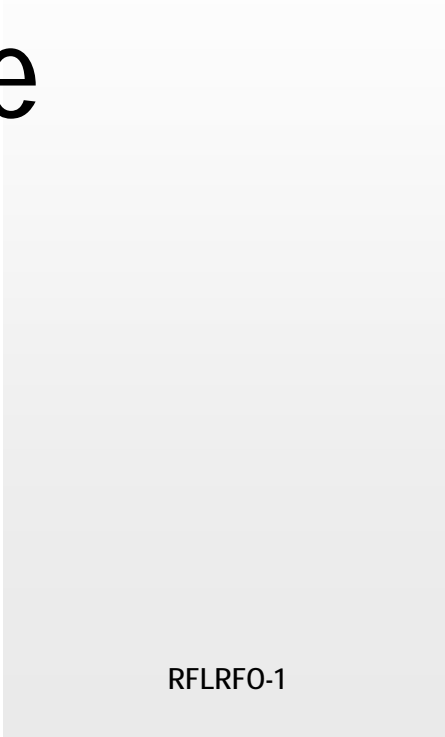




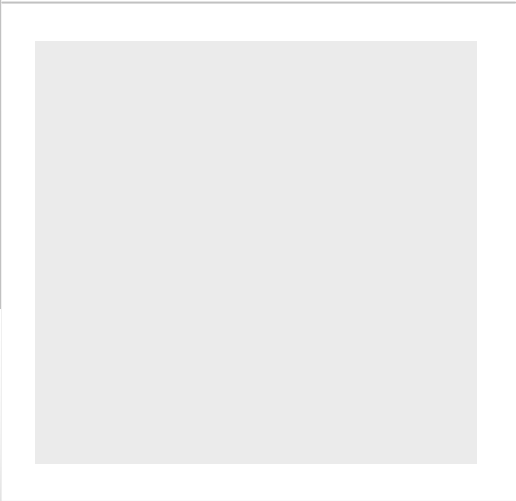
Rural Firefighting

Study Guide

Responsibilities of a Rural Fire Officer



RFLRFO-1



EMQUAL
EMERGENCY MANAGEMENT
QUALIFICATIONS



Status of this Document

This document is issued by the National Rural Fire Authority.

What this means:

This document has the status of an Operational Instruction. It is written to comply with:

- Forest and Rural Fires Act 1977
- Fire Service Act 1975
- Forest and Rural Fires Regulations 2005
- Health and Safety and other relevant legislation
- New Zealand Qualifications Authority requirements
- Emergency Management Qualifications (EMQUAL)
- Other National Training Material
- Rural Fire Authority best practice

The document, its content and specified processes are not to be altered except through National Rural Fire Authority processes.

Recommendations for Change:

National Rural Fire Authority encourages and welcomes feedback on all its products and processes to ensure currency and continuous improvement.

Recommendations for changes to this material should be sent to the National Rural Fire Authority.

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If you wish to copy or reproduce any of the material in this document, please contact:

National Rural Fire Authority
National Training
PO Box 2133
Wellington
Ph: (04) 496-3600
Fax: (09) 496-3700

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Acknowledgements

The National Rural Fire Authority (NRFA), New Zealand Fire Service (NZFS) and Emergency Management Qualifications (EMQUAL) acknowledge the help of the many subject matter experts in preparing this course.

Study Guide Introduction

This course provides evidence towards the achievement of unit standard 20399 version 3 Demonstrate knowledge of legislative responsibilities of Rural Fire Officers and a Rural Fire Authority.

Course delivery

Welcome to Responsibilities of a Rural Fire Officer (RFO). This course consists of a study guide and a workbook. The workbook is required to be completed and sent to the course director **at least a week** prior to commencement of the course, and the second session is held the onsite course training.

This study guide and workbook have been designed to help structure your research. Your resources include access to legislation and policy documents as well as the knowledge of others within your organisation. Use all the resources available to you to help you answer the questions in this material.

Additional resources

To complete the workbook, you will need access to:

- Forest and Rural Fires Act 1977
- Forest and Rural Fires Regulations 2005
- Your Fire Authority's Fire Plan
- The Rural Fire Management Handbook (RFMH)
- Fire Service Act 1975

Please ensure that your RFA supplies you with these documents. When purchasing paper copies of legislation, a version with all the latest amendments incorporated into it is easier to read. Alternatively if you have access to the internet, you can find these documents at: <http://www.legislation.govt.nz>.

How this is assessed

You have been provided a precourse workbook along with your study guide this must be completed, as this will be part of your formal assessment.

You will use the knowledge you collect from completing the workbook to apply principles applicable to your specific role while at the course.

There will also be a theory assessment completed on the day of the course. This too will be part of your formal assessment.

Requirements

Participants must at least complete the following satisfactorily:

- the workbook completed and submitted for approval to the assessor
- attendance and participation in the training session including the theory assessment

Support

If you have any study problems contact your course director.

Abbreviations for the Acts and Regulations used in this study guide

Forest and Rural Fires Act 1977	FRFA
Forest and Rural Fires Regulations 2005	FRF Regs
Fire Service Act 1975	FSA

Legislative Responsibilities of a Rural Fire Officer

Introduction	The general objective for this study guide is to help you understand the responsibilities of a Rural Fire Officer (RFO).
Why do I need to know this?	As RFOs, you require a broad working knowledge of the empowering legislation to guide you through the responsibilities and duties that you may perform on behalf of your Rural Fire Authority. The sources for information are found in the Acts as listed below as well as the policy documents of your RFA.

Introduction

Section Objective	<p>Depending on your background, you may already be familiar with the four R's listed below. You need to know how the Rural Fire terms correlate with those of Emergency Management.</p> <p>Under the Forest and Rural Fires Act 1977 legislation the definition of "fire control" in relation to forest, rural and other areas of vegetation means prevention, detection, control, restriction and extinction of fire. However under current practice the Forest and Rural Fires Regulations 2005 the above translates to the 4 R's of reduction, readiness, response and recovery.</p>
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Rural Fire Management

4 R's	Legislation definitions (Forest and Rural Fires Act 1977)
<p>Reduction</p> <p>Identifying and analysing long-term risks to human life and property from natural or man-made hazards; taking steps to eliminate these risks where practicable and, where not, reducing the likelihood and the magnitude of their impact.</p> <p>Examples of fire reduction activity include: public notification of fire danger, publicity campaigns, setting fire seasons, issue of fire permits and fuel management.</p>	<p>Prevention</p> <p>Activities directed at reducing fire occurrence includes: public education, law enforcement, personal contact, and reduction of fire hazards and risk. Fire prevention aims to reduce the numbers of fires, and therefore area burned, fire suppression cost and other damage.</p>

<p>Readiness</p> <p>Developing operational systems and capabilities before an emergency happens. These include response programmes for emergency services, utilities, and other agencies.</p> <p>Readiness activities include pre attack planning and fire preparedness systems which aim to maximise the success of attack.</p> <p>This includes:</p> <ul style="list-style-type: none"> • initial attack plans and predetermined response levels • manning levels and standby arrangements • notification and dispatch procedures. 	<p>Preparedness</p> <p>The degree to which an agency is prepared to respond to a potential fire situation, to recognise changes in fire danger and adjust levels of resource deployment to meet anticipated fire incidence.</p> <p>and</p> <p>Detection</p> <p>A system for or the act of discovering, locating and reporting of wildfires. Individuals, fire towers, reconnaissance aircraft and automatic devices may be used, either alone or in combination – supported by a well informed public who notify emergency services through the 111 system.</p> <p>Pre-suppression planning</p> <p>Those fire management activities in advance of fire occurrence concerned with the organisation, training and management of a fire fighting force and the procurement, maintenance and inspection of improvements, equipment and supplies help and response to ensure effective fire suppression.</p>
<p>Response</p> <p>Actions taken immediately before, during or directly after an emergency, to save lives and property, as well as help communities to recover. When developing response strategies it is important to consider the effect of elapsed time to minimise impact.</p>	<p>Suppression</p> <p>All the work and activities connected with fire extinguishing operations, beginning with discovery and continuing until the fire is completely extinguished.</p> <p>Example of fire suppression activities include</p> <ul style="list-style-type: none"> • determination of resource requirements • development of suppression strategies and tactics • incident management which includes incident action planning, resource management , logistics, operational coordination and safety • fire behaviour prediction • method of attack.

<p>Recovery</p> <p>Activities include policy and procedures on the health and safety of personnel, fire operation reviews and debrief process, post fire investigations and any other recovery activities that occur after a fire has been contained.</p>	<p>Recovery</p> <p>Actions taken to restore the community, fire response capability and area burnt to normality and include immediate, medium and long term rehabilitation and restoration activities.</p>
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Definitions

At the front of the Fire Service Acts 1975, Forest and Rural Fires Act 1977 and Forest and Rural Fires Regulations 2005 there is an interpretation section of glossary of terms. The words below are not defined, but in the context of rural fire management need to be known.

Fire hazard	Describes the potential fire behaviour, without regard to the state of weather-influenced fuel moisture content, and/or resistance to fireguard construction for a given fuel type. Such an assessment is based on physical fuel characteristics (fuel arrangement, fuel load, condition of vegetation, presence of ladder fuels) and topography.
Fire risk	The probability or chance of fire starting determined by the presence of activities or causative agents (i.e. potential ignition sources).
Fire Danger	Expresses an assessment of both fixed and variable factors of the fire environment that determine the ease of ignition, rate of spread, difficulty of control, and fire impact.
Fire Danger Class	A segment of a fire danger index scale identified by a descriptive term (eg. Low, Moderate, High, Very High, Extreme) and/or a colour code (eg. green, blue, yellow, orange, red). The classification system may be based on more than one fire danger index.
Fire Danger Rating Systems	<p>Fire danger rating systems in general produce one or more indices of the potential for ignition and probable fire behaviour that are used as guides in a wide variety of fire management activities.</p> <ul style="list-style-type: none"> • Fire Weather Danger Index - a quantitative indicator of one of the facets of fire danger, expressed either in a relative sense or as an absolute measure.

Additional Resources

See *Apply FWI for Fire Preparedness Measures* for further information.
See your *Rural Fire Management Handbook* for more definitions.

Section 2: Rural Fire Management Structure

Statutory Foundation The management of vegetation fires in rural areas is governed by three key pieces of legislation:

- Forest and Rural Fires Act 1977 (FRFA).
- Forest and Rural Fires Regulations 2005 (FRF Regs.)
- Fire Service Act 1975 (FSA).

These three pieces of legislation create and support Rural Fire Authorities, the NZFS Commission, the NZ Fire Service, and the National Rural Fire Authority.

NZFS Commission *The NZFS Commission is set up under the Fire Service Act 1975 and is responsible for both the New Zealand Fire Service and the NRFA.*

NZFS The NZFS's responsibilities are defined under the Fire Service Act 1975 (FSA)

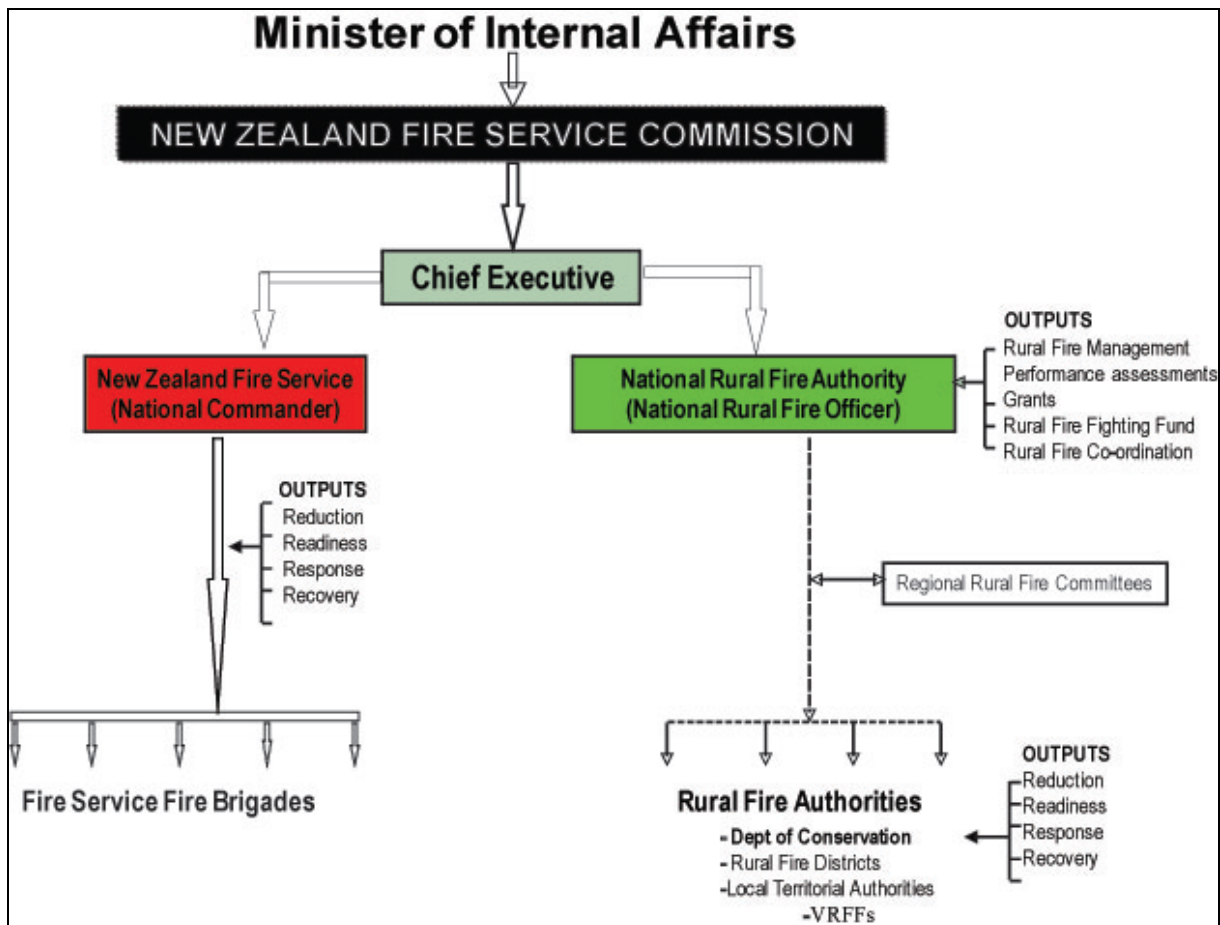


Figure 2.1 – Rural Fire Management Structure

Rural Fire Authorities

What's a Rural Fire Authority?

Fire Authorities have the statutory responsibility for undertaking fire control measures in relation to forest, rural and other areas of vegetation. Fire control means the prevention, detection, control, restriction, suppression and extinction of fire for vegetation fires that occur within their designated area. RFA responsibilities are defined in the Forest and Rural Fires Act 1977.

Three types of RFA

There are three types of RFA:

1. State areas any crown land, national park or conservation area (the majority of which are DOC land) that are administered by the Department of Conservation.
 - The Minister of Conservation is the Fire Authority [ss 7 (1), 11 FRFA]
2. Rural Fire Districts – made up of a gazetted Rural Fire district in which the administration of the district is vested in a rural fire committee.
 - Stakeholders that may include Dept of Conservation, forest owners, councils etc. [s 4 (1) FRFA]
 - The NZ Defence Force - the Minister of Defence is the Fire Authority [s 4 (2) FRFA]
3. Territorial Areas:
 - The Local Authority/Council is the Fire Authority within a council boundary- Territorial Areas are the balance of the land not covered by the first 2 types of RFA and Urban Fire Districts [s 10 FRFA]

State Areas

Section 11 FRFA

The Minister of Conservation, through the Department of Conservation, is a Fire Authority for the lands administered by the Department. The Department is also responsible for a one kilometre fire safety margin extending from the boundary of most of these lands.

Rural Fire Districts

s 4 (1) FRFA

Where a land area is seen to require a higher level of fire prevention, stakeholders may establish a Rural Fire District. These districts vary in size from a few thousand to 3 million hectares.

Territorial Areas

s 10 FRFA

Is land within the boundaries of a territorial authority that is not otherwise included in:

- a rural fire district
- a fire district within the meaning of the Fire Service Act 1975; or
- a State area; or
- a fire safety margin attached to a State area

The strategy for 2009-2014 in the National Rural Fire Authority's statement of strategic direction is:

- to develop a robust framework to promote the establishment of enlarged Rural Fire Districts

The purpose of the enlarged rural fire districts strategy is to improve the efficiency and effectiveness of the rural fire sector through increased capacity and better resource management. This will be pursued by promoting and supporting the voluntary amalgamation of rural fire authorities in the regions. For further information on this strategy see "Enlarged rural fire districts" booklet available from the NRFA.

Part 1 FRFA

Part 1 Fire control organisation

Rural fire districts and specially protected property

- [4 Rural fire districts
- [5 Preliminary steps before rural fire district constituted or boundaries changed
- [6 Specially protected property Fire Authorities
- [7 Fire Authority in rural fire districts
- [7A New Zealand Forestry Corporation Rural Fire District (Repealed)
- [8 Rural fire committees
- 9 Fire Authority's powers in areas of urban vegetation
- [10 Fire Authority in territorial areas
- 11 Fire Authority in State areas
- [11A Fire safety margins
- [11B Exclusion of land from fire safety margin
- 12 Duties of Fire Authorities
- 13 Fire Officers and other employees
- 14 Joint, etc, exercise of statutory fire control powers
- 15 Supply of apparatus and fire fighting services
- 16 Mutual arrangements for fire control measures
- 17 Forest areas

Duties of a RFA s 12 of FRFA and s 14a and 14b FSA

The functions and responsibilities of a RFA:

- undertake fire control measures
- making bylaws
- meeting NRFA standards
- creating and maintaining a fire plan
- appointing a PRFO/RFO
- establishing and maintaining fire response capability
- making public notification about fire control measures
- making agreements with other fire agencies
- following NRFA policies and Procedures

See Appendix 3 for further explanation of the statutory responsibility.

National Rural Fire Authority

What's the role of the NRFA?

The National Rural Fire Authority, under section 14A of the Fire Service Act 1975 coordinates and supports the work of approximately 80 Rural Fire Authorities who have the responsibility for *fire control* in rural areas. The NRFA's responsibilities are defined in the Fire Service Act 1975.

Responsibilities	<p>The functions of the NRFA are set by legislation. The functions include:</p> <ul style="list-style-type: none">• advise the Minister of Internal Affairs of rural fire matters• coordinate all matters relating to national rural fire• facilitate effective regional rural fire coordination• consult with all national organisations which function as rural Fire Authorities• consult with those organisations that represent the interests of different classes of rural Fire Authorities• promote and encourage research in matters relation to rural fire• promote and encourage the training and education of persons engaged in rural fire control• operate a national rural fire weather system to monitor fire danger • set minimum standards for rural Fire Authorities in relation to training, equipping and clothing of fire officers, achieving timely responses to fires, fire weather observation, and assessing fire hazards• audit rural fire authorities compliance with the standards• monitor and evaluate the performance of rural Fire Authorities
Vision	<p>A protected New Zealand landscape.</p>
Mission Statement	<p>Minimise the social, economic and environmental impacts of fire in the forest and rural landscape.</p>
Goals	<ul style="list-style-type: none">• To reduce the number and consequence of wild fires by ensuring that rural Fire Authorities deliver effective fire control measures on forest and rural lands.• To facilitate the use of fire as an effective rural management tool.

Fire Service Act 1975
Section 14A (2)(k)

This states the **minimum standards** that the NRFA in consultation with the Fire Authorities have set. The standards are:

- the training, equipping and clothing of Fire Officers and any other persons required by a Fire Authority to attend a fire (this standard defines the availability, maintenance and testing of fire suppression equipment including PPE)
- achieve timely responses to fires
- fire weather observation
- assessing fire hazards.

Fire authorities will be audited by the NRFA to ensure compliance with these standards. The NRFA will also monitor and evaluate the performance of Fire Authorities. These standards are available on the NRFA website.

The regulations provide specific detail of how a RFA is to undertake its responsibilities. This includes the format and structure of the Fire Plan an example is Regulation 42 (e).

An example is Forest
and Rural Fires
Regulations 2005
Regulation 42 (e)

Details of the training arrangement for the Fire Authority's manager and officers, including an outline of the way in which the Principal Rural Fire Officer and the Rural Fire Officers are educated on their legislative functions, powers, and duties under the acting legislation.

Rural fire fighting in New
Zealand

The majority of fire suppression costs may be met by a Rural Firefighting Fund (RFFF) grant. Claims for firefighting costs are prepared by RFA's and are assessed and a grant provided by the NRFA. In order to receive a RFFF grant, the RFA must have an operative fire plan and meet the requirements of the Fire Service Act and Forest and Rural Fires Act.

Manager Rural Fire

The NRFA has five regional staff to assist with the coordination and facilitation of responsibilities of the NRFA at a regional level.

National Rural Fire Advisory Committee (NRFAC)

A ministerial directive established the National Rural Fire Advisory Committee in 1990. The membership of the committee is made up of stakeholder representatives from the National Rural Fire Authority, Department of Conservation, Federated Farmers of NZ (Inc), Ministry of Agriculture and Forestry, NZ Forest Owners Association, New Zealand Defence Force, New Zealand Fire Service and Local Government New Zealand. Their role is to provide strategic advice and support to the National Rural Fire Authority.

Functional Groups

To assist with the development and application of policies and new initiatives a number of functional groups have been established with representation from stakeholder groups. These functional groups and their roles are listed below

Rural Fire Research Advisory Committee

Committee membership is made up of the same stakeholder groups as the NRFAC as well as a representative from SCION who undertake the majority of the Forest and Rural Fire Research programme. The role of this committee is to identify the issues, oversee and prioritise the rural fire research tasks.

Rural Fire Equipment Working Group

This working group is made up of representatives from the fire authorities industry. This group evaluates and monitors the development of new products, discusses safety issues and equipment related matters and reports back to the NRFA.

Rural Fire Training Working Group

This working group's membership is also made up of representatives from the fire authorities. This group assists with the development of training course material and deals with current and future rural fire training issues and reports back to the NRFA. This group has an integral role with Emergency Management Qualifications (EMQUAL) and the NZFS National Training team.

Regional Rural Fire Committees

The National Rural Fire Authority co-ordinates the rural fire management between the 80 Fire Authorities. At a regional level the National Rural Fire Officer establishes Regional Rural Fire Committees under Section 17x (1)(d) of the Fire Service Act 1975. Each of the Fire Authorities is represented on one of the 11 Regional Rural Fire Committees. Membership also includes a representative from Regional Council, Federated Framers NZ Inc, New Zealand Fire Service, NZ Defence Force and NZ Forest Owners. The key role of each Committee involves the co-ordination and sharing of training, information and fire equipment resources at a regional level.

Voluntary Rural Fire Forces

There are 197 voluntary rural fire forces with an estimated 3,000 personnel registered, with the National Rural Fire Authority under the Forest and Rural Fires Regulations 2005. Voluntary rural fire forces were established for fire suppression in vegetation areas. However some exist to provide protection to their small communities, where there is no NZFS presence.

Rural Fire Personnel

In addition to the VRFF's there is also an estimated 3,000 personnel trained and available to support RFA's in fire control operations. These personnel are drawn from staff and contractors associated with the RFA e.g. Department of Conservation, Territorial Authorities, Forestry companies etc.

It is important for RFOs to understand how rural fire legislation is applied with respect to the reduction, readiness, response and recovery in forest and rural areas.

You need to be able to describe the responsibilities and functions of the National Rural Fire Authority (NRFA) and Rural Fire Authorities (RFA) in accordance with industry legislation.

RFO role

The roles of Rural Fire Authorities (RFA), as well as Rural Fire Officers (RFO), are created, supported and regulated by legislation.

In terms of the RFO role – the legislation gives the power needed to do the job. It sets the obligations and boundaries of the role and it provides some protection, to the individual.



RFO responsibilities are defined in the *Forest and Rural Fires Act 1977*

- e.g. s 13 FRFA directs Fire Authorities to appoint suitable persons as Rural Fire Officers

Rural Fire Authorities Fire Plan further define the responsibilities of the RFOs.

Note

A RFA may delegate limited duties to a RFO. Check and understand the limits of your authority as a RFO with your RFA.

Section 3: Legislation in Context - Rural Fire Officers

Overview

While there is legislative authority for Rural Fire Officers (RFO) there may be variations in levels of delegation within different fire authorities. The FRFA section 13 (5) states that any Fire Authority may in its discretion allocate to its officers, employees, and servants such responsibilities as may from time to time appear to it appropriate and necessary.

As a Rural Fire Officer, your duties and responsibilities include that you:

- be familiar with the Rural Fire Authority Fire Plan
- understand the Forest and Rural Fires Act and Regulations
- monitor the fire weather conditions
- enforce requirements of any restrictions
- respond to wild fires in accordance with the Fire Plan

As a RFO, your duties may also include:

- inspect proposed burns and issue fire permits
- maintain appropriate fire authority preparedness arrangements
- carry out inspections of hazardous areas
- implementing the delegated powers of the PRFO at rural fires

What role are we talking about?

FRFA,FRF, FRF Reg, fire plan and fire authority policy

Warranted RFOs are given powers by their Fire Authority to carry out the delegated duties required by that RFA. Legislation provides a level of protection from liability for any damage caused when carrying out these duties.

The role includes understanding the legislation that supports your position, the powers and duties it gives a RFO, and your fire authority's requirements and policy.

While legislation provides for limited protection for action taken in good faith, you still are accountable for actions taken (FRF Act 1977 section 56).

RFOs have authority to act in the area of their delegated responsibility. They are accountable to the PRFO for the decisions, and actions or inactions they may or may not make.

Note All Department of Conservation officers are warranted RFO's. This is stated in the Forest and Rural Fires Act 1977 Section 13, (3A) every warranted officer appointed under section 59 (1) of the Conservation Act 1987 shall be a Rural Fire Officer for every state area.

FRF Regulations 2005 – Warrants and Powers

Warranted	<p>Every person appointed by a RFA under s 13 FRFA as a Rural Fire Officer must be furnished with a <i>Warrant of Appointment</i> that conforms with Reg. 38 of FRFA. It is to be signed by the senior representative of the Rural Fire Authority.</p> <p>E.g. Chief executive of the territorial authority.</p>
Reg. 38	<p>Reg. 38 directs the RFA to issue a Warrant of Appointment. This is evidence of your authority to carry out your responsibilities within the area of your delegated authority.</p> <ul style="list-style-type: none">• any warrants issued under the 2005 regulations are “in force for 10 years, or until the person ceases to be an officer, whichever is the earlier” [Reg. 38 (3) (c) FRF Regs]• any warrants issued under the 1979 regulations are now invalid• as an officer, you must produce your warrant of appointment when reasonably requested to do so – producing the warrant is sufficient evidence that you are an officer [Reg. 38 (4)].
What does the warrant look like?	<p>Form 1 from Forest and Rural Fires Regulations.</p>

Section 13, Forest and Rural Fires Act 1977
Principal Rural Fire Officer or Rural Fire Officer
Warrant of appointment

Full name: _____

Identification number: _____

Signature: _____

Expiry date: _____

[Photo of warrant holder]

(Back page of warrant)

**Warrant of appointment issued under
section 13 of the Forest and Rural Fires Act 1977**

This is to certify that the person whose name, photograph, and signature appear on this warrant is a Principal Rural Fire Officer*/Rural Fire Officer* appointed under section 13(1) or (3) of the Forest and Rural Fires Act 1977 and may perform the functions and exercise the powers conferred on a Principal Rural Fire Officer*/Rural Fire Officer* by that Act.

*Delete if inapplicable.

.....
Fire Authority

Responsibilities

Appointment to the role of Rural Fire Officer [s 13 FRFA] gives responsibilities for forest and rural fire protection, authority to act and legal powers to carry out those responsibilities within the designated Rural Fire Authority's area of jurisdiction. Rural Fire Officers are accountable to the RFA for their actions or inactions. This may involve the RFO being required to investigate if an offence has been committed against a section of the Forest and Rural Fires Act. This would involved gathering information from witnesses and the offender to see if there is a case to answer

The RFO's level of delegation and warrant of appointment set out the powers and ability to act on offences under section 61 of the FRFA.

Rural Fire Officers have powers delegated to them under the Forest and Rural Fires Act. The Police are empowered to support and assist a Rural Fire Officer in the maintenance of his authority and enforcing obedience of persons to his orders in execution of his duties. It is an offence for anyone to resist, deceive and obstruct RFOs doing their job. The relevant sections include:

- Section 36 Powers of PRFO's or RFO
- Section 36 Offence to obstruct PRFO or RFO
- Section 37 Police to assist Fire Officers

Liability

FRFA section 55,56 and 57 provide protection to the Fire Authority and RFO in certain cases, providing they act in good faith and undertake these duties.

Duties and powers

In the FRFA section 36 it outlines and defines the duties and powers of PRFO and RFO.

Offences

In the FRFA under section 61 it sets out the offences against the Act and identifies the fire officers authority to act.

- (1) Every person commits an offence against this Act who—
- (a) Wilfully acts in contravention of or fails to comply with any fire control measure lawfully issued or required by or under authority of a Fire Authority or Fire Officer[, or the National Rural Fire Officer or any person appointed under section 39 of this Act by the National Rural Fire Officer] pursuant to this Act:
 - (b) Wilfully gives or causes to be given, or attempts to give or cause to be given, to any Fire Officer any false alarm of fire:
 - (c) Resists, obstructs, hinders, or deceives the [[[National Rural Fire Officer]], or any] Fire Officer, employee, or servant of a Fire Authority, or any officer, employee, servant or member of any brigade, or any other person in the exercise, or attempted exercise, of any power or the performance, or attempted performance, of any function or duty conferred or imposed by or under this Act:
 - (d) Wilfully removes, defaces, obscures, or otherwise renders ineffective or inoperative any forest gate, or any notice board, placard, indicator, or other warning or precautionary sign set up for the purpose of fire control:
 - (e) Wilfully prevents, obstructs, interferes with, impairs, or otherwise renders inoperative or less effectual any apparatus or any other fire control measure:
 - [(f) Fails without reasonable excuse to provide any information or deliver any return as and when required by the [[National Rural Fire Officer]], pursuant to any provision of this Act:]
 - [(g) Provides any information or makes any return pursuant to this Act which to that person's knowledge is false in any material particular.]
- (2) Every person who commits an offence against section 20 or section 21 of this Act shall be liable on summary conviction—
- (a) In the case of an individual, to imprisonment for a period not exceeding 6 months, or to a fine not exceeding \$2,000; and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day during which the offence continues:
 - (b) In the case of a body corporate, to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day during which the offence continues.
- (3) Every person who commits an offence against any of sections 23, 25, 26 and 40 of this Act shall be liable on summary conviction—
- (a) In the case of an individual, to imprisonment for a period not exceeding 2 months, or to a fine not exceeding \$1,500; and, if the offence is a continuing one, to a further fine not exceeding \$150 for every day during which the offence continues:
 - (b) In the case of a body corporate, to a fine not exceeding \$7,500, and, if the offence is a continuing one, to a further fine not exceeding \$750 for every day during which the offence continues.
- (4) Every person who commits an offence under any other provision of this Act, being a provision in respect of which no penalty is otherwise provided for, shall be liable on summary conviction—
- (a) In the case of an individual, to imprisonment for a period not exceeding one month, or to a fine not exceeding \$400, or to both such imprisonment and such fine; and, if the offence is a continuing one, to a further fine not exceeding \$40 for every day during which the offence continues:

(b) In the case of a body corporate, to a fine not exceeding \$2,000, and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day during which the offence continues.

(5) Every person who is convicted of any offence against this Act shall be liable for any costs, loss, damage or expense that is incurred or suffered by any Fire Authority and is caused by the act constituting the offence in addition to the penalty for the offence, and the amount payable in respect of that liability may, on application to the Court by the informant or Fire Authority, be awarded by the Court in fixing the penalty and may be recovered as a fine. In assessing the amount so payable the Court may take into account the costs and other expenses incurred in the investigation of the act constituting the offence and in remedying the damage caused by that act and all other relevant factors.

(6) Where any money is recovered under [section [73](#) of the Public Finance Act 1989] or under [section [105](#) of the Reserves Act 1977] or under any other enactment in respect of any costs, loss, damage or expense incurred or suffered by a Fire Authority in extinguishing or attempting to extinguish any fire, the money so recovered shall be paid to the Fire Authority.

(7) *Repealed.*

(8) Proceedings against any person who, outside of a district, lights a fire in the open air without a special permit under section [24](#) of this Act in any area where a warning is in force under section [20\(1\)](#) of this Act may, without complying with the requirements of subsection [\(7\)](#) of this section, be taken by any local authority having territorial jurisdiction over the place where the fire was lit.

If an offence has been committed a Rural Fire Authority would need to consider whether a charge against the offender would be made. This would normally be handled through the police or through the RFA's legal representative. The RFO may be called as a witness if a case goes to Court.

Rural Fire Authorities do not normally prosecute unless it is blatant or a second offence however they do always attempt to recover their fire suppression costs from the person responsible for the fire. Rural Fire Authorities often give letters warning offenders that second offences may end with prosecution.

Section 4: Legislation in Context – Fire Plan Requirements

Overview

Fire plans are required under the Forest and Rural Fires Act 1977, and the structure is determined by the Forest and Rural Fires Regulations 2005.

A fire plan is to include policies and procedures that the RFA has in fire control measures in their district.

Under the FRFA under section 12 (4) it states that a Fire Authority must keep and maintain a current fire plan. Under this RFA policy it is a requirement that a RFO abides by the requirements of the Fire Plan.

Fire Plan

Introduction

The FRF Regs sets out the structure and requirements of fire plans.

Section 39

Fire Authority must adopt fire plan

- A Fire Authority must adopt a fire plan and keep it up to date and provide copy to NRFA within the required time frame.
- A fire plan must set out the policies and procedures of the Rural Fire Authority under the following headings and in the following order:
 - (a) Reduction:
 - (b) Readiness:
 - (c) Response:
 - (d) Recovery.
- A Rural Fire Authority must provide to the NRFA a copy of any amendments to the fire plan.

Reduction (Fire Prevention Measures) Section 41

The policies and procedures to reduce the likelihood and consequence of fires in its district these must include the following:

- the Rural Fire Authority's fire hazard and fire risk management strategies
- the fire prevention planning carried out in the RFA's district
- the public education activities carried out in the RFA's district
- the RFA's directions to people on the use of fire as a land management tool
- any other relevant matters that need to be included in the RFA's district

Readiness Section 42.

The policies and procedures that cover the readiness for a firefighting event in its district.

The Fire plan must include the following matters under this heading:

- a map showing- fire authority district and any other areas which RFA is responsible for. Show the geographic boundaries of adjacent fire districts and the principal roads in the area to do with the above
- details of the FRA's responsibilities and chain of command
- the name of the PRFO and the names of RFO's of the RFA
- in the case of a committee, the membership of the committee and a copy of its rules
- details of training arrangements for the RFA managers and officers, including an outline of the way in which the PRFO and the RFO are educated on their legislative functions, powers, and duties under the act and regs
- list of the agencies available to the RFA for assistance with fire-fighting or related activities, including the contact details of each agency
- details of all equipment and personnel listed as available to attend a fire callout in the RFA district
- record of any arrangements or agreements made under section 14, 15, or 16 of the Act
- record of any agreements between the RFA and voluntary or other fire forces or persons for the delivery of fire control measures
- list of all specially protected areas in the RFA district- this includes a register of Commercial and Industrial Buildings
- details of the fire season status trigger points for the district
- details of the trigger points for imposing restricted access or for closing access into any exotic forest in the RFA district
- any other relevant matters

Response Section 44

This covers the policies and procedures for responding to a fire in its district. This needs to include:

- how the RFA received and deals with calls for assistance at a fire
- how the RFA initially responds to a fire that it has received notice of
- how additional fire fighting resources are deployed if extended action is required at a fire, including identification of the limits of local capacity
- the chain of command and control at a fire
- how all parties involved in the response to a fire establish effective communications with each other (a communications plan)
- any other relevant matters

A description of the systems that the RFA uses for responding to a fire in its district this includes:

- records fire incidents attended by firefighting units in the RFA district
- notifies other fire Authorities, owners of forests, or other interested parties in the vicinity of a fire
- records incoming and outgoing personnel and equipment
- monitors fire behaviour
- provides or organises logistical support (for example catering, relief personnel and first aid)

Recovery Section 46

This covers the policies and procedures for activities undertaken following a fire event in its district. This needs to include:

- the health and safety of personnel
- fire operational reviews
- operational debriefs
- post-fire investigations
- recovery activities that occur after a fire has been contained

Appendix 1: Reading Legislation

Reading Legislation - FRFA, FSA & FRF Regs

Introduction	As the focus of this study guide is on legislative powers, this section includes an introduction to reading legislation. Later we'll look at the role of a Rural Fire Officer and the relationship with the Fire Authority – nationally and locally, in the context of relevant legislation.
Bill Act Statute Regulation	<p>From a bill to a statute</p> <p>Parliamentary changes to law begin life as a <i>bill</i> – a document that must survive several stages of review before Parliament passes it – to become law.</p> <p>Once <i>enacted</i> by Parliament, it is now an <i>Act of Parliament</i> (also called a statute) and it goes to the Governor General for signing (royal assent) before coming into force on the date signed or on the commencement date within the Act itself if one is stated (see Section 1 of an Act).</p> <p>A statute can provide for the creation and review of regulations, these cover detailed areas that may need to be updated frequently (e.g. fees) without the lengthy process of the Act being reviewed and amended by Parliament (Amendment Acts).</p>
Long title	All Acts have two titles – a <i>short</i> title and a <i>long</i> title. You'll find the long title at the front of any Act. It's a long sentence, in bold type and it states the purpose of the Act.
Legislative source	The long title of the FRFA indicates the purpose, means and jurisdiction ¹ of the Act.

¹ Jurisdiction - noun = area; verb = authority

Analysis or Contents

After the long title in the Government Printers version of most Acts, is an *Analysis* or *Contents* – this is a list of the sections of Act – this Analysis / Contents may be divided into Parts.

This excerpt from the contents list of the Forest and Rural Fires Act 1977 is from the Brookers web page including amendments as at December 2006 – i.e. the bracketed sections have been inserted by amendments to the main Act.

Excerpt

Contents	
<p>1 Short Title and commencement</p> <p>2 Interpretation</p> <p>3 Act to bind Crown</p> <p>[3A Delegation of powers by Minister of Forestry (Repealed)</p> <p>[3B Delegation of powers by Secretary (Repealed)</p> <p style="text-align: center;">Part 1 Fire control organisation</p> <p style="text-align: center;"><i>Rural fire districts and specially protected property</i></p> <p>[4 Rural fire districts</p> <p>5 Preliminary steps before rural fire district constituted or boundaries changed</p> <p>[6 Specially protected property</p> <p style="text-align: center;"><i>Fire Authorities</i></p> <p>7 Fire Authority in rural fire districts</p> <p>[7A New Zealand Forestry Corporation Rural Fire District (Repealed)</p> <p>[8 Rural fire committees</p> <p>9 Fire Authority's powers in areas of urban vegetation</p> <p>[10 Fire Authority in territorial areas</p> <p>11 Fire Authority in State areas</p> <p>[11A Fire safety margins</p> <p>[11B Exclusion of land from fire safety margin</p> <p>12 Duties of Fire Authorities</p>	<p>13 Fire Officers and other employees</p> <p>14 Joint, etc, exercise of statutory fire control powers</p> <p>15 Supply of apparatus and fire fighting services</p> <p>16 Mutual arrangements for fire control measures</p> <p>17 Forest areas</p> <p style="text-align: center;">Part 2 Fire control operations</p> <p style="text-align: center;"><i>Fire prediction and fire control measures</i></p> <p>[18 Obligations of Rural Fire Authorities and National Rural Fire Authority in respect of fire control measures</p> <p>19 Fire control measures</p> <p style="text-align: center;"><i>Control of lighting of fires in open air</i></p> <p>20 Prohibition of fires during extreme fire hazard</p> <p>21 Prohibition of certain operations during periods of extreme fire hazard</p> <p>22 Restricted or prohibited fire seasons</p> <p>23 Permits required to light fires in open air</p> <p>24 Special permits when lighting of fires in open air prohibited</p>

Continued on next page

Source - Forest and Rural Fires Act 1977

Short title

The short title is in section 1 of most Acts.

E.g. The Forest and Rural Fires Act 1977 is the short title of that Act.

References

When citing statutes in writing the format is as follows:

- s 14A (2) (k) Fire Service Act 1975

When reading citations aloud do the following:

- “Section 14 (capital) A subsection (2) (k) of the Fire Service Act 1975”.

A further subdivision would be a paragraph and would be indicated by a small Roman numeral.

Where the Act is an Amending Act, once the new words have been inserted into the main Act, there’s no need to refer to the Amending Act again.

Note: In this guide, Forest and Rural Fires Act 1977 may be abbreviated to FRFA and the Fire Service Act 1975 to FSA.

Interpretation

s 2 of most Acts is the Interpretation section: it’s a “glossary of terms” and it gives us specific definitions for terms used in the Act for example:

- “National Rural Fire Authority” means the National Rural Fire Authority constituted under section 14A(1) of the Fire Service Act 1975
- “National Rural Fire Officer” means the National Rural Fire Officer appointed under section 17W of the Fire Service Act 1975.

Fire Service Act 1975 (FSA)

Long title

An Act to establish the New Zealand Fire Service and amend the law relating to the protection of life and property from fire and to certain other emergencies services.

2005 amendment

s 14A FSA was amended in 2005 by adding several paragraphs.

Turn to s 14A of the FSA

- compare the principal functions listed in s 14A FSA with the summary below, and add the *amended paragraph (j) and the new paragraphs (k)-(m)* – inserted by the s 4 Fire Service Amendment Act 2005.

ss 28, 28A FSA

Sections 28 and 28A covers the powers of a Chief Fire Officer.

Depending on the range of duties and powers delegated to you as an RFO, you may need to be mindful of s 28A – functions, duties, and powers of Chief Fire Officer outside of Fire District.

This section provides the CFO with authority to ... “take whatever action is necessary to saves lives and property in danger” ... outside of their Fire District.

Regulations

The Regulations are indexed and divided in the same way as Statutes, with the divisions into clauses and sub-clauses.

e.g. Reg 38 (3) (c) Forest and Rural Fires Regulations 2005 and read aloud as: Regulation 38 clause (3) (c) of the Forest and Rural Fires Regulations 2005.

What's in the regulations?

Read this analysis from the front of the Forest and Rural Fires Regulations 2005 as an overview of its contents.

PART 1 FIRE CONTROL ORGANISATIONS

Subpart 1 Rural Fire Committees

4. Application of subpart 1

Appointment, election, term, resignation, and removal of members

- | | |
|--|---|
| 5. Who may be member | 11. When member may be removed from office |
| 6. How membership attained | 12. Vacancy may be filled by committee appointing member |
| 7. Term of office of appointed committee member | 13. Powers of member or committee not affected by defect in appointment or election, or vacancy in membership |
| 8. Term of office of elected committee member | |
| 9. When member ceases to hold office | |
| 10. When representative no longer eligible to represent member | |

First meeting of committee

14. First meeting of committee

Committee procedure

- | | |
|--|---------------------------|
| 15. Procedure generally | 17. Quorum |
| 16. NRFO may require committee to hold meeting | 18. Presiding at meetings |
| | 19. Voting |

Disclosure of interests of members

20. Disclosure of interest

Subcommittees

21. Committee may appoint subcommittees

Employees

22. Employees

Financial provisions

- | | |
|---|---|
| 23. Accounting records to be kept | 26. Committee must send estimates to NRFA |
| 24. Committee must prepare financial statements | 27. Members' remuneration and allowances |
| 25. Payments must be authorised | |

Confidentiality of information

28. Confidentiality of information

Restriction on entry into exotic forests

57. Restriction on entry into exotic forest

58. Fire Authority intending to close entry into exotic forest must consult with NRFA

Processing plant and equipment

59. Fire Authority may require operator of processing plant or processing equipment to obtain fire safety clearance

PART 3

GENERAL PROVISIONS

60. Penalties

61. Revocations

Transitional provisions in relation to Forest and Rural Fires Regulations 1979

62. Interpretation

65. Fire plan

63. Voluntary rural fire forces

66. Forest areas

64. Warrants of appointment

67. Permits

Transitional provision in relation to Rural Fire District Regulations 1980

68. Rural fire committees

SCHEDULE FORMS

Appendix 2 NRFA Fire Signage

<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO6</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO1</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO7</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO2</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO3</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFV43</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO6</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO8</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO8a</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFSO9</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS10</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS11</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS12</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS13</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS14</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS17</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS18</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS20</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS21</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS22</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS23</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS30</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS31</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS32</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS33</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS34</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS35</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS36</p>
<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFS37</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFV40</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFV41</p>	<p>NATIONAL RURAL FIRE AUTHORITY NATIONAL STANDARD SIGNS</p> <p>Denise Image Graphics RFV42</p>

Appendix 3 Chapman Tripp Memorandum

Memorandum

Date: 9 September 2009

To: New Zealand Fire Service Commission

For your: INFORMATION

FROM: Helen Bowie/John Knight
DIRECT: +64 4 498 4921
MOBILE: 4-54 27 441 0858
FAX: +64 4 472 711.1.
EMAIL: helen.boviegchapmantripp.com
RE: 041445836/1043068.7

by email

NRFA AND RFA STATUTORY RESPONSIBILITIES AND LIABILITIES

- 1 The purpose of this memorandum is to identify the National Rural Fire Authority's (**NRFA's**) and the Rural Fire Authorities' (**RFAs**) statutory responsibilities and their liabilities. In particular, we have been asked to comment on:
 - 1.1 the NRFA's responsibilities and liabilities in relation to setting and auditing minimum standards under section 14A of the Fire Service Act 1975 (**FSA**); and
 - 1.2 the contrast between the NRFA and RFAs' statutory responsibilities.
- 2 This memorandum is in four parts:
 - Part 1: summarises our advice;
 - Part 2: sets out an overview of the statutory responsibilities of the NRFA and RFAs and contrasts those responsibilities;
 - Part 3: comments on the key potential heads of liability for the NRFA and RFAs that may be associated with breach of their statutory responsibilities;
 - Part 4: describes the protections from liability and the immunities and indemnities available to the NRFA and RFAs if they breach their statutory responsibilities.
- 3 Detailed descriptions of the NRFA and RFAs' statutory responsibilities are set out in Appendix 1 and 2 respectively.

PART 1: SUMMARY OF OUR ADVICE

- 4 We summarise our advice as follows:
- 4.1 key responsibilities of the NRFA are to set certain minimum standards to apply across all RFAs, audit compliance with them, and monitor and evaluate RFA performance;
 - 4.2 these responsibilities can be contrasted with the RFA's specific responsibility to create a fire plan including the detail for the four Rs (Reduction, Readiness, Response and Recovery) for its own district, The RFA has a more "hands on" role in relation to fire control;
 - 4.3 the minimum standards to apply to RFAs set by the NRFA must be:
 - (a) consistent with the overall objectives of the NRFA (as set out in the Statement of Intent);
 - (b) set following a consultation process;
 - (c) capable of application across all the RFAs; and
 - (d) objective and measurable;
 - 4.4 as a general proposition, it is difficult to envisage the NRFA incurring either civil or criminal liability if it acts in good faith in endeavouring to discharge its legal functions. The most likely area of potential exposure is the crime of criminal nuisance;
 - 4.5 the most likely areas of potential exposure for an RFA are the civil tort of negligence (and possibly breach of statutory duty) and the crime of criminal nuisance;
 - 4.6 in any event, the Forest and Rural Fires Act 1977 (**FRFA**) provides wide protection from liability for the acts and omissions of the NRFA and the RFAs, as well as their officers and employees, The NRFA as a Crown entity may also be able to invoke the immunity and indemnity provisions of the Crown Entities Act 2004.

PART 2: STATUTORY RESPONSIBILITIES

Statutory responsibilities of the NRFA

- 5 The New Zealand Fire Service Commission (**Commission**) is the National Rural Fire Authority for the purposes of the FRFA. In its capacity as the NRFA, the Commission has a number of specific statutory responsibilities.
- 6 Broadly, the NRFA's statutory responsibilities can be categorised as follows:
- 6.1 keep the Minister informed of rural fire matters;
 - 6.2 consult with RFAs (generally and on specified matters);

- 6.3 co-ordinate rural fire control (generally and on specified matters);
 - 6.4 promote and encourage research, training and education;
 - 6.5 set minimum standards for RFAs on specified matters and audit compliance with the minimum standards;
 - 6.6 monitor and evaluate RFA performance under the FRFA.
- 7 The key specific responsibilities are detailed in Appendix 1 of this memorandum, together with an explanation of the scope of those responsibilities. We elaborate in particular at Rows 10, 11 and 12 on the responsibilities to set minimum standards and audit compliance with them, and to monitor and evaluate RFAs.
- 8 As there is little guidance (by way of statutory definition) regarding these statutory responsibilities, it is necessary in most cases to interpret them by applying their plain meaning.
- 9 Most of the responsibilities are characterised as "functions" under the FSA. The Commission in its capacity as the NRFA, is a Crown entity. As such, the Commission has a board duty to perform its functions efficiently and effectively, and in a manner consistent with the spirit of service to the public. The functions must also be performed consistently with the NRFA's objectives (as set out in the Commission's Statement of Intent).
- 10 The Commission also must ensure that in its capacity as the NRFA it operates in a financially responsible manner and for this purpose that it prudently manages its assets and liabilities.

Statutory responsibilities of the RFAs

- 11 The RFAs' statutory responsibilities are broadly described as follows:
- 11.1 promote and carry out fire control measures;
 - 11.2 comply with the requirements and minimum standards set by the NRFA;
 - 11.3 keep and maintain a fire plan containing prescribed information;
 - 11.4 appoint Rural Fire Officers (*RFOs*) and Principal Rural Fire Officers (*PRFOs*);
and
 - 11.5 meet certain requirements in relation to the determination or imposition of levies.
- 12 A list of the RFAs' key statutory responsibilities is set out in Appendix 2 of this memorandum.

Contrasting the NRFA and RFAs' statutory responsibilities

- 13 The NRFA has the role of setting minimum standards to apply across all RFAs, auditing compliance with them, and monitoring and evaluating RFA performance.

- 14 This can be contrasted with the RFA's specific role of creating a fire plan for its own district, including the detail for the four Rs (Reduction, Readiness, Response and Recovery) in relation to the district.
- 15 The contrast between these two roles is informed by the detail regarding the RFA's responsibilities as set out in the Forest and Rural Fires Regulations 2005 (***FRF Regulations***).
- 16 For example, while it is for the NRFA to set and audit compliance with minimum standards on training, the RFA's task is to set out in the fire plan the details of training arrangements, including the way in which the PRFO and RFOs are educated on their legislative functions, powers and duties (see Regulation 42(e)).
- 17 There is a degree of latitude for the NRFA setting the minimum standards. In the case of training, the wording of section 14A of the FSA is sufficiently general to allow the NRFA to focus on specific areas of training and to use its discretion in setting the minimum level: that must be achieved. But any standards set must be:
 - 17.1 consistent with the overall objectives of the NRFA (as set out in the Statement of Intent),
 - 17.2 set following a consultation process. This strongly suggests that the standards must be realistically capable of achievement given the likely resources available to the RFAs;
 - 17.3 capable of application across all the RFAs;
 - 17.4 measurable; and
 - 17.5 objective,
- 18 It is not necessary for the NRFA to define the "how to" of training in each RFA district. That is a matter for the RFA. All that is required of the NRFA is to set thresholds, against which the RFA's detailed arrangements (when implemented) will be tested,
- 19 Additionally, the NRFA is accountable for monitoring and evaluating the RFAs. These NRFA processes must cover all RFA duties and functions (not just those to which the minimum standards apply). The NRFA can develop its own policies and procedures for monitoring and evaluating functions, but again they must be able to apply across all RFAs and be objective.

PART 3: POTENTIAL LIABILITY

Potential Liability of the NRFA

- 20 As a general proposition it is difficult to envisage the NRFA incurring either civil or criminal liability if it acts in good faith in endeavouring to discharge its legal functions. The most likely area of potential exposure is the crime of criminal nuisance.
- 21 The key potential heads of liability relevant for the NRFA if it were to omit to or fail to reasonably discharge one or more of its statutory responsibilities are:

- 21.1 the civil tort of negligence;
- 21.2 breach of statutory duty;
- 21.3 the tort of misfeasance in public office;
- 21.4 criminal negligence; and
- 21.5 criminal nuisance.

We elaborate briefly on each of these heads of liability below.

Civil tort of negligence

22 The tort of negligence applies where:

- 22.1 there is a duty to exercise care (for example in relation to a person's property);
- 22.2 there is failure to take reasonable care to fulfil that duty; and
- 22.3 the resulting damage caused by that failure could have been reasonably foreseen.

23 For negligence to apply there would have to be a sufficient degree of proximity between the acts or omissions of the NRFA and the damage. By way of example, the proximity issue was discussed in the Court of Appeal decision of *Attorney- General v Body Corporate 200200*. This case involved the question whether the Building Industry Association, which had various quasi-legislative functions, owed a duty of care to the owners of homes with monolithic cladding systems. It was held in the case that the degree of proximity between the BIA and the building owners was not sufficiently high, and that, among other things, the quasi-legislative role was a strong pointer against the imposition of a duty of care.

24 We think there would be difficulty, for example, in establishing that the NRFA in setting minimum standards for RFAs under section 14A(2)(k) **F5A**, had a duty of care to the owners of property destroyed by fire. Given the NRFA role, we think there would likely be insufficient proximity, and that the quasi-legislative role of the NRFA (in setting the standards) would dissuade a Court from imposing such a duty.

25 The NRFA will not have any liability in relation to personal injury suffered by an individual. Those injuries would be covered by the Accident Compensation regime. There are exceptional cases where injured persons can sue for negligence and seek exemplary damages, but these could only arise if the NRFA was found to otherwise have a duty of care

Breach of statutory duty

26 Additionally, there may be a civil claim for breach of statutory duty if, for example, the NRFA fails to set minimum standards and audit compliance with them. However, again, the difficulty for the claimant may be to show the causal link between the breach of duty and damage to the claimant (e.g. where the claimant's property is damaged by fire).

Tort of misfeasance in a public office

27 This tort would only apply where:

27.1 the defendant is a "public officer" of the NRFA;

27.2 that officer acted in the exercise or purported exercise of his or her office;

27.3 that officer acted with malice towards a person, or with knowledge that he or she was acting invalidly and that damage to that person would result; and

27.4 the person suffered damage as a result of that officer's conduct.

Criminal negligence

28 Criminal negligence under section 156 of the Crimes Act 1961 will only occur if the NRFA:

28.1 has something in its charge or under its control (whether it is animate or inanimate). For example, the NRFA has "control" of setting certain minimum standards and auditing compliance with them (sections 14A(2)(k) and (1), FSA); or

28.2 erects, makes, operates, or maintains something.

29 If that test is satisfied, the question then becomes whether the thing in question (in our example, setting the minimum standards and auditing them) might "endanger human life" without precaution or care. If this is the case, the NRFA is:

29.1 under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger; and

29.2 criminal: responsible for the consequences of omitting without lawful excuse to discharge that duty. Importantly, section 150A of the Crimes Act adds the additional requirement that a person will only be criminally responsible if, in the circumstances, the omission or neglect is a major departure from the standard of care expected of a reasonable person.

Criminal nuisance

30 There will be criminal nuisance under section 145 of the Crimes Act where:

30.1 there is an unlawful act, or an omission to discharge a legal duty;

30.2 that act or omission endangers the lives, safety, or health of the public or an individual; and

30.3 there was knowledge that the matters referred to in paragraph 30.2 would occur.

31 By way of example, a failure by the NRFA to set minimum standards for clothing for fire officers (and other persons required by a RFA to attend a fire) may be a circumstance where criminal nuisance may arise,

Potential liability of the RFAs

- 32 The key potential heads of liability relevant to the RFAs if they were to omit to or fail to reasonably discharge one or more of their statutory duties are the same as those that would be relevant to the NRFA.
- 33 We believe the most likely areas of potential exposure are the civil tort of negligence (and possibly breach of statutory duty) and the crime of criminal nuisance.
- 34 Unlike the NRFA, the RFAs have a more "hands on" role in fire control. The quasi-legislative functions of the NRFA do not apply to the RFA. Given the nature of the RFA role, it is likely easier to establish civil negligence, because of the closer proximity of the negligent act or omission of the RFA and damage to property of a property owner. However, we are aware of case law in the United Kingdom where local fire brigades were found not to have a duty of care to persons whose property was damaged as a result of negligent fire control.
- 35 In any event, like the NRFA, the RFA has some statutory protections from liability which we outline next.

PART 4: IMMUNITIES, INDEMNITIES AND PROTECTIONS FROM LIABILITY

Protection from liability under the FRFA

- 36 Sections 56 and 57 of the FRFA provide wide protection from liability for the acts and omissions of the NRFA and the RFAs, as well as their officers and employees.

Section 56(1) FRFA

- 37 Section 56(1) of the FPEA Provides (subject to specified exceptions) that no action shall be brought against the NRFA or RFA to recover damages for damage to property occasioned by an officer or employee in the performance in good faith of duties or functions of his or her powers under the FRFA or other legislation.

Section 56(2) FRFA

- 38 Section 56(2) provides a defence for any claim brought against the NRFA or any REA or any of their officers or employees for their failure or negligence in making adequate provision for fire control. The defence is available where it can be shown that:

38.1 the provision for fire control was in accordance with a fire plan approved by the Crown or by a RFA; or

38.2 the officers or employees complied with the requirements or instructions of various persons including, for example, the relevant RFA,

- 39 There is a reasonable argument that section 56(2) could be used in a defence in proceedings under the Crimes Act (as well as to proceedings in tort). However, there are no decided cases which assist with the interpretation of section 56(2), so the position is not free from doubt.

Section 57(1) FRFA

- 40 Section 57(1) provides that no action or proceedings shall be brought against the NRFA or any RFA, or any officer or employee of either of them to recover damages

for- loss or damage due to the failure or neglect of the NRFA or the RFA to make, or their negligence in making, adequate provision in good faith for fire control.

41 A key element of this defence is that the NRFA or RFA must be acting in good faith.

Immunities and indemnities under the Crown Entities Act 2004

42 The NRFA as a Crown entity may be able to invoke the immunity and indemnity clauses in the Crown Entities Act 2004. However, those provisions will not offer protection to the RFAs because the RFAs are not Crown entities.

Immunity

43 The NRFA is subject to certain protections from liability for its members (i.e. members of the Commission), officeholders and employees.

44 Members, officeholders and employees of NRFA are protected from claims for civil liability but only to the extent that the members, officeholders and employees have acted in good faith and in the performance or intended performance of the duties of the NRFA.

45 This immunity does not apply with respect to criminal proceedings. Hence, there is no protection under this Act for offences under the Crimes Act.

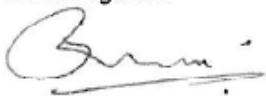
Indemnity

46 The NRFA may indemnify members, officeholders and employees in respect of acts and omissions done in good faith and in the performance or intended performance of NRFA functions.

General

47 Please let us know if you like us to elaborate on any aspect of this advice.

Kind regards



Helen Bowie / John Knight

PARTNER / PARTNER

DIRECT +64 4 498 4921

EMAIL helen.bowie@chapmantripp.com

APPENDIX 1 — NRFA'S STATUTORY RESPONSIBILITIES

The table below sets out the Commission's key statutory responsibilities that specifically relate to it as the NRFA.

	Statutory responsibility	Further explanation	Statutory reference
1	Advise the Minister of rural fire matters relating to the FSA, the FRFA or any other Act.	This is an obligation to keep the Minister informed of such rural fire matters. In particular, the Minister should be kept informed of non-routine or potentially controversial matters.	s 14A (2) (a) FSA
2	Perform the functions conferred on the NRFA by the FSA, FRFA or any other Act.	This is a broad responsibility to carry out all statutory functions. The key functions are listed in this table.	s 14A (2)(b) FSA
3	Consult with all national organisations (including Government Departments and Crown agencies) which function as RFAs, and with organisations which represent the interests of different classes of RFAs.	<p>The Court of Appeal has held that consultation is no negotiation. It is a process to be worked through in the exercise of the statutory power.</p> <p>The scope of the consultation is not specified. We consider the NRFA should consult with the named organisations on matters (related to the NRFA and its functions) which may have a direct impact on those organisations.</p> <p>The NRFA should keep in mind the following principles. Consulting:</p> <ul style="list-style-type: none"> - means more than merely informing the RFA of a plan; - requires making available sufficient information so that the RFA is adequately informed and can meaningfully respond; - involves taking account of the views of the RFAs consulted; - therefore requires approaching the matter with an open mind i.e. one willing to change or start afresh if necessary; 	s 14A (2) (c) FSA

		<ul style="list-style-type: none"> - does not require a blank sheet approach. The NRFA can (and probably should) have a plan in mind and, if so, should reveal it; - does not have to result in agreement; <p>cannot be arbitrarily defined as to time and extent (number of meetings etc.). Each circumstance will be judged on its merits.</p>	
4	Co-ordinate all matters relating to national rural fire control.	This is a broad duty to try to ensure that all matters relating to national rural fire control operate together effectively.	s 14A (2) (d) FSA
5	Co-ordinate the operation of a national rural fire weather index, and co-ordinate a national and regional system of rural fire hazard prediction and warnings.	Again, a duty to try to ensure that these matters operate together effectively.	s 14A (2) (f) FSA
6	Promote and encourage research in matters relating to rural fire control.	The words “promote” and “encourage” connote the need to <i>actively</i> support the research. However, the words do not go so far as to require the NRFA to “achieve” or “ensure” the research.	s 14A (2) (g) FSA
7	Promote and encourage the training and education of persons engaged in rural fire control (including those so engaged as principal rural fire officers or rural fire officers under the FRFA).	Refer to the explanation of the words “promote” and “encourage” in the row above. This responsibility does not require the NRFA to carry out the training or education itself, but to actively support the training and education.	s 14A(2) (h) FSA
8	Make such grants or other assistance available, as the Commission thinks fit, to any RFA	The NRFA may give grants or other assistance to RFAs. The NRFA should have in place a policy on how it will make decisions on the provision of assistance and grants.	s 14A (2) (i) FSA
9	Facilitate effective regional rural fire co-ordination.	In this context we think ‘Facilitating’ would be construed as to “make it less difficult, or more easily achieved”.	14A (2) (j) FSA
10	Set, in consultation with RFAs minimum standards for RFAs in relation to: <ul style="list-style-type: none"> - the training, equipping, and clothing of fire officers and any other persons required by a RFA to attend a fire; - achieving timely responses to fires; - fire weather observation; - assessing fire hazards. 	<p>The RFAs must comply with the standard set by the NRFA (see s 12(a)), FRFA).</p> <p>The FSA does not prescribe (other than the requirement to consult with RFAs) how the NRFA is to go about setting the minimum standards. Therefore the NRFA may adopt its own policy in this regard.</p> <p>The standards should clearly set out the minimum standard in respect of each of the matters listed (recognising that the RFAs may go beyond the minimum standards, but not below them). The minimum standards should be able to be applied consistently to all RFAs and be</p>	s 14A (2) (k) FSA

		<p>measurable.</p> <p>The minimum standards are a threshold that must be attained. However, the <i>means</i> of attaining the standards is for the RFA, not the minimum standard for achieving timely responses to fires, the way in which the RFA goes about attaining that standard is for the RFA to determine. However, having said that, the NRFA's minimum standard must set out a sufficiently detailed threshold such that (if met) timely responses to fires could be achieved.</p> <p>The minimum standards must also be auditable under s 14A(2) (l) of the FSA (refer to row 11 below).</p>	
11	<p>Audit RFAs' compliance minimum standards for RFAs in relation to the following matters:</p> <ul style="list-style-type: none"> - the training, equipping and clothing of Fire Officers and any other persons required by a RFA to attend a fire; - achieving timely responses to fires; - fire weather observation; - assessing fire hazards. 	<p>The Act does not prescribe any processes that the NRFA must implement for the carrying out of audits of the listed matters. Therefore the NRFA can develop its own procedures and processes. The processes must be suitable for an "audit" (as that term is ordinarily used).</p> <p>"Audit" typically means an official inspection of an organisation's accounts, systems etc. By an independent body.</p> <p>Auditing does not suggest involvement or interaction with the party being audited (as opposed to "monitoring" and "evaluation", which may suggest such involvement or interaction). Either the items or circumstances will meet the minimum standard or they will not.</p> <p>The auditing function should be a distinct and separate undertaking from the monitoring and evaluating performance of RFAs under the FRFA.</p> <p>The NRFA audit requirement is limited to the matters described.</p>	s 14A (2) (l) FSA
12	<p>Monitor and evaluate the performance of RFAs under the FRFA.</p>	<p>The NRFA may develop its own procedures and processes for the monitoring and evaluating of RFAs under the FRFA. "monitor" in this context will be construed to mean to observe and check over a period of time, maintain a regular surveillance over, listen to, and report in. "Evaluate" means to assess performance.</p> <p>The monitoring and evaluating should also enable the NRFA to quantify if each RFA's performance is satisfactory. This is because s 46C(1)(ca) of the FSA empowers the Commission to make a grant to a RFA but only if "the most recent evaluation of the RFA's performance under s 14A(2)(m) was considered <i>satisfactory</i> by the NRFA".</p>	<p>s 14A(2) (m) FSA</p> <p>s 14AB FSA</p> <p>s 46C(1)(ca)</p>

		<p>Monitoring and evaluating suggests a continuing facilitative type process that may include involvement or interaction with the party whose performance is at issue.</p> <p>The monitoring and evaluation function broadly relates to <i>all</i> of the duties of RFAs under the FRSA – which includes performance under the FRFA (contrast the limits on the audit function).</p> <p>The NRFA must put in place procedures to be followed for independent assessments of significant fires and internal assessments by RFAs of fires in their district (refer reg 46 of the FRF regs). The NRFA may wish to use these assessments as part of its monitoring and evaluation of RFAs.</p> <p>Before finalising evaluation of a RFA, the NRFA must provide to a RFA:</p> <ul style="list-style-type: none"> - a copy of the draft evaluation; - a reasonable opportunity to make written submissions on the draft evaluation; and - oral submissions on the draft evaluation through a representative. 	
13	Set requirements for RFAs in respect of Forest Area Registers.	<p>The Act does not prescribe any processes that the NRFA must follow when setting the requirements. Therefore the NRFA can develop its own procedures and processes.</p> <p>The NRFA should ensure that any such requirements made are able to be consistently applied across the RFAs.</p>	s 17(2) FRFA
14	Encourage and promote effective fire control measures.	Refer to the explanation of “encourage” and “promote” in row 6 above.	s 18(2) FRFA

APPENDIX 2 — REA'S STATUTORY RESPONSIBILITIES

The table below sets out a RFA's key statutory responsibilities.

	Statutory responsibility	Further explanation	Statutory reference
1	Promote and carry out fire control measures in its district.	<p>The words “promote” and “carry out” suggest the need to <i>actively</i> support and perform fire control measures.</p> <p>Fire control measures include measures to:</p> <ul style="list-style-type: none"> - prevent, detest, control, restrict, suppress, and extinguish fire; - safeguard life and property from damage and risk of damage by or in relation to fire. <p>Further, the RFA must take appropriate fire control measures which include (but are not limited to):</p> <ul style="list-style-type: none"> - the observation of weather and other conditions, and the assessment of fire hazard; - the giving of warnings of the imminence of fire hazard conditions; - the giving of any information available in relation to fire hazard conditions. 	<p>s 12 (1) FRFA</p> <p>s 18 (1) FRFA</p>
2	Comply with the standards set by the NRFA under s 14A (2) (k) of the FSA.	<p>This is an obligation to comply with the minimum standards set by the NRFA under s 14A (2) (k) of the FSA relating to:</p> <ul style="list-style-type: none"> - training, equipping and clothing of Fire Officers and any other persons required by the RFA to attend a fire; - achieving timely responses to fires; - fire weather observation; - assessing fire hazards. 	S 12 (1A) FRFA
3	Keep and maintain a current fire plan for its district.	<p>A RFA must prepare and adopt a fire plan no later than 90 days after the RFA is appointed, constituted or otherwise formed.</p> <p>The fire plan must contain the prescribed information including the policies and</p>	<p>s 12 (4) FRFA</p> <p>s 12 (4A) FRFA</p> <p>regs 39-46</p>

		<p>procedures of the RFA which are to be set out under the headings – reduction, readiness, response and recovery (refer to rows 4 and 7). A RFA must review parts of its fire plan within set timeframes.</p> <p>The RFA must provide to the NRFA a copy of its fire plan no later than 30 days after adoption of the fire plan. It must also promptly provide an amended copy of the fire plan if any amendments are made to a fire plan.</p>	FRF Regs
4	<p>Include in its fire plan the policies and procedures that the RFA has to reduce the likelihood and consequences of fire in its district.</p>	<p>The policies and procedures that the RFA has to reduce the likelihood and consequences of fires in its district must include:</p> <ul style="list-style-type: none"> - the RFA's fire hazard and fire risk management strategies; - the fire prevention planning carried in the RFA's district; - the public education activities carried out in the RFA's district; - the RFA's directions to people on the use of fire as a land management tool; - details of any forest areas, fire safety margins, fire control measures bylaws in the district, and where, and to what extent, in formulating fire control measures the RFA has had regard to any national or regional policy statement, regional or district plan, or regulations made under the RMA. 	reg 41 FRF Regs
5	<p>Include in its fire plan the policies and procedures in relation to readiness for a firefighting event in its district.</p>	<p>The policies and procedures that the RFA has in relation to readiness for a firefighting event in its district must include:</p> <ul style="list-style-type: none"> - a map showing the RFA's district and other specified matters; - details of the RFA's responsibilities and chain of command; - the name of the PRFO and the name(s) of RFO(s) of the RFA; - the membership of the committee (if there is a committee) and a copy of its rules; - details of the training arrangements for the RFA's managers and officers, including an outline of the way in which the PRFO and the RFO are educated 	reg 42 FRF Regs

		<p>on their legislative functions, powers and duties under the FRFA;</p> <ul style="list-style-type: none"> - a list of the agencies available to the RFA for assistance with firefighting or related activities, including the contact details of each agency; - details of all equipment and personnel listed as available to attend a fire callout in the RFA's district; - a record of any arrangements or agreements made under ss 14, 15 or 16 of the FRFA; - a record of any agreement between the RFA and voluntary or other fire forces or persons for the delivery of fire services; - a list of all specially protected areas in the RFA's district; - details of the trigger points for imposing restricted access or for closing access into any exotic forest in the RFA's district. A RFA must consult with the eligible landholders of the forest before setting any trigger points; and - any other relevant matters. 	
6	Include in its fire plan the policies and procedures that RFA had for responding to a fire in its district.	<p>The policies and procedures that the RFA has for responding to a fire in its district must include:</p> <ul style="list-style-type: none"> - how the RFA receives and deals with calls for assistance at a fire; - how the RFA initially responds to a fire that it has received notice of; - how additional firefighting reserves are deployed if extended action is required at a fire; including identification of the limits of local capacity; - the chain of command and control at a fire; and - how all parties involved in the response to a fire establish effective communication with each other. 	reg 44 FRF Regs
7	Include in its fire plan a description of systems the RFA uses for responding to a fire.	<p>The description of the systems that the RFA uses for responding to a fire must include how the RFA:</p>	reg 44 FRF Regs

		<ul style="list-style-type: none"> - records fire incidents attended by firefighting units in the RFA's district; - notifies other RFAs, owners of forests, or other interested parties in the vicinity of a fire, of a fire; - records incoming and outgoing personnel and equipment; - monitors fire behaviour; and - provides or organises logistical support (for example, catering, relief personnel, and first aid). 	
8	Include in its fire plan the policies and procedures for activities it undertakes following a fire event in its district.	<p>The policies and procedures that the RFA has for activities it undertakes following a fire event in its district must include details about:</p> <ul style="list-style-type: none"> - health and safety of personnel; - fire operational reviews (the independent assessments of a significant fire in the RFA's district carried out under the procedure developed by the NRFA under s 14A of the FSA); - operational debriefs (the internal assessments by a RFA of a fire in its district carried out under the procedure developed by the NRFA under s 14A of the FSA); and - post-fire investigations (investigations by a RFA to determine the point of origin and cause of a fire); and - any other recovery activities that occur after a fire has been contained. 	reg 46 FRF Regs
9	Appoint RFO(s) and a PRFO.	The RFA must appoint one or more suitable persons as a RFO. Where there are two or more RFOs one shall be appointed as PRFO.	s 13 FRFA
10	Keep, in accordance with the requirements of the NRFA, a Forest Area Register.	The RFA must comply with any requirements of the NRFA in respect of the RFA's Forest Area Register.	s 17 (2) FRFA s 17 (3) FRFA
		The forest area register should include all registered forest areas declared by that RFA including particulars of any prescribed fire safety margin and of any conditions imposed by the RFA in respect of that forest area.	

		The RFA must be satisfied that certain criteria has been met before declaring land to be forest area.	
11	Reasonably endeavour to recover its costs pursuant to s 43 FRFA before imposing a levy under s 46 FRFA.	The RFA must reasonably endeavour to recover its costs before imposing a s 46 levy. However, such efforts to recover costs will not be expected to be more than a person with sound judgement would attempt to do.	s 43 (4) FRFA
12	Periodically cause an estimate to be prepared of its expenditure for the ensuing period.	The RFA must, at regular periods, have an estimate prepared of its proposed expenditure for the next period.	s 44 FRFA
13	Have regard to certain matters in determining the persons on whom a s 45 levy is to be imposed and the proportions in which it is to be met by those persons.	<p>A s 45 levy is a levy that is applied to meet the ordinary requirements of a RFA.</p> <p>Before imposing such a levy, the RFA must have regard to:</p> <ul style="list-style-type: none"> - the benefit likely to be derived from the operations of the RFA; - the risks of a fire occurring on the land or spreading on to that land or from that land to adjacent land; - the extent to which steps have been taken by or on behalf of any person upon whom a levy may be imposed under s 46 to reduce the risk of fire occurring on that land or spreading on to or from that land; - such other circumstances of whatsoever nature as the RFA considers relevant. 	s 45 FRFA
14	Have regard to certain matters in determining whether a levy is to be imposed under s 46 and the amount of such levy.	<p>A s 46 levy is a levy incurred to cover the costs of and incidental to firefighting operations directed towards to control, restriction, suppression, or extinction or a fire.</p> <p>Before imposing such a levy or determining the amount of any such levy the RFA must have regard to:</p> <ul style="list-style-type: none"> - the value of the property which has been saved and for the protection of which the firefighting operations were to any extent directed; - the extent of the assistance in connection with the firefighting operations rendered by or on behalf of any person upon whom the RFA may be entitled to impose the levy; - the extent of any loss suffered by any such person as a result of the 	<p>s 46 (4) FRFA</p> <p>s 46A (4) FRFA</p>

		<p>firefighting operations;</p> <ul style="list-style-type: none">- such other circumstances as the RFA considers relevant. <p>The RFA must have regard to similar matters when considering whether to impose a levy in relation to the costs of firefighting in fire safety margins attached to State areas (refer to s 46A of the FRFA).</p>	
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