

Version No. 002
Flora and Fauna Guarantee Regulations
2001

S.R. No. 147/2001

Version as at 22 February 2008

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1 Objectives

The objectives of these Regulations are to specify—

- (a) the criteria to be used in determining if a taxon or community or potentially threatening process is eligible to be listed under the **Flora and Fauna Guarantee Act 1988**;
- (b) the information which must be provided in a nomination under section 12 of the Act;
- (c) the form of notices, applications and certificates under the Act;
- (d) the procedures to be used for giving notice under the Act.

2 Authorising provision

These Regulations are made under section 69 of the **Flora and Fauna Guarantee Act 1988**.

3 Revocations

The following Regulations are **revoked**—

- (a) the Flora and Fauna Guarantee Regulations 1990¹;
- (b) the Flora and Fauna Guarantee (Amendment) Regulations 1991².

4 Definitions

In these Regulations—

criterion means one of the set of criteria which is set out in Schedule 1;

item, in relation to the listing process, means a taxon or community or potentially threatening process;

the Act means the **Flora and Fauna Guarantee Act 1988**.

5 The criteria for determining eligibility for listing

For the purposes of section 11 of the Act, the set of criteria by which the eligibility of taxa or communities of flora and fauna or processes for listing can be determined is set out in Schedule 1.

6 Information which must be provided when making a nomination

For the purposes of section 12(2) of the Act, the prescribed information is set out in Schedule 2.

7 Notice of the preparation of certain draft documents

- (1) For the purposes of section 18 of the Act, the prescribed form of the notice of the preparation of a draft Flora and Fauna Guarantee Strategy or a draft amendment to the Strategy is the form in Form 1 of Schedule 3.
- (2) For the purposes of section 21 of the Act, the prescribed form of the notice of the preparation of a draft management plan is in the form in Form 1 of Schedule 3.
- (3) For the purposes of section 22 of the Act, the prescribed form of the notice of the preparation of a draft amendment to, or revocation of, a management plan is in the form in Form 1 of Schedule 3.

- (4) For the purposes of section 33 of the Act, the prescribed form of the notice of the preparation of a draft amendment to a confirmed interim conservation order is in the form in Form 1 in Schedule 3.

8 Notice of making an interim conservation order

For the purposes of sections 28(1)(a) and 28(3) of the Act, a notice regarding the making of an interim conservation order must—

- (a) be given in writing; and
- (b) be served in one of the following ways—
 - (i) in person;
 - (ii) by registered post;
 - (iii) if the whereabouts of the relevant person in possession, landholder or water manager are unknown, by fixing a copy of the notice in a prominent place on any land that is the subject of the interim conservation order, and where possible by fixing a copy of the notice near the main entrance to that land.

9 Notice to persons acting outside the critical habitat

For the purposes of section 35 of the Act, a notice of the making of an interim conservation order must—

- (a) be given in writing; and
- (b) be served in one of the following ways—
 - (i) in person;
 - (ii) by registered post;

- (iii) if the whereabouts of the relevant person carrying on an activity or process are unknown, by fixing a copy of the notice in a prominent place on any land where the activity or process is being carried on, and where possible by fixing a copy of the notice near the entrance to that land.

10 Application for compensation

For the purposes of section 43 of the Act, the prescribed form for an application for compensation is the form in Form 2 in Schedule 3.

11 Certificate of the Secretary

- (1) For the purposes of section 65(2) of the Act, the prescribed form for an application for a certificate of the Secretary is the form in Form 3 in Schedule 3.
 - (2) For the purposes of section 65(4) of the Act, the prescribed form for a certificate is the form in Form 4 in Schedule 3.
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SCHEDULES

SCHEDULE 1

Regulation 5

CRITERIA PREPARED UNDER SECTION 11(4) OF THE ACT FOR DETERMINING ELIGIBILITY TO BE LISTED

Introduction

A primary criterion may be satisfied if any one of its sub-criteria is satisfied.

The sub-criteria are not an exhaustive list of the application of each primary criterion.

1 Group 1—Criteria for determining whether a taxon is eligible to be listed

1.1 Primary criterion 1.1

In accordance with section 11(1) of the Act, a taxon is eligible to be listed if it is in a demonstrable state of decline which is likely to result in extinction.

1.1.1 Sub-criterion 1.1.1

The taxon is known to have occurred in Victoria after European settlement but has not been sighted in the State for 40 years.

1.1.2 Sub-criterion 1.1.2

The reproduction or recruitment of the taxon has seriously declined or is not occurring.

1.2 Primary criterion 1.2

In accordance with section 11(1) of the Act, a taxon is eligible to be listed if it is significantly prone to future threats which are likely to result in extinction.

1.2.1 Sub-criterion 1.2.1

The taxon is very rare in terms of abundance or distribution.

1.2.2 Sub-criterion 1.2.2

The threat is currently operating and is expected to operate at a level in the future which is likely to result in the extinction of the taxon.

1.2.3 Sub-criterion 1.2.3

The reproduction or recruitment of the taxon has seriously declined or is not occurring.

2 Group 2—Criteria for determining whether a community is eligible to be listed

2.1 Primary criterion 2.1

In accordance with section 11(1) of the Act, a community is eligible to be listed if it is in a demonstrable state of decline which is likely to result in extinction.

2.1.1 Sub-criterion 2.1.1

The community is in a demonstrable state of decline which is likely to result in a significant loss of its component taxa.

2.1.2 Sub-criterion 2.1.2

The community's distribution has decreased markedly in a short time and the decrease is continuing.

2.1.3 Sub-criterion 2.1.3

The community's composition has altered markedly in a short time and the alteration is continuing.

2.2 Primary criterion 2.2

In accordance with section 11(1) of the Act, a community is eligible to be listed if it is significantly prone to future threats which are likely to result in extinction.

2.2.1 Sub-criterion 2.2.1

The community is very rare in terms of the total area it covers or it has a very restricted distribution or it has been recorded from only a few localities.

2.2.2 Sub-criterion 2.2.2

The threat is currently operating and is expected to operate at a level in the future which is likely to result in the extinction of the community.

3 Group 3—Criteria for determining whether a taxon below the level of sub-species is eligible to be listed

3.1 Primary criterion 3.1

In accordance with section 11(2) of the Act, a taxon which is below the level of sub-species is only eligible to be listed if, in addition to primary criterion 1.1 or 1.2, there is a special need to conserve it.

3.1.1 Sub-criterion 3.1.1

The special need to conserve a taxon is that the taxonomy of the taxon is under review and there is a reasonable chance that the taxon will be reclassified as a taxon at or above the level of sub-species.

4 Group 4—Criteria for determining whether a community which is narrowly defined is eligible to be listed

4.1 Primary criterion 4.1

In accordance with section 11(2) of the Act, a community which is narrowly defined because of its taxonomic composition, environmental conditions or geography is only eligible for listing if, in addition to primary criterion 2.1 or 2.2, there is a special need to conserve it.

4.1.1 Sub-criterion 4.1.1

The special need to conserve the community is that the classification of the community is under review and there is a reasonable chance that the community will be reclassified as a community that is not narrowly defined.

5 Group 5—Criteria for determining whether a potentially threatening process is eligible to be listed

5.1 Primary criterion 5.1

In accordance with section 11(3) of the Act, a potentially threatening process is eligible to be listed if, in the absence of appropriate management, it poses or has the potential to pose a significant threat to the survival of a range of flora or fauna.

5.1.1 Sub-criterion 5.1.1

The potentially threatening process poses or has the potential to pose a significant threat to the survival of two or more taxa.

5.1.2 Sub-criterion 5.1.2

The potentially threatening process poses or has the potential to pose a significant threat to the survival of a community.

5.2 Primary criterion 5.2

In accordance with section 11(3) of the Act, a potentially threatening process is eligible to be listed if, in the absence of appropriate management, it poses or has the potential to pose a significant threat to the evolutionary development of a range of flora or fauna.

5.2.1 Sub-criterion 5.2.1

The potentially threatening process poses or has the potential to pose a significant threat to the evolutionary development of two or more taxa.

5.2.2 Sub-criterion 5.2.2

The potentially threatening process poses or has the potential to pose a significant threat to the evolutionary development of a community.

6 Group 6—Criteria for determining whether a specifically defined item is eligible to be listed where a more generally defined item has already been listed

6.1 Primary criterion 6.1

A specifically defined item, the subject matter of which is a sub-set or example of the subject matter of a more generally defined item which is listed, is eligible to be listed if it is of such significance that it warrants being listed in its own right so that an action statement must be prepared specifically for that item.

7 Group 7—Criteria for determining whether an item may be repealed from the Threatened List or the Processes List

7.1 Primary criterion 7.1

In accordance with section 10(6) of the Act, an item may be repealed if it is no longer eligible to be listed under section 11 of the Act (see the primary criteria of groups 1–6).

7.1.1 Sub-criterion 7.1.1

The item is not a scientifically valid taxon or community or potentially threatening process.

7.1.2 Sub-criterion 7.1.2

An item which has been listed because it satisfied sub-criteria 3.1.1 or 4.1.1, has had its taxonomy or classification reviewed and the taxon has not been reclassified as a taxon that is at or above the level of sub-species or the community has not been reclassified as a community that is not narrowly defined.

7.1.3 Sub-criterion 7.1.3

A specifically defined item, the subject matter of which is a sub-set or example of the subject matter of a more generally defined item which is listed, may be repealed if it is no longer of such significance that it warrants being listed in its own right and having its own action statement.

SCHEDULE 2

Regulation 6

INFORMATION WHICH MUST BE PROVIDED IN A NOMINATION UNDER SECTION 12(2) OF THE ACT

1 In all cases

- (1) The name, address, and if available the telephone number of the nominator.
- (2) The signature of each person making the nomination or the appointed representative of the nominator.

2 In the case of a nomination associated with an unincorporated body

The name and, if it is different from the address of the nominator, the address of the unincorporated body.

3 In the case of any taxon

- (1) A statement identifying the taxon.
- (2) The statement must—
 - (a) include either—
 - (i) the scientific name and must specify the taxon in accordance with a relevant text or reference; or
 - (ii) a common name and a description of the taxon which, when taken together, unambiguously distinguish the taxon from all other taxa; and
 - (b) indicate whether the taxon is a vascular or a non-vascular plant or a vertebrate or invertebrate animal or some other form of life.

4 In the case of any taxon nominated for addition to the Threatened List

- (1) In the case of a conventionally accepted taxon, evidence showing that the taxon is conventionally accepted and the sources of that evidence.
- (2) In the case of a taxon that is not conventionally accepted—
 - (a) a manuscript quality taxonomic description of the taxon; and
 - (b) evidence showing that at least one voucher specimen is lodged with a relevant scientific institution.
- (3) In either case referred to in subclause (1) or (2), evidence showing that primary criterion 1.1 or 1.2 in Schedule 1 is satisfied by the taxon.

5 In the case of a taxon below the level of sub-species nominated for addition to the Threatened List

In addition to the information required by clause 4, evidence showing that primary criterion 3.1 in Schedule 1 is satisfied by the taxon.

6 In the case of any taxon nominated for repeal from the Threatened List

Evidence showing that primary criterion 7.1 in Schedule 1 is satisfied by the taxon.

7 In the case of any community

- (1) A statement identifying the community.
- (2) The statement must—
 - (a) specify the community in accordance with a relevant text or reference; or
 - (b) describe the community in such a way that it is distinguished from all other communities.

(3) The community must be described with reference to—

- (a) the biological components by which it can be identified and, if relevant to the identification, its non-biological components or environmental features; and
- (b) if known to the nominator, the determining biological or non-biological components, environmental features or processes.

8 In the case of any community nominated for addition to the Threatened List

Evidence showing that primary criterion 2.1 or 2.2 in Schedule 1 is satisfied by the community.

9 In the case of a narrowly defined community nominated for addition to the Threatened List

In addition to the information required by clause 8 for communities, evidence showing that primary criterion 4.1 in Schedule 1 is satisfied by the community.

10 In the case of any community nominated for repeal from the Threatened List

Evidence showing that primary criterion 7.1 in Schedule 1 is satisfied by the community.

11 In the case of any potentially threatening process

- (1) A statement identifying the potentially threatening process.
- (2) The statement must—
 - (a) specify the potentially threatening process in accordance with a relevant text or reference; or
 - (b) describe the potentially threatening process in such a way that it is distinguishable from all other potentially threatening processes.

- (3) The potentially threatening process must be described as a process and not as a cause or a symptom of a process.

12 In the case of a potentially threatening process nominated for addition to the Processes List

- (1) Evidence showing that primary criterion 5.1 or 5.2 in Schedule 1 is satisfied by the potentially threatening process.
- (2) The evidence must indicate—
- (a) the range of flora or fauna affected or potentially affected; and
 - (b) the significance of the threat which the potentially threatening process poses or has the potential to pose.

13 In the case of a potentially threatening process nominated for repeal from the Processes List

Evidence showing that primary criterion 7.1 in Schedule 1 is satisfied by the potentially threatening process.

14 In the case of a specifically defined item which shares subject matter with a generally defined item that is already listed and which is nominated for addition to the Threatened List or the Processes List

In addition to any other information required by this Schedule for the item, evidence showing that primary criterion 6.1 in Schedule 1 is also satisfied by the item.

15 In the case of a specifically defined item which shares subject matter with a generally defined item that is already listed and which is nominated for repeal from the Threatened List or the Processes List

Evidence showing that primary criterion 7.1 in Schedule 1 is satisfied by the item.

16 In any case where a nomination relies on the satisfaction of a sub-criterion to show that a primary criterion is satisfied

- (1) Evidence known to the nominator which supports or negates the conclusion that the satisfaction of the sub-criterion can be relied upon as proof of the satisfaction of its primary criterion.
 - (2) Evidence indicating how significantly that evidence supports or negates that conclusion.
-

SCHEDULE 3

FORMS

FORM 1

Regulation 7

Flora and Fauna Guarantee Act 1988

Flora and Fauna Guarantee Regulations 2001

NOTICE OF THE PREPARATION OF DRAFT DOCUMENTS

- The
- *draft Flora and Fauna Guarantee Strategy prepared under section 18 of the Act
 - *draft amendment to the Flora and Fauna Guarantee Strategy prepared under section 18 of the Act
 - *draft management plan prepared under section 21 of the Act
 - *draft revocation of a management plan prepared under section 22 of the Act
 - *draft amendment to a management plan prepared under section 22 of the Act
 - *draft amendment to a confirmed interim conservation order prepared under section 33 of the Act

relating to *[insert a brief explanation of the draft document if the title is not sufficiently explanatory]*

has been prepared on *[insert date of preparation]* and may be inspected at *[insert details of time and place that the draft is available for public inspection]*.

Submissions may be made to the Secretary on the

- *draft Flora and Fauna Guarantee Strategy prepared under section 18 of the Act
- *draft amendment to the Flora and Fauna Guarantee Strategy prepared under section 18 of the Act
- *draft management plan prepared under section 21 of the Act

*draft amendment to a management plan prepared under section 22 of the Act

*draft amendment to a confirmed interim conservation order prepared under section 33 of the Act.

Submissions must be in writing and must be sent to *[insert relevant Departmental name and address]*.

Submissions close on *[insert the date, being a date at least 30 days after the notice is published and, if desired, the time]*.

Inquiries can be directed to *[insert relevant Departmental name and phone number]*.

[Insert the name of the Secretary or delegate]

[Insert the full title of the Secretary or delegate]

[Indicate if signed by a delegate]

Date notice published:

* delete if inapplicable.

FORM 2

Regulation 10

Flora and Fauna Guarantee Act 1988

Flora and Fauna Guarantee Regulations 2001

**APPLICATION FOR COMPENSATION IN RELATION TO AN
INTERIM CONSERVATION ORDER UNDER SECTION 43 OF THE
ACT**

To the Secretary to the Department of Natural Resources and
Environment

[Insert the postal address of the Department]

*I/We

[Insert name(s) of claimant(s)]

of:

[Insert address(es) of claimants]

apply for compensation for financial loss incurred in relation to the
interim conservation order described below:

*[Describe the interim conservation order so that it can be
distinguished from any other order.]*

The details of the financial loss incurred are:

The financial loss was caused by:

*[Note: the financial loss may have been suffered as a natural direct
and reasonable consequence of the making of the interim conservation
order or of being required to comply with the order or as a result of
the suspension of the operation of a licence, permit or other authority
under section 38 of the Act.]*

*I/We wish to claim interest associated with this claim for
compensation and provide the following details in support of *my/our
claim:

*[If you wish to claim interest associated with this claim for
compensation, give details (including dates when losses occurred) of
your claim.]*

*I/We wish to claim reasonable costs associated with this claim for compensation and provide the following details in support of *my/our claim:

[If you wish to claim reasonable costs associated with this claim for compensation, give details of your claim.]

*I/We would like to make special arrangements for payment, as provided for under sections 43(8) (advance payment) and 43(11) (part-payments) of the Act. Specifically, *I/we request:

[If you would like special arrangements to be made for payment, give your preferred arrangements as provided for under sections 43(8) (advance payment) and 43(11) (part-payments) of the Act.]

*I/We state that *I/we believe that the information that *I/we have supplied above is true and correct.

[Signature(s) of claimant(s)]

Date:

* delete if inapplicable.

FORM 3

Regulation 11(1)

Flora and Fauna Guarantee Act 1988

Flora and Fauna Guarantee Regulations 2001

**APPLICATION FOR A CERTIFICATE UNDER SECTION 65(1) OF
THE ACT INDICATING WHETHER AN INTERIM
CONSERVATION ORDER APPLIES TO LAND**

To the Secretary to the Department of Natural Resources and
Environment

[Insert the postal address of the Department]

Please provide a certificate indicating whether the land described
below is subject to an interim conservation order.

*[Describe the land giving sufficient information so that it can be
readily identified providing, in particular, details such as a map, title
details and the address of the land]*

Name of applicant(s):

Address(es):

[Signature(s) of applicant(s)]

Date:

FORM 4

Regulation 11(2)

Flora and Fauna Guarantee Act 1988

Flora and Fauna Guarantee Regulations 2001

**CERTIFICATE UNDER SECTION 65(3) OF THE ACT INDICATING
WHETHER AN INTERIM CONSERVATION ORDER APPLIES TO
LAND**

This certificate is issued to:

[Insert the name(s) and address(es) of the applicant(s)]

This is to certify that on *[insert the date]* the land described below
*was the subject of the interim conservation *order(s)/*was not the
subject of an interim conservation order:

Description of land:

[Insert a description of the land]

Signature:

Date of certificate:

* delete if inapplicable.

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ENDNOTES

1. General Information

The Flora and Fauna Guarantee Regulations 2001, S.R. No. 147/2001 were made on 11 December 2001 by the Governor in Council under section 69 of the **Flora and Fauna Guarantee Act 1988**, No. 47/1988 and came into operation on 11 December 2001.

The Flora and Fauna Guarantee Regulations 2001 will sunset 10 years after the day of making on 11 December 2011 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Flora and Fauna Guarantee Regulations 2001 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Reg. 3(a): S.R. No. 5/1991.

² Reg. 3(b): S.R. No. 87/1991.