



**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



The Hon. Jay Weatherill MP
Minister for Environment and Conservation



Dated this 15th day of January 2009/10

Draft 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, procedures and plans;
- (b) how the Policy has been developed and its legal standing;
- (c) the location and significance of lands under the care and control of the Minister for Environment and Conservation;
- (d) the person/s or authority/ies responsible for implementing the Policy and the Report;
- (e) land tenure to which the Policy applies; and
- (f) 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 those treatments are applied;
 - (ii) the timing, interval and intensity of those treatments, as appropriate;
 - (iii) the circumstances in which those treatments are applied; and
 - (iv) the relative effectiveness of those treatments.

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.

2.2 Management planning for ecological sustainability

The Report must describe how the Policy will maintain or enhance ecological integrity and the conservation of biodiversity. To this end, the Report should include a description of 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; and,
- (d) biodiversity conservation, including climate change adaptation.

The Report should also explain the extent to which other State strategies, action plans and approvals processes relate to the Policy to achieve ecologically sustainable fire management.

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

3.1 Nature and significance of 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), including beneficial impacts, on values identified in (a) and matters identified in (b);
- (d) an assessment of whether potential impacts, 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 scientific confidence associated with the likelihood and consequence(s) of potential impacts, identified in (c) and (d), including reference to technical data and other information used in identifying and assessing those impacts;
- (f) an analysis of the significance of the potential impacts described in (e) for values described in (a) and matters of national environmental significance described in (b) – with reference to the *EPBC Act Policy Statement 1.1 Significant Impact Guidelines* and other relevant guidelines or policy advice;
- (g) an assessment of whether the potential impacts are unknown or unpredictable; and
- (h) 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 or following a treatment (Item 1.f), to avoid and mitigate the potential impacts on biodiversity and/or heritage values, including matters of national environmental significance.

The Report must also set out:

- (a) the predicted effectiveness of management measures and controls, and related assumptions, for preventing significant 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;
- (b) evaluate available or prospective treatments, as alternatives to proposed treatments, and the relative costs and benefits of those treatments;
- (c) the “whole of State Government” approach taken to addressing the impacts of the treatments;
- (d) maintenance and operational requirements associated with implementing the proposed management measures;
- (e) compliance and enforcement requirements associated with implementing the proposed management controls;
- (f) the budgetary, regulatory and programmatic arrangements in place, anticipated or proposed by the South Australian Government to implement Items (d) and (e) above;

- (g) timelines and accountabilities for implementing (d) and (e); and
- (h) 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 prevented.

3.3 Addressing uncertainty and managing risk.

The Report must identify key uncertainties associated with implementing the Policy, including where there is a high degree of uncertainty 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; and
- (e) the capacity to correctly implement treatments, and associated management measures and controls, and maintenance, operational, compliance and enforcement requirements.

For key uncertainties the Report must set out:

- (f) how these uncertainties have influenced the design of the Policy and actions/classes of actions, management measures and controls;
- (g) how these uncertainties will be responded to over time; and
- (h) arrangements for review of (a)-(d) above in light of anticipated new information.

The Report must demonstrate:

- (i) how the processes for managing the risks associated with the Policy meet *AS/NZS 4360:2004 Risk Management*.

4. REASONABLE ASSURANCE

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

- (a) will be implemented; and,
- (b) will not significantly impact on matters of national environmental significance.

5. ADAPTIVE IMPLEMENTATION

The Report must describe an adaptive implementation strategy which:

- (a) demonstrates how key uncertainties are addressed as part of the Policy’s implementation;
- (b) 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;
- (c) demonstrates that monitoring for the purposes of (a) and (b) support statistically reliable information for decision-making;
- (d) identifies action/s that will be taken if monitoring results indicate implementation of the Policy is causing significant impacts on biodiversity, heritage values or matters of national environmental significance;
- (e) accounts for direct and indirect impacts of wildfire, and implications for fire management practices in the affected area; and

- (f) contains governance and consultative arrangements to maximise scientific input in the implementation of the Policy.

The Report must set out a public reporting process, that will;

- (g) incorporate findings from an independent audit of implementation of the Policy;
- (h) identify the independent party responsible for auditing implementation of the Policy;
- (i) report on the processes and outcomes from implementing the adaptive implementation strategy;
- (j) evaluate the Policy's implementation, including implementation of management measures and controls, any approval conditions under the EPBC Act and the veracity of the reasonable assurance statement;
- (k) be consistent to enable comparison over time; and
- (l) detail any modifications to implementation of the Policy (including the adaptive implementation strategy), management measures or controls to meet the Act's objectives.

6. REVIEW, MODIFICATION AND ABANDONMENT

The Report must identify and analyse the 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

The EPBC Act permits the Minister to approve the taking of actions or classes of actions in accordance with an endorsed policy, plan or program (section 146B). The effect of such a decision is that the approved actions or class of actions would not need further approval from the Minister under the EPBC Act.

When deciding whether to endorse a policy, plan, or program the Minister must be satisfied that the assessment report adequately addresses the impacts to which the agreement relates, and that any recommendations to modify the policy, plan or program have been responded to appropriately.

In determining whether or not to endorse the Policy the Minister will have regard to the extent to which the Policy meets the Objects of the EPBC Act. In particular, that it:

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

Accordingly, the Final report should demonstrate that the Policy will:

- prevent actions from being taken in any location that will, or are likely to, have an impact on matters of national environmental significance, of high biodiversity, or of heritage value; or
- where potential impacts can not be avoided, then the impacts should be less than significant; and
- provide for effective management, mitigation or offset of the likely impacts; and
- contain an effective system of adaptive management that is independently audited and publicly reported.

The extent to which the Policy and Final Report adequately incorporates the precautionary principle and the other principles of ecologically sustainable development, in particular, intergenerational equity in relation to areas containing matters the Minister considers have a high likelihood of being potentially eligible for listing as matters of national environmental significance, will also be considered.

In arriving at a decision to approve an action or a class of actions the Minister must act in accordance with his obligations, including give consideration to:

- issues relevant to any matter protected by a provision of the Act; and
- social and economic matters.

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 Code of Management
- Wilderness Protection Areas and Zones
- 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.

DEH Fire Management Planning

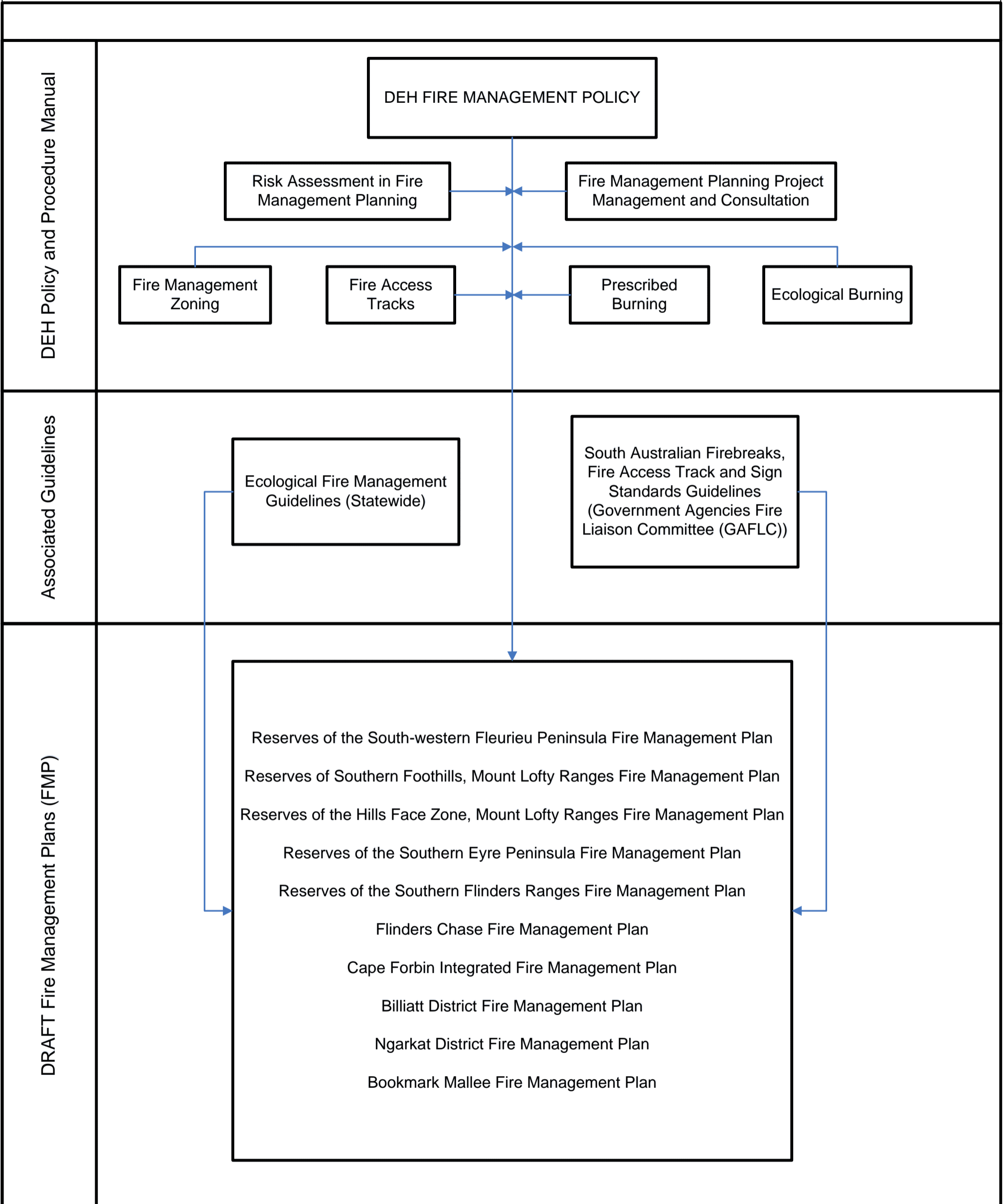


Figure 1: Fire Management Planning