

**Version No. 030**  
**Flora and Fauna Guarantee Act 1988**  
**Act No. 47/1988**

Version incorporating amendments as at 29 June 2000

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**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 of "Administrative Appeals Tribunal" repealed by No. 52/1998 s. 311(Sch. 1 item 31.1(a)).

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

"**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  
No. 46/1998  
s. 7(Sch. 1).

"**Department**" means the Department of Natural Resources 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

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- (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;

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"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;

"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

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



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(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;

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**"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).

\* \* \* \* \*

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

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

**"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;

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

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

**"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;

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**"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

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removal, destruction or lopping of trees and the removal of vegetation or topsoil.

- (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 Sector Management and Employment Act 1998** the name of the Department of Natural Resources and Environment is changed, a reference in the definition of "Department" in sub-section (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.

S. 3(3)  
inserted by  
No. 46/1998  
s. 7(Sch. 1).

#### 4. Objectives

- (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

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

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

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

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

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**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

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- (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 sub-sections (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
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that member must disclose that interest to the Committee.

- (9) A member of the Committee is not in respect of that person's membership of the Committee subject to the **Public Sector Management and Employment Act 1998**.

S. 8(9)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**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.

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

- (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(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).

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Part 3—Listing

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**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 sub-section (1) or (2) only after considering a recommendation of the Committee.

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

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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.

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**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 sub-section (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 sub-section (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).

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**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.
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- (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 sub-section (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).

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**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.
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Part 4—Management Processes

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**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 sub-section (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).

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**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.

S. 18(2)(b)  
amended by  
No. 76/1998  
s. 9(c).

- (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.



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**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).**

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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 sub-section (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.

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**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.

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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

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- (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

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

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

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not come into force before the notice is published.

- (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.

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**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.

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- (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).



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**28. Notice of the making of the order**

- (1) Upon the day on which an interim conservation order is made the Secretary must—
- S. 28(1)  
amended by  
No. 76/1998  
s. 9(e).
- (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.
- (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 sub-section (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).

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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 sub-section (1) the Minister must consider—  
(a) any nature conservation matters; and  
(b) the social and economic consequences of that decision; and

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

(c) the Secretary's advice on consultations and submissions; and

(d) any other relevant matters—

and may consult with any other relevant person.

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- (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).

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- (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.
- (5) Any person may make submissions to the Secretary about a draft amendment.
- (6) The Secretary must consider all submissions made within the time set out in the notice.
- (7) The Secretary may consider a late submission and must consider one if the Minister so directs.
- (8) After considering all the submissions, the Secretary may recommend to the Minister that the confirmed order be amended.
- (9) The Minister must not amend a confirmed order without considering the recommendation of the Secretary.
- (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
- S. 33(4)(b) amended by No. 76/1998 s. 9(g).**
- S. 33(5) amended by No. 76/1998 s. 9(g).**
- S. 33(6) amended by No. 76/1998 s. 9(g).**
- S. 33(7) amended by No. 76/1998 s. 9(g).**
- S. 33(8) amended by No. 76/1998 s. 9(g).**
- S. 33(9) amended by No. 76/1998 s. 9(g).**
- S. 33(10) amended by No. 76/1998 s. 9(g).**
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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).

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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

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(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 sub-section (1).

Penalty: 100 penalty units.

(3) In addition to any penalty imposed under sub-section (2), a person who is convicted of an offence against the sub-section is liable to a continuing penalty of 10 penalty units for each day on which the failure to comply with that sub-section 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 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  
No. 92/1990  
s. 128(Sch. 1  
item 11).

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

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

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- (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**



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- (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— **S. 40(2) amended by No. 76/1998 s. 9(g).**
- (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.
- (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).**

**41. Reviews**

- (1) A person may apply to the Tribunal for review of— **S. 41 substituted by No. 52/1998 s. 311(Sch. 1 item 31.3).**
- (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; **S. 41(1)(b) amended by No. 76/1998 s. 9(g).**

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(c) a decision of the Minister to suspend that person's licence, permit or other authority under section 38.

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

- (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 sub-section (2), within 30 days after the end of the 30 day period referred to in that sub-section.

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 sub-section (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.

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

**41B. Matters Tribunal must take into account**

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

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- (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; 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.

#### **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.

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- (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—
- (a) be made to the Secretary; and
  - (b) be in writing in the prescribed form.
- (5) The Secretary must determine the amount of compensation to be paid to a person entitled to compensation.
- (6) In making a determination under sub-section (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;
  - (b) the amount of financial loss to the person which, in the Secretary's opinion, would result from compliance with the order;
  - (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(4)(a)**  
amended by  
No. 76/1998  
s. 9(h)(i).
- S. 43(5)**  
amended by  
No. 76/1998  
s. 9(h)(i).
- S. 43(6)**  
amended by  
No. 76/1998  
s. 9(h)(i).
- S. 43(6)(a)**  
amended by  
No. 76/1998  
s. 9(h)(ii).
- S. 43(6)(b)**  
amended by  
No. 76/1998  
s. 9(h)(ii).
- S. 43(6)(c)**  
amended by  
No. 76/1998  
s. 9(h)(i)(ii).
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- (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).
- (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(9) amended by No. 76/1998 s. 9(h)(i).
- (10) The assistance given by the Secretary may be either— S. 43(10) amended by No. 76/1998 s. 9(h)(i)(ii).
- (a) a payment of money; or
- (b) a provision of labour, goods or other services—
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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**

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- (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) Sub-section (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
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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(i).

(1) The Secretary may issue a licence to take (except for the purpose of controlling), trade in, keep, move or process protected flora.

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

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

(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.

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

(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.

**49. Offences relating to flora generally**

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



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- (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.

**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(f).

**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.

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Penalty: 50 penalty units.

- (2) Sub-section (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.

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

- (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 sub-section (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**

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

- (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.

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

- (3) A licence issued under sub-section (1) or authorisation made under sub-section (2) does not authorise a person to take, trade in or keep fish in

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any circumstances in which that action is  
prohibited under the **Fisheries Act 1995**.

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**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

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- (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 sub-section (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

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- (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 sub-section (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.

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(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.

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

(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**.

**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.

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- (3) Despite anything to the contrary in sub-section (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.



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**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

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(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.

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- (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(i)(ii).

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

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- (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.

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**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;

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

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- (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 sub-section (3) must be taken to be disallowance by Parliament for the purposes of the **Subordinate Legislation Act 1962**.
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**PART 7—TRANSITIONAL PROVISIONS AND REPEALS**

**70. Repeal and transitional provision**

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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

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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.



*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

Sch. 1

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**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

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*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

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

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*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  
*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

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*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

Sch. 2

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- 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
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*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  
*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

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*Act No. 47/1988*

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*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  
*Hemiergis millewae*—Millewa Skink  
*Hemiphysalis mirabilis*—Hemiphysalis Damsel  
*Hibbertia humifusa* new ssp. (North East)—Guinea flower (North East)  
*Hypseleotris compressus*—Empire Gudgeon

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*Isopogon prostratus*—Prostrate Cone-bush  
*Kelleria laxa*—Drapetes  
*Lagorchestes leporides*—Eastern Hare-wallaby  
*Lathamus discolor*—Swift Parrot  
*Leipoa ocellata*—Malleefowl  
*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

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*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 otares*—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  
*Polytelis anthopeplus anthopeplus*—Regent Parrot (eastern subspecies)  
*Polytelis swainsonii*—Superb Parrot  
*Pomaderris cotoneaster*—Cotoneaster Pomaderris

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*Flora and Fauna Guarantee Act 1988*  
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*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

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*Flora and Fauna Guarantee Act 1988*  
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Sch. 2

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*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  
*Sarcophilus 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  
*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  
*Symplocos thwaitesii*—Buff Hazelwood  
*Synemon nais*—Moth  
*Synemon plana*—Golden Sun Moth  
*Synemon theresa*—Moth  
*Tandanus tandanus*—Freshwater Catfish

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**Sch. 2**

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*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

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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  
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

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*Flora and Fauna Guarantee Act 1988*  
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Sch. 3

**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

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

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).

*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

**Sch. 3**

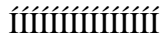
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Use of *Phytophthora*-infected gravel in construction of roads, bridges and reservoirs

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

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*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

Endnotes

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**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.

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Endnotes
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## 2. Table of Amendments

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

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### **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*  
*Act No. 47/1988*

Endnotes
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**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

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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  
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(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

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*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

**Endnotes**

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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

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*Flora and Fauna Guarantee Act 1988*  
*Act No. 47/1988*

Endnotes

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**3. Explanatory Details**

No entries at date of publication.