

VELD/WILDLAND FIRES:

Statutory regulation and
Insurance cover

20 MARCH 2025



AGENDA

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1. INTRODUCTION

- In South Africa, large parts of land are annually destroyed by veld/wildland fires.
- Usually results in extensive losses.
- Often eventuates in litigation.
- Veld/wildland fire litigation very costly.



2. STATUTORY REGULATION

NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 1 INTRODUCTORY PROVISIONS

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- Readiness for fire fighting.
- Actions to fight fires.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 1 INTRODUCTORY PROVISIONS

Purpose:

- (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 this purpose.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 2 FIRE PROTECTION ASSOCIATIONS

Formation of fire protection associations:

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.

A fire protection association may be formed by owners who wish to co-operate 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.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 2 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.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

Membership of a Fire Protection Association - Benefits

- Collaboration and planning;
- Resources are shared leading to the availability of more equipment;
- Collective management of veldfires, using local knowledge;
- 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;
- Improved communication among members about, for example, fire hazard conditions and risk management;
- Application for exemption from duty to prepare and maintain firebreaks
- **No presumption of negligence (Section 34 of the National Veld and Forest Fire Act)**



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

SECTION 34: PRESUMPTION OF NEGLIGENCE

Section 34 stipulates that if a person is being held liable in a civil claim for damages due to negligence as a result of a veld fire which:

- a. The defendant caused, or
 - b. Started on or spread from land owned by the defendant,
- a presumption of negligence against him/her will apply, **if he/she is not a member of a fire protection association in the area in which the fire has occurred.**

This means that there will be a reverse onus of proof in court, in the sense that the person who is being held liable (the defendant) will carry the onus to prove his/her innocence.

This reverse onus will only apply if the defendant is not a member of a fire protection association.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

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.

This chapter has still not been proclaimed.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 4 VELDFIRE PREVENTION THROUGH FIREBREAKS

Duty to prepare and maintain firebreaks

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.

Requirements for firebreaks

- Wide enough and long enough so as to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land;
- Must not cause soil erosion; and
- Must be reasonably free of flammable material capable of carrying a veldfire across it.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 4 VELDFIRE PREVENTION THROUGH FIREBREAKS

Exemption from duty to prepare and maintain firebreaks

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



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 5 FIRE FIGHTING

Chapter 5 places a duty on all owners to acquire equipment and have available personnel to fight fires.

Readiness for 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 as are-

- (i) prescribed; or
- (ii) in the absence of prescribed requirements, reasonably required in the circumstances.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 5 FIRE FIGHTING

Readiness for fire fighting

A landowner must 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.



NATIONAL VELD AND FOREST FIRE ACT, 101 OF 1998

CHAPTER 5 FIRE FIGHTING

Actions to fight fires

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.



NATIONAL VELD AND FOREST FIRE AMENDMENT ACT, 13 OF 2023

On 18 March 2024 the President of South Africa assented to the National Veld and Forest Fire Amendment Act, 13 of 2023.

The Act aims to amend the National Veld and Forest Fire Act, 101 of 1998 and will come into operation on a date fixed by the President by proclamation in the Government Gazette.

The Act is renamed the “**National Veldfire Act**”.



NATIONAL VELD AND FOREST FIRE AMENDMENT ACT, 13 OF 2023

The most important amendment is the new definition of “veldfire” in section 2(1) of the Act which reads as follows:

“veldfire” means any vegetation fire that occurs outside a city, town, its adjoining industrial or residential area including any vegetation along any rural-urban fringe of a city, town, and its adjoining industrial or residential area boundaries.



NATIONAL VELD AND FOREST FIRE AMENDMENT ACT, 13 OF 2023

The judgment in the case of **Gouda Boerdery BK v Transnet 2005 (5) SA 490 (SCA)** was the catalyst for this amendment.

In that case, a fire started in a railway reserve (owned and controlled by Transnet) and spread to the appellant's property. The court first considered the provisions of section 34 of the National Veld and Forest Fire Act, 101 of 1998 ("the Act") and whether, on the facts of the case, the effect of the section was to shift the burden of proving the absence of negligence to respondent (Transnet).

The court decided that the railway reserve did not constitute a "veld" and that the appellant could not rely on section 34 of the Act. The onus of proving all the elements of their claim for damages therefore remained with the appellant.



NATIONAL VELD AND FOREST FIRE AMENDMENT ACT, 13 OF 2023

The following formed part of the court's reasoning:

“Where the land in question takes the form of a strip 20 metres wide it would mean that whatever the use to which the land may be put, the owner would be obliged to turn nearly the entire strip into a firebreak. Such a result could never have been what was intended. The result would be that virtually every stretch of railway reserve, and for that matter road reserve, in the rural areas would have to be turned into a firebreak.”

It therefore appears as though the South African Legislature did not properly consider these cautionary words.



NATIONAL VELD AND FOREST FIRE AMENDMENT ACT, 13 OF 2023

Furthermore, the new section 4(8) provides that:

“The owner in respect of State land, a state-owned enterprise, a public entity or an organ of state must, within a year after the commencement of the National Veld and Forest Fire Amendment Act, 2023, join a registered fire protection association in the area in which the land is situated.”

The effect of this provision is that state owned entities like Transnet, Eskom, SANRAL, etc. would now be obliged to join a registered fire protection association in the area in which any of their land is situated. Failure to join a fire protection association would mean that such entities would be struck by the presumption of negligence in section 34(1) of the Act in the event of a vegetation fire starting on its land (for example in a railway reserve or road reserve).



3. COMMON LAW PRINCIPLES



In Simon's Town Municipality v Dews and another 1993 (1) SA 191 (A), Judge Corbet had the following to say (at 194B-D):

“Clearly anyone who lights a fire in the open veld is under a duty at common law to take all reasonable precautions to keep it under control and to ensure that it does not spread beyond the area of the intended burn. Because of the inherently dangerous character of fire, the standard of care and diligence is a high one and the person concerned must have, or have at his disposal, the skill and equipment needed to keep the fire under control ... one of the hazards of veld-burning is wind. For wind can readily and rapidly cause the fire to spread and get out of control. This should be obvious to any reasonable person, ...”



In Van Wyk v Hermanus Munisipaliteit 1963 (4) SA 285 (CPD),
Watermeyer J had the following to say (at 300D-E):

“The duty to prevent a fire from spreading which you yourself have lit, is a high one and it would be no excuse for the defendant to plead lack of skill on the part of its employees, for when a person undertakes a dangerous task like lighting a fire, he is guilty of negligence unless he has the necessary skill and equipment to control it.”



4. INSURANCE COVER



DAMAGE TO NEIGHBOURING/THIRD PARTY PROPERTY

How do I protect myself against claims from third parties when a fire originates on my property and spreads to neighbouring properties, or spreads over my property to neighbouring properties, and causes damage?



DAMAGE TO NEIGHBOURING/THIRD PARTY PROPERTY

Spread of fire cover with a short-term insurance company:

- Public Liability insurance.
- Extra cover (called an extension) → pay extra premium.
- Make sure you have adequate cover → discuss with your broker.
- Consider your policy conditions.



DAMAGE TO NEIGHBOURING/THIRD PARTY PROPERTY

Special proviso:

Spread of fire extension (if stated as included in the Schedule)

It is a condition of this extension that, at the happening of an occurrence that gives rise to a claim in terms of this extension, the Insured was complying with the requirements of the National Veld and Forest Fire Act No. 101 of 1998 (as amended).

(Santam wording)

● ●
FIRE EXTINGUISHING CHARGES



● ● FIRE EXTINGUISHING CHARGES

Fire extinguishing charges (if stated as included in the Schedule)

Subject to the limit of indemnity in the schedule, the Company will indemnify the Insured for all reasonable fire extinguishing costs and expenses which the Insured shall become legally liable to pay as a result of the extinguishing or fighting of fire (including water-bombing by air) to prevent the spreading of such fire beyond the borders of the Insured's own premises.

The Company will also, **subject to the separate limit of indemnity against “Spotter plane charges”**, indemnify the Insured for the reasonable costs and expenses for which the Insured shall become legally liable to pay as a result of the call out and assistance of a Spotter Plane belonging to Working on Fire (WOF) which has been requested by the Fire Protection Officer of a registered Fire Protection Association for the purposes of spotting the fire or guiding the helicopter or other aircraft required for water-bombing to the site of the fire.

(Santam wording)



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