

Outward Bound Australia Participant Code of Conduct and Risk Warning 2021

Code of Conduct for all Program and Adventurous Journey Participants, Accompanying Adults and Client Back-up Staff

I. Definitions

In these terms:

- I.1. Australian Consumer Law Victoria means the Australian Consumer Law and Fair Trading Act 2012 (Vic) and any amendments, replacements and re-enactments;
- I.2. Australian Consumer Law means Schedule 2 of the Competition and Consumer Act;
- I.3. Civil Liability Act means the Civil Liability Act 2002 (NSW) and any amendments, replacements and re-enactments;
- I.4. Civil Liability Act WA means the Civil Liability Act 2002 (WA) and any amendments, replacements and re-enactments;
- I.5. Claim means actions, suits, causes of action, arbitrations, debts, dues, costs, claims, demands, verdicts, orders and judgements either at law or in equity or arising under a statute;
- I.6. Competition and Consumer Act means the Competition and Consumer Act 201 (Cth), and any amendments, replacements and re-enactments;
- I.7. Program means any Outward Bound program or course
- I.8. Loss means, in relation to any person, any damage, loss, cost expense or liability incurred by the person or any claim, action, proceeding or investigation made against the person however arising and whether present or future, fixed or unascertained, actual or contingent. Loss includes damages of any nature including but not limited to post and future economic loss, loss (general damages), damages for gratuitous attendant care services, damages for loss of capacity to provide domestic services, damages for loss of superannuation entitlements;

- 1.9. Terms means this Participant Code of Conduct and Risk Warning, and any terms set out in the Participant Consent and Medical Form or Terms and Conditions for Bookings and Payments;
- 1.10. We, us, our, or Outward Bound is a reference to The Australian Outward Bound Foundation Limited (CAN 000 250 635) and its employees, agents and contractors;
- 1.11. You or Participant is a reference to you, the participant in our program, and if applicable the legal parent or guardian of the participant.

2. Enrollment

- 2.1. Prior to participating in any Program, all Participants and their legal parent/guardian (if applicable) must read this Code of Conduct and complete the Participant Consent and Medical Form;
- 2.2. If you are not participating in a Program through a school or other organisation (where payment for a Program is to be made via the school or other organisation), then you will be required to complete an Outward Bound enrolment form. Any terms and conditions attached to such a form, including any terms and conditions regarding payment of Program fees, are in addition to this Code of Conduct;
- 2.3. If you are a student of a school or other organisation (where payment for a Program is to be made via the school or other organisation), your payment is subject to the terms and conditions imposed by your school or other organisation.

3. Cancellation

- 3.1. We can decide, in our absolute discretion, whether for safety reasons, extreme adverse weather, or other reasonable reasons, to postpone or cancel a Program;
- 3.2. If we cancel a Program and do not postpone it, we will reimburse you (or your school or other organisation), as per the relevant Terms and Conditions for Bookings and Payments, available at <https://www.outwardbound.org.au/terms-and-conditions/>, for the affected Program. We otherwise will not be liable to you for cancelling a Program;
- 3.3. We reserve the right to cancel your participation in a Program, if in our opinion (acting reasonably), you have in any way breached this Code of Conduct, or have acted in any way which jeopardises the safety of yourself, any other Program participant, or any employee, agent or contractor of Outward Bound, during your participation in the relevant Program.

4. Participant Conduct

You must:

- 4.1. Abide by the safety guidelines and instructions, and behavioural policies issued by us from time to time;
- 4.2. Wear any safety equipment instructed by us;
- 4.3. Maintain appropriate behaviour, to our reasonable satisfaction, including refraining from using obscene language, and always acting with respect and courtesy to our staff;
- 4.4. Not consume any alcohol, tobacco or illicit substances during participation of a Program;
- 4.5. Respect the environment, including disposing of all rubbish;
- 4.6. Not cause damage to any equipment owned by Outward Bound, or that of third-party suppliers who provide the equipment for the purpose of the activities involved in a Program.

5. Personal Belongings

Any personal belongings you bring with you while you participate in a Program is at your own risk. We will not be liable or responsible in any manner whatsoever for damage to or loss of your property.

6. Medical Insurance, Injury and Illness

- 6.1. It is your responsibility to take out and maintain appropriate medical insurance, for the duration of time that you participate in any Program, to cover the cost of any medical, dental, ambulance or related expenses (Expenses) arising from injury or illness;
- 6.2. In the event of injury or illness occurring to you during your participation in a Program, you:
 - 6.2.1. Acknowledge that certain activities will be provided in rural or remote geographic locations where medical, doctor or ambulance services are less readily available or accessible;
 - 6.2.2. Authorise us to seek any medical attention that we deem appropriate, and which is otherwise available in the circumstances;
 - 6.2.3. Consent to the information contained in the Participant Consent and Medical Form to be made available to the relevant persons providing medical assistance or advice;
 - 6.2.4. Will be fully responsible for all Expenses.

7. Risk Warning and Our Liability

- 7.1. You acknowledge that the activities involved in a Program, and the Program itself, are a recreational activity that involves risk. Programs include various adventurous outdoor activities, requiring physical and mental effort, in varied and sometimes adverse weather conditions and often in rural or remote geographic locations and/or in rough terrain. You acknowledge that the risks include risk of physical injury or death, illness, inducement to exacerbation of medical conditions, mental harm or distress, and damage to your property. You acknowledge that your health, ability and conduct will also affect such risks. You also acknowledge that because certain activities will be provided in rural or remote geographic locations, there is risk that there may be less or slower access to medical, doctor or ambulance services, or evacuation or search services;
- 7.2. You agree that you engage in a Program at your own risk;
- 7.3. In the event that these Terms constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Act or the Australian Consumer Law, you may be entitled to statutory consumer guarantees. Except to the extent permitted by law, nothing in these Terms is intended to exclude, restrict or modify those consume guarantees in circumstances where they apply;
- 7.4. To the extent permitted under the Australia Consumer Law, and subject to clause 7(e), we limit our liability for a breach of any guarantee or warranty imposed under the Australian Consumer Law, to one or more of the following at our election:
- 7.4.1. Inn the case of products, to replacement of the products or supply of equivalent products, repair of the products; payment of the cost of replacing the products or of acquiring equivalent products; or payment of the cost of having the goods repaired; and
- 7.4.2. In the case of services, to: supply of the services again; or payment of the cost of having the services supplied again.
- 7.5. To the extent permitted under section 139A of the Competition and Consumer Act, and to the extent that Outward Bound provides a “recreational service” to you (as defined under that Section), Outward Bound excludes application of the guarantees and Subdivision B of Division I of Part 3-2 of the Australian Consumer Law, the exercise of any rights conferred under the provisions of that Subdivision, and excludes liability for failing to comply with a guarantee under that Subdivision for:
- 7.5.1. Death;

7.5.2. Physical or mental injury (including aggravation, acceleration or recurrence of such injury);

7.5.3. The contraction, aggravation or acceleration of a disease;

7.5.4. 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:

7.5.4.1. That is or may be harmful or disadvantageous to you; or

7.5.4.2. That may result in harm or disadvantage to you or the community. This exclusion of liability does not apply where significant personal injury is caused by the reckless conduct of Outward Bound in accordance with s139A of the Australian Consumer Law.

7.6. To the extent permitted under the Civil Liability Act NSW, and to the extent that Outward Bound provides you with “recreation services” and a Program (and/or its activities) is a “recreational activity” as defined under that Act, Outward Bound excludes all liability (including any Loss or Claim) arising from or in connection with a breach of any express or implied warranties and conditions that our services will be provided with reasonable care and skill, regardless of whether the claim is brought in tort (including in negligence), in contract, under statute or otherwise. In the event that a Court deems that s139A of the Australian Consumer Law applies to this exclusion clause, then the exclusion of liability in this clause will not apply where significant personal injury is caused by the reckless conduct of Outward Bound in accordance with s139A of the Australian Consumer Law.

7.7. In the event that the Civil Liability Act WA applies to these Terms, your participation in the Program and/or otherwise to the services we provide you, to the extent permitted under Section 5J of the Civil Liability Act WA, and to the extent that Outward Bound provides you with “recreation services” and a Program (and/or its activities) is a “recreational activity” as defined under that Act, Outward Bound excludes all liability (including any Loss or Claim) arising from or in connection with a breach of any express or implied warranties and conditions that our services will be provided with reasonable care and skill, regardless of whether the claim is brought in tort (including in negligence), in contract, under statute or otherwise. The exclusion will not apply if Outward Bound commits reckless conduct as set out in section 5J(6) of the Civil Liability Act WA.

7.8. In the event that the Australian Consumer Law Victoria applies to these Terms, your participation in the Program, and/or otherwise to the services we provide you, then 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 this form is required to ensure that the recreational services it supplies to you:

7.8.1. Are rendered with due care and skill; and

7.8.2. Are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and

7.8.3. 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 this form. NOTE: The change to your rights, as set out in this form, 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 Australia Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) for the Australian Consumer Law and Fair Trading Act 2012.

7.9. Subject to clauses 7(e) to (h), and to the extent permitted by law, you release Outward Bound from and against any Loss or Claim arising from or in connection with your participation in a Program, or our negligence;

7.10. You indemnify Outward Bound from and against all Loss or Claims incurred by Outward Bound arising from or in connection with:

7.10.1. Your participation in a Program;

7.10.2. Your breach of these Terms;

7.10.3. Your negligent act or omission, including but not limited to providing inaccurate or incomplete information, or omitting information, in the Participant Consent and Medical Form;

7.11. Nothing in clauses 7(i) and (j) limits or excludes liability of Outward Bound for losses, damages or expenses arising as a result of the reckless conduct of Outward Bound, and nothing in this clause 7 excludes any liability of Outward Bound that cannot be excluded under an applicable law.

8. Privacy

- 8.1. We agree to keep your personal information, including the sensitive information you have disclosed in the Participant Consent and Medical Form, in accordance with our Privacy Policy located at <https://www.outwardbound.org.au/wp-content/uploads/2021/06/ERC-Privacy-Policy.pdf>
- 8.2. You agree that we may use your personal information for marketing and promotional purposes, and use any feedback you provide us for research and internal business analysis purposes.
- 8.2.1. You may rescind this agreement in the relevant questions of the Participant Consent and Medical Form.

9. General

- 9.1. Amendment: These Terms may only be varied in writing;
- 9.2. Severability: If any provision of these Terms at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect;
- 9.3. Law and Jurisdiction: The Contract is governed by, and shall be construed in accordance with the laws from time to time in force in New South Wales. You and Outward Bound Australia agree to submit to the exclusive jurisdiction of the courts of New South Wales.