

TOWN OF CLAREMONT



CODE OF CONDUCT

This Code documents the standards of conduct expected of those who serve the community of Claremont.

This Code of Conduct shall apply to Mayor and Councillors, employees of Council and the Town of Claremont and any other members of the community who may serve on Council established Committees.

Revised April 2006

TOWN OF CLAREMONT
CODE OF CONDUCT
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SECTION ONE

PREAMBLE

CODE OF CONDUCT - STATUTORY REFERENCES

Section 5.103 of the Local Government Act requires that:-

- (1) *Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.*
- (2) *A local government is to review its code of conduct within 12 months after each ordinary elections day and make such changes to the code as it considers appropriate.*
- (3) *Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.*

The Declaration made by members under the Act requires observance of the adopted Code. In this regard, Section 2.29 (1) of the Local Government Act states:

- (1) *A person elected as an elector mayor or president or as a councillor has to take an oath or affirmation of allegiance and make a declaration in the prescribed form before acting in the office.*

Regulation 13 Oaths, Affirmations and Declarations of the Local Government (Constitution) Regulations 1998 prescribes as follows:

5. *For the purposes of Sections 2.29 and 2.42.....*
 - (c) *the form of declaration for a mayor, president, deputy mayor, deputy president or councillor is set out in Form-7;...*

Town of Claremont

LOCAL GOVERNMENT ACT 1995

LOCAL GOVERNMENT (CONSTITUTION) REGULATIONS 1998

DECLARATION OF ELECTED MEMBER

I,

of

having been elected to the office of ¹ **Mayor/Deputy Mayor/Councillor** of the ²**Town of Claremont**, declare that I take the office upon myself, and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the code of conduct adopted by the ²**Town of Claremont** under section 5.103 of the *Local Government Act 1995*.

Declared at on

By

Before me

Notes:

1. Delete those that do not apply
2. Insert the name of the Local Government

Other statutory requirements are as follows:

Regulation 34B and 34C of the Local Government (Administration) Regulations 1996.

34B. Codes of conduct (token gifts) - s. 5.103(3)

- (1) In this regulation —
“**gift**” does not include -
- (a) a gift from a relative as defined in section 5.74(1);
 - (b) a gift as defined in regulation 30A of the Local Government (Elections) Regulations 1997;
 - (c) an educational or professional benefit conferred on an employee to further or improve the knowledge or skill of the employee by –
 - (i) this State, another State, a Territory, the Commonwealth or a body established under a written law; or
 - (ii) an incorporated association under the *Association Incorporation Act 1987*, or a corresponding law of another State or Territory, if the employee is eligible for membership of that body on the basis of tasks he or she performs for the local government.

“**token gift**” means a gift of, or below, a value specified by the particular local government.

- (2) A code of conduct is to contain a requirement that a council member or an employee cannot accept a gift, other than a token gift, from a person who is undertaking, or is likely to undertake, business –
- (a) that requires the person to obtain any authorisation from the local government;
 - (b) by way of contract between the person and the local government; or
 - (c) by way of providing any service to the local government.
- (3) A code of conduct is to contain a requirement that the CEO is to keep a register of token gifts that are recorded under subregulation (4).
- (4) A code of conduct is to contain a requirement that a council member or an employee who accepts a token gift from a person referred to in subregulation (2) is, subject to subregulation (5), to record –
- (a) the names of the persons who gave, and received, the token gift;
 - (b) the date of receipt of the token gift; and
 - (c) a description, and the estimated value, of the token gift.
- (5) If the particular local government decides that –
- (a) a specified thing given by way of hospitality; or

- (b) a thing given by way of hospitality that belongs to a specified class of things,

does not need to be recorded under subregulation (4), the specified thing, and things belonging to the specified class, do not need to be so recorded.

34C. Codes of conduct (disclosure of interests affecting impartiality) - s. 5.103(3)

- (1) In this regulation –

“employee” has the meaning given by section 5.70;

“interest” means an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected but does not include an interest as referred to in section 5.60.

- (2) A code of conduct is to contain a requirement that a council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a council or committee meeting that will be attended by the member or employee.
- (3) A code of conduct is to contain a requirement that a council member or an employee is to disclose any interest that he or she has in any matter to be discussed at a council or committee meeting in respect of which the member or employee has given, or will give, advice.
- (4) A code of conduct is to contain a requirement that disclosure of an interest under subregulation (2) or (3) is to be made at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of the relevant meeting.

WHAT IS THE CODE OF CONDUCT?

The Council is the elected body responsible for the administration of the Town in accordance with the applicable legislation. It must do that in the best interests of the local community, as well as the public in general. The conduct of Mayor and Councillors, committee members and employees of Council and the Town of Claremont must not only be based upon the highest ethical principles, it must be seen to be consistent with those principles.

The Code of Conduct therefore provides a *framework for behaviour* that must be observed in the wide range of interactions and scenarios experienced in the conduct of Council activities on a daily basis.

WHY HAVE A CODE OF CONDUCT?

A Code of Conduct is a significant guide to Council, necessary due to the particular relationships and responsibilities that arise from being a public institution.

Mayor and Councillors, committee members and employees of Council and the Town of Claremont are custodians of public resources and trust. In order to continue the effective and efficient administration of this public institution, a set of standards is important to clearly outline these responsibilities and the behaviours that need to be observed to retain the good faith and trust of all parties involved.

AIM OF A CODE OF CONDUCT

This Code seeks to provide a framework within which Mayor and Councillors, committee members and employees of Council and the Town of Claremont should operate to ensure accountability to the community.

The Code complements (and does not in any way substitute) legislation applicable to local government. It provides guidance to parties involved in, empowered by and entrusted by public duty and public office, particularly in regard to conflicts that may arise in the performance of duties in the sphere of government and public administration.

The Code recognises Council duties, responsibilities and values in relation to access, equity, and open and accountable government. Therefore, the Code purports to cultivate, advocate and develop within Council an awareness of propriety with public administration.

IMPLEMENTATION

This Code of Conduct was adopted by the Council on 4 April 2006, Resolution Number 99/06 and is effective from that date.

The Code shall be reviewed within 12 months of every ordinary election of the Town. The review will address compliance with the Code, communication of the Code, any problems experienced within the preceding period in regard to its application or interpretation, and will recommend any amendments that may be appropriate. Amendments to the Code are subsequently communicated to employees of Council and the Town of Claremont, committee members and the community.

ENFORCEMENT OF THE CODE

Any member, committee member or Council employee having concerns with regard to an actual, perceived, potential, intended or unintended breach of either the specific provisions or the spirit of the Code of Conduct, or any provisions of the Local Government Act or such regulations or local laws created thereunder, should report alleged breaches as follows:

- (a) Councillors will report an alleged breach by a Councillor, committee member or employee to the Mayor who will in turn refer the alleged breaches by an employee to the CEO.
- (b) Employees will report an alleged breach by a Councillor, committee member or employee to the CEO who will in turn refer alleged breaches by a Councillor or committee member to the Mayor.
- (c) Councillors, committee members and employees will report an alleged breach by the CEO to the Mayor.
- (d) Councillors and committee members will report an alleged breach by the Mayor to the Deputy Mayor.
- (e) In the case of the Mayor reporting alleged breaches:
 - (i) if it is an allegation of a breach by an employee it is to be reported to the CEO;
 - (ii) if it is an allegation of a breach by a Councillor other than the Deputy Mayor, it is to be reported to the Deputy Mayor;

- (iii) if it is an allegation of a breach by the Deputy Mayor it is to be reported to the CEO;
- (f) A report of an alleged breach is to include:
 - (i) the name of the person who is the subject of the alleged breach;
 - (ii) the behaviours that have been witnessed that give reason to believe that there has been an alleged breach;
 - (iii) any other evidence that may be of relevance to an investigation of the alleged breach; and
 - (iv) the law, clause of the Code or standard of acceptable behaviour that has allegedly been breached.

Such reports shall be treated in the strictest confidence until such time as an appropriate investigation has been undertaken.

Any actions taken as a result of a breach will be made in accordance with the provisions of any applicable legislative requirements and the Council's responsibilities as an employer.

It should be noted that the Corruption and Crime Commission Act 2003 requires the reporting to the Commission of certain matters relating to alleged "misconduct". Definitions of this term are provided in the Act and appear as an annexure to this Code.

SECTION TWO

ROLE OF MAYOR AND COUNCILLORS

A Councillor's primary role is to represent the community, and the effective translation of the community's needs and aspirations into a direction and future for the Local Government will be the focus of the Councillor's public life.

A Councillor is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives.

In fulfilling the various roles, members' activities will focus on:

- achieving a balance in the diversity of community views to develop an overall strategy for the future of the community;
- achieving sound financial management and accountability in relation to the Local Government's finances;
- ensuring that appropriate mechanisms are in place to deal with the prompt handling of residents' concerns;
- working with other governments and organisations to achieve benefits for the community at both a local and regional level;
- having an awareness of the statutory obligations imposed on Councillors and on Local Governments.

SECTION THREE

THE CODE

1. DISCLOSURE OF INTEREST

1.1 Interest Affecting Impartiality (i.e. non-financial conflict of interest)

- a) Mayor and Councillors, committee members and employees of Council and the Town of Claremont will ensure that there is no actual (or perceived) conflict of interest between their personal interests, including those of their immediate family members, business partners or close associates, and the impartial fulfilment of their civic and/or professional duties.
- b) Employees of Council and the Town of Claremont will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Town of Claremont, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided.
- c) Members and employees of Council and the Town of Claremont will lodge written notice with the Chief Executive Officer describing an intention to undertake a dealing in land within the Town of Claremont or which may otherwise be in conflict with the Council's functions (other than purchasing the principal place of residence).
- d) Members and employees who exercise a recruitment, regulatory, inspectorial or other discretionary function will make disclosure before dealing with immediate relatives or close friends and will disqualify themselves from dealing with those persons. This disclosure will be made to the Mayor and Chief Executive Officer (for employees).
- e) Employees of Council and the Town of Claremont will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity.

An individual's rights to maintain their own political convictions are not impinged upon by this clause. It is recognised that such convictions cannot be a basis for discrimination and this is supported by anti discriminatory legislation.

1.2 Financial Interest

Mayor and Councillors, committee members and employees of Council and the Town of Claremont will adopt the principles of disclosure of financial interest as contained within the Local Government Act 1995 [Sections 5.59 to 5.90, Subdivision-2, Division-6], Local Government (Administration) Regulations and the Financial Interests Manual as prepared by the Department of Local Government.

1.3 Disclosure of Interest affecting Impartiality (i.e. non-financial)

- a) In addition to disclosure of financial interests, Mayor and Councillors, committee members and employees of Council and the Town of Claremont, including persons under a contract for services –
 - attending a council or committee meeting; or
 - giving advice to a council or committee meeting;are required to disclose any interest they have in a matter to be discussed at the meeting that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected.
- b) Where an interest must be disclosed under (a) above, the disclosure is to be made at the meeting immediately before the matter is discussed or at the time the advice is given, and is to be recorded in the minutes of the meeting.
- c) The disclosure of an interest in (a) above does not affect the ability of the Councillor, committee member or employee to discuss or vote on the matter.

Footnote

How a Disclosure of Interest Impartiality(non-financial conflict of interest) is made.

The following declaration, similar to that suggested by the Department of Local Government, is to *act as a guide* to members and employees

With regard to(the matter under discussion) ... I disclose that I have an association with the (applicant or person/organization under discussion). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will put aside this association, consider the matter on its merits and vote accordingly.

2. PERSONAL BENEFIT

2.1 Use of Confidential Information

Members and employees will not use confidential information to gain improper advantage for themselves or for any other person or body in ways which are inconsistent with their obligation to act impartially, or to improperly cause harm or detriment to any person or organisation.

2.2 Intellectual Property

The title to Intellectual Property in all duties relating to contracts of employment will be assigned to the Town of Claremont upon its creation unless otherwise agreed by separate contract.

2.3 Improper or Undue Influence

Members and employees will not take advantage of their position to improperly influence any other person in the performance of their duties of functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body.

2.4 Gifts and Acts of Hospitality

The giving and receiving of any gifts, except those on behalf of the Town as a whole (ceremonial mementos etc) and acceptances of civic hospitality by the elected members and staff referred to in 2.4.2 below, is strongly discouraged because of the potential for actual or perceived conflict with our public duty. Gifts include any immediate or future gift, benefit, act of hospitality, gratuity, reward, donation, commission, inducement or opportunity to purchase at valuations significantly below usual retail prices. When a personal gift is received, it should be promptly and fully disclosed to promote both a perception and practice of accountability.

Guidance on specific areas where the seeking or receiving of actual or perceived benefit by any of us is unacceptable includes:

2.4.1 Members and employees will not accept a gift, other than a token gift, from a person who is undertaking, or is likely to undertake, business –

- (a) that requires the person to obtain any authorisation from the Town of Claremont;
- (b) by way of contract between the person and the Town of Claremont; or
- (c) by way of providing any service to the Town of Claremont.

Amt is at discretion of local govt authority – DLGRD advise amt should be whatever is considered “reasonable”

2.4.2 Members and employees who accept a token gift to the value of **\$100** or less from a person or persons referred to in (a), (b) or (c) above are to provide the following details of the gift, in writing, to the CEO, for recording in the Token Gift Register, as soon as practicable following the receipt of the gift (ref r34B Admin Regs) :-

- (a) the name(s) of the person(s) who gave, and received, the token gift;
- (b) the date of receipt of the token gift; and
- (c) a description, and the estimated value, of the token gift.

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Amt \$50 specified in election regs for gifts but is at TOC discretion

2.4.3 Token gifts to which clause 2.4.2 does not apply include acts of hospitality extended to Members and Chief Executive Officer (or delegate) for Town related functions where they are invited in their official capacity, to a value of \$100.

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2.4.4 This clause does not apply to gifts received from a relative (as defined in s.5.74(1) of the Local Government Act or an electoral gift (to which separate disclosure provisions apply).

3. CONDUCT OF MEMBERS AND EMPLOYEES

3.1 Personal Behaviour

Members and employees will:

- a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;

- b) perform their duties impartially and in the best interests of the Town of Claremont uninfluenced by fear or favour;
- c) deal with all sections of the community in an open, honest and forthright manner;
- d) act in good faith (ie. honestly, for the proper purpose and without exceeding their powers) in the interests of the Town of Claremont and the community;
- e) make no allegations which are improper or derogatory (unless true and in public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
- f) always act in accordance with their obligation of loyalty and fiduciary duty to the Council and not publicly reflect adversely upon any decision of the Council.

3.2 Honesty and Integrity

Members and employees will

- a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards;
- b) bring to the notice of the Mayor any dishonesty or possible dishonesty on the part of any other member, and in the case of an employee to the Chief Executive Officer.
- c) be frank and honest in their official dealing with each other and with the public.

3.3 Performance of Duties

- a) While on duty, employees will give their whole time and attention to the Town of Claremont business and ensure that their work is carried out efficiently, economically and effectively, and that their standards of work reflects favourably both on them and on the Town of Claremont

- b) Members will at all times exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Members will be as informed as possible about the functions of the Council, and treat all members of the community honestly and fairly.

3.4 Compliance with Lawful Orders

- a) Members and employees will comply with any lawful order given by any person having authority to make or give such an order, with any doubts as to the propriety if any such order being taken up with the superior of the person who gave the order and if resolution can not be achieved, with the Chief Executive Officer.
- b) Members and employees will give effect to the lawful policies of the Town of Claremont, whether or not they agree with or approve of them.

3.5 Administrative and Management Practices

Members and employees will ensure compliance with proper and reasonable administrative practices and conduct, and professional and responsible management practices.

3.6 Corporate Obligations

- a) Standards of Dress

Employees are expected to comply with neat and responsible dress standards at all times. Management reserves the right to raise the issue of dress with individual employees.

- b) Communication and Public Relations

- (i) All aspects of communication by employees (including verbal, written or personal), involving the Town of Claremont's activities should reflect the status and objectives of the Town of Claremont. Communications should be accurate, polite and professional.

- (ii) As a representative of the community, Members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of

the Council. In doing so Members should acknowledge that:

- as a member of the Council there is respect for the decision making processes of the Council which are based on a decision of the majority of the Council;
- information of a confidential nature ought not be communicated until it is no longer treated as confidential;
- information relating to decisions of the Council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the Council;
- information concerning adopted policies, procedures and decisions of the Council is conveyed accurately.

3.7 Relationships between Mayor and Councillors and Employees

An effective Member will work as part of the Council team with the Chief Executive Officer and other employees. That teamwork will only occur if Members and employees have a mutual respect and cooperate with each other to achieve the Council's corporate goals and implement the Council's strategies. To achieve that position Members need to:

- accept that their role is one of policy and strategic direction;
- acknowledge that they have no capacity to individually direct employees to carry out particular functions;
- refrain from publicly criticising employees in a way that casts aspersions on their professional competence and credibility

3.8 Appointments to Committees

As part of their representative role Members are often asked to represent the Council on external organisations. It is important that Members:

- clearly understand the basis of their appointment;
- provide regular reports on the activities of the organization; and
- make every endeavour to personally notify their deputies when they are not able to attend.

4. DEALING WITH COUNCIL PROPERTY

4.1 Use of Town of Claremont Resources

Members, and employees will:

- a) be scrupulously honest in their use of Town of Claremont resources and shall not misuse them or permit their misuse (or appearance of misuse) by any other person or body;
- b) use the Town of Claremont resources entrusted to them effectively and economically in the course of their duties; and
- c) not use Town of Claremont resources (including the services of employees of Council and the Town of Claremont) for private purposes (other than when supplied as part of a contract of employment), unless properly authorised to do so, and appropriate payments are made (as determined by the Chief Executive Officer).

4.2 Travelling and Sustenance Expenses

Members and employees will only claim or accept travelling and sustenance expenses arising out of travel related matters which have a direct bearing on the services, policies or business of the Town of Claremont and the provisions of the Local Government Act.

4.3 Access to Information

- a) Employees will ensure that members are given access to all information necessary for them to properly perform their functions and comply with their responsibilities as members.
- b) Members will ensure that information provided will be used properly and to assist in the process of making reasonable and informed decisions on matters before the Council.

Attention is drawn to Section 5.93 of the Local Government Act 1995

5.93 A person who is a council member, a committee member or an employee must not make improper use of any information acquired in the performance by the person of any of his or her functions under this Act or any other written law –

- (a) to gain directly or indirectly an advantage for the person or any other person; or
- (b) to cause detriment to the local government or any other person.

Penalty: \$10,000 or imprisonment for 2 years.

ANNEXURE

Definition of “Misconduct”

Section 1 of this Code contains reference to the term “Misconduct” used in the Corruption & Crime Commission Act 2003. The following definition is provided from the Act:

4. “Misconduct”, meaning of
Misconduct occurs if –
- a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;
 - b) a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;
 - c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or
 - d) a public officer engages in conduct that –
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;
 - (ii) constitutes or involves the performance of his or functions in a manner that is not honest or impartial;
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,and constitutes or could constitute –
 - (v) an offence against the *Statutory Corporations (Liability of Directors) Act 1996* or any other written law; or
 - (vi) a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct.