
- certified qualifications appropriate to the level of veldfire risk within the area of the FPA;
- previous experience in managing firefighting resources appropriate to the needs of the FPA;
- experience in the technologies of veldfire management appropriate to the level of veldfire risk within the area of the FPA;
- proven co-ordination, command and control skills appropriate to the needs of the FPA;
- proven negotiation and facilitation skills appropriate to the needs of the FPA;
- whether there is any substantive objection to the appointment of the fire protection officer;
- the nature and level of support that the FPA will receive from an umbrella association or other sources; and
- any other relevant information.

An FPA must apply for registration in two parts. The first part is the completion and submission of Form 1: Application to register a fire protection association Part 1, for DWAF's approval. The reason

for this is that, before FPAs spent the large amount of time and effort required to fill in Form 2, the department needs to ensure that four basic prerequisites for the formation of the FPA have been met: the name of the FPA is unique; the area of the FPA is appropriate (not too small, too large or overlapping with another FPA); no other FPA exists within the same area; and local government is aware of the formation of the FPA.

## **Form 1: Application to register a fire protection association Part 1**

### **1. Particulars of the FPA**

**1.1--Name:** The name must include the words "Fire Protection Association". The name must be unique for any given District or Metropole. DWAF will check against the record of applications and registrations to ensure this and will issue lists at regular intervals to guide applicants.

**1.2 -District Municipality(ies) or Metropole(s) within which the FPA would fall:** This section requires the name of

- a) a Category A municipality, that is, a metropole, or
- b) a Category C municipality, that is, a district municipality.

Note that an FPA should for administrative purposes be confined to a single District or Metropole but that there may be good reason in some cases to have a transboundary FPA.

**1.3 -Subdivision of the District or Metropole, such as a Local Municipality or District Management Area, within which the FPA would fall:** Within a metropole, local affairs may be governed by subcouncils, to which the municipality may delegate powers.

Within a District Municipality there may be several Category B, or local, municipalities; where there is an area within the District where a Local Municipality is not feasible, that area is governed as a District Management Area. Within a Local Municipality, ward committees may govern local affairs.

Note that an FPA should for administrative purposes have boundaries that coincide with one or more Local Municipalities or subcouncil areas but that there may be good reason in some cases to have a transboundary FPA.

**1.4 -Province:** The name of the Province is needed to help locate the FPA. There may be cases where for good reason the boundaries of the FPA cross the provincial boundary in which case, the applicant will give more than one name.

**1.5 -Is this an existing organisation such as a Farmers' Association, Fire Control Committee, Nature Conservancy or Disaster Management structure that wishes to register as an FPA?** Because some organisations may already exist for the same purposes as intended for FPAs, or may easily accommodate the purposes, and to avoid duplication of organisations, the Act provides for the Minister to recognise various kinds of organisations as FPAs (section 4(3)), on the condition that each is open to all owners in its area and, obviously, meets the requirements for registration.

**1.6 -If yes, give the name of the existing organisation, the date of formation and the title of the statute or ordinance under which the organisation was formed:** There is a wide range of statutes under which the relevant organisation may be constituted, such as the Conservation of Agricultural Resources Act, the Forest Act, the Mountain Catchment Areas Act, and provincial nature conservation ordinances. The applicant must stipulate the applicable legislation since this determines the purpose of the organisation and therefore whether or not it can accommodate the objectives of an FPA.

### **2. Particulars of the person initiating the registration of the FPA**

The names and contact details of the person initiating the registration must be recorded.

### **3. Declaration that no owner has been deliberately excluded from meetings or discussions about the formation of the FPA**

A signed declaration must be included that states:

- (i) No owner has been deliberately excluded from meetings of discussions about the formation of the FPA
- (ii) All reasonable steps have been taken to include owners in the meetings and discussions.

The initiators of the FPA need only take *reasonable* steps to include owners, not all *possible* steps. They should take the steps that a reasonable person would take, bearing in mind that the reasonable person in law is the average man or woman, not reckless or overcautious, and aware of their surroundings and the dangers inherent in various activities. What the specific steps are would depend on the area in which the FPA was being organised. If there are many absentee landowners, the steps one takes to inform them will be different from the steps one would take to inform the executive body of a community which is well known and accessible. The person signing should be the same as the representative in 2.

#### **4. Particulars of the area of jurisdiction of the FPA**

**4.1--If the area coincides with that of a municipality, name the municipality:** The name of the municipality should agree with the Demarcation Board name and boundaries.

**4.2 -If boundaries do not agree with part or any of the boundary of your District Municipality or the boundaries of your Local Municipality, please give brief reasons for this:** This needs to be completed if the area is only part of a municipal area, or area of a subdivision of the municipality. This is especially important if the area includes parts of adjoining municipalities or subdivisions of municipalities.

The validity of the reasons given will be judged by DWAF and will be assessed by discussion with the applicant, but should carry the support of the Chief Fire Officer where there is a municipal fire service. An FPA boundary that crosses from one municipality to another will require a mutual assistance agreement between neighbouring fire services, as provided for in the Fire Brigade Services Act, and this should be part of the documents for the FPA business plan.

**4.3 -Give a brief explanation of why you chose to define your area as it is:** This explanation should focus on ecological conditions or on the practicality of the veldfire management strategy.

The Department will approve the boundaries if they:

- (i) ---are suitable with regard to the requirements for veldfire management in the area;
- (ii) --allow the FPA to undertake its duties in terms of section 5 of the Act effectively within the area; and
- (iii)--have been chosen in the best common interests of the population as a whole within the metropolitan or District Municipality boundaries.

Here too the validity of the applicant's reasons is a matter of judgement and should be assessed by discussion with the applicant. There should, however, be good reasons for obvious anomalies in the area defined for the FPA, such as if it seems too small or too large, includes contrasting climatic areas, or has irregular boundaries.

**4.4 -Please attach a 1:250 000 topo-cadastral map or a map issued by the Department showing the boundaries of the FPA. Indicate wherever there is a common boundary with a neighbouring FPA and write the name of that Association on the map:** The applicant may use a copy of the printed map obtainable from the Government Printer or a photocopy of the map. Alternatively, Geomatics or the Regional GIS in the Department may print a map for the applicant. DWAF Fire Advisors can provide maps.

The map does not have to show the boundaries of non-FPA members whose properties fall within the FPA area. Boundaries should mostly coincide with farm and town boundaries; there should not be gaps between the FPA boundaries and those of adjoining or nearby FPAs.

**4.5 -Estimate the extent of the area within the boundaries of the FPA and estimate the proportion of the area represented by owners who would be members of the FPA:** Here DWAF's Fire Adviser for the area would need to be satisfied that these are reasonable estimates.

**5. Signed declaration that no other FPA is intended or exists within the area of the proposed FPA:** The person signing should be the initiator of the FPA.

**6. Declaration by the person initiating the registration of the FPA that the information in Form 1 is true and correct:** The person signing this should be the same as in 2.

**7. Recommendation by an appropriate representative of Local Government that the FPA go on to complete Form 2:** The person signing the declaration may be (a) the Mayor (b) a member of the municipal Executive (c) the head of the local Disaster Management Centre (d) the Chief Fire Officer, but should not be the same person who is initiating the FPA.

**8. Recommendation by the regional representative of DWAF that the FPA may go on to complete Form 2:** The DWAF Fire Advisor for the area should be satisfied that the desire to register the FPA is well-founded. By signing, the Fire Advisor is also indicating that he or she has shown due diligence in the administration of the form.

**9. Declaration by the Cluster Manager of DWAF that the FPA may go on to complete Form 2.**

### **Form 2: Application for the registration of an fire protection association Part 2 and application for the registration of the fire protection officer**

The second part of the registration process is the completion and submission of Form 2, "Application for the registration of a fire protection association Part 2 and application for the registration of the fire protection officer", along with the documents required:

- the minutes of the founding meeting;
- the FPA's constitution;
- the FPA's business plan, which includes its veldfire management strategy and rules; and the minutes of the meetings which approved the constitution, appointment of the FPO, the business plan and Form 2.

Form 2 is designed to enable:

- the Minister to decide whether to register the FPA, thereby conferring on it its powers and duties under the Act; and
- the Director-General to decide whether to register the FPO, thereby conferring on him/her his or her powers and duties under the Act.

The Minister must be satisfied that the FPA is capable of performing its duties under the Act and is representative of owners in its area. The Director-General must be satisfied that the FPO is able to enforce the Act in a responsible manner. Form 2 is designed to enable both of them to establish what they need to establish.

**1. Particulars of the FPA:** the information for this item should be the same as in Form 1.

**2. Particulars of the representative of the FPA:** this person should not be the proposed fire protection officer.

**3. Address of the office of the FPA, if established.**

**4. Particulars of the founding meeting**

**4.1-- Attach copies of advertisements of the founding meeting published in newspapers, if any:** newspapers used to advertise should be the ones that reach most owners in the area and if no newspaper advertisements are attached, then 4.2 must be completed.

**4.2 Describe other means by which owners were notified of the founding meeting, if any:** these may be one or more of: (a) newsletters of associations to which owners belong and which collectively include most owners (b) letters, faxes or e-mail messages to owners (c) copies of notices posted in public places, and a list of the places in which these were posted and (d) detailed invoices for local or regional radio broadcasts. The initiator must have taken reasonable steps to reach owners, but need not prove that all owners have been reached.

**4.3 - Attach the minutes of the founding meeting, including the attendance register:** The minutes must be attached to Form 2 in hard copy and signed by the Chairperson.

The Chief Fire Officer(s) or their delegates must have attended the meeting. If a delegate has attended, a copy of the written authorisation to the delegate signed by the CFO must be attached.

The attendance register must record:

- the names, contact details and property names of all owners who attended the meeting;
- the names, contact details and property names of all owners who were represented at the meeting and the names and contact details of the owners or organisations who represented them.

The minutes must indicate:

- whether or not there was unanimous support among owners or their representatives for the formation of the FPA
- the number of votes cast in favour of the said formation
- the number of votes cast against the said formation; and
- the number of owners or their representatives who abstained from casting their votes on the said formation.

The DWAF Fire Adviser must be satisfied that the minutes of the meeting are an accurate reflection of what took place there.

#### **4.4 Attach a list of names and contact details of members of the elected Executive**

**Committee:** The regulations require that where the founding meeting votes in favour of forming an FPA it must at least:

- give the FPA a name
- describe the area in respect of which the FPA is formed
- elect the Executive Committee.

At least the details of (a) the Chairperson (b) the Secretary and (c) the Fire Protection Officer designate should be attached to Form 2.

**5. *Signed declaration that no owner has been deliberately excluded from the formation of the FPA:*** Here, the DWAF Fire Adviser should be satisfied that the declaration is true and the signature is that of the Chairperson of the FPA, the FPO or a similarly responsible person.

**6. *Attach a copy of the constitution of the FPA:*** The constitution must accompany the application. If the FPA is applying in terms of section 4(3) (which allows the Minister to register existing organisations), then its founding law or constitution must comply with section 4(6): it must allow all owners in the area of the FPA to join provided they undertake to abide by its constitution and rules.

The copy of the constitution of the FPA may be attached as a hard copy or accompany the electronic copy of Form 2 as an electronic file. The text of the constitution should follow closely the requirements set out in regulation 4 but need not comply in every detail.

**7. *Signed declaration that the membership of the FPA will be representative of owners within the area:*** The DWAF Fire Advisor should be satisfied that the declaration is true and the signature is that of the Chairperson of the FPA, the FPO or a similarly responsible person. The declaration states, 'To the best of my knowledge all owners within the area of the FPA have had an opportunity to join the FPA and that the area has not been defined in such a way as to deliberately exclude any owner from the FPA'.

**8. *Record of any objections to the formation of the FPA:*** Attach a list of the names and addresses of those objecting, and describe the nature of objections raised, if any. The DWAF Fire Advisor should be satisfied that the return is a reasonable reflection of the real situation.

#### **9. *Particulars of the Fire Protection Officer of the FPA***

##### **9.1 Name and contact details**

**9.2 Attach CV and provide details of two referees:** The Act requires that the proposed FPO must 'be able to enforce the Act in a responsible manner', that is, the candidate must be able and responsible. See above for criteria that might be used by the DG to determine this.

**9.3 Is the FPO the Chief Fire Officer of your Fire Service?** The Act requires that the local Chief Fire Officer should be the FPO unless he/she declines the position. If there is more than one Fire Service within the area of the FPA, then the FPO must be appointed from among the willing candidate CFOs. Where there is no municipal Fire Service within the area, then the FPO cannot be the CFO. Note that the local Fire Service will be the function of metropolitan local government in the case of metropolises, or the local municipality in the case of district municipalities unless district government executes the service as an agency for the local municipality. If a CFO is not appointed then the reasons for this must comply with the provisions of the Act, that is, either (a) the CFOs have declined or (b) there is no CFO in the area of the FPA.

**9.4-- Have there been any objections to the appointment of the person named above as FPO?** If yes, please specify (a) how objections have been resolved, if so and (b) the nature of any outstanding objections: This provides an independent check on the acceptability of the designated FPO to members of the FPA, and appears here because of some stakeholders' concerns about the competence of available CFOs relative to the magnitude of the risk management problem. Outstanding objections must be evaluated in terms of the likelihood that objectors' safety will be put at unreasonable risk should the designated FPO be registered.

**9.5 Does the FPA require the Director-General of DWAF to designate an officer of the Department to act as its FPO?** Section 6(4) of the Act states that the DG may designate an officer or employee of the Department to act as the FPO if the FPA does not have the means to do so itself. Note that if the FPA requires the Department to designate an FPO, then the relevant DWAF Cluster Manager should indicate in 18 below that a competent person will be available for this duty from his/her staff complement.

**10. Attach a copy of the business plan of the FPA:** A copy of the FPA business plan must be attached to the application, as an electronic file in the case where the FPA has completed its application electronically. DWAF has developed a guide to FPAs for the development of business plans, which is available from any Fire Advisor or DWAF national office. See the next box for information about business plans.

**11. Particulars of the rules of the FPA:** The rules of the FPA should be contained in the business plan. See Box 5 for information on rules.

**12. Umbrella association that will support the FPA (if any):** The name of the umbrella and its Chief Executive Officer should be given. A list of the services to be provided should be given and the Chief Executive Officer should confirm that the umbrella will be providing these services to the FPA. See above for more on umbrellas.

**13. Description of the capability of the FPA:** The National Veld and Forest Fire Act requires that the Minister must be satisfied about the capability of the FPA before registering it. This will be judged by the contents of the business plan required in 10 above, and the support, if any, to be provided by an umbrella association. However, if you wish to add more information relating to capability this should be done under 13. The business plan of the FPA must be the primary source of evidence of capability. The capability indicated in the business plan must measure up to the overall level of risk assessed for the area of the FPA. The overall level of risk assessed for the FPA must approximate the veldfire risk profile for the local municipality, as assessed in the national risk assessment, done by DWAF. Additional evidence of capability provided in 13 must supplement the business plan, rather than constituting primary evidence of capability. Where the FPO is not the local Chief Fire Officer and a Fire Service exists within the municipality(ies) that include the area of the FPA, include a description of agreements to co-operate with the Chief Fire Officer or refer to contents of the business plan where this is set out. Appropriate assistance agreements should exist, if necessary, with the relevant fire services for

the rendering of firefighting and other services to members of the FPA, as evidenced by this entry or by the contents of the relevant part of the veldfire management strategy.

**14. Approval of the application to register the FPA: Attach a copy of the minutes of the meeting(s) at which a majority of FPA members approved:**

- (a) -- the constitution of the FPA;
- (b) -- the appointment of the FPO;
- (c) -- the business plan; and
- (d) -- this application.

**15. Signed statement by an appropriate representative of Local Government (District or Metropolitan or Local Municipality) of commitment to the FPA:** The person signing the statement may be (a) the Mayor, (b) the Chairperson of the Executive Committee or (c) the Municipal Manager, but should not be the same person as the one in 16 below.

**16. Declaration by the representative of the FPA that the information in Form 2 is true and correct:** The person signing this should be the same as in 2.

**17. Recommendation by the regional representative of DWAF that the FPA be registered:** The DWAF Fire Advisor for the area should be satisfied that the registration application is properly founded. By signing, the Fire Advisor is also indicating that he/she has shown due diligence in the administration of the form.

**18. Declaration by the Cluster Manager of DWAF that the FPA should be registered.**

### **How will the minister decide whether to register an FPA?**

Please note: the Minister is under no legal obligation to take the following considerations into account in making his/her decision. These are simply guidelines that the Department has drafted to give an example of criteria that may be used by the Minister. The Minister must register and issue a certificate to an FPA if it is capable of performing its duties, and is representative of the owners in its area (noting also that all owners within the area concerned must be free to join the FPA).

#### **Capability**

To judge **capability**, the Minister will need to have information on the resources, skills and knowledge available to owners within the intended area of the FPA. Discretion will be needed in evaluating capability, since many owners, including municipalities, in certain districts will have very limited resources, but still need to form FPAs. The existence and role of umbrella FPAs will need to be considered when assessing capability. Umbrella associations may relieve FPAs of certain needs to maintain capacity. Criteria for capability include the contents of the FPA's business plan with regard to:

- its compliance with the requirements of the Act and the regulations
- the nature and level of veldfire risk identified by the business plan for the area
- the degree to which the veldfire management strategy addresses the requirements to manage this risk
- the fitness of the rules
- the resourcing of the FPA including the support it will receive from any umbrella association; and
- the capability of the FPA relative to the nature and level of veldfire risk within its area, including:
  - evidence among owners of previous co-operation in managing the environment (for example, previous membership of a Fire Control Committee or a Fire Protection Committee, participation in soil conservation committees, LandCare programmes, or ward or tribal authority development plans, or relevant land development objectives (LDOs) in integrated development plans (IDPs) that reflect collective work on environmental management, or nature conservancy planning)
- evidence of common purpose and commitment to veldfire management



- leadership and management skills, including financial management (of the Executive Committee)
- individual and institutional (public, private and NGO) competence in veldfire management
- acceptable boundaries, relative to the nature and extent of the veldfire management issues within the area of the proposed FPO
- where there is a Chief Fire Officer in the FPA who is not the Fire Protection Officer, evidence of existing or intended co-operation between the Fire Protection Officer and the Chief Fire Officer
- evidence of support from local government for the FPA
- the ability of the proposed Fire Protection Officer to enforce the Act in a responsible manner, and
- any other relevant information.

### ***Representivity***

To judge **representivity**, the Minister will need to receive information on the boundaries of the area of the FPA, the properties within it and the owners of these properties, and the owners who have agreed to join the FPA. Criteria for representivity would include:

- the proportion of owners within the area of jurisdiction of the FPA supporting its formation
- any objections made to the formation or registration of the FPA
- any evidence of the exclusion of any owner
- any evidence that vulnerable communities or assets have been unreasonably excluded from the area, and
- any other relevant information.

### **The constitution of a fire protection association**

The regulations set out a model constitution for you, which you can change according to your needs. Your FPA's constitution should contain the following:

#### ***General provisions***

- -- Name and address of the FPA and a description of the area of the FPA that your members can understand. You can attach a map if you want to.
- -- A statement noting that the constitution is in accordance with Chapter 2 of the National Veld and Forest Fire Act, 1998 (No. 101 of 1998) and the regulations under it.
- -- The aim of the FPA, which is to predict, prevent, manage and extinguish veldfires in its area and its duties set out in section 5 of the Act.

#### ***Membership***

- A section on membership, stating that any owner in the area of the FPA may at any time become a member, provided he/she undertakes to abide by this constitution and the rules of the FPA.
- The Secretary of the FPA must keep a register of members. The constitution should describe what information the register should have.
- Voting rights: how voting will work. A suggestion is that at any meeting where voting is required, each member will have one vote.

#### ***Rights and duties of members***

- Set out the rights and duties of members. For example, a member must pay any fees and charges set by the FPA, is entitled to enjoy all the benefits of membership and must comply with the FPA's rules.
- Also explain when membership will be terminated; membership may be automatically terminated if a member does not pay the membership fees, charges or interest within a certain number of days after the annual general meeting.
- Remember that state and municipal owners cannot have their membership terminated.

#### ***Membership fees***

- Membership fees, charges for services supplied by the FPA and interest on unpaid amounts will

be determined by the FPA in terms of its rules.

- Explain how membership fees will be determined: fees could be calculated per hectare, for example, or members requiring more services could pay higher fees (for example, for aerial support).
- The FPA may exempt any member from paying fees and charges, while still awarding him or her full membership status. The constitution should explain what process will be used to determine who should be exempted.
- The constitution should set out when membership fees are payable, and what the process is for increasing them.

### ***Liability and powers of FPA***

- Liability of members: explain that members are not personally liable for any claims against, debts owed by or omissions to carry out duties of the FPA.
- Powers of the FPA: take care to include all the powers you feel the FPA will need to carry out its business, for example, the FPA may acquire and dispose of any asset, hire employees, and take out loans. Set out the procedures the FPA must go through to do these things, for example, calling a general meeting of members.

### ***Executive Committee***

- Set out what positions there will be in the Executive Committee, for example, Chairperson, Treasurer and Secretary.
- Set out how long the terms of office are.
- Specify how an office bearer can be removed from the Executive Committee. For instance, if he or she has been absent without an apology and a good reason at two consecutive meetings of the Executive Committee.

### ***Financial year***

- The regulations set out that the financial year of the FPA runs from the date of its registration to 31 March of the following year, and then from 1 April every year to 31 March of the next year.
- The Secretary is usually responsible for all the FPA's financial business and must present an audited financial statement at the annual general meeting, but if the FPA has a Treasurer, obviously this person will be responsible.

### ***Annual report of a registered FPA***

A registered FPA must submit an annual report to the Minister by 30 June every year. DWAF wants the FPA to include the following in the annual report:

- a progress report on the attainment or otherwise of the aim and objectives specified in the business plan; and the implementation of the business plan as a whole
- a statistical summary of the causes, extent and consequences of veldfire in the FPA's area
- a summary of offences allegedly committed, a report on compliance with the Act as required by Section 6(1)(e)
- any other matters or observations that relate to successes in or problems with the management of veldfires;
- a report on how organs of state and municipalities have or have not complied with the rules of the FPA
- a summary of changes in membership, including new members and termination of membership with reasons given for termination
- an account of any major changes to the business plan that have been made to improve the functioning of the FPA, and
- any other relevant information.

The Minister may make available within a reasonable time to any interested party the information about veldfire management contained in the annual reports.

### ***Dispute resolution***

- How will disputes between members be resolved? An example is if negotiations between members to resolve a dispute fail, any member of the FPA may approach the Executive Committee, which must appoint an arbitrator whose decision will be final.

### **Annual and special general meetings**

- Describe how the annual general meeting will be called, what it will discuss and what constitutes a quorum. The annual report should be given at the annual general meeting. DWAF requires the annual report to be submitted to it by 30 June each year.
- Special general meeting: when may a special general meeting be convened, and what constitutes a quorum for such a meeting.

### **Dissolution of the FPA**

- How will the FPA be dissolved? For example, it could be dissolved by a general meeting called for that purpose or the Minister may deregister it in terms of Section 8 of the Act.
- The constitution must specify how the general meeting would dissolve it, for example, a resolution to dissolve the FPA must be passed by a two-thirds majority of members present, so long as enough members are present for there to be a quorum.

### **Relationship with umbrella organisations, if any**

- Identify the existing or proposed umbrella that would serve the FPA.
- Indicate which services the umbrella would provide to the FPA.

## **Box 5. The business plan for an FPA. Part 1: Veldfire Management Strategy**

See the DWAF guideline documents for preparing business plans.

### **An FPA's business plan**

The Act sets out in Section 5 the duties of a fire protection association. Here the Act states that an FPA must at least:

- a) develop and apply a veldfire management strategy for its area
- b) provide in the strategy for agreed mechanisms for the co-ordination of actions with adjoining fire protection associations
- c) make rules which bind its members
- d) identify the ecological conditions that affect the fire danger
- e) regularly communicate the fire danger rating to its members
- f) organise and train its members in fire fighting, management and prevention
- g) inform its members of equipment and technology available for preventing and fighting veldfires
- h) provide management services, training and support for communities in their efforts to manage and control veldfires
- i) supply the Minister at least once every 12 months with statistics about veldfires in its area
- j) furnish any information requested by the Minister in order to prepare or maintain the fire danger rating system
- k) exercise the powers and perform the duties delegated to it by the Minister, and
- l) appoint a Fire Protection Officer, unless there is a Chief Fire Officer who is willing to assume the powers and duties of a Fire Protection Officer.

The Department has developed a guide for FPAs to develop business plans to address each of these duties. It has been developed in consultation with a reference group drawn from interested and affected parties. The consultation involved two workshops during 2001, another in April 2002, and a subsequent invitation to send comments by mail. The guidelines also draw from an extensive review of the literature on veldfire risk management.

The FPA's business plan is built logically around the core requirement of a veldfire management strategy, which in turn is based upon the method of risk management. The guideline prescribes the minimum requirements and structure required by the Department to evaluate and approve the business plan and be satisfied that the FPA will be able to fulfil its duties. Copies of the guidelines are available at any DWAF office or on the DWAF CD-ROM *Resource materials on the National Veld and Forest Fire Act No. 101 of 1998*. DWAF Fire Advisers can assist FPAs to draw up their business plans.

### **WHY does the FPA need a business plan?**

South Africa is a country of great social, economic and ecological diversity. It is impossible to have a blueprint for the management of a phenomenon such as veldfires for the country as a whole. Local knowledge and judgement must determine the way veldfires are managed. The final responsibility for veldfire management lies with the owner of the land. The Act affirms this clearly. Veldfire management within an FPA must be a balance between the plans of the individual landowners, and the collective plans of the FPA, established for the common good.

Approval of the business plan is a requirement for the registration of any FPA. Through registration an FPA will be empowered by the Act. Registration is also required for the recognition of the FPA's Fire Protection Officer. In addition, the veldfire management strategy of an FPA will form the veldfire component of your local disaster management plan.

The business plan is needed for the registration of the FPA, for several reasons:

- To show that it is capable of managing veldfires in its area.
- To demonstrate an adequate understanding of the veldfires risks in its area and how to manage them.
- As proof that its members understand the risks and agree with the strategies and measures adopted in the plan.
- To provide the reasons for the rules that it will apply. When the FPA is registered, it will receive the powers to implement these rules. The National Veld and Forest Fire Act makes provision for the delegation of additional powers and duties for veldfire risk management. For these reasons, the strategy and its rules need to be read together as the basis for the empowerment of the FPA.
- To promote common standards and co-ordination among FPAs, municipal fire services, and disaster management.
- To provide information that can be used to build a countrywide picture of veldfire risks and the resources needed to manage them.

The guideline will be useful to the FPA because it provides a framework for a consistent, diligent and efficient approach to veldfire management across South Africa, and for co-ordination with related aspects of managing resources and the environment.

Please note that what is needed is a strategy, not an operational plan. To meet the requirements of the Act, government needs only to determine whether or not an FPA has developed its plans to a level appropriate to the level of veldfire risk in its area, has been reasonably diligent in doing this, and is capable of implementing its strategy. Government will also use the picture that emerges from all FPA business plans to progressively build an overall picture of veldfire risk in South Africa. This will then be used to review priorities for managing veldfires and for the assignment of resources to the different districts in the country.

### ***Communication and consultation***

It is important to develop the strategy for an FPA by involving all interested parties. Stakeholders to be involved in the risk assessment should include the following:

- landowners, that is owners as defined in the Act, which include landowners in the normal sense of the word, lessees and others who use the land by similar contracts, the representatives of communities on communal land
- communities on communal lands, as well as their representatives on the municipal council or ward committee, as well as their traditional leaders where appropriate
- Eskom, whose power lines are vulnerable to veldfires
- provincial and national government departments
- catchment management agencies or forums
- local farmers' associations
- the local fire service
- nature conservancies
- local or provincial disaster management centres
- municipalities and their sub-structures
- nature conservation agencies and NGOs
- fire fighting associations
- land development committees and LandCare committees.

The veldfire management strategy must address all aspects contained in the guideline, but in a manner appropriate to the veldfire management problems in your area and to the level of resources available to you.

FPA's will need to revise their veldfire management strategies, improved in the light of their monitoring of performance and review of strategy, and submit these for approval by DWAF every five years.

## **Veldfire risk management**

### ***What is meant by veldfire risk management?***

Veldfire risk is defined as the chance of a veldfire igniting, spreading and causing damage to assets of economical, social and environmental value to the community.

Veldfire risk management involves identifying the level of risk posed by veldfires to assets, and establishing strategies to protect these assets from the adverse effects of veldfires. The purpose of veldfire risk management is to protect the community and its values, which could be social, economic or environmental, from the adverse effects of veldfire. The risk management strategies must be appropriate to the level of risk determined within an FPA, and must match the options available for managing the risk. The outcome sought is to achieve better integration of community preparedness, prevention, suppression and recovery strategies as key elements of veldfire management.

The principle of achieving the lowest acceptable risk at an affordable cost must apply, that is, that once the FPA has implemented its strategy, the cost of implementation as well as the level of residual risk is acceptable to the members of the FPA and the public agencies supporting the FPA. In order for there to be a risk there must be some asset that is exposed to a hazard. For a given likelihood:

- there is no risk if there is no consequence
- there is a very high risk if the consequence is very great.

For a given magnitude of consequence:

- there is low risk if the likelihood of the hazard eventuating is small, that is, if the event is very unlikely
- there is a high risk if the likelihood of the hazard eventuating is big, that is, if the event is frequent.

Risk management is the logical and systematic method of:

- establishing the strategic context to veldfire risk management within the area of the FPA, that is, the understood social, economic, environmental and institutional context that determines the level of risk faced by the community, the options available to them to manage that risk and the criteria that members will apply when deciding on priorities
- identifying the veldfire hazards that they face
- identifying the assets exposed to the hazards
- identifying, analysing, evaluating, treating, monitoring and communicating risks so that members and the FPA can minimise losses and maximise opportunities.

Risk management must involve effective communication and consultation. This is because the risk management strategy must stand up to the scrutiny of the courts, that is, shown to be diligent, to be reasonable, and to meet established standards.

Veldfire management requires management now, with the best means available. This means we cannot wait for improvements, but rather that we must improve management continuously, in a systematic way. This continuous improvement is achieved by monitoring, evaluation and improvement.

## **Summary of information required for a business plan**

A guide to drawing up a business plan and how to assess veldfire risk, as well as a model business plan are available from any DWAF office or from the DWAF CD-ROM *Resource materials on the National Veld and Forest Fire Act No. 101 of 1998*. The business plan must include the elements specified below.

1. -A summary of its contents.
2. -The scope of the business plan in terms of its area and period of operation.
3. -A description of the current situation in the area of the FPA that provides the strategic context to the business plan of the FPA including:
  - background and history of the FPA
  - social considerations informing the business plan
  - economic considerations informing the business plan
  - environmental considerations informing the business plan
  - a description of veldfires in the area of the FPA
  - laws applying to veldfires in the area of the FPA
  - current veldfire management
  - assessment of the effects of past veldfires in terms of social, economic and environmental impacts
  - criteria to be applied in evaluating veldfire risk within the area of the FPA.
4. - The veldfire management strategy of the FPA under the following headings:
  - aim and objectives of the strategy
  - an identification of the veldfire hazards in the area of the FPA
  - an identification of the social, economic and environmental assets exposed to veldfire hazards in the area of the FPA
  - an identification of the veldfire risks within the area of the FPA
  - resources available for veldfire management in the area of the FPA including institutional capacity, personnel, equipment and facilities, communications, support from an umbrella FPA, if one exists, and assessment of the adequacy of resources and the need for improvement
  - veldfire risk management strategies for the risks identified in the area of the FPA under the following headings: general strategies, integrated veldfire management plans, and specific asset protection strategies.

## TERMINOLOGY

**Act:** the National Veld and Forest Fire Act no. 101 of 1998.

**Asset:** an item or (ecological) process that a community or society at large recognises to have value.

**Backburn:** a fire ignited along the inner edge of a control line to consume the fuel in the path of a wildfire.

**Consequence:** the outcome of a veldfire expressed qualitatively or quantitatively, whether a loss, injury, disadvantage or gain.

**Direct attack:** any treatment of burning fuel, for example, by beating, wetting, smothering, or chemical quenching, or by physically separating the burning from the unburned fuel.

**Fire control line:** a natural or constructed barrier used in veldfire suppression and prescribed burning to limit the spread of veldfire.

**Fire danger:** The resultant of all factors that determine whether veldfires start, spread, and do damage and whether and to what extent they can be controlled.

**Fire danger index:** A relative number denoting an evaluation of rate of spread of a veldfire, or suppression difficulty for specific combinations of fuel, fuel moisture and wind speed.

**Fire prevention plan:** The plan for all activities concerned with minimising the incidence of wildfire, particularly that of human origin.

**Fire protection plan:** The plan for all activities designed to protect an area (including human life, property, assets and values) from damage by wildfire, including fire prevention, fire preparedness, fire suppression and fire recovery.

**Fire Protection Association:** an association registered in terms of Chapter 2 of the Act for the purposes of predicting, preventing, managing and extinguishing veldfires.

**Fire Protection Officer:** a person who performs the function of chief executive officer of a Fire Protection Association, appointed in terms of Section 5 of the Act.

**Fire restriction period:** the period of the year during which a permit is required to light, use or maintain fires in the open air.

**Fire suppression:** the activities connected with restricting the spread of wildfire following its detection and making it safe.

**Firebreak:** a strip of land where vegetation has been removed or modified to contain or to reduce the spread and intensity of any veldfire that may occur in or enter a property. Called a firebelt under previous legislation.

**Flame length:** the length of flames measured along the convective path from the ground surface.

**Flammability:** The ease with which a substance is set on fire.

**Hazard:** a source of potential harm or a situation with the potential to cause loss.

**Head fire:** that portion of a fire edge with the greatest rate of forward spread.

**Hazard:** The potential for harm or damage to people, property, or the environment. Hazards include the characteristics of facilities, equipment systems, property, hardware, or other objects; and the actions and inactions of people that create such hazards.

**Integrated development plan (IDP):** an integrated development plan is the product of the process through which municipalities prepare a strategic development plan, for a five year period. The IDP is a principal strategic planning instrument which guides and informs all planning, budgeting, management and decision-making in a municipality.

**Integrated veldfire management plan:** a plan for a given property of land management unit that incorporates plans for both fire protection as well as the management of veldfire e.g. through prescribed burning for asset maintenance, e.g. habitat management.

**Likelihood:** a qualitative description of probability or frequency.

**Loss:** any negative consequence, financial or otherwise.

**Monitor:** to check, supervise, observe critically, or record the progress of an activity, action or system on a regular basis in order to identify change.

**Prescribed burning:** the controlled application of fire under specified environmental conditions to a predetermined area and at the time, intensity and rate of spread required to attain planned management objectives.

**Preparedness:** All activities undertaken in advance of wildfire occurrence to decrease wildfire area and severity and to ensure more effective fire suppression.

**Prescribed burning:** the controlled application of fire under specified environmental conditions to a predetermined area and at the time, intensity and rate of spread required to attain planned resource management objectives.

**Rate of spread:** the rate of advance of the head of the fire (equivalent to rate of forward spread).

**Readiness and response plan:** A plan outlining desirable levels of readiness of personnel, systems and equipment and their locations and availability for the detection and control of wildfires.

**Recovery:** The post-fire phase where damaged assets are salvaged, repaired or replaced; sites disturbed by fire control operations are rehabilitated; the natural response of the ecosystem is monitored, and managed if necessary; health and safety issues arising from the fire control operation are addressed; and lessons learned from the incident are incorporated into planning for future wildfire events.

**Veldfire:** a veld, forest or mountain fire, where veld means the open countryside or peri-urban land beyond the urban limit or homestead boundary.

**Veldfire behaviour:** the manner in which a veldfire reacts to the variables of fuel, weather and topography.

**Veldfire management:** All activities associated with the management of the use of land, including the use of fire, to meet veldfire management goals and objectives.

**Veldfire management strategy:** the strategy of the FPA to manage veldfires within its area of jurisdiction, as required in Section 5(1)(a) of the National Veld and Forest Fire Act.



**Veldfire risk:** the chance of a veldfire igniting, spreading and causing damage to one or more assets, measured in terms of consequences and likelihood.

**Wildfire:** an unwanted veldfire.