



12 May 2023

A SUMMARY OF SUBMISSIONS RECEIVED ON THE NATIONAL VELD AND FOREST FIRE AMENDMENT BILL [B 24B – 2021]

1. INTRODUCTION AND OVERVIEW

The purpose of this brief is to provide a summary on comments and recommendations received through submissions on the National Veld and Forest Fire Amendment Bill [B 24B – 2021] (hereafter referred to as “the Bill”) in preparation of deliberations on the submissions by the Select Committee on Land Reform, Environment, Mineral Resources and Energy (“the Committee”).

A total of three submissions were received from the following stakeholders:

- Congress of South African Trade Unions (COSATU);
- The Western Cape Government; and
- The Lions River Fire Protection Association.

Since amendments proposed by the Bill affect FPAs in various ways, it is noteworthy that only one Fire Protection Association (FPA) submitted comments on the Bill. FPAs were listed among the stakeholders, government departments and entities consulted on the Bill, although a complete list of all the FPAs which were consulted was not included.

Issue for consideration

- The Department could be asked for a list of all FPAs consulted on the Bill, as well as whether all operational FPAs have been notified of the opportunity to submit comments on the Bill.

Key matters raised in the submissions include law enforcement powers granted to traditional leaders, the requirements and procedures involved in the establishment of Fire Protection Associations (FPAs), the requirements for fire breaks, the standardisation of fire risk categories and the issuing of warnings and communication on fire dangers.

Some of the content of these submissions appear to have been submitted on earlier versions of the Bill. In some of the submissions, clauses referenced in relation to matters being raised, did not appear to correlate with the corresponding clauses on these matters in the current version of the Bill. To avoid confusion in such cases, both the referenced clause (contained in the submissions) and the correct corresponding clause in the current version of the Bill are provided in the summary.



2. SUMMARY OF SUBMISSIONS

The following section will provide a summary of the comments received as part of the three mentioned submissions, organised by theme. Notes are provided in the far right column for further consideration by the Committee.

Apart from this column, the use of bold text, punctuation or spacing not contained in the original submissions, is merely used to provide structure or create headings to improve the flow of the summary and is therefore not intended to remove or place additional emphasis on any particular points.

Topic or theme: Powers extended to traditional leaders			
Input received from	Clause affected	Comment from submission	Notes
COSATU	6/7	<p>COSATU is concerned with regards to the provisions providing peace and fire officers as well as traditional leaders with powers to enter, search, seize and arrest in order to enforce the provisions of the Bill and Act.</p> <p>COSATU supports such powers being entrusted to law enforcement and fire officials.</p> <p>We are however concerned about handing over such powers to traditional authorities. Traditional authorities are not members of the South African Police Service. Nor are they fire or law enforcement personnel.</p> <p>On what legal basis would they have the power to enter, search, seize and arrest? Yes, as ordinary citizens, they are empowered to effect a citizen's arrest upon a person suspected of committing a criminal offence. But they do not have legal powers beyond that.</p>	<p>In its current form, the Act grants extensive powers to registered fire protection officers to enter, search and seize property without a warrant under certain circumstances, as well as performing arrests.</p> <p>The Act requires in S6 (6), that fire protection officers apply to the Director-General for registration.</p> <p>The Bill proposes that these powers be extended to peace officers and traditional leaders who received the adequate training from an accredited institution.</p>



		<p>In the cases of communal and traditional land, they are provided some custodial powers, but again this does not elevate them to members of the SAPS. Under the Traditional Courts' authorities' powers, they are not empowered to arrest or deal with criminal offences. Government needs to provide clarity on this matter.</p> <p>In order to ensure the Bill can pass constitutional muster, Parliament should delete references to traditional authorities having the powers to enter, search, seize and arrest.</p>	<p>The principle act does not appear to have been drafted with the aim of extending such powers to other stakeholders. Extending these powers to traditional leaders could potentially set a precedent for extending these powers to a wider range of stakeholders that also have not been involved in law enforcement in an official or professional capacity.</p> <p>The Department can be requested to provide clarification on this matter.</p>
Western Cape Government	6/7	<p>It is recommended that the references to traditional leaders be deleted from the relevant clause. To the extent that this recommendation is not accepted, it is recommended that this clause be amended to clarify that traditional leaders only have the authority to act in respect of communal land.</p> <p>In terms of the proposed amendments to section 26(2)(a) of the principal Act, various persons, including traditional leaders, are given the power to enforce the principal Act.</p>	<p>In its current form, the Act grants extensive powers to registered fire protection officers to enter, search and seize property without a warrant under certain circumstances, as well as performing arrests.</p> <p>The principle act does not appear to have been drafted with the aim of extending such</p>



		<p>In terms of the proposed amendments to section 26(2)(b) of the principal Act, a reference to a 'fire protection officer' in sections 27, 28 and 29 of the principal Act includes a traditional leader. This will mean that traditional leaders will have the powers of entry, search, seizure and arrest (it is noted that entry, search and seizure can be undertaken without a warrant).</p> <p>It would not be appropriate to give traditional leaders the proposed powers, for the reasons set out below.</p> <p>The only other role that traditional leaders play in the scheme of the Bill is to facilitate the formation of an FPA (there is currently no express role for traditional leaders in the principal Act). There is no rational connection between this role and law enforcement.</p> <p>Given the potential for the powers in sections 27, 28 and 29 (i.e. the powers of entry, search, seizure and arrest) to affect the rights of citizens, and the legal implications of these powers, these powers should not be given to simply any person.</p> <p>It is noted that training will be provided. While training is important, powers of search and seizure should only be given to persons who have appropriate knowledge, experience and skill as well (for example, in areas such as law enforcement, fire and rescue services and environmental law (including knowledge of the provisions of the principal Act)).</p>	<p>powers to other stakeholders. Extending these powers to traditional leaders could potentially set a precedent for extending these powers to a wider range of stakeholders that also have not been involved in law enforcement in an official or professional capacity.</p> <p>The proposal for only allowing traditional leaders to exercise these powers in the case of communal areas (should their involvement in law enforcement not be omitted in its entirety) could potentially lead to a greater fragmentation in regulation of various forms of land ownership.</p> <p>The Department can be requested to provide clarification on this matter.</p>
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Topic or theme: Establishment of a Fire Protection Association (FPA)			
Input received from	Clause affected	Comment from submission	Notes
Western Cape Government	2/3	<p>It is unclear what facilitating the formation of a fire protection association (“FPA”) will entail and what resources will be required from municipalities and traditional councils.</p> <p>It is further unclear why municipalities and traditional leaders ‘may’ facilitate the formation of an FPA if the Minister is of the opinion that an FPA is required. It is noted that when the National Veld and Forest Fire Amendment Bill, 2021 [B24B – 2021] (the Bill) was in draft form (published on 20 March 2015), the provision stated that they “must” facilitate same. It is unclear why this was changed.</p> <p>This clause should be amended so as to provide clarity on what facilitating the formation of a FPA will entail and what resources will be required from municipalities and traditional councils.</p> <p>Consideration should further be given as to whether or not there should be an obligation versus a discretion.</p>	<p>The Department can be requested to provide more details around these matters and whether these would be addressed in regulations. The Department can furthermore provide clarity on the intent of the relevant clause and whether an obligation or a discretionary action is more appropriate.</p>

Topic or theme: Requirements for joining a FPA			
Input received from	Clause affected	Comment from submission	Notes
Western Cape Government	3/4	<p>The proposed clause states 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</p>	<p>There appears to be a potential discrepancy between the</p>



	<p>commencement of the National Veld and Forest Fire Amendment Act, 2021, join [any] a registered fire protection association [registered] in the area in which the land [lies] is situated.”.</p> <p>Section 3(1) of the National Veld and Forest Fire Act, 1998 (Act 101 of 1998) (“the principal Act”), states that “[o]wners may form an association...” (emphasis added).</p> <p>Given that section 3 is discretionary (i.e. it does not state that it is mandatory for owners to form an FPA), it is possible that some areas may not have an FPA. The proposed amendment to section 4 of the principal Act should reflect this.</p> <p>Further, the phrase “in the area in which the land is situated” is vague and could lead to difficulties in interpretation. The language in legislation must be clear, especially where obligations are imposed on parties. Parties should know which FPAs they are required to join.</p> <p>It is recommended that the wording be revised as follows: “...join a fire protection association, if such an association has been registered in the area in which the land is situated”.</p> <p>Further, the clause should explain what the position will be should there not be an FPA registered in an area within one year from the commencement of the Amendment Act. Would parties then need</p>	<p>proposed phrasing in the Bill and the wording contained in the principle Act (“must” vs “may”).</p> <p>The date contained in the Bill for commencement may also need to be revised.</p> <p>The Department can be asked for clarity.</p>
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		<p>to join an FPA within a certain period after an FPA is registered in the area?</p> <p>Further, the clause should be amended to clarify what is meant by “in the area in which the land is situated”.</p> <p>Further, the year “2021” should be replaced with ‘2023’. This also applies to clause 9/10.</p>	
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Topic or theme: Firebreaks			
Input received from	Clause affected	Comment from submission	Notes
Western Cape Government	Section 12 of the principle Act	It is recommended that section 12 of the principal Act be amended to allow for two landowners to agree on the Act preparation of a single firebreak rather than two firebreaks on both sides of the boundary line.	<p>This comment relates to the principle Act and not a proposed amendment through a clause in the Bill.</p> <p>This proposal can be considered by the Department.</p>
Western Cape Government	Section 13 of the principle Act	<p>Section 13(a) of the principal Act reads as follows:</p> <p>“Requirements for firebreaks</p> <p>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-</p> <p>(a) it is wide enough and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land...”.</p> <p>A reasonable argument could be made that the current wording of this provision</p>	<p>This comment relates to the principle Act and not a proposed amendment through a clause in the Bill.</p> <p>This proposal can be considered by the Department.</p>



		<p>results in inappropriate firebreaks being established. In extreme weather events (for example, a gale-force wind), a 200m wide firebreak may not be considered “reasonable”.</p> <p>It is argued that the purpose of a firebreak is to facilitate the implementation of control measures such as backburns, rather than to (try to) prevent fires. It may even be appropriate that a firebreak is not located on the boundary, but along a road that may not be situated on the boundary.</p> <p>It is recommended that the wording be amended to allow for an agreement between landowners on the width and nature of a firebreak and that the wording refer to firebreaks from which reasonable control measures could be implemented to prevent the spreading of veldfires.</p> <p>In the circumstances, it is recommended that section 13 of the principal Act be amended as follows:</p> <p>“13. Requirements for firebreaks An owner who [is obliged to prepare] prepares and [maintain] maintains a firebreak must do so in a manner as agreed to with the owner of neighbouring land and such firebreak must— [ensure that, with due regard to the weather, climate, terrain and vegetation of the area-] (a) [it is] be wide enough and long enough to facilitate the implementation of reasonable measures to control [have</p>	
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		a reasonable chance of preventing] a veldfire from spreading to or from neighbouring land...".	
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Topic or theme: Definitions, title, spelling and grammar			
Input received from	Clause affected	Comment from submission	Notes
Western Cape Government	Definition: <i>municipality</i>	The word "System" should be replaced with "Systems".	The current phrasing in the Bill omitted the last "s" in the word "Systems" where it refers to the Municipal Systems Act. The Department can be requested to make any necessary amendments in this regard.
Western Cape Government	5/6	The first letter of the word "Department" should be a small letter (given that the term "Department" refers to "the national Department which has responsibility for the management of veldfires" and not the Department responsible for the administration of the South African Weather Service Act, 2001 (Act 8 of 2001)), or any other agreement that may be reached (e.g. using an access road as an appropriate firebreak).	The Department can review the relevant clause to verify whether the current spelling has material impacts on the interpretation of the Bill.
Western Cape Government	Long title	The word "matter" should be changed to "matters" (see the last line of the long title).	The Department could be asked to revisit the long title and make the necessary correction.

Topic or theme: Standardisation of fire risk categories and communication on fire dangers
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Input received from	Clause affected	Comment from submission	Notes
<p>The Lions River Fire Protection Association</p>	<p>4</p>	<p>Amendment of section 10 of the principle Act</p> <p>This clause is extremely important from a legal perspective in respect of Fire Protection Associations being in a position to implement fire danger warnings for and on behalf of the Minister – i.e. relative to what is communicated by the Minister to what is communicated by SAWS, by all/any media channels.</p> <p>The public/landowner cannot be confused/misled in any way, as to a warning issued/published by the Minister, which refers to words “high” or “extreme” and a warning issued/published by the DFFE agency, SAWS, which reads “very dangerous” or “extremely dangerous”.</p> <p>SAWS is an agency of DFFE which is permitted to issue warnings and SAWS is also a co-party/agency responsible for the administration of the Act - hence the Minister must/will be guided by SAWS (as the DFFE agency terminology).</p> <p>It is further noted in terms of the Act: 9(4) The fire danger rating system <u>must</u> and 9(4)(c) of the Act states - “show the rating in a clear format”</p> <p>The current fire danger rating system utilised by the South African Weather Service (as per the proposed amendment - section 11“(a) the South African Weather [Bureau] Service, established in terms of the South African</p>	<p>The Department could be requested to verify and ensure appropriate alignment of the Bill with existing legislation, standards and terminology around this matter.</p> <p>This should include alignment of the proposed terminology used in the Bill and applicable legislated fire danger ratings and indexes, such as the South African Weather Service Fire Danger Index Values and terminology.</p> <p>it is important that there is coherence and alignment between different role-players to ensure standardised communication and information being shared with the public to prevent uncertainty.</p>



		<p><i>Weather Service Act, 2001 (Act No. 8 of 2001), if the Director-General of the Department [of Environmental Affairs and Tourism] <u>responsible for the administration of the said Act agrees</u></i> and others, is based on the Lowveld fire danger index/rating methodology (per notice 1099 dd 15 November 2013), which spans from a “Blue” to a “Red”.</p> <p>In terms of Clause 4, as proposed, reference is made to “high” or “extreme” – however there is no correlation or alignment of the terminology “high” or “extreme” to the current legislated fire danger rating/index, nor to the South African Weather Service Fire Danger Index Values and terminology.</p> <p>In terms of subsection (1)(b) – the legislation refers to the South African Weather Service (per the amendment), and hence the wording/terminology in terms of the said clause must align with that of the South African Weather Service and correlate with the section 9(1) of the Act, as SAWS, as a DFFE agency, the entity which issues weather related warnings.</p> <p>The proposed amendment of this clause should read:</p> <p>“(2) (a) 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 <u>rating is very dangerous or extremely dangerous</u>, unless the Minister, on good cause shown,</p>	
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		<p>exempts in writing, a landowner or group of landowners from the said warning, subject to any conditions that the Minister may impose.</p> <p>In terms of the above, the following clauses of the Act will also need to be amended;</p> <p>9(4) (d) identify—</p> <p>(i) what activities are dangerous and what precautions should be taken for each rating; and</p> <p>(ii) when the fire danger is rated as high <u>very dangerous or extremely dangerous</u>.</p> <p>12 (4) An owner may not burn a firebreak, despite having complied with subsection (2), if—</p> <p>(a) the fire protection association objects to the proposed burning; or</p> <p>(b) a warning has been published in terms of subsection 10(1)(b) because the fire danger is high <u>very dangerous or extremely dangerous</u> in the region.</p>	
<p>The Lions River Fire Protection Association</p>	<p>4</p>	<p>In terms of 10(1)(b)(i) and 10(1)(b)(ii) of the principle Act, the required publishing of warnings via local newspapers is very cumbersome and often cannot be achieved, as warnings can be issued overnight and hence too late for publication, hence the said clause should be amended accordingly and aligned to generally accepted media channels of the current day and age.</p> <p>In addition, 10(1) states “must”, which is legally onerous. If the warning is not</p>	<p>The Department could be requested to consider the practicality and efficacy of current and proposed communication channels in relation to issuing warnings. If and where necessary, the Department can respond with potential</p>



		<p>published in a local newspaper, a landowner can do as they please.</p> <p>Clause 10(1) can be read in conjunction with 10(4), and the Minister has opportunity in case of the latter to publish in a newspaper or any other means</p> <p>10. (1) The Minister must—</p> <p>(a) communicate the rating of the fire danger for each region to the fire protection associations in that region regularly;</p> <p>(b) when the fire danger is rated as high <u>very dangerous</u> and or <u>extremely dangerous</u> in any region, publish a warning at the earliest possible opportunity in all the main languages used in that region—</p> <p>(i) on three television channels and three radio stations broadcasting to that region; and</p> <p>(ii) in two newspapers circulating in that region <u>on the South Africa Weather Service website</u>; and</p> <p>(c) ensure that recordings are kept of the broadcasts and copies are kept of the newspaper <u>website</u> notices.</p> <p>10. (3) The warning referred to in subsection (1)(b) must—</p> <p>(a) say that the fire danger is high <u>very dangerous</u> or <u>extremely dangerous</u>;</p> <p>(b) refer to the prohibition on lighting, using or maintaining fires in the open air; and</p>	<p>amendments to ensure effective, efficient, practical, fair and cost-effective communication around these matters.</p>
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		<p>(c) identify the region in which and the period for which the prohibition applies.</p> <p>10. (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.</p>	
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