



Western Australia

Lights (Navigation Protection) Act 1938

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Lights (Navigation Protection) Act 1938

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Defined terms

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*¹.

2. Interpretation

In this Act, subject to the context —

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 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 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 Authority means —

- (a) in the case of a port under the control of a port authority established under an Act — that port authority; and
- (b) in the case of any other port or a harbour — the Minister administering the *Shipping and Pilotage Act 1967*.

Port or Harbour includes a port or a fishing boat harbour declared as such under the *Shipping and Pilotage Act 1967* and

a port under the control of a port authority established under an Act.

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

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 authority, 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 authority, the port authority 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 authority 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 authority may direct;
 - (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 authority may direct and in accordance with the directions of the port authority.
- (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 — \$200, and in addition a daily penalty of \$10 for every day or part of a day during which the directions contained in the notice are not complied with after the time specified in the notice for the compliance therewith.

[Section 3 amended: No. 113 of 1965 s. 8(1).]

4. Port authority 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 authority, or any person authorised in writing by the port authority, 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 authority or the person authorised by the port authority under subsection (1) shall be a debt owing to the port authority by the person upon whom the notice was served as aforesaid and shall be recoverable at the suit of the port authority 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 authority, or

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the person authorised by the port authority, in the exercise of the power conferred by subsection (1), he shall be guilty of an offence against this Act.

Penalty: \$100.

[Section 4 amended: No. 113 of 1965 s. 8(1).]

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 authority to give any notice under section 3, or the failure on the part of a port authority to exercise the power conferred by section 4 shall not make the port authority 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.

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 of a port authority established under an Act — the General Manager of that port authority; or
- (b) in the case of any other port or a harbour — the chief executive officer of the department of the Public Service principally assisting the Minister with the administration of the *Shipping and Pilotage Act 1967*.

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

Notes

- ¹ 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 ². 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	s. 4-9: 14 Feb 1966 (see s. 2(2)); balance: 21 Dec 1965 (see s. 2(1))
<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)
Reprint 1: The <i>Lights (Navigation Protection) Act 1938</i> as at 7 May 2004 (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)

- ² Marginal notes in the *Lights (Navigation Protection) Act 1938* referring to legislation of other jurisdictions have been omitted from this reprint.

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
Harbour light.....	2
Light.....	2
Owner	2
Port Authority	2
Port or Harbour	2