

Version No. 035
Flora and Fauna Guarantee Act 1988
No. 47 of 1988

Version incorporating amendments as at 5 October 2007

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	1
3 Definitions	1
4 Objectives	8
5 Flora and fauna which are excluded from the Act	9
6 Crown to be bound	10
PART 2—ADMINISTRATION	11
7 Functions of the Secretary	11
8 The Scientific Advisory Committee	11
9 Advice	13
PART 3—LISTING	14
10 The list	14
11 Eligibility for listing	15
12 Making a nomination for listing	15
13 Consideration of the nomination	16
14 The Committee's preliminary recommendation	16
15 The Committee's final recommendation	17
16 Minister's decision	18
PART 4—MANAGEMENT PROCESSES	19
Division 1—Flora and Fauna Guarantee Strategy	19
17 The Strategy	19
18 Procedure for making or amending the Strategy	20
Division 2—Action statements and critical habitats	21
19 Action statements	21
20 Determination of critical habitats	21

<i>Section</i>	<i>Page</i>
Division 3—Flora and fauna management plans	23
21 Procedure for making management plans	23
22 Amendment and revocation of management plans	24
23 Contents of management plans	24
24 Review of management plans	25
Division 4—Public authority management agreements	25
25 Public authority management agreements	25
PART 5—CONSERVATION AND CONTROL MEASURES	27
Division 1—Interim conservation orders	27
26 What is the order to apply to and how is it made?	27
27 What can the interim conservation order provide for?	28
28 Notice of the making of the order	29
29 Submissions	29
30 Recommendations of the Secretary	30
31 Confirmation by the Minister	30
32 Period of operation of an interim conservation order	31
33 Amendment of a confirmed order	31
34 Defects in procedure	33
35 Notice to persons acting outside the critical habitat	33
36 Notice to comply	34
37 Notification of other Administrators	35
38 Suspension of licences, permits or other authorities issued under other Acts	36
39 Interim conservation orders to prevail over planning schemes	37
40 Permits	37
41 Reviews	38
41A Application for declaration	38
41B Matters Tribunal must take into account	39
42 Authorised officer may take action	39
43 Compensation	40
44 Minister and Secretary to ensure conservation of taxon, community or habitat	42
Division 2—The handling of flora	43
45 Reference to flora	43
46 Declaration of flora to be protected flora	43
47 Offences relating to protected flora	43
48 Authorisation to take, trade in, keep, move or process protected flora	44
49 Offences relating to flora generally	45
50 Royalties for the taking of flora	45
51 Relationship between authorities issued under this Division and authorities issued under other Acts	46

<i>Section</i>	<i>Page</i>
Division 3—The handling of fish	46
52 Offence to take, trade in or keep listed fish	46
53 Authorisation to take, trade in or keep listed fish	47
PART 6—GENERAL	48
Division 1—General provisions about licences and permits	48
54 Applications	48
55 Giving of licences and permits	48
56 Offence of not complying with terms and limitations of licence or permit	48
Division 2—Enforcement and powers of authorised officers	48
57 Powers of authorised officers	48
58 Offence to obstruct an authorised officer	51
Division 3—Matters relating to offences	52
59 Offence to interfere with notices marks or equipment	52
60 Cancellation of licence or permit upon conviction	52
61 Requirement to carry out restoration work	53
62 Payment of compensation by offender	53
Division 4—Simplification of proof	53
63 Proof of contravention	53
64 Proof of identity	54
Division 5—General	54
65 Certificates	54
66 Secrecy	55
67 Availability for inspection	55
68 Matters to be put in annual report	56
Division 6—Regulations	57
69 Regulations	57
PART 7—TRANSITIONAL PROVISIONS AND REPEALS	59
70 Repeal and transitional provision	59
71 Previously recommended matters may be included on lists without further recommendation	59
72 Saving of action statements	60

<i>Section</i>	<i>Page</i>
SCHEDULES	61
SCHEDULE 1—Previously Recommended Taxa which may be Included on the Excluded List without further Recommendation	61
SCHEDULE 2—Previously Recommended Taxa and Communities which may be Included on the Threatened List without further Recommendation	62
SCHEDULE 3—Previously Recommended Processes which may be Included on the Processes List without further Recommendation	75
SCHEDULE 4— <i>Repealed</i>	76
<hr style="border-top: 3px double #000;"/>	
ENDNOTES	77
1. General Information	77
2. Table of Amendments	78
3. Explanatory Details	81

Version No. 035
Flora and Fauna Guarantee Act 1988
No. 47 of 1988

Version incorporating amendments as at 5 October 2007

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to establish a legal and administrative structure to enable and promote the conservation of Victoria's native flora and fauna and to provide for a choice of procedures which can be used for the conservation, management or control of flora and fauna and the management of potentially threatening processes.

2 Commencement

- (1) Sections 1, 2, 3, 4, 8, 11 and 69 come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day to be proclaimed.

3 Definitions

- (1) In this Act—

* * * * *

**S. 3(1) def. of
Administra-
tive Appeals
Tribunal
repealed by
No. 52/1998
s. 311(Sch. 1
item 31.1(a)).**

amendment includes addition, deletion or substitution;

authorised officer means an officer appointed under Part 9 of the **Conservation, Forests and Lands Act 1987** to be an authorised officer for the purposes of this Act;

S. 3(1) def. of *Catchment Management Authority* inserted by No. 39/1998 s. 14(1)(a).

Catchment Management Authority means a Catchment Management Authority established under Part 2 of the **Catchment and Land Protection Act 1994**;

Committee means the Scientific Advisory Committee established under section 8;

community means a type of assemblage which is or which is wholly or substantially made up of taxa of flora or fauna existing together in the wild;

Conservation Advisory Committee means the committee established under the **Conservation, Forests and Lands Act 1987** and known as the Conservation Advisory Committee;

S. 3(1) def. of *Department* substituted by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 80.1).

Department means the Department of Sustainability and Environment;

development includes—

- (a) the construction or exterior alteration of a building or other structure; and
- (b) the demolition or removal of a building or other structure or works; and

- (c) the construction or carrying out of works; and
- (d) the subdivision or consolidation of land; and
- (e) the placing or relocation of a building or other structure or works on land;

* * * * *

S. 3(1) def. of *Director-General* repealed by No. 76/1998 s. 9(a)(i).

Excluded List means the list made under section 5(1);

S. 3(1) def. of *Excluded List* inserted by No. 10/2000 s. 4.

fauna means any animal-life which is indigenous to Victoria whether vertebrate or invertebrate and in any stage of biological development and includes fish and any other living thing generally classified as fauna but does not include humans;

fish has the same meaning as in the **Fisheries Act 1995**;

S. 3(1) def. of *fish* amended by No. 92/1995 s. 161(Sch. 2 item 1).

flora means any plant-life which is indigenous to Victoria whether vascular or non-vascular and in any stage of biological development and includes any other living thing generally classified as flora;

keep in relation to flora or fauna, means to have charge or possession of in captivity or in a domesticated state;

land includes—

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water; and
- (c) any estate, interest, easement, servitude, privilege or right in or over land;

S. 3(1) def. of *landholder* amended by No. 85/1998 s. 24(Sch. item 23(a)(b)).

landholder—

- (a) in relation to land which has been alienated from the Crown and is under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means the person who is registered as a proprietor, or the persons who are registered as the proprietors, of an estate in fee simple in the land; and
- (b) in relation to land which has been alienated from the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner or the persons who are the owners of the fee or equity of redemption; and
- (c) in relation to Crown land which is occupied under a lease, licence or other right, means the occupier under that lease, licence or right; and
- (d) in relation to Crown land which is managed or controlled by a public authority (other than the Minister administering this Act) means the public authority or Minister that manages or controls the land; and

(e) in relation to land, whether or not alienated by the Crown, means a person who, whether alone or with others, is in occupation or possession, or has the management or control, of land, and includes the agent of such a person;

* * * * *

S. 3(1) defs of *Land Protection Council, Land Protection Regional Advisory Committee* repealed by No. 52/1994 s. 97(Sch. 3 item 12.1).

planning scheme means a planning scheme made or having effect under the **Planning and Environment Act 1987**;

potentially threatening process means a process which may have the capability to threaten the survival, abundance or evolutionary development of any taxon or community of flora or fauna;

Processes List means the list made under section 10(2);

S. 3(1) def. of *Processes List* inserted by No. 10/2000 s. 4.

protected flora means—

- (a) any flora which is declared to be protected by Order of the Governor in Council published in the Government Gazette; and
- (b) any flora which is a part or member of a listed taxon or community;

Flora and Fauna Guarantee Act 1988
No. 47 of 1988
Part 1—Preliminary

s. 3

public authority means a body established for a public purpose by or under any Act;

S. 3(1) def. of *Regional Catchment and Land Protection Board* inserted by No. 52/1994 s. 97(Sch. 3 item 12.2), repealed by No. 39/1998 s. 14(1)(b).

* * * * *

Secretary means the body corporate established by Part 2 of the **Conservation, Forests and Lands Act 1987**;

S. 3(1) def. of *Secretary* inserted by No. 76/1998 s. 9(a)(ii).

take in relation to flora or fauna, means to kill, injure, disturb or collect flora;

taxon means a taxonomic group of any rank into which organisms are categorised;

Threatened List means the list made under section 10(1);

S. 3(1) def. of *Threatened List* inserted by No. 10/2000 s. 4.

trade includes—

- (a) to buy, to agree to receive or accept under an agreement to buy, to acquire by barter, or to cause or suffer any of those things; and
- (b) to sell, to agree to offer or expose for sale or to keep and have in one's possession for sale, to deliver or receive for sale, to dispose of by barter for the purposes of gain or advancement or to cause or suffer any of those things;

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 3(1) def. of *Tribunal* inserted by No. 52/1998 s. 311(Sch. 1 item 31.1(b)).

use in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed;

* * * * *

S. 3(1) def. of *Victorian Catchment and Land Protection Council* inserted by No. 52/1994 s. 97(Sch. 3 item 12.3), repealed by No. 39/1998 s. 14(1)(b).

Victorian Catchment Management Council means the Victorian Catchment Management Council established under Part 2 of the **Catchment and Land Protection Act 1994**;

S. 3(1) def. of *Victorian Catchment Management Council* inserted by No. 39/1998 s. 14(1)(a).

water manager means a person who manages or controls water;

wild means in an independent unpossessed or natural state and not in an intentionally cultivated or domesticated or captive state, regardless of the location or land tenure;

works in relation to land includes any change to the natural or existing condition or topography of the land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

S. 3(3)
inserted by
No. 46/1998
s. 7(Sch. 1),
amended by
No. 108/2004
s. 117(1)
(Sch. 3
item 80.2).

- (2) In this Act a reference to a landholder's land includes a reference to land occupied, managed or controlled by the landholder.
- (3) If under the **Public Administration Act 2004** the name of the Department of Sustainability and Environment is changed, a reference in the definition of *Department* in subsection (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

4 Objectives

S. 4(1)(a)
amended by
No. 10/2000
s. 5.

- (1) The flora and fauna conservation and management objectives are—
 - (a) to guarantee that all taxa of Victoria's flora and fauna other than the taxa listed in the Excluded List can survive, flourish and retain their potential for evolutionary development in the wild; and
 - (b) to conserve Victoria's communities of flora and fauna; and
 - (c) to manage potentially threatening processes; and
 - (d) to ensure that any use of flora or fauna by humans is sustainable; and
 - (e) to ensure that the genetic diversity of flora and fauna is maintained; and
 - (f) to provide programs—
 - (i) of community education in the conservation of flora and fauna; and
 - (ii) to encourage co-operative management of flora and fauna through, amongst other things, the entering into of land management co-operative agreements

under the **Conservation, Forests and Lands Act 1987**; and

(iii) of assisting and giving incentives to people, including landholders, to enable flora and fauna to be conserved; and

(g) to encourage the conserving of flora and fauna through co-operative community endeavours.

(2) A public authority must be administered so as to have regard to the flora and fauna conservation and management objectives.

5 Flora and fauna which are excluded from the Act

(1) The Governor in Council may, on the recommendation of the Minister, and by Order published in the Government Gazette specify, in a list, a taxon, the members of which constitute a serious threat to human welfare, and may amend the list or repeal the whole or any part of the list.

S. 5(1)
substituted by
No. 10/2000
s. 6.

(2) The Minister may make a recommendation under subsection (1) only after considering a recommendation of the Committee.

S. 5(2)
substituted by
No. 10/2000
s. 6.

(3) If the Committee proposes to make a recommendation to the Minister it must advertise the proposed recommendation and the reasons for it in the Government Gazette and in a newspaper circulating generally throughout the State.

(4) After advertising its preliminary recommendation the Committee must allow at least 30 days to elapse for public comment to be made and must consider any public comments which are made during that time before making its recommendation.

- (5) After considering the Committee's recommendation the Minister may decide whether or not to recommend to the Governor in Council that the addition, amendment or repeal be made and the Minister must publish reasons for that decision in the Government Gazette and in a newspaper circulating generally throughout the State.

6 Crown to be bound

This Act binds the Crown, not only in right of the State of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2—ADMINISTRATION

7 Functions of the Secretary

- (1) The Secretary must administer this Act in such a way as to promote the flora and fauna conservation and management objectives. **S. 7(1) amended by No. 76/1998 s. 9(b)(i).**
- (2) If the Secretary is of the opinion that action taken or to be taken by a public authority is likely to threaten the survival of a listed taxon or community of flora or fauna or a critical habitat the Secretary may require the public authority to consult with the Secretary either before the action starts, or if the action has already started within 15 days of the request being made. **S. 7(2) amended by No. 76/1998 s. 9(b)(i)(ii).**
- (3) The Secretary may give grants and other incentives to encourage the achievement of the flora and fauna conservation and management objectives. **S. 7(3) amended by No. 76/1998 s. 9(b)(i).**

8 The Scientific Advisory Committee

- (1) There is established by this Act a body to be called the Scientific Advisory Committee.
- (2) The following are the functions of the Committee—
- (a) to advise the Minister on the listing of taxa or communities of flora and fauna and potentially threatening processes;
 - (b) to advise the Minister on any other flora and fauna conservation matters.
- (3) The members of the Committee are—
- (a) three senior government scientific officers appointed by the Minister; and
 - (b) two scientists on the staff of any of the Victorian education institutions, appointed by the Minister; and

-
- (c) two scientists appointed by the Minister who are not employed by the Government.
- (4) All members of the Committee must be knowledgeable and experienced in the sciences of flora or fauna conservation or ecology.
- (5) Each member of the Committee must have in the opinion of the Minister expertise in one or more of the following categories and between them the members of the Committee must have expertise in all the following categories—
- (a) vertebrate fauna;
 - (b) invertebrate fauna;
 - (c) vascular flora;
 - (d) non-vascular flora;
 - (e) communities of flora or fauna;
 - (f) aquatic taxa or communities of flora or fauna in marine environments;
 - (g) aquatic taxa or communities of flora or fauna in inland aquatic environments;
 - (h) taxa or communities of flora or fauna in terrestrial environments;
 - (i) potentially threatening processes.
- (6) Except as provided in subsections (7), (8) and (9) the provisions relating to the membership and procedure of committees and councils set out in Schedule 2 to the **Conservation, Forests and Lands Act 1987** apply to the Committee.
- (7) The Convenor must not be a senior government scientific officer.
-

-
- (8) If a Committee member has any interest which is likely to interfere with that member's ability to perform his or her duties as a Committee member that member must disclose that interest to the Committee.
- (9) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of the Committee in respect of the office of member.

S. 8(9)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 80.3),
80/2006
s. 26(Sch.
item 41).

9 Advice

- (1) The Conservation Advisory Committee and the Victorian Catchment Management Council may provide advice to the Minister on any matter arising from the administration of this Act.
- (2) The Conservation Advisory Committee, the Victorian Catchment Management Council and each Catchment Management Authority may provide advice to the Secretary on any matter arising from the administration of this Act for which the Secretary has responsibility.

S. 9(1)
amended by
Nos 52/1994
s. 97(Sch. 3
item 12.3),
39/1998
s. 14(2)(a).

S. 9(2)
amended by
Nos 52/1994
s. 97(Sch. 3
items 12.3,
12.4), 76/1998
s. 9(c),
39/1998
s. 14(2)(b)(i)(ii).

PART 3—LISTING

10 The list

S. 10(1)
substituted by
No. 10/2000
s. 7.

- (1) The Governor in Council may, on the recommendation of the Minister, and by Order published in the Government Gazette specify, in a list, any taxon or community of flora and fauna which is threatened, and may amend the list or repeal the whole or any part of the list.

S. 10(2)
substituted by
No. 10/2000
s. 7.

- (2) The Governor in Council may, on the recommendation of the Minister, and by Order published in the Government Gazette specify, in a list, any potentially threatening process, and may amend the list or repeal the whole or any part of the list.

S. 10(3)
substituted by
No. 10/2000
s. 7.

- (3) The Minister may make a recommendation under subsection (1) or (2) only after considering a recommendation of the Committee.

S. 10(4)(5)
repealed by
No. 10/2000
s. 7.

* * * * *

S. 10(6)
amended by
No. 10/2000
s. 8(1).

- (6) The Committee may recommend to the Minister that an eligible taxon or community of flora or fauna or an eligible process be added to the Threatened List or the Processes List or that any taxon or community of flora or fauna or any process which is no longer eligible be repealed from the Threatened List or the Processes List.
- (7) The Minister in making a recommendation under this Part and the Committee in making a recommendation under this Part and in preparing the list of criteria for eligibility must have regard only to nature conservation matters.

11 Eligibility for listing

- (1) A taxon or community of flora or fauna is eligible to be listed if it is in a demonstrable state of decline which is likely to result in extinction or if it is significantly prone to future threats which are likely to result in extinction.
- (2) A taxon of flora or fauna which is below the level of sub-species and a community of flora or fauna which is narrowly defined because of its taxonomic composition, environmental conditions or geography is only eligible for listing if in addition to the requirements of subsection (1) there is a special need to conserve it.
- (3) A potentially threatening process is eligible for listing if, in the absence of appropriate management, it poses or has the potential to pose a significant threat to the survival or evolutionary development of a range of flora or fauna.
- (4) The Committee is responsible for preparing and maintaining a set of criteria by which the eligibility of taxa or communities of flora or fauna or processes for listing can be determined.
- (5) The set of criteria referred to in subsection (4) is of no effect unless it is included in regulations.

12 Making a nomination for listing

- (1) A person may nominate any eligible taxon or community of flora or fauna or potentially threatening process to be added to or ineligible taxa or communities of flora or fauna or potentially threatening processes to be repealed from the Threatened List or the Processes List.
- (2) A nomination must be made to the Committee and must include any prescribed information and must be in writing addressed to the Secretary to the Committee.

S. 12(1)
amended by
No. 10/2000
s. 8(2).

13 Consideration of the nomination

- (1) The Committee must consider each nomination as soon as possible after it has been made.
- (2) The Committee may consider different nominations about the same subject together.
- (3) The Committee may reject a nomination if—
 - (a) the subject of the nomination is already listed; or
 - (b) the nomination is vexatious; or
 - (c) the nomination is not accompanied by the prescribed information.
- (4) If the Committee rejects a nomination it must so notify the Minister and nominator and must give reasons for that rejection.

14 The Committee's preliminary recommendation

- (1) The Committee after considering the nominations must make a preliminary recommendation that the nomination should either be supported or not be supported.
 - (2) When the Committee has made a preliminary recommendation it must as soon as possible—
 - (a) notify the nominator; and
 - (b) advertise its preliminary recommendation and the reasons for it in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area likely to be affected by the recommendation; and
 - (c) publish notice of the making of the preliminary recommendation in the Government Gazette.
-

-
- (3) After advertising its preliminary recommendation the Committee must allow 30 days to elapse for public comment to be made and must consider any public comments which are made during that time.

15 The Committee's final recommendation

- (1) After considering any public comments the Committee must make a recommendation to the Minister that the nomination should either be supported or not be supported and must give reasons for its recommendation.
- (2) The Committee must make a recommendation under subsection (1) within three years of the making of the nomination.
- (3) When the Committee has made its recommendation—
- (a) it must notify the nominator, the Conservation Advisory Committee and the Victorian Catchment Management Council of the recommendation; and
 - (b) advertise the recommendation and the reasons for it in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area likely to be affected by the recommendation; and
 - (c) publish notice of making of the recommendation in the Government Gazette.

S. 15(3)(a)
amended by
Nos 52/1994
s. 97(Sch. 3
item 12.5),
39/1998
s. 14(3).

16 Minister's decision

S. 16(1)
amended by
Nos 52/1994
s. 97(Sch. 3
item 12.6),
39/1998
s. 14(4),
10/2000
s. 9(a)(b).

- (1) After considering the Committee's recommendation and any comments of the Conservation Advisory Committee and the Victorian Catchment Management Council the Minister must within 30 days of receiving the Committee's recommendation decide whether or not to recommend to the Governor in Council that the taxon or community of flora or fauna or potentially threatening process be added to or repealed from the Threatened List or the Processes List.
 - (2) That decision and the reasons for it must be advertised in a newspaper circulating generally throughout the State and a newspaper circulating generally in the area likely to be affected by the decision and notice of the making of the decision must be published in the Government Gazette.
-

PART 4—MANAGEMENT PROCESSES

Division 1—Flora and Fauna Guarantee Strategy

17 The Strategy

- (1) The Secretary must prepare a Flora and Fauna Guarantee Strategy as soon as possible after this section comes into operation setting out how the flora and fauna conservation and management objectives are to be achieved.
- (2) The Strategy must include proposals for—
 - (a) guaranteeing subject to subsection (3) the survival, abundance and evolutionary development in the wild of all taxa and communities of flora and fauna; and
 - (b) ensuring the proper management of potentially threatening processes; and
 - (c) an education program; and
 - (d) improving the ability of all relevant people to meet the flora and fauna conservation and management objectives.
- (3) The Strategy may allow for particular needs in particular areas and must have regard to the need for efficiency and effectiveness and to the need to achieve the flora and fauna conservation and management objectives with the minimum adverse social and economic impact and to the rights and interests of landholders.
- (4) The Secretary may amend the Strategy.

S. 17(1)
amended by
No. 76/1998
s. 9(c).

S. 17(4)
amended by
No. 76/1998
s. 9(c).

18 Procedure for making or amending the Strategy

S. 18(1)
amended by
No. 76/1998
s. 9(c).

(1) Before making the Strategy the Secretary must prepare a draft Strategy and must publish notice of the draft Strategy in the Government Gazette and in a newspaper circulating generally throughout the State.

(2) A notice must—

(a) be in the prescribed form; and

(b) state the date by which submissions must be made to the Secretary which must be at least 30 days after the date on which the notice is published; and

(c) specify the manner in which submissions must be made; and

(d) fix a time and place at which a copy of the draft Strategy will be available to the public for inspection.

S. 18(3)
amended by
No. 76/1998
s. 9(c).

(3) Any person may make submissions to the Secretary about the draft Strategy.

S. 18(4)
amended by
No. 76/1998
s. 9(c).

(4) After considering all the submissions made the Secretary may make the Strategy either with or without changes.

S. 18(5)
amended by
No. 76/1998
s. 9(c).

(5) After the Strategy has been made the Secretary must publish notice of its making in the Government Gazette and in a newspaper circulating generally throughout the State.

(6) The procedures applicable to the making of the Strategy apply to the making of an amendment to the Strategy which is not a minor amendment.

Division 2—Action statements and critical habitats

19 Action statements

- (1) The Secretary must prepare an action statement for any listed taxon or community of flora or fauna or potentially threatening process as soon as possible after that taxon, community or process is listed. **S. 19(1) amended by No. 76/1998 s. 9(c).**
- (2) The action statement must set out what has been done to conserve and manage that taxon or community or process and what is intended to be done and may include information on what needs to be done.
- (3) In preparing or amending an action statement the Secretary must consider— **S. 19(3) amended by No. 76/1998 s. 9(c).**
- (a) any management advice given by the Committee, the Conservation Advisory Committee and the Victorian Catchment Management Council; and **S. 19(3)(a) amended by Nos 52/1994 s. 97(Sch. 3 item 12.7), 39/1998 s. 14(5).**
- (b) any other relevant nature conservation, social and economic matters.
- (4) The Secretary may amend an action statement. **S. 19(4) amended by No. 76/1998 s. 9(c).**

20 Determination of critical habitats

- (1) The Secretary may determine that the whole or any part or parts of the habitat of any taxon or community of flora or fauna is critical to the survival of that taxon or community. **S. 20(1) amended by No. 76/1998 s. 9(d)(i).**

Flora and Fauna Guarantee Act 1988
No. 47 of 1988
Part 4—Management Processes

s. 20

S. 20(2)
amended by
No. 76/1998
s. 9(d)(i).

- (2) The Secretary must—
- (a) advertise the determination in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area likely to be affected by the determination; and
 - (b) notify those persons listed in section 37; and
 - (c) notify any landholder or water manager who manages land or water likely to be affected by the determination; and
 - (d) publish notice of the determination in the Government Gazette.

S. 20(3)
amended by
No. 76/1998
s. 9(d)(i).

- (3) The Secretary need not comply with subsection (2)(a) if—

S. 20(3)(a)
amended by
No. 76/1998
s. 9(d)(i)(ii).

- (a) the Secretary is of the opinion that to disclose the location of the habitat would result in an unreasonable level of harm being done to it and to the flora and fauna which it supports and the Minister has approved of the Secretary's decision; or
- (b) the landholder requests that the information be withheld and the Minister approves the withholding of the information.

S. 20(4)
amended by
No. 76/1998
s. 9(d)(i).

- (4) The Secretary may amend or revoke a determination.

S. 20(5)
amended by
No. 76/1998
s. 9(d)(i).

- (5) Upon amending or revoking a determination the Secretary must notify those persons who were given notice of the making of the determination and publish notice in the Government Gazette.

Division 3—Flora and fauna management plans

21 Procedure for making management plans

- (1) The Secretary may make a management plan for any taxon or community of flora or fauna or potentially threatening process. S. 21(1)
amended by
No. 76/1998
s. 9(d)(i).
- (2) Before making a management plan the Secretary must prepare a draft management plan and before preparing a draft management plan the Secretary must consult with any landholder or water manager whose interests in the Secretary's opinion may be directly and materially affected by the management plan. S. 21(2)
amended by
No. 76/1998
s. 9(d)(i)(ii).
- (3) The Secretary must give notice of the preparation of draft management plan to any landholder of land or manager of water which is likely to be directly affected by that plan and must publish notice of the preparation of draft management plan in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the plan applies. S. 21(3)
amended by
No. 76/1998
s. 9(d)(i).
- (4) A notice must—
 - (a) be in the prescribed form; and
 - (b) state the date by which submissions must be made to the Secretary, which must be at least 30 days after the date on which the notice is published; and S. 21(4)(b)
amended by
No. 76/1998
s. 9(d)(i).
 - (c) specify the manner in which submissions must be made; and
 - (d) fix a time and a place at which a copy of the draft plan will be available to the public for inspection.

s. 22

S. 21(5)
amended by
No. 76/1998
s. 9(d)(i).

(5) Any person may make submissions to the Secretary about a draft management plan and the Secretary must acknowledge receipt of each submission.

S. 21(6)
amended by
No. 76/1998
s. 9(d)(i).

(6) After considering all the submissions made within the period set out in the notice the Secretary may make the management plan either with or without changes.

S. 21(7)
amended by
No. 76/1998
s. 9(d)(i).

(7) After the management plan has been made the Secretary must give notice of its making to those persons to whom notice was given under subsection (3) and must publish notice of its making in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the plan applies.

22 Amendment and revocation of management plans

S. 22(1)
amended by
No. 76/1998
s. 9(e).

(1) The Secretary may amend or revoke a management plan.

(2) The procedures applicable to the making of a management plan apply to the revocation of a management plan or the making of an amendment to a management plan which is not a minor amendment.

23 Contents of management plans

(1) A management plan must state—
(a) the taxon or community of flora or fauna or potentially threatening process to which it applies; and

- (b) in relation to the flora or fauna conservation and management objectives—
- (i) the way in which those objectives are to be implemented or promoted for the benefit of that taxon or community or the management of that process; and
 - (ii) the method by which progress towards achieving those objectives can be assessed; and
- (c) the nature conservation and the social and economic consequences of the plan; and
- (d) the date by which the management plan should be subject to review by the Secretary.

S. 23(1)(d)
amended by
No. 76/1998
s. 9(e).

- (2) In making or amending a management plan the Secretary must consider—
- (a) any relevant nature conservation, social or economic matters; and
 - (b) any other relevant matters.

S. 23(2)
amended by
No. 76/1998
s. 9(e).

24 Review of management plans

The Secretary must review a management plan before the date fixed under section 23(1)(d).

S. 24
amended by
No. 76/1998
s. 9(e).

Division 4—Public authority management agreements

25 Public authority management agreements

- (1) The Secretary may enter into an agreement with one or more public authorities to provide for the management of any taxon or community of flora or fauna or potentially threatening process.
- (2) The Secretary must cause notice of the making of the agreement to be published in the Government Gazette and the agreement must not come into force before the notice is published.

S. 25(1)
amended by
No. 76/1998
s. 9(e).

S. 25(2)
amended by
No. 76/1998
s. 9(e).

Flora and Fauna Guarantee Act 1988
No. 47 of 1988
Part 4—Management Processes

s. 25

- (3) The agreement must set out its purposes and aims, the duties and areas of responsibility of the parties and the date on which it begins and (if necessary) ends.
 - (4) An agreement may be changed or terminated by mutual agreement between the parties or according to the terms of the agreement.
-

PART 5—CONSERVATION AND CONTROL MEASURES

Division 1—Interim conservation orders

26 What is the order to apply to and how is it made?

- (1) The Minister may in writing make an interim conservation order to conserve—
 - (a) the critical habitat of a listed taxon or community of flora or fauna on Crown land or in water under the control of the Crown; or
 - (b) the critical habitat of a taxon or community of flora or fauna which has been nominated for listing which is on Crown land or in water under the control of the Crown; or
 - (c) the critical habitat of a listed taxon of flora or fauna on private land or in water under private control; or
 - (d) the critical habitat of a taxon of flora or fauna which has been nominated for listing which is on private land or in water under private control.
- (2) If the Minister makes an order to conserve a taxon or community of flora or fauna which has been nominated for listing the Committee must make a final recommendation on that nomination within 80 days of the making of the interim conservation order and the Minister must make a decision on the recommendation within 10 days of receiving it.
- (3) If the Minister decides not to recommend a taxon or community for listing then the order made in respect of that taxon or community is revoked.

-
- (4) Before making an order the Minister must consult with any other Minister whose area of responsibility is likely to be affected by the order.
 - (5) In making an order the Minister must consider—
 - (a) any nature conservation matters; and
 - (b) the social and economic consequences of making the order; and
 - (c) any other relevant matters.
 - (6) An interim conservation order has effect from the day on which it is made.

27 What can the interim conservation order provide for?

An interim conservation order may provide for all or any of the following—

- (a) the conservation protection or management of flora, fauna, land or water within the critical habitat which is the subject of the order;
- (b) the prohibition or regulation of any activity or process which takes place on the land or in relation to the water or the use, management or development of the land or water within the critical habitat which is the subject of the order;
- (c) the prohibition, regulation or management of any activity or process which takes place outside the critical habitat which is the subject of the order but which is likely to adversely affect the critical habitat;
- (d) a requirement to undertake works or activities specified in the order or by the Secretary.

S. 27(d)
amended by
No. 76/1998
s. 9(e).

28 Notice of the making of the order

- (1) Upon the day on which an interim conservation order is made the Secretary must—
- (a) give notice that the order has been made to the person in possession of any land and the water manager of any water within the critical habitat which is the subject of the order; and
 - (b) as soon as possible publish notice that the order has been made in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the order applies.

S. 28(1)
amended by
No. 76/1998
s. 9(e).

- (2) A notice must—

- (a) be given in accordance with the regulations; and
- (b) state the date by which submissions must be made to the Secretary which must be at least 30 days after the date on which the notice is published.

S. 28(2)(b)
amended by
No. 76/1998
s. 9(e).

- (3) As soon as possible after the making of an order the Secretary must give notice—

S. 28(3)
amended by
No. 76/1998
s. 9(e).

- (a) that the order has been made; and
- (b) of the terms of the order—

to all landholders of land within the critical habitat which is the subject of the order who have not been notified under subsection (1).

29 Submissions

- (1) Any person may make submissions to the Secretary about an interim conservation order of which notice has been published.

S. 29(1)
amended by
No. 76/1998
s. 9(e).

s. 30

S. 29(2)
amended by
No. 76/1998
s. 9(e).

(2) The Secretary must consider all submissions made within the period set out in the notice.

S. 29(3)
amended by
No. 76/1998
s. 9(e).

(3) The Secretary may consider a late submission and must consider one if the Minister so directs.

30 Recommendations of the Secretary

S. 30(1)
amended by
No. 76/1998
s. 9(e).

(1) The Secretary must within 50 days of the date on which submissions close make a recommendation to the Minister on whether the Minister should approve, approve with amendments or revoke the interim conservation order.

S. 30(2)
amended by
No. 76/1998
s. 9(e).

(2) Before making the recommendation the Secretary must consult with all persons upon whom notice was served and must consult with any other person who is, in the Minister's opinion, relevant.

31 Confirmation by the Minister

S. 31(1)
amended by
No. 76/1998
s. 9(f)(i).

(1) Within 10 days of receiving the Secretary's recommendation the Minister must either—
(a) confirm the interim conservation order with or without amendments; or
(b) revoke the interim conservation order.

(2) In making a decision under subsection (1) the Minister must consider—

- (a) any nature conservation matters; and
- (b) the social and economic consequences of that decision; and
- (c) the Secretary's advice on consultations and submissions; and

S. 31(2)(c)
amended by
No. 76/1998
s. 9(f)(i).

(d) any other relevant matters—
and may consult with any other relevant person.

- (3) On the day on which an interim conservation order is confirmed the Secretary must—
- (a) give notice of the terms of the order to all persons who were given notice under section 28; and
 - (b) give notice of the terms of the order to all persons who made submissions about the order; and
 - (c) publish notice of the confirmation of the order in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the order applies.

S. 31(3)
amended by
No. 76/1998
s. 9(f)(ii).

32 Period of operation of an interim conservation order

An interim conservation order ceases to operate at the end of 2 years from the date on which it is confirmed by the Minister or at any earlier date decided on by the Minister or stated in the order.

33 Amendment of a confirmed order

- (1) The Minister may amend a confirmed interim conservation order at any time.
- (2) Before amending a confirmed order the Minister must prepare a draft amendment.
- (3) The Secretary must give notice of the draft amendment to all persons who were given notice under section 28 and must publish notice of the draft amendment in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the order applies.

S. 33(3)
amended by
No. 76/1998
s. 9(g).

S. 33(4)(b)
amended by
No. 76/1998
s. 9(g).

- (4) A notice must—
- (a) be in the prescribed form; and
 - (b) state the date by which submissions must be made to the Secretary, which must be at least 30 days after the date on which the notice is published; and
 - (c) specify the manner in which submissions must be made; and
 - (d) fix a time and place at which a copy of the draft amendment will be available for inspection.

S. 33(5)
amended by
No. 76/1998
s. 9(g).

- (5) Any person may make submissions to the Secretary about a draft amendment.

S. 33(6)
amended by
No. 76/1998
s. 9(g).

- (6) The Secretary must consider all submissions made within the time set out in the notice.

S. 33(7)
amended by
No. 76/1998
s. 9(g).

- (7) The Secretary may consider a late submission and must consider one if the Minister so directs.

S. 33(8)
amended by
No. 76/1998
s. 9(g).

- (8) After considering all the submissions, the Secretary may recommend to the Minister that the confirmed order be amended.

S. 33(9)
amended by
No. 76/1998
s. 9(g).

- (9) The Minister must not amend a confirmed order without considering the recommendation of the Secretary.

S. 33(10)
amended by
No. 76/1998
s. 9(g).

- (10) If the Minister has made an amendment to a confirmed order the Secretary must—
- (a) give notice that the Minister has made an amendment to a confirmed order to all landholders of land or managers of water affected by the order; and

-
- (b) publish notice of the making of the amendment in the Government Gazette and in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area to which the order applies.

34 Defects in procedure

- (1) A person cannot bring an action in respect of a failure to comply with the procedure for making an interim conservation order which has not been confirmed unless the person is substantially or materially disadvantaged by the failure.
- (2) A confirmed order or an amendment to a confirmed order is not made invalid by any failure to comply with the procedure for making or amending a confirmed order.
- (3) A person may apply to the Tribunal for review of a decision to make an interim conservation order if the order has not been confirmed and if that person is substantially or materially disadvantaged by a failure to comply with the procedure for making the order.

S. 34(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 31.2).

35 Notice to persons acting outside the critical habitat

- (1) At any time during the operation of an interim conservation order the Secretary may give notice of the making of the order to any person carrying on an activity or process outside the critical habitat which is the subject of the order and which is likely to detrimentally affect the critical habitat.
- (2) A notice must—
- (a) be given in accordance with the regulations;
and

S. 35(1)
amended by
No. 76/1998
s. 9(g).

Flora and Fauna Guarantee Act 1988
No. 47 of 1988
Part 5—Conservation and Control Measures

s. 36

S. 35(2)(b)
amended by
No. 76/1998
s. 9(g).

(b) state the date by which submissions must be made to the Secretary which must be at least 30 days after the day on which the notice is given to the person.

S. 35(3)
amended by
No. 76/1998
s. 9(g).

(3) If the person upon whom the notice has been given wishes to object to the terms of the order that person may make a submission to the Secretary within the time fixed in the notice.

S. 35(4)
amended by
No. 76/1998
s. 9(g).

(4) Before making a recommendation the Secretary must consider all submissions made within the time fixed in the notice and may consult with any other person.

S. 35(5)
amended by
No. 76/1998
s. 9(g).

(5) The Secretary may recommend to the Minister that an amendment be made to the order.

S. 35(6)
amended by
No. 76/1998
s. 9(g).

(6) If the Minister makes an amendment to the order as the result of a recommendation made by the Secretary under this section, the Secretary must give notice of the making of that amendment to the person to whom the original notice was given and to any other person to whom, before the making of the amendment, notice had been given about the order.

36 Notice to comply

S. 36(1)
amended by
No. 76/1998
s. 9(g).

(1) At any time during the operation of an interim conservation order the Secretary may serve notice on any person—

(a) who is a landholder of land or a manager of water which forms part of the critical habitat which is the subject of the order; or

(b) who is carrying on an activity outside the critical habitat which is the subject of the order which is likely to detrimentally affect the critical habitat—

requiring them to comply with the order.

(2) A person must comply with a notice issued under subsection (1).

Penalty: 100 penalty units.

(3) In addition to any penalty imposed under subsection (2), a person who is convicted of an offence against the subsection is liable to a continuing penalty of 10 penalty units for each day on which the failure to comply with that subsection continues after conviction.

37 Notification of other Administrators

As soon as possible after the making or amending of an interim conservation order the Secretary must give notice of the terms of the order to—

(a) the Minister administering the **Planning and Environment Act 1987**; and

(b) the Minister administering the **Mineral Resources (Sustainable Development) Act 1990**; and

(c) the Minister administering the **Extractive Industries Development Act 1995**; and

(d) any planning authority and responsible authority appointed under the **Planning and Environment Act 1987** for the area in which the land which is the subject of the order is situated; and

S. 37
amended by
No. 76/1998
s. 9(g).

S. 37(b)
amended by
Nos 92/1990
s. 128(Sch. 1
item 11),
63/2006
s. 61(Sch.
item 15).

S. 37(c)
amended by
No. 67/1995
s. 58(Sch. 1
item 7).

s. 38

S. 37(e)
repealed by
No. 41/1997
s. 28.

* * * * *

- (f) any other relevant Minister; and
- (g) any Minister previously consulted about that order.

38 Suspension of licences, permits or other authorities issued under other Acts

S. 38(2)
amended by
No. 76/1998
s. 9(g).

S. 38(3)
amended by
No. 76/1998
s. 9(g).

- (1) If at any time during the operation of an interim conservation order the Minister becomes aware of a licence, permit or other authority which would permit the holder to act in contravention of the terms of the order the Minister may suspend the operation of that licence, permit or other authority to the extent that it permits that action.
- (2) Before suspending the licence, permit or other authority the Secretary must consult with the person responsible for issuing that licence, permit or other authority and must advise the Minister of the result of the consultation.
- (3) The Secretary must give notice of the suspension of the operation of the licence, permit or other authority to the holder.
- (4) The suspension of the licence, permit or other authority begins at the time at which the notice is given or any later time specified in the notice and lasts until the order no longer operates or any earlier time specified in the notice.

39 Interim conservation orders to prevail over planning schemes

Where there is any conflict between an interim conservation order and a planning scheme the order is to prevail over the planning scheme.

40 Permits

- | | |
|--|---|
| (1) A landholder or water manager who wishes to undertake a particular use or activity for which a permit is required under an interim conservation order must apply to the Secretary. | S. 40(1)
amended by
No. 76/1998
s. 9(g). |
| (2) In deciding whether to grant a permit the Secretary must consider—

(a) the flora and fauna conservation and management objectives; and

(b) the Flora and Fauna Guarantee Strategy; and

(c) any relevant action statements or flora and fauna management plans; and

(d) any significant effects which the granting of the permit will have on listed taxa or communities of flora or fauna or the critical habitat; and

(e) any possible social and economic effects which the granting of the permit might have; and

(f) any other relevant matters. | S. 40(2)
amended by
No. 76/1998
s. 9(g). |
| (3) If the Secretary decides to refuse an application for a permit or places conditions on a permit the Secretary must give reasons for refusing or for placing those conditions to the applicant. | S. 40(3)
amended by
No. 76/1998
s. 9(g). |

s. 41

S. 41
substituted by
No. 52/1998
s. 311(Sch. 1
item 31.3).

41 Reviews

- (1) A person may apply to the Tribunal for review of—
 - (a) a requirement or prohibition placed on that person by a confirmed interim conservation order;
 - (b) a decision of the Secretary under a confirmed interim conservation order that affects that person's interests;
 - (c) a decision of the Minister to suspend that person's licence, permit or other authority under section 38.
- (2) If the Secretary has not determined an application for a permit within 30 days after it is lodged, the Secretary is deemed to have made a decision refusing the application at the end of that 30-day period.
- (3) An application for review must be made—
 - (a) within 30 days after the day on which the applicant was advised of the requirement, prohibition or decision; or
 - (b) in the circumstances referred to in subsection (2), within 30 days after the end of the 30 day period referred to in that subsection.

S. 41(1)(b)
amended by
No. 76/1998
s. 9(g).

S. 41(2)
amended by
No. 76/1998
s. 9(g).

S. 41A
inserted by
No. 52/1998
s. 311(Sch. 1
item 31.3).

41A Application for declaration

- (1) A person may apply to the Tribunal for a declaration concerning the validity of a requirement, prohibition or decision referred to in section 41(1).
- (2) On an application under subsection (1) the Tribunal may make any declaration it thinks appropriate in the circumstances.

- (3) The Tribunal's power to make a declaration under this section is exercisable only by a presidential member of the Tribunal.

41B Matters Tribunal must take into account

In determining an application for review or a declaration under section 41 or 41A the Tribunal must—

- (a) take into account any relevant planning scheme; and
- (b) where appropriate, have regard to any planning scheme or amendment adopted by a planning authority under the **Planning and Environment Act 1987** but not, as at the date the application is determined, approved by the Minister or the planning authority; and
- (c) take account of and give effect to any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**; and
- (d) where appropriate, have regard to any agreement made under section 173 of the **Planning and Environment Act 1987** affecting land the subject of the application.

S. 41B
inserted by
No. 52/1998
s. 311(Sch. 1
item 31.3).

S. 41B(b)
amended by
No. 81/2004
s. 48.

42 Authorised officer may take action

If an authorised officer believes on reasonable grounds that a landholder or water manager has not satisfactorily complied with the terms of an interim conservation order, the authorised officer, with any assistance the authorised officer considers necessary, may, having first given notice to the landholder or water manager—

-
- (a) enter onto the land or water of the landholder or water manager; and
 - (b) do anything which the authorised officer reasonably believes to be necessary to ensure compliance with the order.

43 Compensation

- (1) A landholder or water manager is entitled to compensation for financial loss suffered as a natural direct and reasonable consequence of the making of an interim conservation order.
- (2) A person who is required to comply with a notice under section 36 is entitled to compensation for financial loss suffered as a natural direct and reasonable consequence of being required to comply with that notice.
- (3) The holder of a licence, permit or other authority suspended under section 38 is entitled to compensation for financial loss suffered as a natural direct and reasonable consequence of the suspension of that licence, permit or other authority.
- (4) An application for compensation under this section must—

S. 43(4)(a)
amended by
No. 76/1998
s. 9(h)(i).

- (a) be made to the Secretary; and

- (b) be in writing in the prescribed form.

S. 43(5)
amended by
No. 76/1998
s. 9(h)(i).

- (5) The Secretary must determine the amount of compensation to be paid to a person entitled to compensation.

-
- (6) In making a determination under subsection (5) the Secretary must consult with and consider the submissions of any other relevant person or body and must have regard to the following matters—
- (a) the amount by which, in the Secretary's opinion, the value of the land will be increased or decreased because of the order; **S. 43(6)** amended by **No. 76/1998** s. 9(h)(i).
 - (a) the amount by which, in the Secretary's opinion, the value of the land will be increased or decreased because of the order; **S. 43(6)(a)** amended by **No. 76/1998** s. 9(h)(ii).
 - (b) the amount of financial loss to the person which, in the Secretary's opinion, would result from compliance with the order; **S. 43(6)(b)** amended by **No. 76/1998** s. 9(h)(ii).
 - (c) any increase in the value of the land which, in the Secretary's opinion, would result from the carrying out of works by the Secretary; **S. 43(6)(c)** amended by **No. 76/1998** s. 9(h)(i)(ii).
 - (d) what, in the Secretary's opinion, will be the cost of any works required to be carried out on the land; **S. 43(6)(d)** amended by **No. 76/1998** s. 9(h)(ii).
 - (e) any change in the value of chattels or improvements which would, in the Secretary's opinion, occur because the land use or activity to which they relate is to be restricted or prohibited by the order; **S. 43(6)(e)** amended by **No. 76/1998** s. 9(h)(ii).
 - (f) any other matter which the Secretary considers relevant. **S. 43(6)(f)** amended by **No. 76/1998** s. 9(h)(i).
- (7) If compensation is payable under this section the person to whom it is payable is also entitled to be paid for any reasonable costs associated with the claim for compensation and interest associated with the claim for compensation calculated from the time when the loss was first incurred.
- (8) If a person has applied for compensation, the Secretary may decide to make a payment of an amount determined by the Secretary to that person in advance of any decision being made on that person's application. **S. 43(8)** amended by **No. 76/1998** s. 9(h)(i).
-

s. 44

S. 43(9)
amended by
No. 76/1998
s. 9(h)(i).

(9) The Secretary must undertake to assist any person who is required to carry out works under an interim conservation order if the Secretary is of the opinion that that person could claim compensation for those works and the assistance must be given before the requirement is enforced.

S. 43(10)
amended by
No. 76/1998
s. 9(h)(i)(ii).

(10) The assistance given by the Secretary may be either—
(a) a payment of money; or
(b) a provision of labour, goods or other services—

and the money paid or cost of other assistance given must be that which in the Secretary's opinion is the reasonable and direct costs of carrying out the works.

S. 43(11)
amended by
No. 76/1998
s. 9(h)(i).

(11) The Secretary may pay compensation to a person entitled to receive it by part payments at periodic intervals if the Secretary and that person so agree.

(12) Parts 10 and 11 and section 37 of the **Land Acquisition and Compensation Act 1986**, with any necessary changes, apply to the determination of compensation under this section as if the claim were a claim under section 37 of that Act.

S. 44
amended by
No. 76/1998
s. 9(i).

44 Minister and Secretary to ensure conservation of taxon, community or habitat

Before an interim conservation order expires the Minister and the Secretary must take all reasonable steps for the purpose of ensuring the long-term conservation of the taxon, community or critical habitat in respect of which the order was made.

Division 2—The handling of flora

45 Reference to flora

In this Division and in Part 6 a reference to flora includes a reference to flora which is not indigenous to Victoria and includes a reference to flora in any form including the whole organism or any part or product, whether alive or dead or however processed.

46 Declaration of flora to be protected flora

The Governor in Council may by Order published in the Government Gazette declare any flora to be protected flora.

47 Offences relating to protected flora

- (1) A person must not take, trade in, keep, move or process protected flora without a licence or permit or unless authorised by Order of the Governor in Council published in the Government Gazette.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply to the taking of flora by a person if that person—
- (a) has accidentally taken that flora and has exercised reasonable care not to take that flora; or
 - (b) in the case of flora taken from private land, other than land which is part of the critical habitat of the flora, is the owner of the land or person who has been granted a lease by the owner of the land from which the flora is taken and has not taken that flora for the purposes of sale or sold or offered that flora for sale; or

- (c) in the case of flora taken from private land, other than land which is part of the critical habitat of the flora, is allowed to take that flora by the owner of the land or person who has been granted a lease by the owner of the land from which that flora is taken and has not taken that flora for the purposes of sale or sold or offered that flora for sale; or
 - (d) takes flora propagated from flora which has been lawfully obtained and kept.
- (3) Where the taking, trading in, keeping, moving or processing of protected flora is authorised by Order of the Governor in Council, a person must not take, trade in, keep, move or process that flora in contravention of the terms and conditions fixed in that Order.

Penalty: 40 penalty units.

48 Authorisation to take, trade in, keep, move or process protected flora

S. 48(1)
amended by
No. 76/1998
s. 9(f).

- (1) The Secretary may issue a licence to take (except for the purpose of controlling), trade in, keep, move or process protected flora.
- (2) The Secretary may issue a permit to take, trade in, keep, move or process protected flora.
- (3) The Governor in Council may by Order published in the Government Gazette authorise the taking (except for the purpose of controlling), trading in, keeping, moving or processing of protected flora subject to the terms and conditions fixed by the Governor in Council in the Order.

S. 48(2)
amended by
No. 76/1998
s. 9(f).

-
- (4) The Secretary must not issue a licence or permit for and the Governor in Council must not authorise the taking, trading, keeping, moving or processing of protected flora if in the opinion of the Secretary or the Governor in Council (as the case may be) to do so would threaten the conservation of the taxon or community of which the flora is a member or part.
- (5) The Secretary must not issue a permit for the taking of listed flora for the purpose of control unless the Secretary is of the opinion that the flora is a serious cause of injury to property, crops, stock or listed taxa or communities of flora or fauna.

S. 48(4)
amended by
No. 76/1998
s. 9(i).

S. 48(5)
amended by
No. 76/1998
s. 9(i).

49 Offences relating to flora generally

- (1) A person must not, except as prescribed, without the permit of the Secretary, abandon or release any prescribed flora into the wild.
Penalty: 50 penalty units.
- (2) A person who does not in the circumstances and in the manner prescribed mark any flora which is required by the regulations to be marked is guilty of an offence and liable to a penalty of 40 penalty units.

S. 49(1)
amended by
No. 76/1998
s. 9(i).

50 Royalties for the taking of flora

The Secretary may determine royalties for the taking of wild flora in accordance with this Act from Crown land.

S. 50
amended by
No. 76/1998
s. 9(i).

51 Relationship between authorities issued under this Division and authorities issued under other Acts

- (1) A licence or permit or other authority issued under any Act which authorises the taking, trading in, keeping, moving or processing of flora does not authorise the holder to take, trade in, keep, move or process flora in circumstances in which it would be prohibited under this Division.
- (2) A licence or permit issued under this Division or an authorisation made under this Division does not authorise a person to take, trade in, keep, move or process flora in circumstances in which that action is prohibited under another Act.

Division 3—The handling of fish

52 Offence to take, trade in or keep listed fish

- (1) A person must not take, trade in or keep any fish which is a member of a listed taxon or community of fauna without a licence or unless authorised by Order of the Governor in Council published in the Government Gazette.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply to the taking of fish by a person if that person has accidentally taken that fish, has exercised reasonable care not to take that fish and has returned the fish in a viable condition to the wild.
- (3) A licence issued under the **Fisheries Act 1995** does not authorise the holder to take, trade in or keep fish in circumstances in which the taking, trading in or keeping of fish is prohibited under subsection (1).

S. 52(3)
amended by
No. 92/1995
s. 161(Sch. 2
item 1).

-
- (4) Where the taking, trading in or keeping of any fish which is a member of a listed taxon or community of fauna is authorised by Order of the Governor in Council, a person must not take, trade in or keep that fish in contravention of the terms and conditions fixed in that Order.

Penalty: 40 penalty units.

53 Authorisation to take, trade in or keep listed fish

- (1) The Secretary may issue a licence to take, trade in or keep fish which are members of a listed taxon or community of fauna.
- (2) The Governor in Council may by Order published in the Government Gazette authorise the taking, trading in, or keeping of any fish which is a member of a listed taxon or community of fauna subject to the terms and conditions fixed by the Governor in Council in the Order.
- (3) A licence issued under subsection (1) or authorisation made under subsection (2) does not authorise a person to take, trade in or keep fish in any circumstances in which that action is prohibited under the **Fisheries Act 1995**.

S. 53(1)
amended by
No. 76/1998
s. 9(i).

S. 53(3)
amended by
No. 92/1995
s. 161(Sch. 2
item 1).

PART 6—GENERAL

Division 1—General provisions about licences and permits

S. 54
amended by
No. 76/1998
s. 9(i).

54 Applications

An application for a licence or permit under this Act must be made to the Secretary in writing.

55 Giving of licences and permits

S. 55(1)
amended by
No. 76/1998
s. 9(j)(i)(ii).

(1) If the Secretary gives a licence or permit it must be in writing and may contain those terms and be limited in those ways which the Secretary considers are necessary.

S. 55(2)
amended by
No. 76/1998
s. 9(j)(i).

(2) The Secretary may give both a licence and a permit or more than one licence or permit together in the same instrument.

S. 55(3)
amended by
No. 76/1998
s. 9(j)(i).

(3) The Secretary may amend or revoke a licence or permit after first giving notice to the licensee or permit holder of the intention to do so.

56 Offence of not complying with terms and limitations of licence or permit

A person who holds a licence or permit given under this Act who does not comply with the terms and limitations of that licence or permit is guilty of an offence and liable to a penalty of 50 penalty units.

Division 2—Enforcement and powers of authorised officers

57 Powers of authorised officers

- (1) An authorised officer may take any action which is necessary to find out whether the provisions of—
- (a) this Act; or
 - (b) the regulations; or

-
- (c) any Orders in Council made under this Act;
or
 - (d) an interim conservation order; or
 - (e) a licence or permit given under this Act; or
 - (f) a public authority management agreement; or
 - (g) a land management co-operative agreement entered into under the **Conservation, Forests and Lands Act 1987** for the purposes of this Act; or
 - (h) any Codes of Practice approved under the **Conservation, Forests and Lands Act 1987** for the purposes of this Act—
are being complied with.
- (2) For the purposes of subsection (1) an authorised officer may—
- (a) at any reasonable time and by any reasonable means and with that assistance which the authorised officer requires enter land, buildings not occupied as places of residence or vehicles; or
 - (b) search any land, buildings not occupied as places of residence or vehicles; or
 - (c) with a warrant, search any building occupied as a place of residence; or
 - (d) inspect equipment, machinery, implements, plants, animals, enclosures or other goods; or
 - (e) require a moving vehicle to be stopped; or
 - (f) ask questions; or
 - (g) seize, examine or take copies of, or extracts from documents; or
-

-
- (h) without payment, take or require a person who is the landholder of the land or is apparently in charge of anything mentioned in paragraph (b) to give to the authorised officer samples of substances or articles in respect of which the officer suspects that there has been a contravention of an instrument mentioned in subsection (1); or
 - (i) require a person to produce a document which the officer believes on reasonable grounds relates to, or may contain evidence of an offence under this Act or the regulations; or
 - (j) require the person having custody of any municipal rate book or record to produce it to the officer who may inspect the rate book or record to find the name or address of a landholder or water manager and take extracts from the rate book or record; or
 - (k) having first given notice to the owner and to the person in possession of the land enter land and construct or erect or maintain markers or equipment on that land; or
 - (l) having first given notice to the owner and to the person in possession of the land enter land and carry out scientific studies; or
 - (m) request a person to give his or her name and place of residence.
- (3) For the purposes of preventing the commission repetition or continuance of an offence against this Act or the regulations an authorised officer may seize any equipment or material which is being used by any person found committing an offence.

-
- (4) A magistrate may issue a search warrant with respect to any building if satisfied by the evidence on oath or by affidavit of the authorised officer that there is reasonable grounds for believing flora or fauna is being held there in contravention of this Act.
- (5) This section is in addition to and does not limit the other powers which an authorised officer has under this Act or the **Conservation, Forests and Lands Act 1987**.

S. 57(4)
amended by
No. 57/1989
s. 3(Sch.
item 78).

58 Offence to obstruct an authorised officer

- (1) A person must not wilfully assault, obstruct, threaten, or intimidate an authorised officer who is exercising his or her powers under this Act or the regulations.

Penalty: 20 penalty units.

- (2) A person must not—
- (a) contravene a lawful direction, order or requirement of an authorised officer; or
 - (b) when asked by an authorised officer—
 - (i) refuse to give that person's name and place of residence; or
 - (ii) refuse to produce a document, sample, plant or animal; or
 - (c) destroy, alter or remove a notice placed by an authorised officer; or
 - (d) destroy, damage, interfere with or remove any matter or thing done by an authorised officer in accordance with his or her powers under this Act.

Penalty: 10 penalty units.

- (3) Despite anything to the contrary in subsection (2) a person may refuse to answer an authorised officer's question or to give information to the authorised officer if the person believes that the answer or information would tend to incriminate himself or herself.

Division 3—Matters relating to offences

59 Offence to interfere with notices marks or equipment

A person must not interfere with—

- (a) any notice or marker erected in accordance with this Act; or
- (b) any mark which is required to be attached to flora or fauna under this Act; or
- (c) any equipment being used for the purposes of this Act.

Penalty: 10 penalty units.

60 Cancellation of licence or permit upon conviction

If a licensee or permit holder is convicted of an offence connected with the licence or permit the Court may order—

- (a) that the licence or permit be cancelled; and
- (b) that any flora or fauna which is held by the licensee or permit holder and which is connected with the offence be given up to the Crown; and
- (c) that the person not be entitled to hold a similar licence or permit for the time specified by the Court.

61 Requirement to carry out restoration work

If a person is convicted of an offence under this Act involving the destruction of or damage to flora, fauna or a critical habitat, the Court may order that person—

- (a) to carry out restoration work; and
- (b) to provide security for the performance of that work—

and this order may be in addition to or in substitution of any other penalty.

62 Payment of compensation by offender

- (1) If a person is convicted of an offence under this Act involving the destruction of or damage to flora, fauna or a critical habitat, the Court may order that person to pay compensation for that destruction or damage to the Secretary in addition to any other penalty.
- (2) The amount of compensation payable under subsection (1) may be fixed by the Court after taking evidence on oath from any person who may assist the Court to determine the nature and extent of the damage.
- (3) In fixing the amount of compensation to be paid the Court must have regard to the cost of any restoration work required to be carried out as a result of the offence.

S. 62(1)
amended by
No. 76/1998
s. 9(k).

Division 4—Simplification of proof

63 Proof of contravention

Evidence that a person except in accordance with this Act has protected flora—

- (a) in that person's possession or control; or

(b) on the premises which that person owns or occupies—

is evidence and, in the absence of evidence to the contrary, is proof that the person has taken protected flora in contravention of this Act.

64 Proof of identity

A certificate signed by an authorised officer to the effect that a plant described in the certificate is protected flora of a kind stated in the certificate is evidence, and in the absence of evidence to the contrary, is proof of the facts stated in the certificate.

Division 5—General

65 Certificates

S. 65(1)
amended by
No. 76/1998
s. 9(k).

(1) A person may apply to the Secretary for a certificate under this section for land described in the application.

(2) An application for a certificate must be in writing in the prescribed form.

S. 65(3)
amended by
No. 76/1998
s. 9(k).

(3) As soon as possible after receiving an application for a certificate the Secretary must give the certificate to the applicant.

(4) A certificate must—

(a) be in writing in the prescribed form; and

(b) describe the land to which the certificate relates; and

(c) state whether, on a date specified in the certificate, an interim conservation order was in force in respect of the land.

- (5) In proceedings under this Act, a certificate under this section is evidence and, in the absence of evidence to the contrary, is proof of the facts stated in the certificate.

66 Secrecy

- (1) The Secretary with the approval of the Minister may declare information about flora or fauna to be confidential if the Secretary is of the opinion that the disclosure of that information is likely to result in an unreasonable level of harm being done to the flora or fauna or its critical habitat.
- (2) If in the course of performing duties under this Act a person gets information which has been declared to be confidential that person must not disclose or make use of that information except to the extent necessary to perform that person's duties or for the purpose of legal proceedings.

S. 66(1)
amended by
No. 76/1998
s. 9(k).

Penalty: 10 penalty units.

67 Availability for inspection

The Secretary must make available for inspection at the principal offices of the Department, at the Secretary's principal office and at regional departmental offices which the Secretary considers appropriate without charge during normal office hours—

- (a) the listing criteria; and
- (b) the Minister's decisions and reasons on nominations for listing; and
- (c) the list of protected flora and the wildlife protected under the **Wildlife Act 1975**; and
- (ca) the Excluded List, the Processes List and the Threatened List; and

S. 67
amended by
No. 76/1998
s. 9(l)(i)(ii).

S. 67(ca)
inserted by
No. 10/2000
s. 10.

- (d) the Flora and Fauna Guarantee Strategy; and
- (e) any action statement; and
- (f) any management plan; and
- (g) any determination of critical habitat; and
- (h) a copy of any current interim conservation order; and
- (i) a copy of the Department's latest annual report; and
- (j) a copy of the Act and the regulations; and
- (k) a copy of the Second Reading Speeches made during the Parliamentary debate of the Bill to provide for the conservation and management of flora and fauna; and
- (l) a copy of any public authority management agreement; and
- (m) the Scientific Advisory Committee's final recommendation on nominations for listing and any comments to the Minister on that recommendation provided by the Conservation Advisory Committee and the Victorian Catchment Management Council.

S. 67(m)
amended by
Nos 52/1994
s. 97(Sch. 3
item 12.8),
39/1998
s. 14(6).

68 Matters to be put in annual report

The annual report of the Department must set out the activities undertaken by the Department within the reporting year to further the purposes of this Act, including—

- (a) an assessment of the progress made toward achieving the flora and fauna conservation and management objectives; and
- (b) any prescribed matters.

Division 6—Regulations

69 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following matters—
 - (a) forms for the purposes of this Act;
 - (b) criteria for the listing of taxa, communities or potentially threatening processes;
 - (c) information to be included in nominations;
 - (d) the method of giving notice of the making of an interim conservation order;
 - (e) the taking, trading in, keeping, moving or processing of flora;
 - (f) the releasing or abandoning of flora;
 - (g) the marking of flora and fauna;
 - (h) the records to be kept by persons holding licences and permits under this Act and the methods of keeping those records and the circumstances in which they must be produced;
 - (i) fees to be paid for licences or permits issued under this Act or applications made under this Act and royalties to be paid for the taking of flora;
 - (j) the procedure to be followed by authorised officers in exercising their powers under this Act;
 - (k) the circumstances in which specimens of flora or fauna must be given and the nature and condition of those specimens;

S. 69(2)(c)
amended by
No. 76/1998
s. 9(m).

-
- (1) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may leave any matter to be approved or determined by the Secretary, or an authorised officer; and
 - (d) may impose penalties not exceeding 5 penalty units for contravention of the regulations.
- (3) Regulations made under this section may be disallowed, in whole or in part, by resolution of either House of Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962**.
- (4) Disallowance of a regulation under subsection (3) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
-

PART 7—TRANSITIONAL PROVISIONS AND REPEALS

70 Repeal and transitional provision

* * * * *

S. 70(1)
repealed by
No. 76/1998
s. 9(n).

(2) In—

- (a) an Act other than this Act; or
- (b) a subordinate instrument made under an Act;
or
- (c) a document—

a reference to the **Wild Flowers and Native Plants Protection Act 1958** is on and from the commencement of this section to be treated as a reference to this Act.

- (3) Any licence issued under the **Wild Flowers and Native Plants Protection Act 1958** and in force immediately before the commencement of this section continues in force on the same conditions as applied to it immediately before that commencement and for the remainder of the term for which it was issued.

71 Previously recommended matters may be included on lists without further recommendation

S. 71
repealed by
No. 76/1998
s. 9(n),
new s. 71
inserted by
No. 10/2000
s. 11.

- (1) Upon the coming into operation of section 6 of the **Flora and Fauna Guarantee (Amendment) Act 2000**, the Governor in Council may specify in the Excluded List any taxon set out in Schedule 1 without complying with section 5(2), (3), (4) and (5).
- (2) Upon the coming into operation of section 7 of the **Flora and Fauna Guarantee (Amendment) Act 2000**, the Governor in Council may specify in the

Threatened List any taxon or community set out in Schedule 2 without complying with section 10(3), (6) and (7) and section 16.

- (3) Upon the coming into operation of section 7 of the **Flora and Fauna Guarantee (Amendment) Act 2000**, the Governor in Council may specify in the Processes List any process set out in Schedule 3 without complying with section 10(3), (6) and (7) and section 16.

S. 72
inserted by
No. 10/2000
s. 11.

72 Saving of action statements

- (1) If—

(a) a taxon or community of flora and fauna was listed immediately before the commencement of section 12 of the **Flora and Fauna Guarantee (Amendment) Act 2000**; and

(b) that taxon or community is listed under section 10 on or after that commencement—

any action statement in force in respect of that taxon or community immediately before that commencement is deemed to continue in force on and from the listing of that taxon or community after that commencement.

- (2) If—

(a) a potentially threatening process was listed immediately before the commencement of section 12 of the **Flora and Fauna Guarantee (Amendment) Act 2000**; and

(b) that process is listed under section 10 on or after that commencement—

any action statement in force in respect of that process immediately before that commencement is deemed to continue in force on and from the listing of that process after that commencement.

SCHEDULES

SCHEDULE 1

Sch. 1
substituted by
No. 10/2000
s. 12(1).

**PREVIOUSLY RECOMMENDED TAXA WHICH MAY BE
INCLUDED ON THE EXCLUDED LIST WITHOUT FURTHER
RECOMMENDATION**

Human Disease organisms

Sch. 2

SCHEDULE 2

PREVIOUSLY RECOMMENDED TAXA AND COMMUNITIES
WHICH MAY BE INCLUDED ON THE THREATENED LIST
WITHOUT FURTHER RECOMMENDATION

TAXA

Sch. 2
amended by
GGs 7.8.91
p. 2210,
14.8.91
p. 2282,
18.12.91
p. 3539,
27.5.92
p. 1258,
30.9.92
p. 2909,
11.2.93 p. 290,
6.5.93 p. 1000,
12.8.93
p. 2272,
SG (No. 95)
21.12.93 p. 1,
GGs 11.5.95
pp 1153, 1154,
24.8.95
pp 2269, 2270,
21.12.95
p. 3659,
15.8.96
pp 2173, 2174
7.11.96
p. 2909,
substituted by
No. 10/2000
s. 12(2).

- Abutilon fraseri*—Dwarf Lantern-bush
Acacia deanei ssp. *deanei*—Deane's Wattle
Acacia enterocarpa—Jumping-jack Wattle
Acacia glandulicarpa—Hairy-pod Wattle
Acacia havilandii—Needle Wattle
Acacia maidenii—Maiden's Wattle
Acacia omalophylla—Yarran Wattle
Acacia pendula—Weeping Myall
Acanthophis antarcticus—Death Adder
Acrodipsas brisbanensis—Large Ant-blue Butterfly
Acrodipsas myrmecophila—Small Ant-blue Butterfly
Adiantum capillus-veneris—Dainty Maidenhair
Adiantum diaphanum—Filmy Maidenhair
Adriana quadripartita—Rare Bitter-bush
Aepyprymnus rufescens—Rufous Bettong
Agrostis adamsonii—Adamson's Bent
Agrostis billardierei var. *filifolia*—Coast Blown-grass
Allocasuarina luehmannii—Buloke
Almaleea capitata—Slender Parrot-pea
Ambassis agassizii—Agassiz's Chanda Perch

Amphibromus pithogastrus—Swollen Swamp Wallaby-grass
Aprasia aurita—Legless lizard
Aprasia parapulchella—Pink-tailed Worm-lizard
Archaeophylax canarus—Caddisfly
Ardea alba—Great Egret
Ardea intermedia—Intermediate Egret
Ardeotis australis—Australian Bustard
Astelia australiana—Tall Astelia
Asterolasia phebalioides—Downy Star-bush
Australatya striolata—Eastern Freshwater Shrimp
Austrogammarus australis—Freshwater amphipod
Austrogammarus haasei—Amphipod
Balaenoptera musculus—Blue Whale
Ballantinia antipoda—Ballantinia
Bettongia gaimardi—Tasmanian Bettong
Bettongia penicillata—Brush-tailed Bettong
Bidyanus bidyanus—Silver Perch
Boronia galbraithiae—Aniseed Boronia
Boyra mirabilis—Grampians Pinchusion-lily
Brachyscome muelleroides—Mueller Daisy
Brachyscome tenuiscapa—Mountain Daisy
Bracteantha sp. aff. *subundulata*—Swamp Everlasting
Brunoniella pumilio—Dwarf Brunoniella
Burhinus magnirostris—Bush Thick-knee
Burramys parvus—Mountain Pygmy-possum
Cacatua leadbeateri—Major Mitchell Cockatoo

Sch. 2

-
- Caladenia amoena*—Charming Spider-orchid
Caladenia audasii—Audas' Spider-orchid
Caladenia calcicola—Limestone Spider-orchid
Caladenia concolor—Maroon Spider-orchid
Caladenia formosa—Blood-red Spider-orchid
Caladenia fragrantissima ssp. *orientalis*—Cream Spider-orchid
Caladenia fulva—Tawny Spider-orchid
Caladenia hastata—Melblom's Spider-orchid
Caladenia lowanensis—Wimmera Spider-orchid
Caladenia magnifica—Magnificent Spider-orchid
Caladenia robinsonii—Frankston Spider-orchid
Caladenia rosella—Rosella Spider-orchid
Caladenia thysanochila—Fringed Spider-orchid
Caladenia xanthochila—Yellow-lip Spider-orchid
Calochilus richiae—Bald-tip Beard-orchid
Calyptorhynchus lathami lathami—Glossy Black Cockatoo
(eastern subspecies)
Calyptorhynchus magnificus—Red-tailed Black-Cockatoo
Carex cephalotes—Wire-head Sedge
Carex paupera—Dwarf Sedge
Carex tasmanica—Curly Sedge
Cassinia rugata—Wrinkled Cassinia
Casuarina obesa—Swamp Sheoke
Celmisia sericophylla—Silky Daisy
Chaeropus ecaudatus—Pig-footed Bandicoot
Charadrius rubricollis—Hooded Plover
-

-
- Chlamydera maculata*—Spotted Bowerbird
Christella dentata—Binung
Climacteris affinis—White-browed Treecreeper
Comesperma polygaloides—Small Milkwort
Coturnix chinensis—King Quail
Craterocephalus fluviatilis—Murray Hardyhead
Craterocephalus stercusmuscarum fulvus—Non-specked
Hardyhead
Cryptostylis hunteriana—Leafless Tongue Orchid
Cyathea cunninghamii—Slender Tree-fern
Cyathea leichhardtiana—Prickly Tree-fern
Cyclodomorphus michaeli—Eastern She-oak Skink
Cyclodomorphus praealtus—Alpine She-oak Skink
Dasyornis brachypterus—Eastern Bristlebird
Dasyornis broadbenti—Rufous Bristlebird
Dasyurus maculatus—Tiger Quoll
Dasyurus viverrinus—Eastern Quoll
Delma impar—Striped Legless Lizard
Dendrobium speciosum—Rock Orchid
Dipodium hamiltonianum—Yellow Hyacinth Orchid
Discaria nitida—Shining Anchor Plant
Discaria pubescens—Hairy Anchor Plant
Diuris cuneata—Wedge Diuris
Diuris fragrantissima—Sunshine Diuris
Diuris punctata—Purple Diuris
Diuris sp. aff. *lanceolata*—Small Golden Moths Orchid
-

Sch. 2

- Drabastrum alpestre*—Mountain Cress
Dysphania simulans—Spiked Pigweed
Echiopsis curta—Bardick
Edelia obscura—Yarra Pigmy Perch
Egernia multiscutata—Heath Skink
Egretta garzetta nigripes—Little Egret
Engaeus mallacoota—Mallacoota Burrowing Crayfish
Engaeus phyllocercus—Narracan Burrowing Crayfish
Engaeus sternalis—Warragul Burrowing Crayfish
Epilobium willisii—Carpet Willow-herb
Eremophila bignoniiflora—Bignonia Emu-bush
Eremophila sturtii—Narrow-leaf Emu-bush
Eriocaulon australasicum—Southern Pipewort
Euastacus diversus—Orbost Crayfish
Eubalaena australis—Southern Right Whale
Eucalyptus aggregata—Black Gum
Eucalyptus cadens—Warby Swamp Gum
Eucalyptus crenulata—Buxton Gum
Eucalyptus froggattii—Kamarooka Mallee
Eulamprus tympanum marnieae—Corangamite Water Skink
Euphorbia planiticola—Plains Spurge
Euphorbia tannensis—Desert Spurge
Euphrasia scabra—Rough Eyebright
Falco hypoleucos—Grey Falcon
Furina diadema—Red-naped Snake
Galaxias cleaveri—Tasmanian Mudfish
-

-
- Galaxias olidus* var. *fuscus*—Brown Galaxias
Galaxiella pusilla—Dwarf Galaxias
Geijera parviflora—Wilga
Glycine canescens—Silky Glycine
Glycine latrobeana—Clover Glycine
Gobiomorphus coxii—Cox's Gudgeon
Goodenia macbarronii—Narrow Goodenia
Grantiella picta—Painted Honeyeater
Grevillea barklyana—Gully Grevillea
Grus rubicundus—Brolga
Gymnobelideus leadbeateri—Leadbeater's Possum
Haliaeetus leucogaster—White-bellied Sea-eagle
Halosarcia flabelliformis—Beaded Glasswort
Heleioporus australiacus—Giant Burrowing Frog
Helipterum strictum—Upright Sunray
Hemichroa diandra—Mallee Hemichroa
Hemiergus millewae—Millewa Skink
Hemiphysalis mirabilis—Hemiphysalis Damselfly
Hibbertia humifusa new ssp. (North East)—Guinea flower
(North East)
Hypseleotris compressus—Empire Gudgeon
Isopogon prostratus—Prostrate Cone-bush
Kelleria laxa—Drapetes
Lagorchestes leporides—Eastern Hare-wallaby
Lathamus discolor—Swift Parrot
Leipoa ocellata—Malleefowl
-

Sch. 2

- Lepidium aschersonii*—Spiny Pepper-cress
Lepidium hyssopifolium—Small Pepper-cress
Lepidium monoplocoides—Winged Pepper-cress
Lepidium pseudopapillosum—Erect Pepper-cress
Leporillus apicalis—Lesser Stick-nest Rat
Leptorhynchus medius—Annual Buttons
Lichenostomus melanops cassidix—Helmeted Honeyeater
Limnodynastes interioris—Giant Bullfrog
Litoria spenceri—Spotted Tree Frog
Lovettia sealii—Tasmanian Whitebait
Maccullochella macquariensis—Trout Cod
Maccullochella peelii—Murray Cod
Macquaria australasica—Macquarie Perch
Manorina melanotis—Black-eared Miner
Megascolides australis—Giant Gippsland Earthworm
Melaleuca halmaturorum—Salt Paperbark
Melanotaenia fluviatilis—Murray Rainbowfish
Menkea crassa—Fat Spectacles
Miniopterus schreibersii—Common Bent-wing Bat
Mixophyes balbus—Southern Barred Frog
Mogurnda adspersa—Southern Purple-spotted Gudgeon
Morelia spilota—Carpet and Diamond Pythons
Myoporum floribundum—Slender Myoporum
Myrmecia sp. 17—Bull-ant
Nannoperca variegata—Ewens Pigmy Perch
Neophema chrysogaster—Orange-bellied Parrot
-

Neophema pulchella—Turquoise Parrot
Ninox connivens—Barking Owl
Ninox strenua—Powerful Owl
Ogyris idmo halmaturia—Large Brown Azure Butterfly
Ogyris otanes—Small Brown Azure Butterfly
Olearia astroloba—Marble Daisy-bush
Olearia pannosa ssp. *cardiophylla*—Velvet Daisy-bush
Onychogalea fraenata—Bridled Nailtail Wallaby
Oxyura australis—Blue-billed Duck
Pachycephalus rufogularis—Red-lored Whistler
Paralucia pyrodiscus lucida—Eltham Copper Butterfly
Pedionomus torquatus—Plains-wanderer
Perameles bougainville—Western Barred Bandicoot
Perameles gunnii—Eastern Barred Bandicoot
Petaurus norfolcensis—Squirrel Glider
Petrogale penicillata—Brush-tailed Rock-wallaby
Pezoporus wallicus—Ground Parrot
Phascogale calura—Red-tailed Phascogale
Phascogale tapoatafa—Brush-tailed Phascogale
Phebalium obcordatum—Dainty Phebalium
Phebalium wilsonii—Shiny Phebalium
Philoria frosti—Baw Baw Frog
Pimelea spinescens—Plains Rice Flower
Planigale gilesi—Paucident Planigale
Platydoris galbana—Marine opisthobranch
Poa saxicola—Rock Tussock-grass

Sch. 2

-
- Polytelis anthopeplus anthopeplus*—Regent Parrot (eastern subspecies)
Polytelis swainsonii—Superb Parrot
Pomaderris cotoneaster—Cotoneaster Pomaderris
Pomaderris sericea—Bent Pomaderris
Pomaderris subplicata—Concave Pomaderris
Pomatostomus temporalis—Grey-crowned Babbler
Potamalosa richmondia—Freshwater Herring
Potorous longipes—Long-footed Potoroo
Prasophyllum chasmogamum—Spreading Leek Orchid
Prasophyllum diversiflorum—Gorae Leek-orchid
Prasophyllum subbisectum—Pomonal Leek-orchid
Prototroctes maraena—Australian Grayling
Pseudemoia cryodroma—Alpine Bog Skink
Pseudomys novaehollandiae—New Holland Mouse
Pseudomys shortridgei—Heath Rat
Psophodes nigrogularis leucogaster—Western Whipbird
Psoralea australasica—Tall Psoralea
Psoralea cinerea—Hoary Psoralea
Psoralea parva—Small Psoralea
Psoralea patens—Spreading Psoralea
Psoralea tenax—Tough Psoralea
Pterostylis baptistii—King Greenhood
Pterostylis basaltica—Greenhood
Pterostylis cheraphila—Floodplain Rustyhood
Pterostylis cucullata—Leafy Greenhood
-

-
- Pterostylis despectans*—Greenhood
Pterostylis truncata—Brittle Greenhood
Pterostylis woollsi—Long-tail Greenhood
Pterostylis xerophila—Desert Greenhood
Ptilotus erubescens—Hairy-tails
Pultenaea graveolens—Scented Bush-pea
Pygopus nigriceps—Hooded Scaly-foot
Rhinolophus megaphyllus—Eastern Horseshoe-bat
Rhodope genus—Marine opisthobranch
Rhynchoedura ornata—Beaked Gecko
Riekoperla darlingtoni—Mount Donna Buang Wingless Stonefly
Riekoperla intermedia—Stonefly
Riekoperla isosceles—Stonefly
Rulingia pannosa—Clustered Kerrawang
Rulingia prostrata—Dwarf Kerrawang
Rutidosia leptorrhynchoides—Button Wrinklewort
Sambucus australasica—Yellow Elderberry
Santalum lanceolatum—Northern Sandalwood
Sarcochilus falcatus—Orange-blossom Orchid
Sclerolaena napiformis—Turnip Bassia
Senecio behrianus—Stiff Groundsel
Senecio macrocarpus—Large-fruit Groundsel
Sphenomorphus kosciuskoi—Alpine Water Skink
Sterna albifrons—Little Tern
Sterna nereis nereis—Fairy Tern
-

Sch. 2

-
- Stictonetta naevosa*—Freckled Duck
Stipiturus mallee—Mallee Emu-wren
Swainsona brachycarpa—Slender Swainson-pea
Swainsona galegifolia—Smooth Darling-pea
Swainsona murrayana—Murray Swainson-pea
Swainsona plagiotropis—Red Swainson-pea
Swainsona purpurea—Purple Swainson-pea
Swainsona recta—Mountain Swainson-pea
Symplocus thwaitesii—Buff Hazelwood
Synemon nais—Moth
Synemon plana—Golden Sun Moth
Synemon theresa—Moth
Tandanus tandanus—Freshwater Catfish
Taraxacum cygnorum—Coast Dandelion
Thaumatoperla alpina—Stonefly
Thaumatoperla flaveola—Stonefly
Thelymitra epipactoides—Metallic Sun-orchid
Thelymitra matthewsii—Spiral Sun-orchid
Thelymitra merraniae—Merran's Sun-orchid
Thelypteris confluens—Swamp Fern
Thesium australe—Austral Toad-flax
Thismia rodwayi—Fairy Lanterns
Thylogale billardierii—Tasmanian Pademelon
Trichanthodium baracchianum—Dwarf Gnephosis
Tympanocryptis lineata lineata—Lined Earless Dragon
Tympanocryptis lineata pinguicolla—Earless dragon
-

Tyto novaehollandiae—Masked Owl
Tyto tenebricosa—Sooty Owl
Vermicella annulata—Bandy Bandy
Wahlenbergia densifolia—Fairy Bluebell
Westringia crassifolia—Whipstick Westringia
Xanthomyza phrygia—Regent Honeyeater
Zieria aspalathoides—Whorled Zieria

COMMUNITIES

Alpine Bog Community
Alpine Snowpatch Community
Butterfly Community No. 1
Caltha introloba Herbland Community
Central Gippsland Plains Grassland Community
Cool Temperate Rainforest
Dry Rainforest (Limestone) Community
Fen (Bog Pool) Community
Forest Red Gum Grassy Woodland Community
Herb-rich Plains Grassy Wetland (West Gippsland) Community
Limestone *Pomaderris* Shrubland Community
Montane Swamp Complex Community
Northern Plains Grassland Community
Plains Grassland (South Gippsland) Community
Red Gum Swamp Community No. 1
Rocky Chenopod Open-Scrub Community
San Remo Marine Community

Sch. 2

Sedge-rich *Eucalyptus camphora* Swamp Community
Warm Temperate Rainforest (Coastal East Gippsland)
Community
Warm Temperate Rainforest (Cool Temperate Overlap, Howe
Range) Community
Warm Temperate Rainforest (East Gippsland Alluvial Terraces)
Community
Warm Temperate Rainforest (Far East Gippsland) Community
Western (Basalt) Plains Grassland Community

SCHEDULE 3

**PREVIOUSLY RECOMMENDED PROCESSES WHICH MAY
BE INCLUDED ON THE PROCESSES LIST WITHOUT
FURTHER RECOMMENDATION**

Alteration to the natural flow regimes of rivers and streams

Alteration to the natural temperature regimes of rivers and streams

Collection of native orchids

Degradation of native riparian vegetation along Victorian rivers and streams

Increase in sediment input into Victorian rivers and streams due to human activities

Input of organotins to Victorian marine and estuarine waters

Input of petroleum and related products into Victorian marine and estuarine environments

Input of toxic substances into Victorian rivers and streams due to human activities

Introduction and spread of *Spartina* to Victorian estuarine environments

Introduction of live fish into waters outside their natural range within a Victorian river catchment after 1770

Invasion of native vegetation by environmental weeds

Loss of hollow-bearing trees from Victorian native forests

Predation of native wildlife by the cat *Felis catus*

Predation of native wildlife by the introduced Red Fox

Prevention of passage of aquatic biota as a result of the presence of instream structures

Removal of wood debris from Victorian streams

Soil and vegetation disturbance resulting from marble mining

Sch. 3
amended by
GGs 7.8.91
p. 2211,
18.12.91
p. 3539,
27.5.92
p. 1258,
30.9.92
p. 2909, 6.5.93
p. 1000,
25.8.94
p. 2322, 8.6.95
p. 1391,
15.8.96
p. 2174,
7.11.96
p. 2909,
substituted by
No. 10/2000
s. 12(3).

Sch. 3

Soil erosion and vegetation damage and disturbance in the alpine regions of Victoria caused by cattle grazing

Spread of *Pittosporum undulatum* in areas outside its natural range

The introduction of exotic organisms into Victorian marine waters

The use of lead shot in cartridges for the hunting of waterfowl

Use of *Phytophthora*-infected gravel in construction of roads, bridges and reservoirs

Sch. 4
repealed by
No. 76/1998
s. 9(n).

* * * * *

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 24 March 1988

Legislative Council: 21 April 1988

The long title for the Bill for this Act was "A Bill to provide for the conservation and management of flora and fauna."

The **Flora and Fauna Guarantee Act 1988** was assented to on 24 May 1988 and came into operation as follows:

Sections 1–4, 8, 11, 69 on 24 May 1988; rest of Act on 25 September 1988:
Special Gazette (No. 81) 25 September 1988 page 1.

Flora and Fauna Guarantee Act 1988
No. 47 of 1988

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Flora and Fauna Guarantee Act 1988** by Acts and subordinate instruments.

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Mineral Resources Development Act 1990, No. 92/1990

Assent Date: 18.12.90
Commencement Date: S. 128(Sch. 1 item 11) on 6.11.91: Government Gazette 30.10.91 p. 2970
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Catchment and Land Protection Act 1994, No. 52/1994

Assent Date: 15.6.94
Commencement Date: S. 97(Sch. 3 items 12.1–12.8) on 15.12.94: s. 2(3)
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Extractive Industries Development Act 1995, No. 67/1995

Assent Date: 17.10.95
Commencement Date: S. 58(Sch. 1 item 7) on 1.6.96: Special Gazette (No. 60) 31.5.96 p. 4
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Fisheries Act 1995, No. 92/1995

Assent Date: 5.12.95
Commencement Date: S. 161(Sch. 2 item 1) on 1.4.98: Government Gazette 26.2.98 p. 418
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Environment Conservation Council Act 1997, No. 41/1997

Assent Date: 11.6.97
Commencement Date: S. 28 on 1.7.97: Special Gazette (No. 75) 1.7.97 p. 1
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Catchment and Land Protection (Amendment) Act 1998, No. 39/1998

Assent Date: 26.5.98
Commencement Date: S. 14 on 31.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Flora and Fauna Guarantee Act 1988**

Flora and Fauna Guarantee Act 1988
No. 47 of 1988

Endnotes

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998**

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 31) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

**Conservation, Forests and Lands (Miscellaneous Amendments) Act 1998,
No. 76/1998**

Assent Date: 10.11.98
Commencement Date: S. 9 on 15.12.98: s. 2(5)
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 23) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

Flora and Fauna Guarantee (Amendment) Act 2000, No. 10/2000

Assent Date: 18.4.00
Commencement Date: Ss 1, 2 on 19.4.00: s. 2(1); rest of Act on 29.6.00:
Government Gazette 29.6.00 p. 1455
Current State: All of Act in operation

Planning and Environment (General Amendment) Act 2004, No. 81/2004

Assent Date: 16.11.04
Commencement Date: S. 48 on 23.5.05: Government Gazette 19.5.05 p. 930
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 80) on 5.4.05: Government
Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

**Mineral Resources Development (Sustainable Development) Act 2006,
No. 63/2006**

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 15) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

Flora and Fauna Guarantee Act 1988
No. 47 of 1988

Endnotes

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006,
No. 80/2006**

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 41) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Flora and Fauna Guarantee Act 1988**

Government Gazette 7 August 1991 pages 2210, 2211

Government Gazette 14 August 1991 page 2282

Government Gazette 18 December 1991 page 3539

Government Gazette 27 May 1992 page 1258

Government Gazette 30 September 1992 page 2909

Government Gazette 11 February 1993 pages 289, 290

Government Gazette 6 May 1993 page 1000

Government Gazette 12 August 1993 page 2272

Special Gazette
(No. 95) 21 December 1993 page 1

Government Gazette 25 August 1994 page 2322

Government Gazette 11 May 1995 pages 1153, 1154

Government Gazette 8 June 1995 page 1391

Government Gazette 24 August 1995 pages 2269, 2270

Government Gazette 21 December 1995 page 3659

Government Gazette 15 August 1996 pages 2173, 2174

Government Gazette 7 November 1996 page 2909

3. Explanatory Details

No entries at date of publication.