



Western Australia

## **Lights (Navigation Protection) Act 1938**

Compare between:

[27 Feb 2019, 01-c0-00] and [23 Aug 2019, 02-a0-00]



## Lights (Navigation Protection) Act 1938

An Act relating to lights likely to be a danger to marine navigation.

### 1. Short title

This Act may be cited as the *Lights (Navigation Protection) Act 1938*<sup>1</sup>.

### 2. ~~Interpretation~~ Terms used

In this Act, subject to the context —

*chief executive officer* means the chief executive officer of the department;

*department* means the department of the Public Service principally assisting the Minister in the administration of this Act;

*harbour* includes a boat harbour declared under the *Shipping and Pilotage Act 1967* section 10(2);

~~*Light* includes any fire, lamp, light, illuminated sign, street light or other mechanical, manufactured or constructed illumination and also the glow from any such light.~~

~~*Harbour*~~ *harbour light* includes lighthouses, lightships, beacons, buoys, lights and other signs, both on land and water, used as an aid to the navigation of ships, vessels and boats entering or leaving or within a port or harbour.;

~~*Owner*~~ *light* includes any fire, lamp, light, illuminated sign, street light or other mechanical, manufactured or constructed illumination and also the glow from any such light;

*owner* includes the owner, lessee, tenant, purchaser, hirer or other person in possession or entitled to the possession of a light

and in the case of a street light means the local government of the district in which such street light is erected or installed;

**port** includes —

- (a) a port declared under the *Shipping and Pilotage Act 1967* section 10(1); and
- (b) a port as defined in the *Port Authorities Act 1999* section 3(1);

**port manager** means —

- (a) in the case of a port under the control of a port authority established under the *Port Authorities Act 1999* — that port authority; or
- (b) in the case of any other port or a harbour — the chief executive officer.

[Section 2 amended: No. 47 of 1993 s. 15; No. 14 of 1996 s. 4; No. 2 of 2019 s. 17.]

### **3. Powers in relation to lights**

- (1) Where any light is used, kept, burnt or exhibited between the hours of sunset and sunrise at such a place (whether within or outside the limits of a port or harbour) or in such a manner as, in the opinion of the port manager, to be likely to be mistaken for, or obscure, or conflict with, or adversely interfere with the effectiveness of a harbour light of the port or harbour controlled and managed by such port manager, the port manager may, by notice in writing, require the owner of or the person in charge of such light or the occupier of the place or premises where such light is used, kept, burnt or exhibited, within a time to be specified in the notice to take effectual means —
  - (a) to extinguish the light; or
  - (b) to remove the light entirely or to some other position; or
  - (c) to modify the light or to alter its character or colour, or to screen the light to such an extent and in such manner as the port manager may direct; or

- (d) to refrain from using, keeping, burning or exhibiting the light either entirely or for such period or during such hours as the port manager may direct; or
  - (e) to do or refrain from doing such other act, matter or thing in relation to using, keeping, burning or exhibiting the light as the port manager may direct and in accordance with the directions of the port manager.
- (2) Any notice under subsection (1) may be served either personally or by delivery at the place of abode of the person to be served or by affixing it in some conspicuous place on or near the place or premises upon or in which the light to which the notice relates is used, kept, burnt or exhibited.
  - (3) It shall be the duty of the owner, occupier or other person served with a notice under subsection (1) to comply with such notice.
  - (4) Every owner, occupier or other person on whom a notice is served under this section who fails, without reasonable cause (proof whereof shall lie upon him) to comply in all respects with the directions contained in the notice shall be guilty of an offence against this Act.

Penalty for this subsection: a fine of \$12 000.

Daily penalty for this subsection: a fine of \$600.

*[Section 3 amended: No. 113 of 1965 s. 8(1); No. 2 of 2019 s. 18 and 22.]*

**4. Port manager may cause requisitions of notice to be carried out**

- (1) If any owner, occupier or other person served with a notice under section 3 fails in any respect to comply with the directions of such notice within the time specified in the notice for such compliance the port manager, or any person authorised in writing by the port manager, may enter upon the place or premises whereon the light to which the notice relates is used, kept, burnt or exhibited and forthwith take effectual means (but doing no unnecessary damage) to carry out and otherwise give

effect to the directions contained in the notice which have not been complied with as aforesaid.

- (2) Any expense incurred by the port manager or the person authorised by the port manager under subsection (1) shall be a debt owing to the port manager by the person upon whom the notice was served as aforesaid and shall be recoverable at the suit of the port manager in any court of competent jurisdiction.
- (3) If the owner, occupier or other person upon whom a notice under section 3 has been served as aforesaid or any other person obstructs or hinders, prevents or interferes with or attempts to obstruct, hinder, prevent or interfere with the port manager, or the person authorised by the port manager, in the exercise of the power conferred by subsection (1), he shall be guilty of an offence against this Act.

Penalty for this subsection: a fine of \$5 000.

*[Section 4 amended: No. 113 of 1965 s. 8(1); No. 2 of 2019 s. 19 and 22.]*

## **5. Civil rights**

Where any owner, occupier or other person upon whom a notice under section 3 has been served as aforesaid has failed, within the time prescribed by such notice, to comply with the directions of such notice and by reason of such non-compliance and by reason of the light to which the said notice relates being mistaken for, or obscuring, or conflicting with or adversely interfering with the effectiveness of a harbour light, any vessel, ship or boat is damaged the said non-compliance with the said notice shall, for the purpose of enabling the owner of such vessel, ship or boat to recover compensation or damages in respect of the damage suffered by such vessel, ship or boat be deemed to be a tort in the nature of a nuisance committed by such owner, occupier or person aforesaid upon which an action for damages may be instituted.

**6. Saving provision**

The omission on the part of a port manager to give any notice under section 3, or the failure on the part of a port manager to exercise the power conferred by section 4 shall not make the port manager in any respect responsible or liable for any damage suffered by a vessel, ship or boat as the result of any light being mistaken for or obscuring or conflicting with or adversely interfering with the effectiveness of a harbour light.

*[Section 6 amended: No. 2 of 2019 s. 22.]*

**7. Proceedings for offences**

A prosecution for an offence under this Act may be commenced by —

- (a) in the case of a port under the control and management of a port authority established under the *Port Authorities Act 1999* — by a person authorised to do so by the port authority; or
- (b) in the case of any other port or a harbour — the chief executive officer.

*[Section 7 inserted: No. 47 of 1993 s. 16; amended: No. 59 of 2004 s. 141; No. 2 of 2019 s. 20.]*

**8. Delegation**

- (1) The chief executive officer may delegate to a person any power or duty the chief executive officer has under another provision of this Act.
- (2) The delegation must be in writing signed by the chief executive officer.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so

in accordance with the terms of the delegation unless the contrary is shown.

- (5) Nothing in this section limits the ability of the chief executive officer to perform a function through an officer of the department or an agent.

*[Section 8 inserted: No. 2 of 2019 s. 21.]*

**9. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may provide that contravention of a regulation is an offence and, for an offence against the regulations, provide for a penalty not exceeding a fine of \$12 000.

*[Section 9 inserted: No. 2 of 2019 s. 21.]*

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**Notes**

<sup>1</sup> This is a compilation of the *Lights (Navigation Protection) Act 1938* and includes the amendments made by the other written laws referred to in the following table.<sup>2</sup> The table also contains information about any reprint.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Lights (Navigation Protection) Act 1938</i>	16 of 1938	1 Dec 1938	1 Dec 1938
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	<del>Act other than s. 4-9; 14 Feb 1966 (see s. 2(2));</del> balance: 4-9; 21 Dec 1965 (see s. 2(1)); <a href="#">s. 4-9; 14 Feb 1966 (see s. 2(2))</a>
<i>Acts Amendment (Department of Transport) Act 1993 Pt. 8</i>	47 of 1993	20 Dec 1993	1 Jan 1994 (see s. 2 and <i>Gazette</i> 31 Dec 1993 p. 6861)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<b>Reprint 1: The <i>Lights (Navigation Protection) Act 1938</i> as at 7 May 2004</b> (includes amendments listed above)			
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Ports Legislation Amendment Act 2019 Pt. 3</i>	2 of 2019	26 Feb 2019	27 Feb 2019 (see s. 2(b))
<a href="#"><b>Reprint 2: The <i>Lights (Navigation Protection) Act 1938</i> as at 23 Aug 2019</b> (includes amendments listed above)</a>			

<sup>2</sup> Marginal notes in the *Lights (Navigation Protection) Act 1938* referring to legislation of other jurisdictions have been omitted from this compilation.