

Flora and Fauna Guarantee Act 1988

Critical habitat and habitat conservation orders

Powers to recognise and protect Victoria's most precious habitats.

What are critical habitats?

Critical habitats are areas determined under the *Flora and Fauna Guarantee Act 1988* (FFG Act) which make a significant contribution to the conservation of listed threatened species or communities. They may also include areas that support ecological processes or ecological integrity that significantly contribute to the conservation of listed species or communities. They can be on public or private land.

What changes have been made to critical habitat powers?

The *Flora and Fauna Guarantee Amendment Act 2019* expands the concept of critical habitat in the FFG Act and provides an inclusive list of factors which may contribute to an area being critical habitat.

The amendments provide a greater role for the Scientific Advisory Committee (SAC), including in making recommendations to the Secretary and assisting to draft eligibility guidelines.

The FFG Act will now also require the Secretary to seek to manage critical habitat by agreement with affected landholders or managers.

How are critical habitats determined?

Before making a determination, the Secretary must notify and consult with any people or public authorities who may be affected by it. A public comment period then follows where any person may provide comments about the proposed critical habitat.

The Secretary must also consult with the SAC before making a determination.

What happens when a critical habitat is determined?

There are no automatic regulatory implications of a determination. The Secretary must try to manage the critical habitat cooperatively with landholders or land managers.

A critical habitat determination indicates that the area is of state biodiversity significance and any impacts

should be avoided. Regulatory protection of critical habitat is provided by Habitat Conservation Orders.

What are habitat conservation orders?

Habitat Conservation Orders (HCO) replace interim conservation orders under the original FFG Act.

HCOs may be made by the Minister to conserve, protect or manage critical habitat. HCOs can prohibit damage to critical habitat or require remediation of previous damage.

It is an offence to contravene an HCO, punishable by up to two years imprisonment or a fine of up to 240 penalty units or both. The Minister may also suspend existing licenses or permits granted under other legislation if they permit the holder to act in contravention of an HCO.

An HCO may operate for a maximum of ten years.

How are they made?

HCO's are made in consultation with relevant Ministers. Once an order is made any person likely to be affected by an order must be notified. Persons affected may then make submissions to the Minister, for example requesting that certain requirements of the order be changed. The Minister must consider all submissions.

What if a habitat conservation order affects land that I own or manage?

Persons affected by an HCO may apply for review of the order at the Victorian Civil and Administrative Tribunal. Persons affected by an HCO are also entitled to compensation for financial loss if an order affects an existing use right or a pre-existing approval under another scheme, such as a planning permit.

Activities prohibited by an HCO may be able to continue under a permit granted by the Minister, if impacts on the critical habitat or any threatened species or communities can be appropriately managed.

More information

The *Flora and Fauna Guarantee Act 1988* is available at: www.legislation.vic.gov.au

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