

You apply to participate in the Event. In consideration of your participation being accepted, you agree to the terms and conditions below.

**Definitions**

- 1) In these terms and conditions:
  - Affiliated Club** means the power boat club hosting the Event.
  - APBA** means the Australian Power Boat Association (ACN 000 991 775).
  - PB** means power boat or power boating.
  - Claim** means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any PB Activities, but does not include:
    - a. a claim against APBA by any person expressly entitled to make a claim under an APBA insurance policy; or
    - b. a claim against APBA under any right expressly conferred by its Constitution or regulations.
  - Event** means the relevant power boat event, sanctioned by APBA and the State Council and hosted by the Affiliated Club.
  - PB Activities** mean performing or participating in any capacity in any authorised or recognised PB Organisation activity including but not limited to the Event.
  - PB Organisations** mean and include APBA, the State Councils and the Affiliated Club and where the context so permits, their respective directors, officers, members, servants or agents, including scrutineers.
  - State Council** means the South Australian Council of the Australian Power Boat Association Incorporated (ABN 83 279 401 512).
  - You** refers to the person participating in the Event.

**Rules of participation**

- 2) These terms and conditions and any other terms and conditions for the Event comprise a contract between you and the PB Organisations, which is necessary and reasonable for promoting and conducting the Event.
- 3) You acknowledge this entry to the Event will be accepted upon notification to you by the PB Organisations and you acknowledge that you will be bound by and agree to comply with such rules, terms and conditions as may be imposed by the PB Organisations 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 PB Organisations, as amended from time to time. You agree that you will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and any appeal mechanisms of the PB Organisations. You agree that you will follow any rules and/or directions set by APBA or any relevant State Council or Affiliated Club in connection with the Event and understand that if you fail to comply with any such rules or directions you will not be permitted to participate or to continue to participate in the Event and no refund will be given.

**Risk Warning**

- 4) Participation in the recreational activities supplied by the PB Organisations 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. These risks include, but are not limited to, extreme weather and water conditions, loss of control of the boat, collisions with objects and/or other boats, mechanical failure and equipment on the boat causing injury. Prior to undertaking any such recreational activity, you should ensure you are aware of all of the risks involved, including those risks associated with any health condition you may have.
- 5) By agreeing to these terms and conditions, you acknowledge, agree, and understand that participation in the recreational services provided by the PB Organisations may involve risk. You agree and undertake any such risk voluntarily and at your own risk. You acknowledge that the assumption of risk and warning above constitutes a 'risk warning' in accordance with relevant legislation.

**Waiver**

- 6) A supplier of recreational services or recreational activities can ask you 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 you (or a person for whom or on whose behalf you are acquiring the services or activities).
- 7) By agreeing to these terms and conditions, you will be agreeing that your rights (or the rights of a person for whom or on whose behalf you are acquiring the services) to sue the supplier in relation to recreational services or recreational activities undertaken because the services or recreational activities provided were not in accordance with the guarantees are excluded, restricted or modified as set out below.

**For recreational services or recreational activities to which the Australian Consumer Law (Commonwealth) applies:**

- 8) By agreeing to these terms and conditions, you agree that the liability of the PB Organisations in relation to recreational services (as that term is defined in the *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law*) for any:
  - a. death;
  - b. physical or mental injury (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:
    - (i) that is or may be harmful or disadvantageous to you or the community; or
    - (ii) that may result in harm or disadvantage to you or the community, that may be suffered by you resulting from the supply of 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.

**For recreational services to which the Australian Consumer Law (South Australia) applies:**

- 9) 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. 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. 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* (SA), 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 agree to the terms and conditions in 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 the terms and conditions in this form. 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 the terms and conditions in this form. Even if you agree to the terms and conditions in this form, 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 PB Organisations 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.

**Definitions:**

1. Recreational services are services that consist of participation in a sporting activity or similar leisure-time pursuit or any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.
2. Personal injury is bodily injury and includes mental and nervous shock and death.

**Further information:** Further information about your rights can be found at [www.ocba.sa.gov.au](http://www.ocba.sa.gov.au)

**Release and indemnity**

- 10) In consideration of the relevant PB Organisation accepting this entry, to the extent permitted by law, you:
  - a. release and will release the PB Organisation(s) from all Claims that you may have or may have had but for this release arising from or in connection with participation in the Event;

- b. release and indemnify any scrutineer utilised by a PB Organisation prior to your participation in the Event from all Claims that you may have or may have had but for this release arising from or in connection with your participation in the Event, or the relevant scrutineer scrutineering your boat;
- c. release and indemnify the PB Organisations against any Claim which may be made by you or on the your behalf, for or in respect of or arising out of your death whether caused by the negligence or breach of contract by any PB Organisation or in any other manner whatsoever; and
- d. indemnify and will keep indemnified the PB Organisations to the extent permitted by law in respect of any Claim by any person:
  - (i) arising as a result of or in connection with your participation in any PB Activities; or
  - (ii) against any PB Organisation in respect of any injury, loss or damage arising out of or in connection with your failure to comply with PB Organisation 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 PB Organisation.

**Bar to Proceedings**

- 11) You acknowledge that the PB Organisations may plead this contract as a bar to proceedings now or in the future commenced by or on behalf of you or by any person claiming through you. Where you commence proceedings against any PB Organisation, you:
- 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 you seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by any PB Organisation) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by any PB Organisation to remove the proceedings to the jurisdiction in which any incident occurs;
  - d. will pay the costs of any application made by any PB Organisation under paragraph 11(c) and will consent to any application for security of costs made at any time by any PB Organisation; and
  - e. consent to paying any PB Organisation's legal defence costs of the proceedings (on a solicitor client basis) where any PB Organisation successfully defends the proceedings.

**Insurance**

- 12) Insurance is in place that may provide limited cover to you whilst participating in the Event or in other PB Activities. You understand that this insurance may not cover you for all injury, loss or damage sustained and you acknowledge that the PB Organisations do not make any representations about the suitability of any insurance. You also understand you can, in your own interests and at your own expense, seek and obtain personal insurances over and above any cover that may be provided by the PB Organisations.

**Fitness to Participate**

- 13) You declare that you are medically and physically fit and able to participate in the Event. You are not and must not be a danger to yourself or to the health and safety of others. You will immediately notify the PB Organisations in writing of any change to your medical condition, fitness and ability to participate. You understand and accept that the PB Organisations will continue to rely upon this declaration as evidence of your fitness and ability to participate in the Event. You will report to the relevant PB Organisations any accidents, injuries, loss or damage suffered by you during the Event before you leave any relevant venue.

**Medical Treatment**

- 14) You warrant to receiving any medical treatment that a PB Organisation reasonably considers necessary or desirable for you during participation in the Event. You also agree to reimburse the relevant PB Organisation for any costs or expenses incurred in providing you with medical treatment.

**Exclusion of Applicant**

- 15) You warrant that you are not currently excluded from PB Activities by a medical practitioner or any person or entity including but not limited to APBA and its constituent State Councils and Affiliated Clubs. You acknowledge and agree that the PB Organisations may demand a medical certificate or opinion as to your fitness from a qualified medical practitioner PRIOR to you undertaking the Event.

**Safety**

- 16) You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during the Event, and that the presence of alcohol or any mind-altering substance is strictly prohibited whilst participating in the Event. You accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

**Prevailing conditions**

- 17) The Event and the conduct of, and participation in it may be affected by weather and associated conditions. Given there is often an element of "luck of the prevailing conditions" in participating in PB Activities you acknowledge and agree organisers cannot control the weather and associated conditions. You accept that in the event of extreme weather conditions the PB Organisation reserves the right to alter the format of, shorten, or cancel the Event in the interest of competitor safety. You acknowledge that the PB 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 you accept that the PB Organisation is not obliged to provide you with any refund, or provide a credit or transfer you to another PB Activity, or to restage the Event, as weather and associated conditions are beyond the control of the PB Organisations.

**Right to Use Image**

- 18) You acknowledge and consent to photographs and electronic images being taken of you during your participation in the Event. You acknowledge and agree that such photographs and electronic images are owned by the PB Organisations and that the PB Organisations may use the photographs for promotional or other purposes without your further consent being necessary. Further, you consent to the PB Organisations using your name, image, likeness and performance in the Event, at any time, by any form of media, to promote PB Activities or PB Organisations.

**Non transferable**

- 19) A right to participate in the Event is non-transferable to other programs or people. Any attempt to transfer to another person without the knowledge of the PB Organisation may result in the cancellation of any rights granted by the PB Organisation without refund and you may not be permitted to participate in further PB Activities. You accept that fees paid for participation in the Event are non-refundable.

**Entire Agreement**

- 20) These terms and conditions (and the documents to which it refers, including the Event scrutineering form) 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 and membership.

**Severance**

- 21) If any provision of these terms and conditions are 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 these terms and conditions or affect the validity or enforceability of it in any other jurisdiction.

**Governing Law**

- 22) The governing law of this event entry and declaration is the law of the state of South Australia. You irrevocably and unconditionally consent and submit to the jurisdiction of the courts of South Australia and waive any right to object to the exercise of such jurisdiction.

**Warranty**

- 23) You warrant that all information provided is true and correct. You acknowledge these terms and conditions cannot be amended. If you do amend them these terms and conditions may be null and void and cannot be accepted by the PB Organisation.

**SIGNATURE CLAUSE**

By signing below, you declare that you have read, understood, acknowledge and agree to the terms and conditions of this volunteers terms and conditions and declaration including the exclusion of implied terms, warning, assumption of risk, release and indemnity. By signing below, you agree that if your entry for the PB Activities is accepted, you will be bound by these terms and conditions.

Name (Print) : \_\_\_\_\_ Signature: \_\_\_\_\_ \*\*\* Date: \_\_\_\_\_

Role / Job / Position: \_\_\_\_\_

\*\*\*Where a volunteer is under 18 years this application and declaration must also be signed by the applicant's parent or legal guardian.

I \_\_\_\_\_ [insert name] of \_\_\_\_\_

\_\_\_\_\_ [insert address] am the parent or guardian of the applicant. I authorise and consent to the applicant participating in the PB Activities. In consideration of the applicant's application for the PB Activities being accepted, I expressly agree to accept in my capacity as parent or guardian, the terms set out in this application and declaration. In addition, I agree to be bound by and to comply with any regulations or policies in relation to the PB Activities.