



DISCLAIMER FORM
Voluntary Assumption of Risk, Waiver,
Release and Indemnity Agreement



THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE SIGNING. BY SIGNING THIS DISCLAIMER FORM, YOU ARE DEEMED TO HAVE ACCEPTED AND UNDERSTOOD AS BINDING ON YOU ITS TERMS AND CONDITIONS AND ANY ACCOMPANYING RISKS, OBLIGATIONS AND RESPONSIBILITIES. UPON AGREEING TO THE TERMS AND CONDITIONS CONTAINED IN THIS DISCLAIMER FORM, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS.

This Agreement is between a Member wishing to participate in Club Activities (which includes Spearfishing and Underwater Hockey) and the Tweed-Gold Coast Freediving Club Inc ABN 48 605 570 540 (hereinafter 'TGCFD') which includes its organising committee members, other club members and executive. In consideration of a Member being permitted to participate in Club Activities the Member acknowledges and agrees:

1. TGCFD is in the business of providing recreational services that relate to the sports of Spearfishing and Underwater Hockey (the "Club Activities").

RISK WARNING – Voluntary Assumption of Risk

2. The Member voluntarily participates in Club Activities at their own risk and acknowledges that both Spearfishing and Underwater Hockey are potentially dangerous activities.
3. Prior to undertaking any Club Activities, the Member should ensure they are aware of all of the risks involved, including those risks associated with any health condition the Member may have.
4. By participating in Club Activities the Member is at risk of "Harm" which includes:
 - 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 the Member or the community; or
 - ii. that may result in harm or disadvantage to the Member or the community
5. **Spearfishing - Inherent Dangers** | Possible causes of Harm whilst Spearfishing include, but are not limited to:
 - a. **Blackout:** a major killer of breath-hold spearfishers. It is the result of oxygen starvation at the end of a breath-hold dive.
 - b. **Boat / diver interactions:** There is a risk of Harm from boat traffic. Harm can occur from propeller strike. There is also the risk of spearfishers being caught in currents and lost at sea.
Refer to Marine Safety Queensland (MSQ) [www.msq.qld.gov.au], Roads and Maritime Services NSW (RMS) [www.rms.nsw.gov.au] or other applicable state government website for information regarding safe boating and legal requirements for the area.
Always ensure weather conditions are suitable [www.bom.gov.au].
 - c. **Diver / diver interactions:** Underwater fishing equipment such as spearguns and pole spears have the potential to be extremely dangerous if not handled properly. When multiple divers are in the water in close vicinity together there is an increased risk that a speargun could discharge causing Harm. Likewise, spearguns must be handled correctly out of the water as well.
 - d. **Marine creatures:** The ocean has a diversity of marine life that may harm humans. Sharks, crocodiles and fish may bite; stingrays and jellyfish may sting (especially irukandji jellyfish and box jelly fish); some fish, sea snakes, blue ring octopus and cone shells are venomous. Sharks and other fish can be aggressive if speared such as bill fish and barracouta. If large species are being speared there is also a risk of entanglement.



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- e. **Rockhopping / shore diving:** Rockhopping /shore diving involves entering and exiting the water from the shore, often from rocky headlands, and then swimming in the sea, often around the head land. It presents some unique risks for the spearfisherman. Sea conditions, tides, rips, surf, boat traffic are just some risks associated with rock hopping.
- f. **General health & fitness:** As people of all ages and athletic abilities pursue spearfishing consideration must be given to the fitness level required for spearfishing. Spearfishing requires a measure of strength and stamina.
- g. **Competence & Culture:** Spearfishing is about hunting, learning fish behaviour, reading conditions, identifying 'signs' and good ground etc. While spearfishers need to utilize freediving it is a different sport to 'competitive' freediving. It can endanger spearfishers when the two sports are discussed interchangeably without fully understanding the differences between spearfishing and competitive freediving.
- h. **Equipment:** Having the right equipment whilst spearfishing is not only important for comfort and functionality but also plays an important safety role. Critical spearfishing gear includes mask, snorkel, wetsuit, weight belt, fins, gloves and socks.

SPEARSAFE | for further information go to: www.spearsafe.webs.com

- 6. **Underwater Hockey - Inherent Dangers** | Although Underwater Hockey is a limited-contact sport, there is a significant risk of Harm. Possible risks of Harm whilst playing Underwater Hockey include, but are not limited to:
 - a. Many injuries are typical sports injuries such as sprains, torn muscles and light scratches.
 - b. More major injuries might include deeper cuts, broken fingers, impacts to the head causing concussion or dental trauma.
 - c. There is also a minor risk of life-threatening injury from being struck on the head with the possibility of a major concussion and/or blackout underwater.
 - d. There is an obvious risk of drowning if knocked unconscious underwater.
 - e. Mandatory personal protective equipment needs to be worn to reduce injury risks (such as gloves, mouth guards and ear guards).
 - f. There is a risk of pulmonary capillary stress failure (Hemoptysis) in some players.

WAIVER – WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND OTHER LEGISLATION

- 7. Under the Australian Consumer Law, several statutory guarantees apply to the supply of certain goods and services (Consumer Guarantees).
- 8. These Consumer Guarantees mean that TGCFD is required to ensure that the recreational services (ie the 'Club Activities') it supplies to Members must:
 - a. be provided with acceptable care and skill or technical knowledge and taking all necessary steps to avoid loss and damage;
 - b. be fit for the purpose or give the results that the Member and the TGCFD had agreed to.
- 9. Under the Australian Consumer Law and in some states, other legislation, TGCFD is entitled to ask the Member to agree that these Consumer Guarantees do not apply to the Member.
- 10. If the Member participates in Club Activities by submitting this form, the Member will be agreeing that their rights to sue TGCFD under the Australian Consumer Law, and other legislation, if they suffer Harm because the services provided were not in accordance with these Consumer Guarantees, are excluded, restricted or modified in the way set out in this form.
- 11. The change to a Member's rights, as set out in this form, does not apply if their death or injury is due to gross negligence on the TGCFD'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.



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12. Under the Australian Consumer Law only consumers who are 18 years of age or older are able to sign recreational services' waivers: accordingly, this Disclaimer Form does not attempt in any way to exclude the consumer guarantees when it comes to minors, does not exclude or modify their consumer rights; and does not ask a parent or guardian to sign a waiver on their behalf excluding consumer guarantees.

RELEASE AND INDEMNITY

13. The Member, to the extent permitted by law:
- a. By signing this Disclaimer Form, the Member agrees that the liability of the TGCFD in relation to the Club Activities for any Harm that may be suffered by a Member resulting from the supply of the recreational services is excluded.
The Member acknowledges and agrees that the above provision operates to exclude the liability of TGCFD as a result of a breach of an express or implied warranty that the recreational services will be rendered in accordance with Consumer Guarantees pursuant to the Australian Consumer Law;
 - b. Releases and forever discharges the TGCGD from all action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Club Activities (Claims) that a Member may have or may have had but for this release arising from or in connection with a Member's participation in the Club Activities;
 - c. Release and indemnifies the TGCFD against any Claim which may be made by a Member, or on a Member's behalf, for, or in respect of, or arising out of, a Member's death whether caused by the negligence or breach of contract by TGCFD or in any other manner whatsoever; and
 - d. Indemnifies, and will keep indemnified and hold harmless, the TGCGD to the extent permitted by law in respect of any Claim made by a Member, or on a Member's behalf:
 - i. arising as a result of, or in connection with, a Member undertaking Club Activities; and
 - ii. against TGCFD in respect of any injury, loss or damage arising out of or in connection with a Member's failure to comply with TCGFD rules 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 grossly negligent acts or omissions by TCGFD.

WARRANTIES & ACKNOWLEDGMENTS

14. The Member attests that prior to undertaking any Club Activities they:
- a. are and must continue to be medically and physically fit, enjoying good health, and have sufficient expertise for participation in Club Activities;
 - b. are not a danger to themselves or to the health and safety of others;
 - c. have not at any time suffered any blackout, seizure, convulsion, fainting or dizzy spells;
 - d. are not presently receiving treatment for any condition, illness, disorder or injury which would render it unsafe for them to take part in the Club Activities.
15. The Member acknowledges that they must, and the Member agrees they will, disclose any pre-existing medical or other condition that may affect the risk that either the Member or any other person will suffer Harm. The Member acknowledges that TGCFD relies on information provided by the Member and that all such information is accurate.
16. A Pre-Existing Medical Condition includes:
- a. **Medication:** Any medication taken on a regular basis either over-the-counter or prescribed by a physician.
 - b. **Mental and Mood Conditions:** Current or history of mental illness or mood disorder including, but not limited to schizophrenia, paranoid disorder, bouts of hysteria.



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- c. **Neurological Conditions:** Including, but not limited to any history of seizure disorder, stroke, brain surgery, repeated blackouts or fainting fits, severe migraine headaches, or aneurysm of the brain's blood vessels.
 - d. **Cardiovascular Conditions:** Including, but not limited to heart attack, heart surgery, irregular heartbeat, pacemaker, uncontrolled elevated blood pressure.
 - e. **Pulmonary Conditions:** Including, but not limited to asthma, history of spontaneous collapsed lung, collapsed lung due to injury, cysts or air pockets of the lungs, severe damage to lung tissue, emphysema, any lung problem which interferes with your ability to breathe.
 - f. **Ear, nose and throat Conditions:** Including, but not limited to tumor, polyps, or cyst of the sinus cavities or nasal passages, major sinus surgery, persistent sinus infection, permanent holes of the eardrums, history of ruptured eardrum, permanent types in ear-drums, severely impaired hearing or hearing loss in one or both ears, major ear surgery.
 - g. **Eye Condition:** Including, but not limited to severe myopia, contact lens, retinal detachment, eye surgery.
 - h. **Diabetes Mellitus:** Type I Diabetes (Insulin dependent) or Type II Diabetes, which requires Insulin or oral medication for control. Any form of Diabetes that is unstable, "brittle" or produces episodes of hypoglycemia (low blood sugar reactions), hyperglycemia (extremely high blood sugar with ketosis) or there is related kidney disease, eye disease, heart disease or blood vessel disease.
 - i. **Freediving / Scuba Diving History:** Including, but not limited to previous history of a diving accident, severe blackout, decompression sickness, decompression of the inner ear of air, reverse block, lung squeeze, any lung squeeze producing pink foam, pulmonary bleeding.
 - j. **General Medical Problems:** Any physical and/or emotional condition not mentioned that might affect your safety in an underwater environment or affect your judgment under times of physical or emotional stress.
 - k. **Pregnancy:** If you are presently pregnant.
17. In the event of a Member disclosing a medical condition(s) membership is pending approval by the relevant committee of the TGCFD. The Member may be required to complete a Medical Statement certified by medical practitioner prior to engaging in Spearfishing and/or Underwater Hockey activities.
 18. The Member will not, whilst participating in Club Activities, consume or otherwise take in substances or do things that will adversely affect the Member's physical or mental ability, capacity or judgement.
 19. TGCFD reserves the right to refuse the Member, without limitation, participation in Club Activities and at any time may withdraw its consent for the Member to participation in Club Activities.
 20. Before submitting this Disclaimer Form the Member has read and fully understands its meaning and that the Member, by submitting this Disclaimer Form, may be giving up important legal rights.
 21. If the Member does not understand this form, or does not agree to be bound by the provisions of this Agreement, the Member should not participate in Club Activities.
 22. If anything in this Disclaimer Form is unenforceable, illegal or void then it is severed and the rest of this Disclaimer Form remains in force. The terms of this Risk Waiver are governed by the laws of Queensland, Australia.
 23. If the Member requires clarification or assistance regarding the contents of this Disclaimer Form or how to safely undertake the Club Activities, please contact the TGCFD prior to undertaking any Club Activities.