

**WASTE AVOIDANCE AND RESOURCE RECOVERY ACT 2007
LOCAL GOVERNMENT ACT 1995**

Town of Claremont

WASTE LOCAL LAWS 2017

Under the powers conferred by the *Waste Avoidance and Resource Recovery Act 2007* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Town of Claremont resolved on the _____2017 to make the following local laws.

PART 1 – PRELIMINARY

1.1. Citation

This is the Town of Claremont Waste Local Law 2017

1.2 Commencement

This local law commences 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 meaning of terms used in this local law

(1) In this local law –

authorised person means a person appointed by the local government under section 9.10 of the *Local Government Act 1995* to perform any of the functions of an authorised person under this local law;

carriageway means a portion of thoroughfare that is improved, designed or ordinarily used for vehicles and includes the shoulders and areas including embayments at the side or centre of the carriageway, used for the parking of vehicles; and where a thoroughfare has two or more of those portions divided by the median strip, the expression means each of those portions, separately;

collectable waste means local government waste that is not –

- (a) liquid refuse
- (b) liquid waste; or
- (c) non-collectable waste;

collectable waste receptacle means a receptacle for the deposit and collection of collectable waste that is-

- (a) a recycling waste receptacle;
- (b) a general waste receptacle; or
- (c) an organic waste receptacle;

collection day means the day determined by the local government for the collection of collectable waste in the district or a part of the district;

collection time means the time on the collection day determined by the local government for the collection of collectable waste in the district or a part of the district;

commencement date means the date on which this local law commences operation under clause 1.2;

costs means costs of the local government including administrative costs;

Council means the council of the local government;

district means the district of the local government;

general waste receptacle means a receptacle for the deposit and collection of collectable waste that is not recycling waste, or organic waste;

LG Act means the Local Government Act 1995;

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

local government waste has the same meaning as in the WARR Act;

local government means the Town of Claremont;

non-collectable waste has the meaning set out in Schedule 1;

nuisance means

- (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 of his or her ownership or occupation of land; or
- (c) interference which causes damage to land or other property on the land affected by the interference;

occupier in relation to premises, means any or all of the following-

- (a) a person by whom or on whose behalf the premises are actually occupied; or
- (b) a person having the management or control of the premises;

organic waste means waste that decomposes readily, such as garden waste or food waste;

organic waste receptacle means a receptacle for the deposit and collection of organic waste;

owner has the same meaning as in the LG Act;

public place includes a place to which the public ordinarily have access, whether or not by payment of a fee;

receptacle means a receptacle –

- (a) that has been supplied for the use of the premises by the local government or its contractor, or which has otherwise been approved by the local government; and
- (b) the waste from which is collected and removed from the premises by the local government or its contractor;

recycling waste receptacle means a receptacle for the deposit and collection of recycling waste;

recycling waste means -

- (a) paper and cardboard;
- (b) plastic containers comprised of polyethylene terephthalate or high density polyethylene;
- (c) glass containers;
- (d) steel containers;
- (e) aluminium containers;
- (f) liquid paper board; and
- (g) any other waste determined by the local government to be recycling waste;

Specified means specified by the local government or an authorised person, as the case may be;

Street alignment means the boundary between the land comprising a street and the land that abuts the street;

WARR Act means the Waste Avoidance and Resource Recovery Act 2007;

WARR Regulations means the Waste Avoidance and Resource Recovery Regulations 2008;

waste has the same meaning as in the WARR Act;

waste facility means a waste facility, as defined in the WARR Act, that is operated by the local government; and

waste service has the same meaning as in the WARR Act.

(2) Where, in this local law, a duty or liability is imposed on an owner or occupier, or on an owner and occupier, the duty or liability is taken to be imposed jointly and severally on each of the owners or occupiers.

1.5 Local public notice of determinations

Where, under this local law, the local government has a power to determine a matter –

- (a) local public notice, under section 1.7 of the LG Act, must be given of the matter determined;
- (b) the determination becomes effective only after local public notice has been given;
- (c) the determination remains in force for the period of one year after the date that

- local public notice has been given under paragraph (a);
- (d) after the period referred to in paragraph (c), the determination continues in force only if, and for so long as, it is the subject of local public notice, given annually, under section 1.7 of the LG Act; and
- (e) the determination must be recorded in a publicly accessible register of determinations that must be maintained by the local government.

1.6 Rates, fees and charges

The local government's powers to impose rates, fees and charges in relation to waste services are set out in sections 66 to 68 of the WARR Act and section 6.16 and 6.17 of the LG Act

1.7 Power to provide waste services

The local government's power to provide, or enter into a contract for the provision of, waste services is dealt with in section 50 of the WARR Act

PART 2 – Local Government Waste

2.1 Supply of receptacles

- (1) The local government is to supply for the use of each premises that are, or are capable of being, occupied or used for residential purposes, one or more receptacles for the collection and removal from those premises, of collectable waste.
- (2) The owner of premises to which subclause (1) applies must –
- (a) ensure that the fee or charge (if any) imposed by the local government in relation to each receptacle is paid to the local government; and
 - (b) ensure that each receptacle is used, in respect of those premises, in accordance with this local law.

2.2 Deposit of waste receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a receptacle any non-collectable waste.
- (2) A person must not deposit waste in a receptacle that has been provided for the use of other premises without the consent of the owner or occupier of those premises.

2.3 General waste receptacles

- (1) An owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle –
- (a) where the receptacle has a capacity of 120 Litres or 240 Litres – more than 70 kilograms of collectable waste or;
 - (b) where the receptacle has any other capacity – more than the weight determined by the local government.
- (2) Where the local government supplies recycling waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any recycling waste.

- (3) Where the local government supplies organic waste receptacles, an owner or occupier of premises must not deposit or permit to be deposited in a general waste receptacle any organic waste

2.4 Recycling waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in a recycling waste receptacle-

- (a) anything other than the particular type of recycling waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 120 Litres or 240 Litres – more than 70 kilograms of recycling waste; or
- (c) where the receptacle has any other capacity-more than the weight determined by the local government.

2.5 Organic waste receptacles

An owner or occupier of premises must not deposit or permit to be deposited in an organic waste receptacle-

- (a) anything other than the particular type of organic waste for which that receptacle was provided by the local government for those premises;
- (b) where the receptacle has a capacity of 120Litres or 240 Litres – more than 70 kilograms of organic waste; or
- (c) where the receptacle has any other capacity – more than the weight determined by the local government.

2.6 Direction to place or remove a receptacle

- (1) The local government or an authorised person may give a written direction to an owner or occupier of specified premises –
 - (a) to place a receptacle in respect of those premises for collection; or
 - (b) to remove a receptacle in respect of those premises after collection.
- (2) The direction under subclause (1) may specify when the placement or removal is to occur, or where the receptacle is to be placed, or both.
- (3) An owner or occupier of premises must comply with a direction given under this clause.

2.7 Duties of owner or occupier

An owner or occupier of premises must –

- (a) except for 24 hours before and after collection time, keep each receptacle in a storage space or area, that is behind the street alignment or where approved by the local government or authorised person;
- (b) when placing a receptacle for collection on the verge adjoining the premises, or other area as determined by the local government, take reasonable steps to ensure that, no later than 6am on collection day, each receptacle is –
 - (i) within 1 meter of the carriageway
 - (ii) placed so that it does not unduly obstruct any footpath, cycle way, right-of-way or carriageway; and
 - (iii) facing squarely to the edge of and opening towards the carriageway, or in such other position as is approved in writing by the local government, or an authorised person.

- (c) take reasonable steps to ensure that the premises are provided with an adequate number of receptacles; and
- (d) if the receptacle is lost, stolen, damaged or defective, notify the local government, as soon as practicable, after the event.

2.8 Exemption

- (1) An owner or occupier of premises may apply in writing to the local government for an exemption from compliance with the requirements of clause 2.7 (a) or (b).
- (2) The local government or an authorised person may grant, with or without conditions, or refuse an application for exemption from compliance under this clause.
- (3) An exemption granted under this clause must state –
 - (a) the premises to which the exemption applies;
 - (b) the period during which the exemption applies; and
 - (c) any conditions imposed by the local government or the authorised person.
- (4) An exemption granted under this clause will cease to apply if the local government decides on reasonable grounds that there has been a failure to comply with a condition of the exemption. If the local government so decides, the exemption will cease to apply from the date the local government informs the owner or occupier of that decision.

2.9 Damaging or removing receptacles

A person, other than the local government or its contractor, must not –

- (a) damage, destroy or interfere with a receptacle; or
- (b) except as permitted by this local law or as authorised by the local government or an authorised person, remove a receptacle from any premise to which it was delivered by the local government or its contractor.

2.10 Verge collections

- (1) Where the local government has advertised a verge waste collection (such as a green waste, or a bulk, waste, verge collection) a person, unless with and in accordance with the approval of the local government or an authorised person –
 - (a) must deposit waste only during the period of time, and in accordance with any terms and conditions, as advertised by the local government in relation to that verge waste collection; and
 - (b) must otherwise comply with any advertised terms and conditions.
- (2) Where waste has been deposited on a verge for a verge waste collection, a person must not remove any of the waste for a commercial purpose but may remove it for any other purpose.
- (3) Except where waste is lawfully removed from a verge under this clause, a person must not disassemble or tamper with any waste deposited on a verge for a verge waste collection so as to increase the risk of harm to any person.
- (4) Subclause (2) does not apply to the local government or a person engaged or contracted by the local government in relation to the verge waste collection.

PART 3 - GENERAL DUTIES

3.1 Duties of an owner or occupier

- (1) An owner or occupier of premises must –
 - (a) ensure that a sufficient number of receptacles are provided to contain all waste which accumulates or may accumulate in or from the premises;
 - (b) take reasonable steps to ensure that each receptacle is kept in good condition and repair;
 - (c) take all reasonable steps to –
 - (i) prevent fly breeding and keep each receptacle free of flies, maggots, cockroaches, rodents and other vectors that may transmit disease;
 - (ii) prevent the emissions of offensive or noxious odours from each receptacle; and
 - (iii) ensure that no receptacle causes a nuisance to an occupier of adjoining premises; and
 - (d) whenever directed to do so by the local government or an authorised person, thoroughly clean, disinfect, deodorise and apply a residual insecticide to each receptacle.

3.2 Removal of waste from premises

- (1) A person must not remove any waste from premises unless that person is –
 - (a) the owner or occupier of the premises;
 - (b) authorised to do so by the owner or occupier of the premises; or
 - (c) authorised in writing to do so by the local government or an Authorised Person; or
- (2) A person must not remove any waste from a receptacle without the approval of –
 - (a) the local government or an authorised person; or
 - (b) the owner or occupier of the premises at which the receptacle is ordinarily kept.

3.3 Receptacles and containers for public use

- A person must not, without the approval of the local government or an authorised person –
- (a) deposit household, commercial or other waste from any premises on or into; or
 - (b) remove any waste from a receptacle provided for the use of the general public in a public place.

PART 4 – ENFORCEMENT

4.1 Offences and general penalty

- (1) A 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 a person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000 and if the offence is of a continuing nature, to a further penalty not exceeding \$500 in respect of each day or part of a day which the offence has continued.

4.2 Other costs and expenses

- (1) A person who is convicted of an offence under this local law is to be liable, in addition to any penalty imposed under clause 4.1, to pay to the local government the costs and expenses incurred by the local government in taking remedial action such as -
 - (a) removing and lawfully disposing of toxic, hazardous or poisonous waste; or
 - (b) making good any damage caused to a waste facility.
- (2) The costs and expenses incurred by the local government are to be recoverable, as a debt due to the local government, in a court of competent civil jurisdiction.

4.3 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the LG Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2

4.4 Form of notices

- (1) Where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the LG Act is that of Form 1 in Schedule 1 of the LG Regulations.
- (2) The form of the infringement notice given under section 9.16 of the LG Act is that of Form 2 in Schedule 1 of the LG regulations.
- (3) The form of the infringement withdrawal notice given under section 9.20 of the LG Act is that of Form 3 in Schedule 1 of the LG Regulations.

Schedule 1 **MEANING OF 'NON-COLLECTABLE WASTE'**

“non-collectable waste” means-

- (a) hot or burning material;
- (b) household hazardous waste, including paint, acids, alkalis, fire extinguishers, solvents, pesticides, oils, gas cylinders, batteries, chemicals and heavy metals;
- (c) any other hazardous material, such as radioactive waste;
- (d) any explosive material, such as flares or ammunition;
- (e) electrical and electronic equipment;
- (f) hospital, medical, veterinary, laboratory or pathological substances;
- (g) construction or demolition waste;
- (h) sewage;
- (i) 'controlled waste' for the purposes of the Environmental Protection (Controlled Waste) Regulation 2004;
- (j) any object that is greater in length, width, or breadth than the corresponding dimension of the receptacle or that will not allow the lid of the receptacle to be tightly closed;
- (k) waste that is or is likely to become offensive or a nuisance, or give off an offensive or noxious odour, or to attract flies or cause fly breeding unless it is first wrapped in non-absorbent or impervious material or placed in a sealed impervious and leak-proof container; and

- (l) any other waste determined by the local government to be non-collectable waste.

Schedule 2
PRESCRIBED OFFENCES

Item No.	Clause No.	Description	Modified Penalty
	2.1(2)(a)	Failing to pay fee or charge	\$350
	2.1 (2)(b)	Failing to ensure lawful use of receptacle	\$350
	2.2(1)	Depositing non-collectable waste in a receptacle	\$350
	2.2(2)	Depositing waste in another receptacle without consent	\$350
	2.3(1)	Exceeding weight capacity of a general waste receptacle	\$350
	2.3(2)(3)	Depositing unauthorised waste in a general waste receptacle	\$350
	2.4(a)	Depositing unauthorised waste in a recycling waste receptacle	\$350
	2.4(b)(c)	Exceeding weight capacity of a recycling waste receptacle	\$350
	2.5(a)	Depositing unauthorised waste in a organic waste receptacle	\$350
	2.5(b)(c)	Exceeding weight capacity of a organic waste receptacle	\$350
	2.6(3)	Failing to comply with a direction concerning placement or removal of a receptacle	\$250
	2.7(a)	Failing to keep a receptacle in the required location	\$250
	2.7(b)	Failing to place a receptacle for collection in a lawful position	\$250
	2.7(c)	Failing to provide a sufficient number of receptacles	\$250
	2.7(d)	Failing to notify of a lost, stolen, damaged or defective receptacle	\$250
	2.9(a)	Damaging, destroying or interfering with a receptacle	\$400
	2.9(b)	Removing a receptacle from premises without permission	\$400
	2.10(1)	Failing to comply with a term or condition of verge waste collection	\$400
	2.10(2)	Removing waste for commercial purposes	\$350
	2.10(3)	Disassembling or leaving in disarray waste deposited for collection	\$250
	3.1(a)	Failing to provide a sufficient number of receptacles	\$250
	3.1(b)	Failing to keep a receptacle in a good condition and repair	\$250
	3.1(c)(i)	Failing to prevent fly breeding and disease transmitting vectors in a receptacle	\$350
	3.1(c)(ii)	Failing to prevent the emission of offensive or noxious odours from a receptacle	\$350
	3.1(c)(iii)	Allowing a receptacle to cause a nuisance	\$350
	3.1(d)	Failing to comply with a direction to disinfect or deodorise receptacle	\$250
	3.2(1)	Unauthorised removal of waste from premises	\$250
	3.2(2)	Unauthorised removal of waste from receptacle	\$250
	3.3(1)(a)	Deposit of household, commercial or other waste from any premises on or into receptacle for general public use	\$200
	3.3(1)(b)	Remove waste from receptacle provided for general public use	\$200