

National Veld and Forest Fire Act No. 101 of 1998

Legally speaking...

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History (1)

- Indigenous people in South Africa had customary arrangements about the control and use of fire for centuries. 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. The first statute designed to control veldfires was the Cape Colony's Forest and Herbage Preservation Act of 1859.
- This was superseded by the Forest Act of 1888, which also provide for the prevention and combating of veldfires. A series of statutes related to forests 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 Statutory law governing veldfires broadened, for example with the passage of the Soil Conservation Act of 1946 (later superseded by the Conservation of Agricultural Resources Act) and the Mountain Catchment Areas Act.

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History (3)

- South Africa is becoming more and more vulnerable to veldfires because of urbanisation and the development of rural areas.
- The purpose of the National Veld and Forest Fire Act, Act No. 101 of 1998, as amended by the National Fire Laws Amendment Act, is to prevent and combat veld, forest and mountain fires throughout South Africa.
- The Act applies to the open countryside beyond the urban limit and puts in place a range of requirements.

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Urban fringe



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History (2)

- The Forest Act of 1984 captured much of the historical developments regarding the prevention and combating of veldfires. It included provisions 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.
- Nevertheless, the provisions of the Forest Act reflected a historical situation that no longer exists. It was written at a time when national government had substantial capacity for management throughout most of South Africa.

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Urban fringe



Veld?



Veld?



CHAPTERS IN THE NVFFA

- CHAP 1: INTRODUCTORY PROVISIONS
- CHAP 2: FIRE PROTECTION ASSOCIATIONS
- CHAP 3: FIRE DANGER RATING
- CHAP 4: FIREBREAKS
- CHAP 5: FIRE FIGHTING
- CHAP 6: ADMINISTRATION OF THE ACT
- CHAP 7: OFFENCES AND PENALTIES
- CHAP 8: ENFORCEMENT
- CHAPTER 9: GENERAL AND TRANSITIONAL PROVISIONS

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Chapter 1

INTRODUCTORY PROVISIONS (1)

- 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
 - Definitions etc
 - Landowner :
 - (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;

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Chapter 1 INTRODUCTORY PROVISIONS (2)

- **Veld** is defined in the CARA regulations of 25 May 1984 as 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.
- **Veldfire** means a veld, forest or mountain fire
- In March 2005 the Supreme Court of Appeal (SCA) handed down its decision in the *Gouda Boerdery BK v Transnet Ltd* case. A fire broke out and spread from the grass on the edge of a Spoorwet railway line in the rail reserve, causing damage to a farm. If the grass had been 'veld' in terms of the National Veld and Forest Fire Act, Spoorwet as the owner of the land would have had an obligation to prepare a firebreak. Because it had not prepared a firebreak, it would have been negligent and therefore responsible for damages. However, the court found that the veld in the rail reserve next to a railway line is **not** 'veld' in terms of the Act, so Spoorwet had not been negligent in not preparing a firebreak and was therefore not liable for damages.

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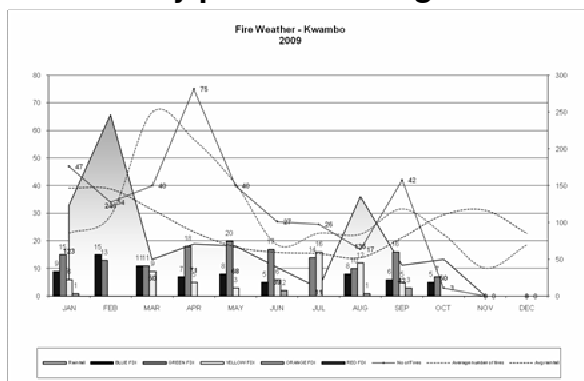
Chapter 1 INTRODUCTORY PROVISIONS (2)

- On the 27th November 2007 the Act was amended as follows
- **Previous definition:**
- "**Veldfire**" means a veld, forest or mountain fire.
- **Amended definition:**
- "**Veldfire**" means "any fire on any area of land, whether cultivated or uncultivated, including any building or structure on or adjacent thereto, and in respect of which area of land, the Fire Brigade Services Act, 1987 does not apply".
- Instead of changing the CARA act wrt the definition of Veld they changed the definition of Veldfire instead and closed the loophole!

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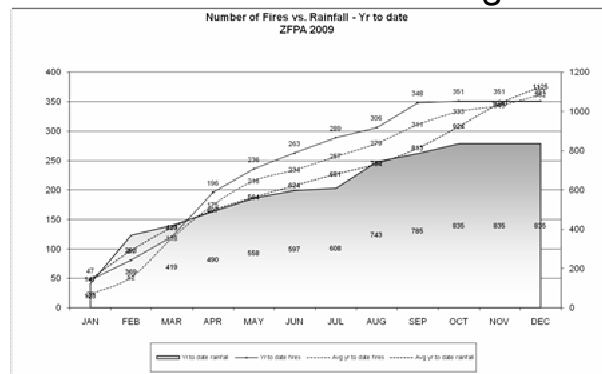
- Owners may form a fire protection association for the purpose of predicting, preventing, managing and extinguishing wild and forest fires and apply for its registration as a fire protection association in terms of the act.
- A fire protection association may be formed in an area which has:-
 - Regular veldfires; or
 - A relatively uniform risk of veldfire; or
 - Relatively uniform climatic conditions; or
 - Relatively uniform types of forest or vegetation.
- The Minister may recognize and register as a fire protection association:-
 - A fire control committee or a regional fire control committee;
 - A conservation committee.
 - A catchment management agency.
 - Any nature conservancy.
 - A fire protection committee.
 - A disaster management agency.
 - Any voluntary association which has as one of its objects the prevention and combating of veldfires.

Monthly prediction of ignitions



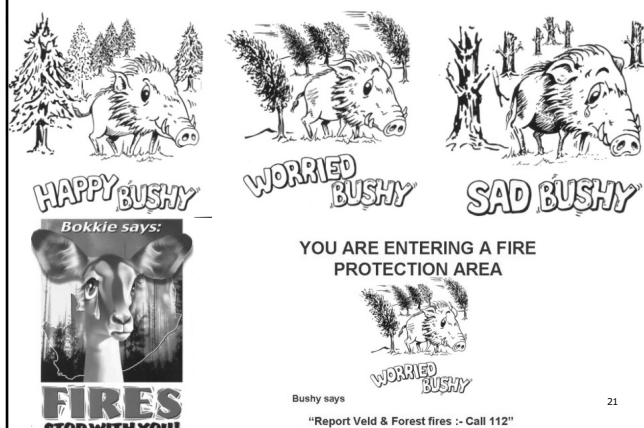
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Accumulative tracking



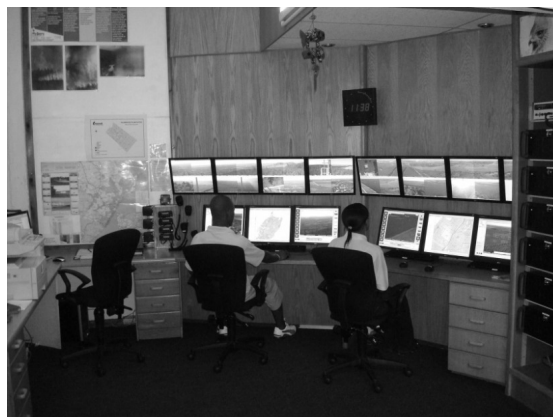
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FIRE AWARENESS



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ICC



Chapter 3 FIRE DANGER RATING

- The Minister must prepare and maintain on a continuous basis a fire danger rating system for the entire country in consultation with:-
 - The South African Weather Bureau; and
 - Fire protection associations.
- The country may be divided into separate regions, which have a uniform fire danger.
- The Minister must communicate the rating to the fire protection associations in the region.
- The Minister must publish warnings when the fire danger rating is high in any region. This must be published in newspapers and three television channels.
- When the minister has published a warning, no person may light, use or maintain a fire in the open air in the region where the fire danger is high.

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FIRE DANGER RATING

Zululand Fire Protection Services FIRE DANGER RATING SYSTEM, FIRE CONTROL AND STANDBY STATE					
Fire Alert Stage	0 - 20	21 - 45	46 - 60	61 - 75	76 - 100
FDS	SAFE	MODERATE	DANGEROUS	VERY DANGEROUS	EXTREMELY DANGEROUS
Fire Behaviour	0 - 1	1 - 12	12 - 18	18 - 24	24 - 30
Flame Length	0 - 1	1 - 12	12 - 18	18 - 24	24 - 30
Fire Controllability Guide	<p>1. If started they spread very slowly and may go out without suppression.</p> <p>2. There is little flaming combustion and intensity is low.</p> <p>3. Control is readily achieved and little or no map up is required.</p>	<p>1. Ignition may take place near protrusions but main body of fire is slow in forests.</p> <p>2. Moderate in open areas. Light surface fires with low flames. Control is readily achieved with direct manual attack with minimal resources.</p> <p>3. Stage exposed areas and require light map up.</p>	<p>1. Clear flames will start fires. Mature grasslands and forest litter will burn readily. Spread is moderate in open areas. Light surface fires with low flames. Control is readily achieved with direct manual attack with minimal resources.</p> <p>2. Stage exposed areas and require light map up.</p>	<p>1. Ignition can occur readily with fast spread in forests. Grass fire behaviour will be extreme.</p> <p>2. Fires will be very hot with crowning and short to medium attack on the head may not be possible.</p> <p>3. Direct resources must be used with extended map up. Reserve of wind change!</p>	<p>1. Ignition can occur from sparks. Fast spread in forests. Control may not be possible during day due to long range spotting and increased danger to forest.</p> <p>2. Stage exposed areas and require light map up.</p>
Controlled burning operations	Control burns can be executed if burning prohibitions and SOPs allow.	Control burns can be executed if burning prohibitions and SOPs allow.	No controlled burns if FDS forecast for the day exceeds 50.	No controlled burns of any nature.	No controlled burns of any nature.
Fire Fighting One Activation - fire on members land	<p>1. Landowner or 2. Addition of all neighbour resources if requested.</p>	<p>1. Landowner or 2. Addition of all neighbour resources if requested.</p>	<p>1. All available resources.</p> <p>2. Landowner or 3. Addition of all neighbour resources if requested.</p>	<p>1. All available resources.</p> <p>2. Landowner or 3. Addition of all neighbour resources if requested.</p>	<p>1. All available resources.</p> <p>2. Landowner or 3. Addition of all neighbour resources if requested.</p>
Fire Safety Foresters	Normal - good fire risk and time off if burning standby forester available.	Normal - remain on duty in rural and call contact. Report if necessary to ops.	Alert - remain on duty in rural and call contact. Know where all teams are. Have strike areas on vehicle. Report all movements to ops.	Danger - remain on duty in rural and call contact. Report all movements to ops. Know where all teams are. Have strike areas on vehicle and move to initial attack staging areas.	Extreme Danger - remain on duty in rural and call contact. Report all movements to ops. Know where all teams are. Have strike areas on vehicle and move to initial attack staging areas.

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Chapter 4

VELDFIRE PREVENTION THROUGH FIREBREAKS (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 side of the boundary between his or her land and adjoining land.
- Neighbours must determine a mutually agreeable date or dates for burning of firebreaks and inform the fire protection association, if any.
- A owner may not burn a firebreak if;
 - A fire protection association objects;
 - A warning has been published;
 - The conditions are not conducive to burning.

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Chapter 4

VELDFIRE PREVENTION THROUGH FIREBREAKS (2)

- Owners of adjoining land may agree to position a common firebreak away from the boundary.
- Owners must ensure that, with due regard to the weather, climate, terrain and vegetation of the area:-
 - It is wide enough and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land;
 - It does not cause soil erosion; and
 - It is reasonably free of flammable material capable of carrying a veldfire across it.
- The Minister may exempt any owner or group of owners from the duty to prepare and maintain a firebreak for good reason.

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Chapter 5

FIRE FIGHTING

- Every owner on whose land a veldfire may start or burn or from whose land it may spread must:-
 - Have such equipment, protective clothing and trained personnel for extinguishing fires.
 - Ensure that in his absence responsible persons are present on or near his or her land.
- 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:-
 - Notify the fire protection officer.
 - The owners of adjoining land.
 - Do everything in his power to stop the spread of the fire.

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Chapter 6

ADMINISTRATION OF THE ACT

- Regulations
- Procedures to make regulations
- Delegation of powers and duties
- Assignment of powers and duties

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Chapter 7

PENALTIES AND OFFENCES - 1

DESCRIPTION OF OFFENCE	SECTION	CATEGORY OF OFFENCE	PENALTY ON FIRST CONVICTION	PENALTY ON SECOND CONVICTION
A person lights, uses or maintains a fire in the open air when the fire danger rating is high	25(1)	1	Fine Imprisonment up to 2 years Both	Fine Imprisonment up to 2 years Both
An owner, occupier or person in control of land on which a fire occurs fails to take reasonable steps to <ul style="list-style-type: none"> • extinguish the fire • confine it to that land • prevent it from causing damage to property on adjoining land 	25(5)	1	Fine Imprisonment up to 2 years Both	Fine Imprisonment up to 2 years Both

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Chapter 7

PENALTIES AND OFFENCES - 2

A person leaves a fire which s/he lit, used or maintained in the open air unattended, before the fire is extinguished	25(2)(a)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
A person lights, uses or maintains a fire in the open air, with or without the permission of the owner, which spreads and causes injury or damage	25(2)(b)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
A person throws, puts down or drops a burning match or other burning material or material which is capable of spontaneous combustion or self-ignition, and by doing so, makes a fire which spreads and causes injury or damage	25(2)(c)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
A person lights, uses or maintains a fire in a road reserve other than in a fireplace which has been designated by a competent authority	25(2)(d)(i)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
A person lights, uses or maintains a fire in a road reserve for a purpose other than to burn a firebreak	25(2)(d)(ii)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
A person smokes where by notice smoking is prohibited	25(2)(e)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
An owner on whose land a veldfire may start or burn or spread fails to prepare and maintain a firebreak on his or her side of the boundary with adjoining land	25(3)(a)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both

Chapter 7

PENALTIES AND OFFENCES - 3

An owner whose land coincides with the boundary of the Republic and whose land is subject to a risk of veldfire fails to prepare and maintain a firebreak as close as possible to the border	25(3)(a)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
An owner who cannot reach agreement with his or her neighbour for a date on which both can burn their firebreaks, fails to give the owner of adjoining land, and the FPA if there is one, 14 days written notice of the day on which he or she intends to burn the firebreak	25(3)(b)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
An owner burns a firebreak when the FPA has objected	25(3)(c)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
An owner fails to inform the owners of adjoining land and the FPA if there is one: <ul style="list-style-type: none"> that burning of a firebreak cannot be done on the agreed days or if no agreement was reached, on the days he or she has given notice for; of the additional days on which he or she now intends to burn 	25(3)(d)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both
An owner on whose land a veldfire may start or burn or spread fails to meet the standards of readiness for fire fighting: <ul style="list-style-type: none"> by not having the equipment, protective clothing and trained personnel for extinguishing fires, either that are prescribed, or reasonably required in the circumstances; by not ensuring that in their absence, a responsible person will be present on or near their land who if there is a fire will: <ul style="list-style-type: none"> extinguish it or assist in doing so; 	25(4)(a)	2	Fine Imprisonment up to 1 year Both	Fine Imprisonment up to 2 years Both

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Chapter 7

PENALTIES AND OFFENCES - 3

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Chapter 8 ENFORCEMENT

- Powers of arrest
- Powers of seizure
- Powers of enter and search

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Honey hunter!



Chapter 9 GENERAL AND TRANSITIONAL PROVISIONS

- **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

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Chapter 9 PRESUMPTION OF NEGLIGENCE

- **EXPLANATION**
- **Delictual liability**
 - Because generally when someone suffers a loss due to fire they turn to the law of delict for a remedy.
 - The remedy will be in the form of monetary compensation for the loss suffered because of the fire.
 - To win your case, you must show that all five elements of a delictual action are satisfied
- **Elements of a delictual action**
- **1 - Conduct**
 - something was done or not done
- **2 - Wrongfulness**
 - Conduct must be legally wrongful in order for one to be liable. It cannot just be something which is morally wrongful.
 - Every violation of a duty in an Act is wrongful. Therefore, failing to prepare a firebreak when one is required to according to section 12(1) is wrongful.
 - Defences to wrongfulness e.g., self defence, impossibility, superior orders, necessity etc.

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Chapter 9 PRESUMPTION OF NEGLIGENCE

- **3 - Fault**
 - The conduct must have occurred intentionally or negligently.
 - Intentional wrongdoing takes place where the wrongdoer intends to cause the harm
 - that one acted reasonably (i.e. if a reasonable person would not have done it then I do not need to do it either).
 - A 'Reasonable person' is:
 - the average man or woman,
 - not reckless or overcautious,
 - aware of their surroundings and the dangers inherent in various activities.
 - Should the person concerned also have particular expertise, then their conduct is measured against that of the reasonable expert (e.g. electrician or mechanic).

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Chapter 9 PRESUMPTION OF NEGLIGENCE

- **4 - Causation**
 - The primary test for causation is the factual 'but for' test: the damage would not have happened, 'but for' the conduct of the wrongdoer (e.g. But for the fact that Mr Schoeman started burning the break, there would not have been a fire).
 - However, this test is often too broad, as one act can give rise to many consequences (e.g. not raising your children correctly results in your child growing up to be a domestic abuser).
 - So, the law limits the chain of causal events by saying that a wrongdoer is not liable for damage which is "too remote" or "too far removed" from her or his conduct.
- **5 - Harm**
 - If there is no legally recognised damage, then there is no delict.
 - For instance if your fire burns out your neighbour vs. your girlfriend dropped you and you feel hurt
 - The only defence is that the harm caused is not legally recognised

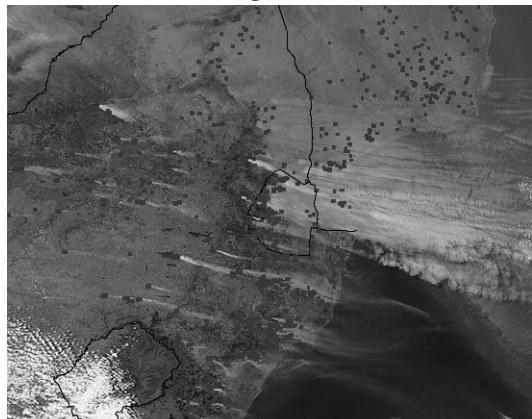
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Chapter 9 PRESUMPTION OF NEGLIGENCE

- **Summary of s34 presumption**
- **If the wrongdoer is not a FPA member, what must the injured party prove?**
 - conduct yes
 - wrongfulness yes
 - negligence no – the presumption comes in
 - harm yes
 - causation yes
- **If the wrongdoer is an FPA member, what must the injured party prove?**
 - conduct yes
 - wrongfulness yes
 - negligence yes
 - harm yes
 - causation yes

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31st August 2008



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QUESTIONS?



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