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OFFICE OF THE PRESIDENT

No. 1536.27 November 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 101 of 1998: National Veld and Forest Fire Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1536.27 November 1998

Hierby word bekend gemaak dat die President sy goed-keuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 101 van 1998: Nasionale Wet op Veld- en Bosbrande, 1998.

19515

27 NOVEMBER

101

NATIONAL VELD AND FOREST FIRE ACT, 1998

(English text signed by the President.)

(Assented to 19 November 1998.)

ACT

To reform the law on veld and forest fires; to repeal certain provisions of the Forest Act, 1984; and to provide for related matters.

The Parliament of the Republic of South Africa enacts the following law:

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CHAPTER 1 INTRODUCTORY PROVISIONS

This Chapter sets out the purpose for which this Act is passed. It defines important words and terms used in the Act and guides its interpretation.

Purpose

1. (1) The purpose of this Act is to prevent and combat veld, forest and mountain fires throughout the Republic.

(2) The Act provides for a variety of institutions, methods and practices for achieving the purpose.

Interpretation

2. (1) In this Act, unless inconsistent with the context—

(i) “chief fire officer” means the person appointed in terms of section 5 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), to be in charge of a service or designated service; (xiii)

(ii) “community” means a coherent, social group of persons with interests or rights in a particular area of land which the members have or exercise communally in terms of an agreement, custom or law; (xii) (iii) “Department” means the national Department which has responsibility for the management of veldfires; (vii)

(iv) “designated service” means a service recognised by the Minister for Provincial Affairs and Constitutional Development in terms of section 4 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987); (i) (v) “Director-General” means the Director-General of the Department; (x) (vi) “fire” includes a veldfire; (iii)

(vii) “fire danger” means the chance of a veldfire occurring or of an existing veldfire getting out of control and, if so, the anticipated rate at which, and intensity with which, it will burn; (vi)

(viii) “fire protection association” means a fire protection association registered in terms of section 4; (v)

(ix) “fire protection officer” means a person referred to in sections 5 and 6; (iv)

(x) “forest officer” means a forest officer designated or appointed under section 65 of the National Forests Act, 1998; (ii)

(xi) “Minister” means the Minister to whom the President assigns responsibility for veldfires in terms of section 91(2) of the Constitution; (xiv)

(xii) “municipality” means a local council, a metropolitan council, a metropolitan local council, a representative council, a rural council or a district council as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993), and any successor to such a council; (xv)

(xiii) “owner” has its common law meaning and includes—

(a) a lessee or other person who controls the land in question in terms of a contract, testamentary document, law or order of a High Court;

(b) in relation to land controlled by a community, the executive body of the community in terms of its constitution or any law or custom;

(c) in relation to State land not controlled by a person contemplated in paragraph (a) or a community—

(i) the Minister of the Government department or the member of the executive council of the provincial administration exercising control over that State land; or

(ii) a person authorised by him or her; and

(d) in relation to a local authority, the chief executive officer of the local authority or a person authorised by him or her; (xi)

(xiv) “prescribe” means prescribe by regulation; (xix)

(xv) “service” means a fire brigade service as defined in section 1 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987); (viii)

(xvi) “State forest” means a State forest as defined in section 2 of the National Forests Act, 1998; (xvi)

(xvii) “State land” means land which vests in the national or a provincial government—

(a) including land held in trust by the Minister of Land Affairs or the Ingonyama referred to in the KwaZulu Ingonyama Trust Act (KwaZulu Act No. 3 of 1994);

(b) excluding land belonging to a local authority; (xvii)

(xviii) “the Act” or “this Act” means the National Veld and Forest Fire Act, 1998, and includes the regulations made under the Act; (ix) (xix) “veldfire” means a veld, forest or mountain fire. (xviii)

(2) Words derived from the words defined have corresponding meanings, unless the context indicates otherwise.

(3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not.

(4) Neither—

(a) a reference to a duty to consult specific persons or authorities, nor

(b) the absence of any reference to a duty to consult or give a hearing,

in this Act exempts the official or authority exercising a power or performing a duty from the duty to proceed fairly in respect of all persons entitled to be heard.

(5) Where there is more than one owner in respect of the same land, the proper performance by one owner of a duty imposed in terms of this Act exempts the other owners from performing that duty.

(6) Explanatory notes, printed in bold italics at the commencement of Chapters, must not be used to interpret this Act.

CHAPTER 2 FIRE PROTECTION ASSOCIATIONS

Chapter 2 regulates the establishment, registration, duties and functioning of fire protection associations. These associations must deal with all aspects of veldfire prevention and fire fighting. The appointment and duties of a fire protection officer are also regulated in this Chapter.

Formation of fire protection associations

3. (1) Owners may form an association for the purpose of predicting, preventing, managing and extinguishing veldfires and apply for its registration as a fire protection association in terms of this Chapter.

(2) A fire protection association may be formed by owners who wish to co-operate for the purpose referred to in subsection (1) in respect of an area which has—

(a) regular veldfires; or

(b) a relatively uniform risk of veldfire; or

(c) relatively uniform climatic conditions, or

(d) relatively uniform types of forest or vegetation.

(3) If no fire protection association has been registered within one year after the Act comes into effect in an area where the Minister is of the opinion that a fire protection association should be formed, he or she must convene a meeting of owners in the area to—

(a) explain the provisions of this Chapter;

(b) see if there is support for the forming of a fire protection association; and

(c) identify what assistance the Department can provide in the formation, registration and management of a fire protection association, if there is such support.

(4) The Minister may give assistance to and co-operate with owners in forming a fire protection association.

Registration of fire protection associations

4. (1) An application for registration as a fire protection association must be made in the prescribed way.

(2) If the Minister is satisfied that—

(a) the applicant is capable of performing the duties imposed on a fire protection association in terms of this Act; and

(b) the applicant is representative of owners in the area,

he or she must register such an association and issue a registration certificate.

(3) The Minister may recognise and register as a fire protection association—

(a) a fire control committee or regional fire control committee established under section 19 of the Forest Act, 1984 (Act No.122 of 1984);

(b) a conservation committee established under section 15 of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983);

(c) a catchment management agency established under section 78 of the National Water Act, 1998 (Act No. 36 of 1998);

(d) any nature conservancy established in terms of any ordinance of any Province;

(e) a fire protection committee established under section 7 of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970);

(f) a disaster management agency established in terms of any law passed for the management of disasters or for civil protection; and

(g) any voluntary association in existence at the time of the promulgation of the Act, which has as one of its objects the prevention and combating of veldfires, or any committee of such an association,

if its founding law or constitution complies with subsection (6).

(4) The Minister may require an applicant for registration to fulfil certain conditions either before or after registration, including the amendment of its constitution.

(5) Only one fire protection association may be registered in respect of an area.

(6) All owners in an area for which a fire protection association has been registered have a right to join the fire protection association, provided they undertake to abide by its constitution and rules.

(7) Where a fire protection association has been registered in an area—

(a) all or part of which is controlled by a municipality and that municipality has a service; or

(b) in which there is a designated service,

the municipality or designated service must become a member of the fire protection association.

(8) The owner in respect of State land must join any fire protection association registered in the area in which the land lies.

(9) Nothing in this Act prevents the formation of an umbrella association for a number of fire protection associations, but a reference in this Act to a fire protection association is not a reference to such an umbrella association.

(10) An umbrella association may exercise powers under this Act or perform duties in terms of this Act on behalf of a fire protection association if the Minister agrees.

Duties of fire protection associations

5. (1) A fire protection association 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 in the event of a fire crossing boundaries;

(c) make rules which bind its members;

(d) identify the ecological conditions that affect the fire danger;

(e) regularly communicate the fire danger rating referred to in sections 9 and 10 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 a municipality is a member.

(2) Where a municipality or a designated service is a member, the fire protection association must consult with it in the development and application of the strategy.

(3) The Minister may delegate a power or duty to a fire protection association if he or she has consulted with the fire protection officer beforehand.

(4) The rules contemplated in subsection (1)(c) must provide for—

(a) any matter which may or must be dealt with in terms of this Act;

(b) the minimum standards to be maintained by members in relation to all aspects of veldfire prevention and readiness for fire fighting;

(c) controlled burning to conserve ecosystems and reduce the fire danger; and
(d) any other matter which is necessary for the fire protection association to achieve its objects.

(5) A copy of the rules must be lodged with the Minister.

Fire protection officers

6. (1) The fire protection officer must—

(a) perform the function of chief executive officer of the fire protection association;
(b) carry out the tasks assigned to him or her by the fire protection association or its executive committee;

(c) take control of any fire fighting in the area for which the fire protection association has been formed, if—

(i) the veldfire is a threat to life or property; and

(ii) he or she is reasonably able to do so;

(d) enforce the rules of the association;

(e) monitor and report to the association and the Minister on compliance with this Act;

(f) train the members—

(i) in the law regarding veldfire prevention, management and control;

(ii) on the rules of the fire protection association; and

(iii) to prevent and fight veldfires; and

(g) inspect the members' land to ensure that they are complying with their duties in terms of the Act and the rules of the fire protection association.

(2) Where—

(a) a municipality is a member and has a service, or where a designated service is a member, the chief fire officer is the fire protection officer;

(b) a fire protection association has as members more than one entity having a chief fire officer, the fire protection officer must be elected as prescribed.

(3) A fire protection officer has the right of entry onto the land of a member of the fire protection association on reasonable notice to carry out the duties contemplated in subsection (1)(g).

(4) The Director-General may designate an officer or employee of the Department to act as fire protection officer for a fire protection association if a fire protection association does not have the means to do so itself.

(5) (a) An appointment under subsection (4) must be for a fixed period.

(b) The period may only be extended if, in the opinion of the Director-General, there is good reason for doing so.

(6) (a) A fire protection officer must apply to the Director-General for registration as a fire protection officer in the prescribed way.

(b) The Director-General must register a fire protection officer if he or she is satisfied that the person will be able to enforce the Act in a responsible manner.

(7) The fire protection officer may delegate his or her powers and duties in terms of this Act, except the powers of arrest, search and seizure.

Financial and other assistance

7. The Minister may give a loan, grant or other assistance to—

(a) any fire protection association for any of its activities; and

(b) any owner who prepares a firebreak in terms of section 14 and in doing so incurs expenses in excess of what he or she would reasonably be expected to incur if the boundary of his or her land did not coincide with that of the Republic.

De-registration of fire protection associations

8. (1) If a fire protection association has, in the opinion of the Minister, become inoperative or ineffective, he or she may deregister it and withdraw its certificate.

(2) In that event the fire protection association immediately becomes liable to—

(a) repay any loan made to it by the Department; and

(b) return any assets lent to it by the Department.

CHAPTER 3 FIRE DANGER RATING

Chapter 3 provides for the prevention of veldfires through a fire danger rating system. The Minister sets up and maintains the system, although he or she may delegate his or her powers and duties to do so to an organisation with the necessary expertise. The content of the system and the factors to be taken into account when preparing it are set out. A prohibition on the lighting of fires in the open air comes into force when the Minister warns in the media that the fire danger is high.

Fire danger rating

9. (1) The Minister must prepare and maintain on a continuous basis a fire danger rating system for the entire country in consultation with—

- (a) the South African Weather Bureau or any successor to that Bureau; and
- (b) fire protection associations.

(2) The Minister may consult other organisations with expertise, information or equipment relevant to the establishment or maintenance of a fire danger rating system.

(3) The Minister must divide the entire country into separate regions, each region being one in which the fire danger is usually sufficiently uniform to allow for a single rating which is meaningful for the entire region.

(4) The fire danger rating system must—

- (a) take into account the relevant peculiarities of each region, including—
 - (i) the topography;
 - (ii) the type of vegetation in the area;
 - (iii) the seasonal climatic cycle;
 - (iv) typical weather conditions;
 - (v) recent weather conditions;
 - (vi) where reasonably possible, current weather conditions;
 - (vii) forecasted weather conditions; and
 - (viii) any other relevant matter;
- (b) incorporate the formula or formulae needed to—
 - (i) take into account all factors affecting the fire danger for each region;
 - (ii) calculate the indicators needed to rate the fire danger;
 - (iii) rate the fire danger in each region for an appropriate period or periods;
- (c) show the rating in a clear format;
- (d) identify—
 - (i) what activities are dangerous and what precautions should be taken for each rating;

and

- (ii) when the fire danger is rated as high.

(5) The Minister may require any fire protection association to provide information needed for the fire danger rating system within a period specified by him or her.

Communication of fire danger rating

10. (1) The Minister must—

(a) communicate the rating of the fire danger for each region to the fire protection associations in that region regularly;

(b) when the fire danger is rated as high in any region, publish a warning at the earliest possible opportunity in all the main languages used in that region—

- (i) on three television channels and three radio stations broadcasting to that region; and
- (ii) in two newspapers circulating in that region; and

(c) ensure that recordings are kept of the broadcasts and copies are kept of the newspaper notices.

(2) When the Minister has published a warning in terms of subsection (1)(b), no person may light, use or maintain a fire in the open air in the region where the fire danger is high.

- (3) The warning referred to in subsection (1)(b) must—
- (a) say that the fire danger is high;
 - (b) refer to the prohibition on lighting, using or maintaining fires in the open air; and
 - (c) identify the region in which and the period for which the prohibition applies.
- (4) The Minister may publish the warning in such other media or employ any other means as he or she considers appropriate to ensure that it is effectively communicated.

Delegation of powers and duties

11. The Minister may delegate any of his or her powers or duties in terms of this Chapter to—

- (a) the South African Weather Bureau if the Director-General of the Department of Environmental Affairs and Tourism agrees;
- (b) any successor to that Bureau; or
- (c) an organisation with the necessary expertise,

and may pay such an organisation for its services from money appropriated by Parliament.

CHAPTER 4VELDFIRE PREVENTION THROUGH FIREBREAKS

Chapter 4 places a duty on owners to prepare and maintain firebreaks. The procedure in this regard and the role of adjoining owners and the fire protection association are dealt with. Provision is also made for the making of firebreaks on the international boundary of the Republic. The Minister is given the power to exempt any owner from making a firebreak for good reason.

Duty to prepare and maintain firebreaks

12. (1) Every owner on whose land a veldfire may start or burn or from whose land it may spread must prepare and maintain a firebreak on his or her side of the boundary between his or her land and any adjoining land.

(2) (a) If an owner referred to in subsection (1) intends to prepare and maintain a firebreak by burning, he or she must determine a mutually agreeable date or dates with the owners of adjoining land for doing so, and inform the fire protection association for the area, if any.

(b) If agreement cannot be reached, such owner must give to the owners of adjoining land and the fire protection association for the area, if any, at least 14 days written notice of the day or days during which he or she intends burning firebreaks, fire danger permitting.

(3) An owner of adjoining land who has agreed on a day in terms of subsection (2)(a) or who receives a notice in terms of subsection (2)(b) must—

- (a) burn his or her firebreak on the boundary concerned on the same day or days; or
- (b) be present at such burning or have his or her agent attend; and
- (c) ensure that a sufficient number of persons are present on his or her side of the boundary to prevent any spread of fire when the firebreak is burned.

(4) An owner may not burn a firebreak, despite having complied with subsection (2), if—

- (a) the fire protection association objects to the proposed burning; or
- (b) a warning has been published in terms of subsection 10(1)(b) because the fire danger is high in the region; or
- (c) the conditions are not conducive to the burning of firebreaks.

(5) The owner must inform the owners of adjoining land and the fire protection association, if any—

(a) if burning cannot be done on the agreed day or days referred to in subsection (2)(a) or any of the days referred to in subsection (2)(b); and

(b) of the additional days on which he or she intends to burn because of the failure to do so on the day or days set in terms of subsection (2)(a) or (b).

(6) It is not necessary for the owner to give 14 days notice of the additional days.

(7) Owners of adjoining land may agree to position a common firebreak away from the boundary.

(8) Should an owner intend to be absent for a period longer than 14 days during the period or part of any period in which burning normally takes place, he or she must give all owners of

adjoining land an address and telephone number, if any, at which he or she may be contacted.

(9) If an owner of adjoining land—

(a) is not present on the agreed or notified day or days; or

(b) has not given an address and telephone number, if any, as required in subsection (8), the owner may proceed with the burning in his or her absence.

(10) A fire protection association may make rules different from subsections (2) to (6) if the new rules are approved by the Minister, in which event members are bound by the new rules and exempt from subsections (2) to (6).

Requirements for firebreaks

13. An owner who is obliged to prepare and maintain a firebreak must ensure that, with due regard to the weather, climate, terrain and vegetation of the area—

(a) it is wide enough and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land;

(b) it does not cause soil erosion; and

(c) it is reasonably free of inflammable material capable of carrying a veldfire across it.

Firebreaks on borders of Republic

14. An owner—

(a) whose land is subject to a risk of veldfire; and

(b) whose land or any part of it coincides with the border of the Republic,

must prepare and maintain a firebreak on his or her land as close as possible to that border.

Exemption from duty to prepare and maintain firebreaks

15. (1) The Minister may exempt any owner or group of owners from the duty to prepare and maintain a firebreak or firebreaks for good reason.

(2) The exemption may be subject to conditions.

(3) The Minister must consult the fire protection association for the area, if any, before granting any exemption.

Exemption from prohibitions on damaging plants

16. The right or duty to prepare and maintain a firebreak in terms of this Chapter prevails over any prohibition in any other law on the cutting, disturbance, damage, destruction or removal of any plant or tree, except that the owner must—

(a) where possible, transplant any plant which is protected in terms of any law; or

(b) where it is safe and feasible, position the firebreak so as to avoid such plant or tree.

CHAPTER 5 FIRE FIGHTING

Chapter 5 places a duty on all owners to acquire equipment and have available personnel to fight fires. Certain persons and officials are given the power to enter land and fight fires in an emergency. It provides for agreements to be entered into between the Minister and fire protection associations, or between such associations, to assist each other in the case of a fire.

Readiness for fire fighting

17. (1) Every owner on whose land a veldfire may start or burn or from whose land it may spread must—

(a) have such equipment, protective clothing and trained personnel for extinguishing fires as are—

(i) prescribed; or

(ii) in the absence of prescribed requirements, reasonably required in the circumstances;

(b) ensure that in his or her absence responsible persons are present on or near his or her land who, in the event of fire, will—

(i) extinguish the fire or assist in doing so; and

(ii) take all reasonable steps to alert the owners of adjoining land and the relevant fire protection association, if any.

(2) An owner may appoint an agent to do all that he or she is required to do in terms of this section.

Actions to fight fires

18. (1) Any owner who has reason to believe that a fire on his or her land or the land of an adjoining owner may endanger life, property or the environment, must immediately—

(a) take all reasonable steps to notify—

(i) the fire protection officer or, failing him or her, any member of the executive committee of the fire protection association, if one exists for the area; and

(ii) the owners of adjoining land; and

(b) do everything in his or her power to stop the spread of the fire.

(2) Any person who has reason to believe that a fire on any land may endanger life, property or the environment, may, together with any other person under his or her control, enter that land or land to which the fire can spread in order to prevent that fire from spreading or to extinguish it.

(3) In taking control over the fighting of a fire in terms of section 6(1)(c), any fire protection officer may—

(a) take control from any person who has, until his or her arrival, controlled the fighting of the fire;

(b) order any person who is apparently not younger than 16 years and not older than 60 years to assist him or her.

(4) In the absence of a fire protection officer, a forest officer may—

(a) take over control of the fighting of a fire in or within ten kilometres of any State forest to the exclusion of any other person; and

(b) order any person who is apparently not younger than 16 years and not older than 60 years to assist him or her.

(5) Any person acting in terms of subsection (1), (2), (3) or (4) may, if he or she considers it necessary for the protection of life, property or the environment or for preventing a fire from spreading or for extinguishing it—

(a) enter any land;

(b) destroy trees, grass, crops or other vegetation;

(c) enter or break and enter any premises;

(d) prevent any person from entering any premises;

(e) forcibly remove from the scene any person who is in danger or who obstructs him or her in the performance of his or her duties; and

(f) remove or order to be removed any vehicle or other thing.

(6) Whenever a fire spreads or may spread across a boundary of a fire protection association, the fire protection officer must—

(a) inform the fire protection officer of the area to which the fire spreads or may spread;

(b) take all steps needed to co-ordinate the fire-fighting operation in accordance with the fire management strategy referred to in section 5(1)(a) and (b).

Agreements for mutual assistance

19. (1) The Minister may enter into an agreement with any person or persons or a fire protection association to provide mutual assistance in fighting fires.

(2) Two or more fire protection associations may enter into an agreement to provide mutual assistance in fighting and extinguishing fires on the land of or constituting a threat to their respective members.

(3) The agreements referred to in subsections (1) and (2) may provide for the payment of compensation for the assistance rendered.

CHAPTER 6 ADMINISTRATION OF ACTRegulations

20. (1) The Minister may make regulations to deal with—

(a) any matter that may or must be prescribed in terms of this Act;

(b) model constitutions for fire protection associations;

(c) procedures relating to registration of fire protection associations;

(d) procedures relating to the election of certain fire protection officers;

(e) applications for and grants of financial and other assistance to fire protection associations;
and

(f) generally, the carrying out of the purposes and the provisions of this Act.

(2) The Minister may make different regulations under subsection (1) for different regions of the Republic.

(3) The reference to specific regulation-making powers in this section does not limit the general regulation-making powers conferred by it.

(4) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe maximum penalties for such offences.

(5) The penalties may not exceed those for a second category offence referred to in section 24(2).

Procedure for making regulations

21. (1) Before making or amending any regulations in terms of this Act, the Minister must—

(a) publish a notice in the Gazette—

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations within a specified period;

(b) consider all comments received; and

(c) take advice from—

(i) the National Forests Advisory Council established in terms of section 33 of the National Forests Act, 1998;

(ii) the Fire Brigade Board established in terms of section 2 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987).

(2) The Minister makes the regulations by publishing them in the Gazette.

(3) The Minister must table the regulations in Parliament together with any written comments and advice received on them pursuant to subsection (1)—

(a) within 30 days after publishing them; or

(b) if Parliament is not then in session, within 30 days after the next session starts.

(4) Parliament may reject the regulations within 60 days after they have been tabled.

(5) If Parliament rejects any regulations, the Minister must—

(a) repeal them; or

(b) table amended regulations in draft form in Parliament, within 60 days of the rejection or if Parliament is not then in session, within 60 days after the next session starts, failing which the regulations become invalid.

(6) If the Minister elects to amend regulations which have been rejected, he or she—

(a) need not follow the procedure set out in subsection (1);

(b) must consult the chairpersons of the Council and of the Board referred to in subsection (1)(c),

before the amended regulations are tabled.

(7) If Parliament—

(a) accepts the amended regulations, the Minister must publish them within 30 days of Parliament's acceptance;

(b) rejects the amended regulations, subsections (5), (6) and this subsection apply.

(8) If the Minister complies with subsection (5)(b), the regulations as originally published continue to apply until amended regulations are accepted by Parliament and published by the Minister in terms of subsection (2).

Delegation of powers and duties

22. (1) The Minister may delegate the exercise of any of his or her powers under this Act, except the power to make regulations, and the performance of any of his or her duties in terms of this Act, to—

(a) a named official of the Department;

(b) the holder of an office in the Department;

- (c) an organ of State;
- (d) a person who or which is not an organ of State.

(2) The Director-General may delegate the exercise of any of his or her powers under this Act, and the performance of any of his or her duties in terms of this Act, to any employee in the Department.

(3) The Minister or the Director-General, as the case may be, may permit a person or organ of State to whom a power or duty has been delegated to delegate that power or duty further.

(4) A delegation referred to in subsections (1) and (2) and the permission referred to in subsection (3)—

- (a) must be in writing;
- (b) may be subject to conditions;
- (c) must specify the period for which it endures; and

(d) does not prevent the exercise of the power or the performance of the duty by the Minister or the Director-General, as the case may be.

Assignment of powers and duties

23. (1) The Minister may—

- (a) assign any power or duty in this Act to—
 - (i) a province or other organ of State; or
 - (ii) a person who or which is not an organ of State,

indefinitely or for a fixed period;

- (b) withdraw an assignment;
- (c) make an assignment subject to conditions,

by notice in the Gazette.

(2) The Minister must—

- (a) consult with the province, organ of State or person concerned; and

(b) consider the administrative capacity of the province, organ of State or person concerned to assume, or continue to provide, effective responsibility, before making or withdrawing an assignment.

(3) A province may implement those provisions of the Act relating to the powers and duties assigned to it—

- (a) from the date of the assignment;
- (b) in the area to which the assignment relates;
- (c) until the assignment ends.

CHAPTER 7 OFFENCES AND PENALTIES

This Chapter sets out the relevant offences in terms of the Act and the penalties applicable.

Penalties

24. (1) A person who is guilty of a first category offence referred to in section 25 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to two years, or to both a fine and such imprisonment.

(2) A person who is guilty of a second category offence referred to in section 25 may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to one year, or to both a fine and such imprisonment.

(3) A person who is guilty of a third category offence referred to in section 25 may be sentenced on a first conviction for that offence to a fine or community service for a period of up to six months, or to both a fine and such service.

(4) A person who is guilty of a second or third category offence may be sentenced on a second conviction for that offence as if he or she has committed a first or second category offence, respectively.

(5) A court which sentences any person to community service for an offence in terms of this Act must impose a form of community service which benefits the environment if it is possible for the offender to serve such a sentence in the circumstances.

Offences

25. (1) Any person who lights, uses or maintains a fire in the open air in contravention of section 10(2) is guilty of a first category offence.

(2) Any person who, in the open air—

(a) leaves unattended a fire which he or she lit, used or maintained before that fire is extinguished;

(b) lights, uses or maintains a fire, whether with or without permission of the owner, which spreads and causes injury or damage;

(c) throws, puts down or drops a burning match or other burning material or any material capable of spontaneous combustion or self-ignition and, by doing so, makes a fire which spreads and causes injury or damage;

(d) lights, uses or maintains a fire in a road reserve—

(i) other than in a fireplace which has been designated by a competent authority; or

(ii) for a purpose other than the burning of a firebreak in terms of sections 12 to 16; or

(e) smokes where smoking is by notice prohibited,

is guilty of a second category offence.

(3) Any person who—

(a) fails to prepare a firebreak when obliged to do so in terms of section 12(1) or 14;

(b) fails to give notice of intention to burn a firebreak in terms of section 12(2)(b);

(c) burns a firebreak when a fire protection association has objected in terms of section 12(4)(a); or

(d) fails to inform adjoining owners of the matters referred to in section 12(5),

is guilty of a second category offence.

(4) Any person who—

(a) fails to meet the standards of readiness for fire fighting referred to in section 17(1);

(b) fails to notify the persons referred to in section 18(1)(a);

(c) refuses to assist a fire protection officer or a forest officer in terms of section 18(3)(b) or 18(4)(b); or

(d) hinders or obstructs any person referred to in section 18(2) or any fire protection officer referred to in section 18(3) or any forest officer referred to in section 18(4),

is guilty of a second category offence.

(5) Any owner, occupier or person in control of land on which a fire occurs who fails to take reasonable steps to extinguish the fire or to confine it to that land or to prevent it from causing damage to property on adjoining land, is guilty of a first category offence.

(6) Any person who—

(a) prevents a fire protection officer, forest officer, a police officer or an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), from acting in terms of section 27, 28 or 29; or

(b) in any way interferes with him or her in the performance of his or her duties in terms of section 27, 28 or 29,

is guilty of a third category offence.

(7) Negligence amounts to fault for the purposes of an offence in terms of this section.

CHAPTER 8 ENFORCEMENT

This Chapter sets out the powers of registered fire protection officers to police the provisions of this Act effectively.

Implementation of this Chapter

26. (1) A fire protection officer has the power to enforce the Act in terms of this Chapter only if he or she is registered in terms of section 6(6).

(2) (a) A forest officer, a police officer, and an officer appointed in terms of section 5 or 6 of the Fire Brigade Services Act, 1987 (Act No. 99 of 1987), have the power to enforce the Act in terms of this Chapter.

(b) A reference to a fire protection officer in sections 27, 28 and 29 includes the officers referred to in paragraph (a).

(3) A fire protection officer exercising powers under this Act must carry with him or her, and produce on request, the prescribed proof of his or her identity and appointment as a fire protection officer.

(4) A reference to an offence in this Chapter means an offence in terms of this Act.

(5) (a) A court which imposes a fine for an offence in terms of this Act, may order that a sum of not more than one-fourth of the fine be paid to any person whose evidence led to the conviction or who helped bring the offender to justice.

(b) An officer in the service of the State may not receive such an award.

Power to enter and search

27. (1) A fire protection officer may enter and search any land or premises without a warrant if he or she has reason to believe that an offence has been or is being committed there and—

(a) the person in control of the land or premises consents; or

(b) the fire protection officer has reason to believe that a warrant would be issued if he or she were to apply for such warrant, but the delay caused by applying would defeat the object of the entry or search.

(2) A fire protection officer may, without a warrant, stop, enter and search any vehicle, or stop and search any beast of burden which he or she reasonably suspects is being or has been used in the commission of an offence.

Power to seize

28. (1) A fire protection officer may seize without a warrant—

(a) any vehicle, tool, weapon, animal or other thing which he or she has reason to believe has been or is being used in the commission of an offence;

(b) any thing which he or she has reason to believe might be used as evidence in the prosecution of any person for an offence.

(2) Where any vehicle or animal is seized in terms of subsection (1)(a), the person in control of the vehicle or animal must take it to the place pointed out by the fire protection officer.

(3) The place pointed out must be that which in the opinion of the fire protection officer is the nearest or most convenient for keeping the vehicle or animal.

(4) The vehicle or animal may be kept there pending the outcome of any proceedings in terms of this Act.

(5) If the person in control of the vehicle or animal refuses to take it to the place, a fire protection officer may do so.

(6) In order to safeguard a vehicle which has been seized, a fire protection officer may immobilise it by removing a part.

(7) The part must be kept safely and returned to the vehicle in good order when it is released.

(8) An item seized under this section must be kept securely and in good order.

Power to arrest

29. (1) A fire protection officer may arrest any person whom he or she reasonably suspects to have committed—

(a) a first or second category offence; or

(b) a third category offence and who in his or her opinion will fail to appear in answer to a summons.

(2) In making an arrest, a fire protection officer must—

(a) not use more force than is reasonably necessary if the arrest is resisted;

(b) respect the constitutional rights of the person arrested.

CHAPTER 9 GENERAL AND TRANSITIONAL PROVISIONS

This Chapter deals primarily with the transition to a new legal order in veldfire management and control. Miscellaneous items which need to be regulated are also dealt with.

Research

30. (1) The Minister may carry out or commission research into—

- (a) the prevention and combating of veldfires; and
- (b) the use of controlled fire in sustainable forest management.

(2) The Minister must make the results of the research available to all fire protection associations free of charge.

Publication of notices in media

31. (1) Where a notice must be published in terms of this Act and—

- (a) the required number of television channels or radio stations do not reach an area; or
- (b) the required number of newspapers do not circulate in an area,

the organ of State responsible for publication may do so in such lesser number of media as do reach the area in question.

(2) If an employee of a television channel or radio station signs an affidavit confirming—

- (a) publication of a notice, it is presumed that the notice has been published; or
- (b) that a television channel or radio station broadcasts to a particular area, it is presumed that

it so broadcasts,

until the contrary is proved.

(3) If an employee of a newspaper signs an affidavit confirming that a newspaper circulates in a particular area, it is presumed that it does, until the contrary is proved.

Notices to owners

32. (1) Where any person is required to give notice to an owner in terms of this Act, he or she must do so—

- (a) by hand delivery of the notice; or
- (b) by registered mail.

(2) If notice cannot be given to an owner because he or she is absent, notice may be given to the person apparently in charge of the land or, failing such a person, any person over the age of 16 years apparently residing on the land.

(3) If there is no person referred to in subsection (2), notice may be given by leaving a copy of the notice in a prominent place on the land in question.

Limitation of liability

33. Neither the State, nor any other person is liable for any damage or loss caused by—

- (a) the purported exercise of any power or performance of any duty; or
- (b) the failure to exercise any power or perform any duty,

in terms of this Act, unless the State or person responsible did so—

- (i) in bad faith, if it relates to a power or duty in Chapter 3; or
- (ii) negligently or in bad faith, if it relates to a power or duty in any other part of the Act.

Presumption of negligence

34. (1) If a person who brings civil proceedings proves that he or she suffered loss from a veldfire which—

- (a) the defendant caused; or
- (b) started on or spread from land owned by the defendant,

the defendant is presumed to have been negligent in relation to the veldfire until the contrary is proved, unless the defendant is a member of a fire protection association in the area where the fire occurred.

(2) The presumption in subsection (1) does not exempt the plaintiff from the onus of proving that any act or omission by the defendant was wrongful.

Amendment of Act 122 of 1984

35. The Forest Act, 1984 (Act No. 122 of 1984), is hereby amended—

(a) by the deletion in section 1 of the definitions of “fire belt”, “fire control area”, “fire control committee”, “fire control region”, “fire protection scheme” and “regional fire control

- (b) by the repeal of sections 18 to 27;
- (c) by the deletion in section 73 of paragraph (c) of subsection (1); and
- (d) by the deletion in section 75 of—

- (i) subparagraphs (iii) and (iv) of paragraph (a) of subsection (2);
 - (ii) paragraph (b) of subsection (2); and
 - (iii) subsections (7) and (8).

Savings

36. (1) Anything done in terms of a law repealed by this Act—

- (a) remains valid if it is consistent with this Act, until repealed or overridden; and
- (b) becomes an action in terms of the corresponding provision of this Act.

(2) Any regulation made in terms of the Forest Act, 1984 (Act No. 122 of 1984)—

- (a) remains valid if it is consistent with this Act, until it is repealed by the Minister; and
- (b) becomes a regulation made in terms of sections 20 and 21 of this Act.

(3) Assignments and delegations of powers or duties in terms of the Forest Act, 1984, become assignments and delegations in terms of this Act if they are consistent with this Act.

Short title

37. This is the National Veld and Forest Fire Act, 1998.

Commencement

38. This Act takes effect on a date fixed by the President in the Gazette.