



**ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999**
Part 10 Strategic Assessments
Section 146 (1) Agreement

Relating to implementation of Fire Management Policy for lands under the care and control of the
Minister for Environment and Conservation.

between

THE COMMONWEALTH OF AUSTRALIA

and

THE STATE OF SOUTH AUSTRALIA

1 PARTIES

The Parties to this Agreement are:

The Commonwealth of Australia, represented by the Minister for the Environment, Heritage and the Arts

and

The State of South Australia, represented by the Minister for Environment and Conservation.

2 COMMENCEMENT OF THE AGREEMENT

2.1 This agreement will commence on the date on which the agreement is executed.

3 DEFINITIONS

3.1 Unless stated otherwise in this Agreement, the definitions, meanings and terms in the *Environment Protection and Biodiversity Conservation Act 1999* apply to this Agreement and its attachments.

3.2 In this Agreement:

Business days means a business day that is not a Saturday or a Sunday, or a public holiday or bank holiday in Canberra.

Commonwealth Minister means the Minister for the Environment, Heritage and the Arts.

Policy means Fire Management Policies and Procedures for lands under the care and control of the Minister for Environment and Conservation as set out in Attachment C.

State Minister means the Minister for the Environment and Conservation.

The Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth).

4 PREAMBLE

4.1 The Parties agree that lands managed by the State Minister have significant environmental, social and economic values, and those values need to be managed to reduce the impact of inappropriate fire management practices and bushfires.

4.2 Recognising those values, the Parties commit to undertake an assessment of the impacts of actions associated with implementing the Policy on all matters protected by Part 3 of the Act.

5 BACKGROUND

- 5.1 The Policy is to give effect to the policies and procedures for fire management on all lands under the care and control of the State Minister.
- 5.2 Section 146(1) of the Act allows the Commonwealth Minister to agree in writing with a person responsible for the adoption or implementation of a policy, plan or program that an assessment be made of the impacts of actions under the policy, plan or program on a matter protected by a provision of Part 3 of the Act. For the purpose of this Agreement the Policy is considered to be a policy, plan or program.
- 5.3 Assessment of the impacts associated with implementing the Policy will be undertaken through a report prepared in accordance with Section 146(2) of the Act. This will include preparation of Terms of Reference for a report on the impacts associated with implementing the Policy, preparation of the report and consideration by the Commonwealth Minister of that report.

6 TERMS OF REFERENCE FOR THE REPORT

- 6.1 The State Minister shall as soon as practicable and possible seek public comment on the Draft Terms of Reference (Attachment A) for the preparation of a report on the impacts of actions associated with implementation of the Policy.
- 6.2 The State Minister shall provide the Draft Terms of Reference for public comment by notice
- (a) posted on a website determined by the State Minister; and
 - (b) published in a newspaper circulating generally in South Australia.

The notice must advise that the Draft Terms of Reference are available and how copies may be obtained, provide contact details for obtaining further information, and invite public comments on the Draft Terms of Reference for not less than 28 days.

- 6.3 The Parties may directly notify other parties, who could have an interest in the strategic assessment, of the notice in clause 6.2. Each Party will make the notice and Draft Terms of Reference available electronically through its website.
- 6.4 Following the consideration of public comments on the Draft Terms of Reference, the State Minister will submit to the Commonwealth Minister:
- (a) the Revised Draft Terms of Reference;
 - (b) public responses relating to the Draft Terms of Reference; and
 - (c) comments on how the public responses have been taken into account in the Revised Draft Terms of Reference.
- 6.5 Following receipt of the Revised Draft Terms of Reference, the Commonwealth Minister shall as soon as practicable notify the State Minister that the Revised Draft Terms of Reference:
- (a) are approved; or
 - (b) are not approved. In this instance the Commonwealth Minister will:
 - (i) notify the State Minister of his concerns and invite the State Minister to provide Revised Draft Terms of Reference which take those concerns into account; and

- (ii) within 15 business days of receipt of the Revised Draft Terms of Reference mentioned above, either:
 - (A) notify the State Minister of his approval of the Revised Draft Terms of Reference; or
 - (B) provide approved Terms of Reference.

7 PREPARATION OF REPORT

- 7.1 The State Minister shall as soon as practicable cause a Draft Report to be prepared in accordance with the approved Terms of Reference (clause 6.5).
- 7.2 The State Minister shall provide the Draft Report for public comment by notice:
 - (a) posted on a website determined by the State Minister; and
 - (b) published in a newspaper circulating generally in South Australia.

The notice must advise that the Draft Report is available and how copies may be obtained, provide contact details for obtaining further information, and invite public comments on the Draft Report for not less than 28 days.

- 7.3 The Parties may directly notify other parties, who could have an interest in the strategic assessment, of the notice in clause 7.2. Each Party will make the notice and Draft Report available electronically through its website.
- 7.4 The State Minister will prepare, within 60 days of the closure of the public comment period (clause 7.2), a Revised Draft Report, or a Supplementary Report to the Draft Report, taking account of the comments received.

8 CONSIDERATION OF THE REPORT

- 8.1 The State Minister will submit to the Commonwealth Minister:
 - (a) the Final Report, comprised of:
 - (i) the amended Draft Report, or
 - (ii) the Draft Report and a Supplementary Report (clause 7.4);
 - (b) the Revised Policy;
 - (c) public responses relating to the Draft Report; and
 - (d) comments on how the public responses have been taken into account in the Final Report.
- 8.2 The Commonwealth Minister will consider the Final Report. If the Commonwealth Minister is not satisfied that the Final Report adequately addresses the impacts of the actions to which this Agreement relates:
 - (a) The Commonwealth Minister will make recommendations to the State Minister, as he considers appropriate, regarding the Final Report and implementation of the Policy;
 - (b) The State Minister may provide the Commonwealth Minister with advice, or seek clarification from the Commonwealth Minister on recommendations in subclause (a);
 - (c) The State Minister will provide to the Commonwealth Minister a summary of the recommendations, advice or clarification in subclauses (a) and (b), and how those recommendations, advice or clarification are given effect through modifications to the Policy; and

- (d) The Commonwealth Minister will consider the revised Policy and supporting material and may accept the Final Report or request further information or clarification if not satisfied that it addresses adequately the impacts of the actions to which this Agreement relates.

8.3 The Commonwealth Minister will endorse the Policy if satisfied that the Report adequately addresses the impacts to which this Agreement relates, and:

- (a) that any recommended modifications to the Policy or modifications having the same effect have been made; and
- (b) the requirements set out in Attachment B are met.

9 VARIATION

The parties may vary this Agreement by an exchange of letters (including electronic communications) to the extent only that such variation is consistent with the provisions of the Act.

10 TERMINATION

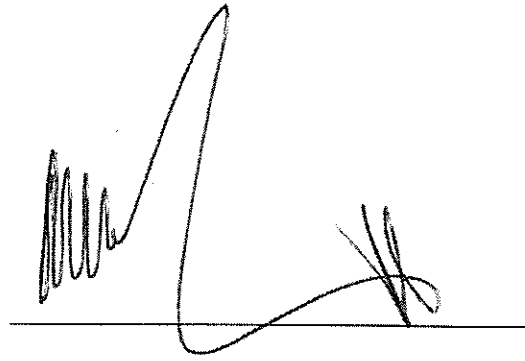
Either party may at any time terminate this Agreement by correspondence to the other Party (including electronic communications).

11 CONFLICT RESOLUTION

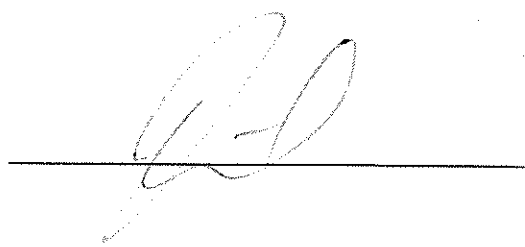
In the event that any dispute arises under this agreement, the parties will settle it by direct negotiation using their best endeavours, acting in a spirit of cooperation. The parties agree that in the event of a dispute, discussions aimed at resolution will normally take place at officials level in the first instance. This clause does not purport to limit the rights and obligations of each party under relevant sections of the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

SIGNED BY:

The Hon. Peter Garrett AM MP
Minister for the Environment, Heritage and the Arts

A handwritten signature in black ink, consisting of several vertical strokes on the left and a large, sweeping loop on the right, ending in a horizontal line. The signature is positioned above a solid horizontal line.

The Hon. Jay Weatherill MP
Minister for Environment and Conservation

A handwritten signature in black ink, featuring a large, stylized 'J' and 'W' that are interconnected. The signature is positioned above a solid horizontal line.

Dated this ^{15th}.....day of ^{June}.....2009/10

Terms of Reference for Strategic Assessment of the Fire Management Policy for lands under the care and control of the Minister for Environment and Conservation

1. PURPOSE, DESCRIPTION AND APPLICATION

The Report, referred to in clause 5.3 of the Agreement, must describe the Policy including:

- (a) component policies and procedures;
- (b) processes for implementing the Policy, including through relevant environment, nature conservation, planning and natural resource management legislation;
- (c) how the Policy has been developed and its legal standing;
- (d) the location and conservation values of lands under the care and control of the Minister for Environment and Conservation;
- (e) the person/s or authority/ies responsible for implementing the Policy and the Report;
- (f) land tenure to which the Policy applies; and
- (g) the actions or classes of action (i.e. *treatments*, e.g. planned burning, fuel break construction), including their short, medium and long term aspects, that are implemented under the Policy's provisions. This should include:
 - (i) a description of where in the State treatments are implemented;
 - (ii) the timing, interval, extent and intensity of treatments;
 - (iii) the circumstances in which treatments are applied (the why and where), including for multiple treatments in the same location, and the reasons for the treatment/s being considered necessary; and
 - (iv) the forecast response and relative effectiveness of those treatments in achieving fire management objectives.

2. PROMOTING ECOLOGICALLY SUSTAINABLE DEVELOPMENT

2.1 Social and Economic Matters

The Report should describe the environmental, social and economic need for the Policy, and identify and analyse any socio-economic issues associated with implementing the Policy. This should include identifying and analysing social and/or economic risks of implementing the Policy, and describe how those risks will be avoided or mitigated.

2.2 Management planning for ecological sustainability

The Report must describe how implementing the Policy will maintain or enhance ecological integrity and the conservation of biodiversity. To this end, the Report should describe how the Policy gives effect to national strategies developed by the Council of Australian Governments, including for:

- (a) the national reserve system;
- (b) pest plants and animals;
- (c) managing native vegetation;
- (d) biodiversity conservation;
- (e) climate change adaptation; and
- (f) wetland and water resource management.

The Report should also explain how State strategies, laws, action plans and approvals processes relate to the Policy so as to achieve ecologically sustainable fire management.

3. PROTECTING AND CONSERVING BIODIVERSITY AND HERITAGE VALUES, AND MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

3.1 Nature of potential impacts.

The Report must analyse the potential impacts of implementing the Policy and associated treatments on lands with biodiversity and/or heritage values, and matters of national environmental significance.

The analysis must include:

- (a) the nature and location of lands managed by the State Minister, and attendant biodiversity and/or heritage values, including those values listed or potentially listed under State legislation;
- (b) matters of national environmental significance, including those potentially eligible for listing;
- (c) a description of potential direct and indirect impacts (as defined by Section 527E of the EPBC Act) and associated consequences, including beneficial consequences, on (a) and (b);
- (d) an assessment of whether potential impacts and associated consequences identified in (c) are likely to be short, long term or irreversible, local or regional, discrete or cumulative, or exacerbated by the potential impacts of climate change;
- (e) an assessment of the probability and scientific confidence of potential impacts identified in (c) occurring, including reference to technical data and other information used in identifying and assessing those impacts;
- (f) an analysis of the potential impacts described in (c) – with reference to the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* and other relevant guidelines or policy advice or Recovery Plans, Conservation Advice and Threat Abatement Plans;
- (g) an assessment of the predictability of the potential impacts described in (c); and
- (h) any assumptions underpinning the above.

3.2 Avoiding and mitigating potential impacts.

The Report must identify and describe the *management measures* (i.e., on-ground actions) and *controls* (i.e. regulatory interventions, area-specific policies and plans) that will be implemented prior, during and/or following a treatment (Item 1(g)), and document how they are intended to avoid and mitigate potential impacts on biodiversity and/or heritage values, and matters of national environmental significance.

The Report must also set out:

- (a) consultative arrangements with stakeholder groups, for example traditional owners and adjacent landowners/land managers, to be implemented prior to any treatment that might impact on biodiversity and/or heritage values, and matters of national environmental significance;
- (b) the predicted effectiveness of management measures and controls, and related assumptions, to avoid and mitigate impacts on matters identified in Items 3.1(a) and (b). Claims regarding effectiveness must be supported by best available knowledge (indigenous and non-indigenous), including a description of the methodology used to formulate these predictions;

- (c) evaluate available or prospective treatments, as alternatives to proposed treatments, and the relative costs and benefits of proposed and alternative treatments;
- (d) the “whole of State Government” approach taken to addressing the impacts of treatments;
- (e) maintenance and operational requirements associated with implementing the proposed management measures;
- (f) compliance and enforcement requirements associated with implementing the proposed management controls;
- (g) the resourcing, regulatory and programmatic arrangements in place, anticipated or proposed by the South Australian Government to implement Items (e) and (f) above;
- (h) timelines and accountabilities for implementing (e) and (f); and
- (i) regional case studies describing the treatments used in fire management across the state, the proposed management measures and controls and, how impacts on matters identified in Items 3.1(a) and (b) will be avoided.

3.3 Addressing uncertainty and managing risk.

The Report must identify key uncertainties associated with implementing the Policy related to:

- (a) the potential impacts of identified treatments;
- (b) the timing and nature of management measures and their maintenance/operation;
- (c) the timing and nature of management controls and their enforcement/compliance;
- (d) the effectiveness of proposed management measures or controls to avoid or mitigate potential impacts;
- (e) the capacity of agencies to correctly implement, monitor and adapt treatments for ecological outcomes, and associated management measures and controls, and maintenance, operational, compliance and enforcement requirements; and
- (f) the capacity to avoid implementing treatments likely to impact on biodiversity or heritage values, and matters of national environmental significance, where unacceptable risks have been identified.

For key uncertainties the Report must set out:

- (g) how these uncertainties have influenced the design of the Policy and associated treatments, management measures and controls;
- (h) how these uncertainties will be responded to, including recommendations for alternative treatments, management measures and controls; and
- (i) arrangements for review of (a)-(d) in light of anticipated new information.

The Report must demonstrate how the processes for managing the risks associated with the Policy meet AS/NZS ISO 31000:2009 Risk management - Principles and guidelines.

4. REASONABLE ASSURANCE

The Report must include a “*reasonable assurance statement*” that gives a high degree of confidence that the Policy and associated treatments and management measures and controls:

- (a) will be implemented; and,
- (b) will not result in unacceptable impacts on matters of national environmental significance.

5. ADAPTIVE IMPLEMENTATION

The Report must describe an adaptive implementation strategy which:

- (a) identifies, monitors and responds to potential impacts on biodiversity, heritage values and matters of national environmental significance from implementation of the Policy. To this end the strategy should include indicators and/or criteria that will be applied to measure success in achieving these environmental protection objectives, and as far as possible mitigating any adverse impacts;
- (b) identifies knowledge gaps in scientific understanding, and associated key uncertainties;
- (c) demonstrates how key uncertainties, including those in (b) above, are addressed as part of the Policy's implementation;
- (d) includes a process for interim treatments, measures or controls where uncertainty and risk are deemed unacceptable;
- (e) demonstrates that monitoring for the purposes of (a) and (b) is designed with a view to generating statistically reliable information for decision-making;
- (f) identifies environmental, socio-cultural and economic action/s that will be taken if monitoring results indicate implementation of the Policy is causing unacceptable impacts on biodiversity, heritage values or matters of national environmental significance;
- (g) includes processes and accountabilities for monitoring, analysing and contributing to adaptive management and continuous improvement processes.
- (h) accounts for direct and indirect impacts of wildfire, and implications for fire management practices in the affected area; and
- (i) contains governance, third party auditing and consultative arrangements to maximise scientific input in the implementation of the Policy.

6. REVIEW, MODIFICATION AND ABANDONMENT

The Report must identify and analyse circumstances and procedures that may result in the review, modification or abandonment of the Policy, such that changing community standards or new information relating to the impacts of the Policy may be introduced, reassessed and accounted for in Policy implementation.

7. ENDORSEMENT CRITERIA

The Report must describe how the Policy, in association with the Report, meets the criteria set out in *Attachment B (Strategic Assessment - Endorsement Criteria)*.

8. INFORMATION SOURCES

For information used in the assessment, the Report must state:

- (a) the source of the information;
- (b) how recent the information is;
- (c) how the reliability of the information was tested; and
- (d) what uncertainties are in the information.

Strategic Assessment Endorsement Criteria

In order to endorse a policy, plan or program under section 146 of the *Environment Protection and Biodiversity Conservation Act 1999*, the Minister must be satisfied that the assessment report adequately addresses the impacts to which the agreement relates and that any modifications to the policy, plan or program recommended by the Minister, or modifications having the same effect, have been made.

In determining whether to endorse the Policy the Minister will have regard to the extent to which the Policy is consistent with the objectives of the Act. In particular that it:

- protects the environment, especially matters of national environmental significance;
- promotes ecologically sustainable development;
- promotes the conservation of biodiversity; and
- provides for the protection and conservation of heritage.

Without limiting the factors the Minister may consider when making the decision whether or not to endorse the Policy, the Minister will consider the manner in which the Policy:

- provides for the avoidance of impacts on matters of national environmental significance or areas of high biodiversity or heritage value;
- mitigates impacts on matters of national environmental significance;
- offsets impacts on matters of national environmental significance;
- contributes to enhancement of the environment to which the Policy applies, and management of existing threats; and
- provides for adaptive management, monitoring, auditing and public reporting.

Fire Management Policies and Procedures

Listed here are the policies and procedures subject to the strategic assessment and used for preparation and implementation of individual fire management plans.

Department of Environment and Heritage Fire Policy and Procedures:

- Department of Environment and Heritage Fire Management Policy
- Risk Assessment in Fire Management Planning Policy/Procedure
- Ecological Burning Policy/Procedure
- Fire Access Tracks Policy/Procedure
- Fire Management Zoning Policy/Procedure
- Fire Management Planning Project Management and Consultation Policy/Procedure
- Prescribed Burning Policy/Procedure
- Ecological Fire Management Guidelines

Supporting Guidelines and Codes (Non-DEH):

- South Australian Firebreaks, Fire Access Tracks & Sign Guidelines
- SA Overall Fuel Hazard Guide
- Aboriginal Heritage Handbook and Strategy
- Wilderness Protection Areas and Zones Code of Management
- SA Prescribed Burning Code of Practice
- Code of Practice for Native Vegetation Management in SA

Figure 1 demonstrates how the above documentation is integrated into the fire management planning process.

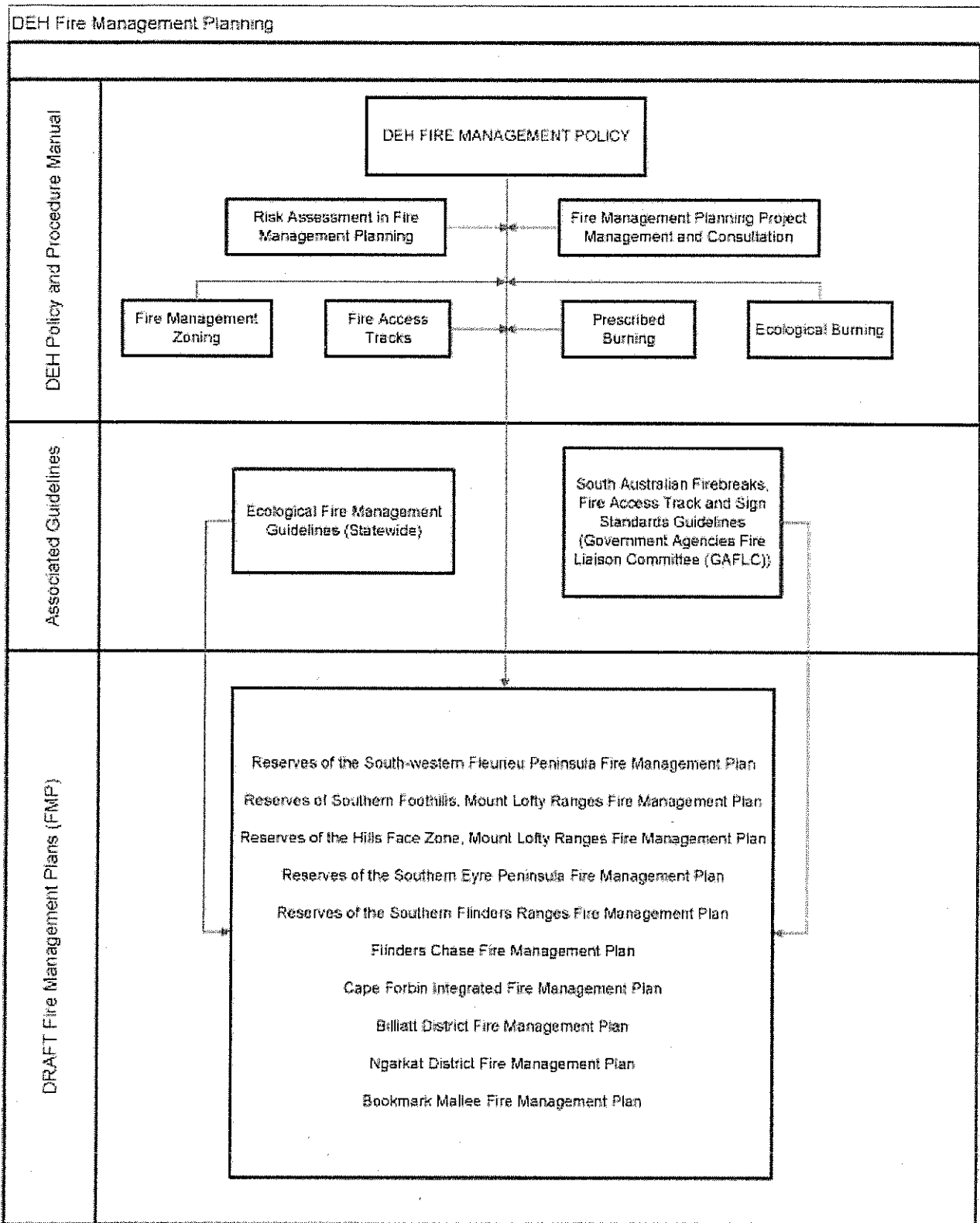


Figure 1: Fire Management Planning

