

Swimrun Australia Waiver

I apply for entry to the Event.

If I am not currently a member of Triathlon Australia, I apply for one-day membership of Triathlon Australia.

In consideration of my application to enter the Event and (where applicable) my application for one-day membership being accepted, I acknowledge and agree that (for competitors under the age of 18 a parent or guardian must also make this declaration):

Definitions

1. In this Event Entry Declaration:
 - a. "Affiliated Club" has the same meaning as in the Triathlon Australia Constitution and where the context permits, the Affiliated Club in which I apply to become a member.
 - b. "Claim" means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Triathlon Activities, but does not include:
 - i. a claim against Triathlon Australia by any person expressly entitled to make a claim under a Triathlon Australia insurance policy; or
 - ii. A claim against Triathlon Australia under any right expressly conferred by its Constitution or regulations.
 - c. "Event" means the event that I am applying for.
 - d. "Event Organiser" means OceanFit Pty Ltd ACN 602 106 016 (trading as Swimrun Australia)
 - e. "STTA" refers to a State and Territory Triathlon Association and has the same meaning as in the Triathlon Australia Constitution.
 - f. "Triathlon Activities" means performing or participating in any capacity in any authorised or recognized Triathlon Organisation activity.
 - g. "Triathlon Australia" means Triathlon Australia Limited ACN 007 356 907.
 - h. "Triathlon Organisation" means and includes the Event Organiser, Triathlon Australia, the STTAs and the Affiliated Clubs and where the context so permits, their respective directors, officers, members, servants or agents.

Rules of participation

2. The Event rules, this declaration and any other terms and conditions of entry comprise a contract between me and the Triathlon Organisations which is necessary and reasonable for promoting and conducting the Event.

3. I acknowledge my application to enter the Event will be accepted upon notification to me by the Triathlon Organisation and I acknowledge that I will be bound by and agree to comply with such rules, terms and conditions as may be imposed by the Triathlon Organisation with respect to the conduct and management of the Event, including but not limited to competition rules and all relevant rules, regulations, policies and codes of conduct of the Triathlon Organisation, as amended from time to time. I agree that I will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and any appeal mechanisms of the Triathlon Organisation. I agree to follow any rules and/or directions set by Triathlon Australia or any relevant STTA or Affiliated Club in connection with the Event and understand that if I fail to comply with any such rules or directions I will not be permitted to participate or to continue to participate in the Event and no refund will be given.

Risk Warning

4. My participation in the recreational activities supplied by the Triathlon Organisation is inherently dangerous and may involve risk. There are risks specifically associated with participation in the recreational activities and accidents can and often do happen which may result in personal injury, death or property damage. Prior to undertaking any such recreational activity, I should ensure I am aware of all of the risks involved, including those risks associated with any health condition I may have.
5. By agreeing to these terms and conditions, I acknowledge, agree, and understand that participation in the recreational services provided by the Event Organiser may involve risk. I agree and undertake any such risk voluntarily and at my own risk. I acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

Waiver

6. It is possible for a supplier of recreational services or recreational activities to ask me to agree that statutory guarantees under the Australian Consumer Law (which is Schedule 2 to the Competition and Consumer Act 2010 (Cth)) do not apply to me (or a person for whom or on whose behalf I am acquiring the services or activities).
7. By agreeing to these terms and conditions, I will be agreeing that my rights (or the rights of a person for whom or on whose behalf I am acquiring the services) to sue the supplier in relation to recreational services or recreational activities that you undertake because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

For Queensland, New South Wales, Western Australia, Tasmania, Northern Territory and Australian Capital Territory and Commonwealth

By agreeing to our Terms & Conditions, you agree that the liability of the Triathlon Organisation in relation to the activities (as defined by the Competition and Consumer Act 2010 (Cth), the Consumer Affairs and Fair Trading Act (NT) and the Australian Consumer Law) and recreational

activities (as defined by the Civil Liability Act 2002 (NSW) and the Civil Liability Act 2002 (WA)) for any:

- a. Deaths;
- b. Physical or mental injuries (including the aggravation, acceleration or recurrence of such an injury);
- c. The contraction, aggravation or acceleration of a disease;
- d. The coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual:
- e. That is or may be harmful or disadvantageous to you or the community; or
- f. That may result in harm or disadvantage to you or the community;
- g. That may be suffered by you (or a person for whom or on whose behalf you are acquiring the services) resulting from the supply of the recreational services or recreational activities;

is excluded and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded.

You acknowledge and agree that the above provision operates to exclude the liability of the Triathlon Organisation as a result of a breach of an express or implied warranty that the recreational services will be rendered with reasonable care and skill in accordance with section 5J of the Civil Liability Act 2002 (WA) and section 5N of the Civil Liability Act 2002 (NSW).

For South Australia

Exclusion, restriction or modification of rights under the Australian Consumer Law (SA)

Your rights:

Under sections 60 and 61 of the Australian Consumer Law (SA), if a person in trade or commerce supplies you with services (including recreational services), there is—

- a. A statutory guarantee that those services will be rendered with due care and skill; and
- b. A statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and
- c. A statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services).

Excluding, restricting or modifying your rights:

Under section 42 of the Fair Trading Act 1987, the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any personal injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a third party consumer).

If you sign this form, you will be agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third party consumer suffer personal injury.

Important

You do not have to agree to exclude, restrict or modify your rights by agreeing to these Terms & Conditions. The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by agreeing to these Terms & Conditions. Even if you agree to these Terms & Conditions, you may still have further legal rights against the supplier.

A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights. A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

Agreement to exclude, restrict or modify your rights:

You agree that the liability of the person under the age of 18 [named as a participant on your booking form] for any personal injury that may result from the supply of the recreational services that may be suffered by you (or a person for whom or on whose behalf you are acquiring the services) is excluded.

Further information: Further information about your rights can be found at www.ocba.sa.gov.au

For Victoria

Warning under the Australian Consumer Law And Fair Trading Act 2012 (Vic)

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on these Terms & Conditions is required to ensure that the recreational services it supplies to you—

- a. Are rendered with due care and skill; and
- b. Are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and

- c. Might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the Australian Consumer Law and Fair Trading Act 2012, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in these Terms & Conditions.

NOTE: The change to your rights, as set out in these Terms & Conditions, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

Agreement to exclude, restrict or modify your rights:

You agree that the liability of the Triathlon Organisation for any personal injury that may result from the supply of the recreational services that may be suffered by you (or a person for whom or on whose behalf you are acquiring the services) is excluded.

Release and indemnity

8. In consideration of the Triathlon Organisation accepting my entry into the Event, to the extent permitted by law, I:
 - a. release and will release the Triathlon Organisation from all Claims that I may have or may have had but for this release arising from or in connection with my membership or participation in the Event; and
 - b. release and indemnify the Triathlon Organisation against any Claim which may be made by me or on me behalf for or in respect of or arising out of my death whether caused by the negligence or breach of contract by any Triathlon Organisation or in any other manner whatsoever; and
 - c. indemnify and will keep indemnified the Triathlon Organisation to the extent permitted by law in respect of any Claim by any person:
 - i. arising as a result of or in connection with my membership or my participation in the Event;
 - ii. against any Triathlon Organisation in respect of any injury, loss or damage arising out of or in connection with my failure to comply with Triathlon Organisation's rules and/or directions,

save that the above releases and indemnities shall not apply to the extent that the loss, damage or injury that is the subject of the Claim is caused or contributed to by the grossly negligent act or omission of a Triathlon Organisation.

Bar to Proceedings

9. I acknowledge that the Triathlon Organisation may plead this contract as a bar to proceedings now or in the future commenced by or on my behalf or by any person claiming through me. Where I commence proceedings against any Triathlon Organisation, I:
- a. will commence those proceedings in the courts of the jurisdiction in which any incident occurs;
 - b. waive any right to object to the exercise of such jurisdiction;
 - c. will, where I seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by any Triathlon Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by any Triathlon Organisation to remove the proceedings to the jurisdiction in which any incident occurs;
 - d. will pay the costs of any application made by any Triathlon Organisation under paragraph 10(c) and will consent to any application for security of costs made at any time by any Triathlon Organisation; and
 - e. consent to paying any Triathlon Organisations' legal defence costs of the proceedings (on a solicitor-client basis) where any Triathlon Organisation successfully defend the proceedings.

Insurance

10. Insurance is in place that may provide limited cover to me whilst I am participating in the Event. I understand that this insurance may not cover me for all injury, loss or damage sustained by me and I acknowledge that the Triathlon Organisation do not make any representations about the suitability of any insurance. I also understand I can, in my own interests and at my own expense, seek and obtain personal insurances over and above any cover that may be provided by the Triathlon Organisation.

Fitness to Participate

11. I declare that I am medically and physically fit and able to participate in the Event. I am not and must not be a danger to myself or to the health and safety of others. I will immediately notify the Triathlon Organisation in writing of any change to my medical condition, fitness and ability to participate. I understand and accept that the Triathlon Organisation will continue to rely upon this declaration as evidence of my fitness and ability to participate in the Event. I will report any accidents, injuries, loss or damage I suffer during the Event to the relevant Triathlon Organisation before I leave any relevant venue.

Medical Treatment

12. I consent to receiving any medical treatment that a Triathlon Organisation reasonably considers necessary or desirable for me during my participation in the Event. I also agree to reimburse the relevant Triathlon Organisation for any costs or expenses incurred in providing me with medical treatment.

Exclusion of Applicant

13. I warrant that I have not at any time been excluded from Triathlon Activities by a medical practitioner or any person or entity including but not limited to Triathlon Australia and its constituent STTAs and Affiliated Clubs. I acknowledge and agree that the Triathlon Organisation may demand a medical certificate or opinion as to my fitness from a qualified medical practitioner PRIOR to my undertaking any Triathlon Activities.

Safety

14. I understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during any Triathlon Activity, and I accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

Prevailing conditions

15. The Event and the conduct of, and participation in the Event may be affected by weather and associated conditions. Given there is often an element of "luck of the prevailing conditions" in entering and competing in the Event I acknowledge and agree the Event organisers cannot control the weather and associated conditions. I accept that in the event of extreme weather conditions the Triathlon Organisation reserves the right to alter the format of, shorten, or cancel the Event in the interest of competitor safety. I acknowledge that the Triathlon Organisation will use all reasonable efforts to conduct the Event in the planned format if safe to do so. Should prevailing weather conditions force any change I accept that the Triathlon Organisation is not obliged to provide any refund to me, nor to provide a credit or transfer for me to another Triathlon Organisation event, nor to restage the Event, as weather and associated conditions are beyond the control of the Triathlon Organisation.

Right to Use Image

16. I acknowledge and consent to photographs and electronic images being taken of me during my participation in the Event. I acknowledge and agree that such photographs and electronic images are owned by the Triathlon Organisation and that the Triathlon Organisation may use the photographs for promotional or other purposes without my further consent being necessary. Further, I consent to the Triathlon Organisation using my name, image, likeness and also my performance in the Event, at any time, by any form of media, to promote the Triathlon Activities or the Triathlon Organisation.

Privacy

17. I understand that the personal information I have provided in my membership application is collected, used and disclosed in accordance with the Privacy Policy of the Event Organiser. I acknowledge that the Event Organiser and Triathlon Australia may use and disclose my personal information for the purposes of conducting and administering Triathlon Activities and other related activities across Australia, providing me with member services or promotional material, complying with legal obligations or otherwise in accordance with the Event Organiser's Privacy Policy and/or Triathlon Australia Privacy Policy. The Event Organiser or Triathlon Australia may share my information (including name, date of birth, emergency contact details and suburb of residence) with third parties such as event timing companies and first aid and medical services, however, my information will not generally be disclosed to anyone outside Australia. I understand that the Event Organiser's Privacy Policy and Triathlon Australia's Privacy Policy contains information about how I may access and request correction of my personal information held by the Event Organiser or Triathlon Australia or make a complaint about the handling of my personal information, and provides information about how a complaint will be dealt with by the Event Organiser or Triathlon Australia. I acknowledge that my Event entry and membership application may be rejected if the information is not provided. If I do not wish to receive promotional material from the Event Organiser or Triathlon Australia or their sponsors and other third parties I must advise the relevant Event Organiser and Triathlon Australia in writing or via the opt-out procedures provided in the relevant communication.

Non-transferable

18. Entries are non-transferable to other events or to other people, except when explicitly stipulated in the Event rules and under the terms of those rules. Any attempt to transfer my entry to another person without the knowledge of the Triathlon Organisation may result in the cancellation of my entry without refund and I may not be permitted to participate in further Triathlon Activities or events.

Non-refundable

19. I accept that my entry fees are non-refundable.

Entire Agreement

20. This agreement (and the documents to which it refers) constitutes the entire agreement between the parties in respect of the Event and supersedes all other agreements, understandings, representations and negotiations in relation to the Event.

Severance

21. If any provision of this event entry application and declaration is invalid or unenforceable in any jurisdiction, the phrase or clause is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable. If the phrase or clause cannot be so read down it will be severed to the extent of the invalidity or unenforceability. Such severance does not affect the

remaining provisions of this application and declaration or affect the validity or enforceability of it in any other jurisdiction.

Governing Law

22. The governing law of this agreement is the law of the state of that the Event takes place in ('Jurisdiction'). I irrevocably and unconditionally consent and submit to the Jurisdiction of the courts of the Jurisdiction in which any incident occurs and waive any right to object to the exercise of such Jurisdiction.

Warranty

23. I warrant that all information provided is true and correct. I acknowledge this application and declaration cannot be amended. If I do amend it my application will be null and void and cannot be accepted by the Triathlon Organisation.

I have read, understood, acknowledge and agree to the above terms including the warning, exclusion of implied terms, release and indemnity.

***Where the applicant is under 18 years of age this declaration must also be signed by the applicant's parent or legal guardian, who agree to the additional terms below:

I am the parent or guardian of the applicant. I authorise and consent to the applicant participating in the Event. In consideration of the applicant's entry being accepted, I expressly agree to be responsible for the applicant's behaviour and agree to accept in my capacity as parent or guardian, the terms set out in this entry application and declaration, including the provision by me of a release and indemnity in the terms set out above.