

# RISK WARNING & WAIVER ©2020 Horseforce Legal

## **PART 1** *(applicable to events wherever held in Australia except South Australia)*

Australian Barrel Horse Association ABN 25 422 622 119 ('Association' or 'supplier'), its officer holders, volunteers, employees and agents along with the Association's affiliates, warn every person riding, racing, handling, touching or going near a horse:

1. a horse is a large, heavy, herd animal, a creature of flight and has highly developed senses of hearing, sight and smell;
2. regardless of its gender, size, weight or age, a horse can react unexpectedly, unpredictably, uncontrollably and dangerously to external stimuli (auditory and visual, real and perceived) such as bite, bolt, buck, disobey riding aids, fall, jump, kick, lose balance, pig-root, rear, roll, shy, slip, stop and turn and stumble. Such reactions can also occur in myriad situations including when: a person has no riding or horse experience or is inexperienced; someone else can't manage or loses control of their horse; a horse is loose; the riding surface or sub-surface is unstable or uneven; leading a horse onto or off a float or truck; the horse has a vice or bad behavior or is unsound, sick or injured; the horse lacks fitness and/or confidence; riding gear (saddle, bridle) is not properly fitted, in poor condition or unsuitable; and, despite the Association's requirement that they be worn, failing to wear a riding helmet compliant with current Australian Standards and heeled riding footwear on a horse and protective footwear near a horse;
3. barrel racing is a competition where the horse and rider complete a barrel course against the clock, so speed on entering the arena, negotiating the barrels and exiting the arena is required for success;
4. pole bending is a competition where the horse and rider weave a path around 6 poles arranged in a line against the clock, so speed entering the arena, weaving between the poles and exiting the arena is required for success;
5. due to its speed in a barrel or pole bending competition, a horse might:
  - (a) slip, slide, stumble or lose its footing due to surface or sub-surface conditions; or
  - (b) collide with a barrel, pole or entry/exit fence or post -causing the rider to fall to the ground or into an obstacle, or the horse and rider to fall together or the horse to fall onto the rider; and
6. irrespective of prior horse handling or riding experience, riding, racing, interacting with, or going near a horse, entails a significant risk of serious physical harm, including death, from a fall (especially if riding at speed), kick, strike, drag, crush, stomp, bite or knock, even if (but especially if not) exercising reasonable care to avoid harm and wearing a riding helmet and appropriate footwear or, if physically, mentally or cognitively impaired by drugs, alcohol, medication or an existing medical condition (including pregnancy).

Every person who rides, races, handles, touches or goes near a horse at an event hosted or managed by, or affiliated with, the Association, agrees with the Association as a condition of entry into and of participating in that event:

7. he or she does so at his or her own risk;
8. he or she acknowledges that barrel racing and pole bending competitions, and horse riding in general, involve a significant risk of physical harm and the potential of death;
9. he or she will observe and perform all the Association's oral and written requests, directions and rules and, whether mounted or on the ground, keep a safe distance from another horse;
10. he or she will not ride a horse: that is lame, sick, injured or diseased or exceeds his or her skill and experience; if he or she is physically, mentally or cognitively impaired by drugs, alcohol, medication, an existing medical condition or a past or present injury, illness or disease (unless the Association has given prior approval after full written disclosure); if the riding gear is not properly fitted, in poor condition or unsuitable for the horse; without

wearing a riding helmet compliant with current Australian Standards and heeled riding footwear; in any way or anywhere that poses an unreasonable risk of harm to him or herself, the welfare of another person or the horse; anywhere that the Association has advised him or her not to ride;

11. the Association will not be liable for bodily injury to him or her, including death and mental or nervous shock, caused by, due to or arising from:
  - (a) breach of an implied or express warranty, condition or guarantee under the written and unwritten laws applicable to the location where the event is held;
  - (b) breach of a guarantee under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law* applicable to the State or Territory in which the event is held (the provisions of which subdivision are hereby excluded in any event);
  - (c) negligence or fault on its part under the law; or
  - (d) materialisation of any risk of horse riding and interaction, whether inherent, obvious or one the nature of which the Association has specifically warned against;
12. he or she will not make any claim or bring any legal action against the Association arising from or connected with any liability excluded by clause 11; and
13. if any clause above is unenforceable in whole or part, void or voidable by reason of any present or future law, it must be severed (if it may not be read down) and the remainder given full force and effect.

## **PART 2** (*applicable to events held in Victoria*)

### **WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012**

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 -

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- 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 Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

*This form may be executed by electronic signature which shall be considered as an original signature and have the same legal force and effect as an original signature. An 'electronic signature' includes electronically scanned and transmitted versions of an original.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Date:

Print name and contact number of someone to contact in case of emergency: \_\_\_\_\_