

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

ENVIRONMENT AND NUISANCE LOCAL LAW 2013

CONTENTS

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Commencement
- 1.3 Application
- 1.4 Repeal
- 1.5 Definitions

PART 2—GENERAL—NOISE, LIGHT AND VIBRATIONS*Division 1—Amusements*

- 2.1 Definitions
- 2.2 Nuisance
- 2.3 Abatement by authorised person

Division 2—Light

- 2.4 Emission or reflection of light
- 2.5 Use of floodlights
- 2.6 Notice

Division 3—Parking of livestock trucks

- 2.7 Livestock trucks

Division 4—Truck noise from residential land

- 2.8 Truck noise from residential land

PART 3—DISPOSING OF DISUSED REFRIGERATORS

- 3.1 Disposing of disused refrigerators or similar containers

PART 4—OBJECTIONS AND APPEALS

- 4.1 Application of Part 9 Division 1 of the Act

PART 5—ENFORCEMENT*Division 1—Notices given under this local law*

- 5.1 Offence to fail to comply with notice
- 5.2 Local government may undertake requirements of notice

Division 2—Offences and penalties

Subdivision 1—General

- 5.3 Offences and general penalty

Subdivision 2—Infringement notices and modified penalties

- 5.4 Prescribed offences
- 5.5 Form of notices

SCHEDULE 1

LOCAL GOVERNMENT ACT 1995

SHIRE OF AUGUSTA-MARGARET RIVER

ENVIRONMENT AND NUISANCE LOCAL LAW 2013

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Shire of Augusta-Margaret River* resolved on 27 November 2013 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Augusta-Margaret River Environment and Nuisance Local Law 2013*.

1.2 Commencement

This Local Law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Augusta-Margaret River Pest Plants By-laws* as published in the *Government Gazette* on 27 November 1992 is repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

authorised person means a person appointed by the local government under section 9.10 of the Act to perform any of the functions of an authorised person under this local law;

CEO means the chief executive officer of the local government;

Council means the council of the local government;

district means the district of the local government;

livestock includes cattle, sheep, pigs, goats and horses;

local government means the Shire of Augusta-Margaret River;

local government property means anything except a thoroughfare—

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

lot has the meaning given to it in the *Planning and Development Act 2005*;

nuisance includes—

(a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;

(b) an unreasonable interference with the use and enjoyment of a person in her or his ownership or occupation of land; and

(c) interference which causes material damage to land or other property on the land affected by the interference;

person does not include the local government;

Regulations means the *Local Government (Functions and General) Regulations 1996*; and

vehicle includes—

(a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise;

(b) an animal being ridden or driven,

but excludes—

- (c) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
- (d) a pram, a stroller or a similar device.

PART 2—GENERAL—NOISE, LIGHT AND VIBRATIONS

Division 1—Amusements

2.1 Definitions

In this Division—

Amusement means anything usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere.

2.2 Nuisance

A person shall not provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

2.3 Abatement by authorised person

Subject to Subdivision 3 of Division 3 of Part 3 of the Act, an authorised person may enter on any land where an amusement is provided or conducted and may do any act or thing reasonably required to abate a nuisance referred to in clause 2.2.

Division 2—Light

2.4 Emission or reflection of light

(1) Where artificial light is emitted or reflected from anything on a lot so as to illuminate land outside the lot to more than 50 lux, then every owner and occupier of the lot commits an offence.

(2) Where natural light is reflected from anything on a lot so as to create or be a nuisance to any—

- (a) owner or occupier of land; or
- (b) person using a thoroughfare as a thoroughfare,

then every owner and occupier of the lot commits an offence.

2.5 Use of floodlights

An owner or occupier of a lot on which floodlights or other exterior lights are erected or used shall not allow the floodlights or other exterior lights to shine directly onto an adjoining lot.

2.6 Notice

The local government may give a notice to the owner or occupier of a lot—

- (a) requiring that any reflective surfaces creating a nuisance within clause 2.4(2) be painted or otherwise treated so as to abate the nuisance; and
- (b) on which floodlights or other exterior lights are erected, requiring that—
 - (i) the hours of use of the lighting be limited to the hours specified in the notice; or
 - (ii) the direction in which the lights are shining be altered as specified in the notice.

Division 3—Parking of livestock trucks

2.7 Livestock trucks

(1) A person shall not park a vehicle containing livestock in a townsite for a period in excess of 30 minutes.

(2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour emanating from the vehicle.

(3) If a person parks a vehicle containing livestock in a townsite under and in accordance with subclause (1), then the person does not contravene subclause (2).

Division 4—Truck noise from residential land

2.8 Truck noise from residential land

(1) A person shall not start or drive a truck on land zoned, approved or used for residential purposes between the hours of 11pm and 7am on the following day without first obtaining the written consent of the local government.

(2) In this clause, a truck means a vehicle having a tare in excess of 2,000 kgs.

PART 3—DISPOSING OF DISUSED REFRIGERATORS

3.1 Disposing of disused refrigerators or similar containers

A person shall not place, leave or dispose of a disused refrigerator, ice-chest, ice-box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first—

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened.

PART 4—OBJECTIONS AND APPEALS**4.1 Application of Part 9 Division 1 of the Act**

When the local government makes a decision under clause 2.6 or 2.8 (1), the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Regulations apply to that decision.

PART 5—ENFORCEMENT*Division 1—Notices given under this local law***5.1 Offence to fail to comply with notice**

Whenever the local government gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

5.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 5.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

Division 2—Offences and penalties

Subdivision 1—General

5.3 Offences and general penalty

(1) Any person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any person who commits an offence under this local law is liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

Subdivision 2—Infringement notices and modified penalties

5.4 Prescribed offences

(1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

5.5 Form of notices

For the purposes of this local law—

- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
- (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
- (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.

*Schedule 1***PRESCRIBED OFFENCES**

[Clause 5.4(2)]

Item	Clause	Description	Modified Penalty \$
1	2.2	Conducting an amusement so as to create a nuisance	125
2	2.4 (1)	Emitting light of more than 50 lux	125
3	2.5	Erection or use of lights other than in accordance with requirements	125
4	2.7(1)	Parking a livestock truck in a townsite in excess of 30 minutes	125
	2.8 (1)	Starting or driving a truck on residential land without consent	125

Item	Clause	Description	Modified Penalty \$
5	3.1	Disposing of disused refrigerator or similar container with door or lid that can be fastened	300
6	5.1	Failure to comply with notice	125

Dated: 27 November, 2013.

The Common Seal of the Shire of Augusta-Margaret River was affixed under the authority of a resolution of the Council in the presence of—

MICHAEL SMART, Shire President.

GARY EVERSLED, Chief Executive Officer.
