

Waivers

In the last few years, the High Court has been more prepared to read waiver agreements as they are written, rather than limiting their effect. Previously, the law was reluctant to recognise that individuals might accept the risk of their own dangerous activities, rather than shift the cost of these activities to (usually insured) defendants.

That is, the law is now more willing to recognise that individuals can accept the risk of sustaining injury and if a waiver agreement is in place, the individual has accepted the risk that eventuated. One of the effects of this change in the High Court's attitude is that individuals will think more about their own safety, leading to fewer injuries, less claims and lower public liability insurance premiums for organisations. Not only should this reduce the number of injuries sustained, but it should make community activities more affordable.

At the same time, with the 2002 amendments to the Victorian *Wrings Act* (and the *Civil Liability Acts* in other States), there now is a greater emphasis on people taking responsibility for their own actions.

However, this greater emphasis on personal responsibility coming out of parliament and the High Court has had a contradictory effect. Perhaps in reaction to these developments, lower courts (where most claims are heard) can now be willing to find that the cause of an injury was foreseeable to a defendant, so as to allow a claimant to recover damages. There are significant costs in appealing a judgment to a higher court and most community organisations and their insurers will often accept a lower court's judgment, rather than expend further costs in bringing an appeal. While this might provide 'justice' in an individual case, it requires community organisations to be more vigilant in recognising and removing risks that a court might find caused an injury, even if a common sense approach might conclude that the claimant ought to have seen (and avoided) the risk or that the risk only had a very marginal role in causing the injury.

AGRICULTURAL SOCIETIES COUNCIL OF NEW SOUTH WALES LIMITED

WIFE CARRYING PARTICIPANT RISK ACKNOWLEDGEMENT & WAIVER (Individual)

Show Society _____

Name of Event _____ Date of Event _____

Name Of Participant _____ Contact Telephone of Participant _____

Participant Address _____ Participant Email _____

Agricultural Societies Council of New South Wales Limited and (show name) _____ (together **the Suppliers**) advise that participation (including passive participation) in a physical competition or event at an agricultural show contains elements of risk, both obvious and inherent. Physical competitions, activities and events of all types are sometimes dangerous recreational activities.

1. By signing this waiver I acknowledge that:
 - 1.1 participation in(the Event) is a recreational service for the purpose of section 139A of the **Australian Competition and Consumer Act (Cth) 2010** and also a recreational activity for the purposes of section 5K of the **Civil Liability Act (NSW) 2002**;
 - 1.2 participation in the Event involves a significant risk of physical harm and may result in injury, loss, damage or death to me;
 - 1.3 participation in the Event requires certain skills and experience. I declare that I have sufficient skills and experience to be able to safely and properly participate in the Event;
 - 1.4 if the Event is held outdoors, there are risks to me as a result of the weather conditions, including either extreme hot or cold weather, rain or wind;
 - 1.5 I am responsible for ensuring that I have and will wear equipment suitable for safely and properly participating in the Event;
 - 1.6 I am responsible for the condition of any tools and equipment and ensuring that they are appropriate for the Event; and
 - 1.7 I use the facilities supplied for the event entirely at my own risk, as I find them and with the prior acceptance of the risk of possible danger to me.
2. If I suffer injury, loss or damage (**Loss**) while participating in the Event, I will not hold the Suppliers, their employees or agents legally responsible for any Loss I suffer. I will not sue the Suppliers, their employees or agents for any claims, costs, damages or liability. I agree to release the Suppliers and their employees from legal responsibility for the services I have been provided and/or activity I have participated in.
3. I acknowledge and agree that my participation in the Event and associated activities is a danger and may have inherent risks as a result of which personal injury (and sometimes death) may occur and I accept and assume all such risks of personal injury or death in anyway whatsoever arising from these activities and hereby waive my individual right to sue the Suppliers for all claims I or my representatives may have for such personal injury or death against the Suppliers in any way whatsoever arising from or in connection with these activities.
4. At the time of participating in the event, I have not been to any degree under the influence of alcohol or illicit drugs.

5. I will not consume any alcohol or illicit drugs while participating in the Event and agree that such use may result in my being excluded from the Event or other events with no entitlement to any refund of money paid for entry to the Suppliers.
6. I agree to be bound by the rules and guidelines of the Agricultural Societies Council of New South Wales Limited as varied from time to time.

Where the participant is over 18 years of age:

I agree that I have read and understood this waiver prior to signing it and agree that this waiver will be binding on my heirs, next of kin, executors and administrators.

I acknowledge that the Suppliers have permitted me to participate in the activity the subject of this document in reliance upon the matters acknowledged by me and the representations I have made herein.

I agree that this waiver shall be governed in all respects by and interpreted in accordance with the laws of New South Wales.

Signature _____ Dated _____

Where participant is under 18 years of age (to be completed by a parent or guardian):

Participant's Date of Birth.....

I, being a parent or legal guardian of the above named participant hereby consent to my child participating in this event.

I confirm that I have read and understood and explained to the participant, this waiver prior to signing it and agree that this agreement will be binding on my (and his/her) heirs, next of kin, executors and administrators.

I acknowledge that the Suppliers have permitted the participant to participate in the activity the subject of this document in reliance upon the matters acknowledged by me and the representations I have made herein.

I agree that this waiver shall be governed in all respects by and interpreted in accordance with the laws of New South Wales.

Signature _____ Dated _____