

Version No. 001
Flora and Fauna Guarantee Regulations
2011

S.R. No. 147/2011

Version as at
10 December 2011

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1 Objectives

The objectives of these Regulations are to—

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

2 Authorising provision

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

3 Commencement

These Regulations come into operation on 10 December 2011.

4 Revocation

The Flora and Fauna Guarantee Regulations 2001¹ are **revoked**.

5 Definitions

In these Regulations—

criterion means a criterion contained in the set of criteria in Schedule 1;

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

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

6 Criteria for determining eligibility for listing

For the purposes of section 11(4) of the Act, the set of criteria by which the eligibility of taxa or communities of flora and fauna or processes for listing can be determined is the set of criteria in Schedule 1.

7 Information which must be provided when making a nomination

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

8 Prescribed forms for notice of preparation of draft documents

- (1) For the purposes of section 18(2) of the Act, the prescribed form for a notice of the preparation of a draft Flora and Fauna Guarantee Strategy or a draft amendment to the Strategy is Form 1 in Schedule 3.
- (2) For the purposes of section 21(4) of the Act, the prescribed form for a notice of the preparation of a draft management plan is Form 1 in Schedule 3.
- (3) For the purposes of section 21(4) of the Act, the prescribed form for a notice of the preparation of a draft amendment to, or revocation of, a management plan is Form 1 in Schedule 3.

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

9 Notice of making an interim conservation order

For the purposes of section 28(2)(a) of the Act, a notice of the making of an interim conservation order under section 28(1)(a) or (3) of the Act must—

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

10 Notice to persons acting outside the critical habitat

For the purposes of section 35(2)(a) of the Act, a notice of the making of an interim conservation order given under section 35(1) of the Act must—

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

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

11 Prescribed form for application for compensation

For the purposes of section 43(4) of the Act, the prescribed form for an application for compensation is Form 2 in Schedule 3.

12 Prescribed form for certificate and application for certificate

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

SCHEDULE 1

Regulation 6

CRITERIA PREPARED UNDER SECTION 11(4) OF THE ACT FOR DETERMINING ELIGIBILITY FOR LISTING

Introduction

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

The sub-criteria of the primary criterion are not an exhaustive list of the factors to be considered when determining whether that primary criterion is satisfied.

1 Group 1—Criteria for determining whether a taxon is eligible for listing

1.1 Primary criterion 1.1

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

1.1.1 Sub-criterion 1.1.1

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

1.1.2 Sub-criterion 1.1.2

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

1.2 Primary criterion 1.2

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

1.2.1 Sub-criterion 1.2.1

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

1.2.2 Sub-criterion 1.2.2

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

1.2.3 Sub-criterion 1.2.3

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

2 Group 2—Criteria for determining whether a community is eligible for listing

2.1 Primary criterion 2.1

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

2.1.1 Sub-criterion 2.1.1

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

2.1.2 Sub-criterion 2.1.2

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

2.1.3 Sub-criterion 2.1.3

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

2.2 Primary criterion 2.2

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

2.2.1 Sub-criterion 2.2.1

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

2.2.2 Sub-criterion 2.2.2

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

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

3.1 Primary criterion 3.1

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

3.1.1 Sub-criterion 3.1.1

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

4 Group 4—Criteria for determining whether a community which is narrowly defined is eligible for listing

4.1 Primary criterion 4.1

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

4.1.1 Sub-criterion 4.1.1

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

5 Group 5—Criteria for determining whether a potentially threatening process is eligible for listing

5.1 Primary criterion 5.1

In accordance with section 11(3) of the Act, 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 of a range of flora or fauna.

5.1.1 Sub-criterion 5.1.1

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

5.1.2 Sub-criterion 5.1.2

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

5.2 Primary criterion 5.2

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

5.2.1 Sub-criterion 5.2.1

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

5.2.2 Sub-criterion 5.2.2

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

6 Group 6—Criteria for determining whether a specifically defined item is eligible for listing if a more generally defined item has already been listed

6.1 Primary criterion 6.1

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

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

7.1 Primary criterion 7.1

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

7.1.1 Sub-criterion 7.1.1

- (1) The item is not—
- (a) a scientifically valid taxon; or
 - (b) a clearly defined community; or
 - (c) a potentially threatening process.

7.1.2 Sub-criterion 7.1.2

If an item is listed because it satisfied sub-criterion 3.1.1 or 4.1.1, the item has had its taxonomy or classification reviewed and—

- (a) in the case of a taxon, it is not reclassified as a taxon that is at or above the level of sub-species; or
- (b) in the case of a community, it is not reclassified as a community that is not narrowly defined.

7.1.3 Sub-criterion 7.1.3

A specifically defined item, the subject matter of which is a subset or example of the subject matter of a more generally defined listed item, may be repealed if it is no longer of such significance that it is eligible for listing in its own right and requires its own action statement.

SCHEDULE 2

Regulation 7

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

1 In all cases

- (1) The name, address, and if available the telephone number of the nominator.
- (2) The signature of—
 - (a) the nominator, or each nominator if more than one; or
 - (b) the appointed representative of the nominator, in the case of a body corporate.

2 In the case of a nomination by an incorporated body

If the nominator is a body corporate, the name and, if available, the telephone number of the appointed representative of the nominator.

3 In the case of any taxon

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

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

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

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

- (1) The information required by clause 4.
- (2) Evidence that the taxon satisfies primary criterion 3.1 in Schedule 1.

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

Evidence that the taxon satisfies primary criterion 7.1 in Schedule 1.

7 In the case of any community

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

(c) name the community based on its distinctive features, including one or more of the following—

- (i) its characteristic species;
- (ii) its structure;
- (iii) the environmental conditions under which it typically occurs.

(3) The community must be described with reference to its distinguishing biological and non-biological components and any key interactions and functional processes.

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

Evidence that the community satisfies primary criterion 2.1 or 2.2 in Schedule 1.

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

- (1) The information required by clause 8.
- (2) Evidence that the community satisfies primary criterion 4.1 in Schedule 1.

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

Evidence that the community satisfies primary criterion 7.1 in Schedule 1.

11 In the case of any potentially threatening process

- (1) A statement identifying the potentially threatening process.
- (2) The statement must—
 - (a) specify the potentially threatening process in accordance with a relevant text or reference;
 - or

(b) describe the potentially threatening process in such a way that it is distinguishable from all other potentially threatening processes.

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

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

(1) Evidence that the potentially threatening process satisfies primary criterion 5.1 or 5.2 in Schedule 1.

(2) The evidence must indicate—

(a) the range of flora or fauna affected or potentially affected by the potentially threatening process; and

(b) the significance of the threat which the process poses or has the potential to pose.

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

Evidence that the potentially threatening process satisfies primary criterion 7.1 in Schedule 1.

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

Evidence that the item satisfies primary criterion 6.1 in Schedule 1.

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

Evidence that the item satisfies primary criterion 7.1 in Schedule 1.

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

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

SCHEDULE 3

FORMS

FORM 1

Regulation 8

Flora and Fauna Guarantee Act 1988

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NOTICE OF THE PREPARATION OF DRAFT DOCUMENT

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

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

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

Submissions may be made to the Secretary on the

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

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

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

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

[Insert the name of the Secretary or delegate]

[Insert the full title of the Secretary or delegate]

[Indicate if signed by a delegate]

Date notice published:

* delete if inapplicable.

FORM 2

Regulation 11

Flora and Fauna Guarantee Act 1988

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

To the Secretary to the Department of Sustainability and Environment

[Insert the postal address of the Department]

*I/We

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

of:

[Insert address(es) of claimant(s)]

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

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

The details of the financial loss incurred are:

The financial loss was caused by:

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

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

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

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

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

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

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

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

[Signature(s) of claimant(s)]

Date:

* delete if inapplicable.

FORM 3

Regulation 12(1)

Flora and Fauna Guarantee Act 1988

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

To the Secretary to the Department of Sustainability and Environment

[Insert the postal address of the Department]

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

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

Name of applicant(s):

Address(es):

[Signature(s) of applicant(s)]

Date:

FORM 4

Regulation 12(2)

Flora and Fauna Guarantee Act 1988

Flora and Fauna Guarantee Regulations 2011

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

This certificate is issued to:

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

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

Description of land:

[Insert a description of the land]

Signature:

Date of certificate:

* delete if inapplicable.

=====

ENDNOTES

1. General Information

The Flora and Fauna Guarantee Regulations 2011, S.R. No. 147/2011 were made on 6 December 2011 by the Lieutenant-Governor as the Governor's deputy with the advice of the Executive Council under section 69 of the **Flora and Fauna Guarantee Act 1988**, No. 47/1988 and came into operation on 10 December 2011: regulation 3.

The Flora and Fauna Guarantee Regulations 2011 will sunset 10 years after the day of making on 6 December 2021 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Flora and Fauna Guarantee Regulations 2011 by statutory rules, subordinate instruments and Acts.

Endnotes

3. Explanatory Details

¹ Reg. 4: S.R. No. 147/2001.