

The following Membership Terms and Conditions (**Conditions**) apply to membership of Eltham Leisure Centre.

THIS IS AN IMPORTANT DOCUMENT AND YOU SHOULD READ IT CAREFULLY BEFORE AGREEING TO THE FOLLOWING TERMS AND CONDITIONS. UPON AGREEING TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THESE TERMS AND CONDITIONS

You apply, either yourself or on behalf of a Member under the age of 18 as their parent/guardian, for membership of Eltham Leisure Centre. In consideration of the application being accepted, you (or you and the Member) acknowledge and agree to the terms and conditions below. You agree to these terms and conditions on your own behalf, or where relevant also on behalf of the Member.

1. DEFINITIONS AND INTERPRETATION

(a) In these Conditions the following expressions have the following meanings:

Eltham Leisure Centre means Aligned Leisure Pty Ltd trading as Eltham Leisure Centre (ABN 58 608 613 350).

Claim means and includes any action, suit, proceeding, claim, demand, damage, penalty, cost or expense however arising from or in connection with any Member Activities, but does not include a claim against Eltham Leisure Centre by any person expressly entitled to make a claim under a Eltham Leisure Centre insurance policy.

Member means an applicant for membership of Eltham Leisure Centre as indicated in a membership application.

Member Activities mean performing or participating in any capacity in any authorised or recognised Eltham Leisure Centre activity.

You means a Member, and where the Member is under the age of 18, both the Member and the Member's parent/guardian.

(b) In these Conditions: any references: to the singular includes the plural and vice versa, to any gender includes all genders, to persons includes all bodies and associations both incorporated and unincorporated, to any legislation or regulation includes all amending and succeeding legislation and regulations, to the word "including" must be construed without limitation, to a "Clause" means a clause in these Conditions; and paragraph headings are for reference purposes only.

2. RULES OF MEMBERSHIP

(a) These Conditions and any other terms and conditions of membership comprise a contract between You and Eltham Leisure Centre which is necessary and reasonable for promoting and conducting the Member Activities and administering Your membership.

(b) You acknowledge this application for membership of Eltham Leisure Centre will be accepted upon notification to You by Eltham Leisure Centre and You acknowledge that You will be bound by and agree to comply with such rules, terms and conditions as may be imposed by Eltham Leisure Centre with respect to the conduct and management of the Member Activities, including but not limited to all relevant rules, regulations, policies and codes of conduct of Eltham Leisure Centre, as amended from time to time. You agree that You will follow any rules and/or directions set by Eltham Leisure Centre in connection with the Member Activities 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 Member Activities and no refund will be given.

(c) In consideration of Your membership application being accepted, You:

(i) must update Your contact details with Eltham Leisure Centre as soon as reasonably possible where they change; and

(ii) acknowledge and agree it is Your responsibility to cancel or suspend Your membership (in accordance with clauses 18 and 17 respectively) should You wish.

3. RISK WARNING

(a) Participation in the recreational activities supplied by Eltham Leisure Centre 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. Prior to You 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.

(b) By agreeing to these Conditions, You acknowledge, agree, and understand that participation in the recreational services provided by Eltham Leisure Centre 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.

4. WAIVER

(a) 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).

(b) By agreeing to these 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:

(c) By agreeing to these Conditions, You agree that the liability of Eltham Leisure Centre 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:

(i) death;

(ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);

(iii) the contraction, aggravation or acceleration of a disease;

(iv) 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:

(A) that is or may be harmful or disadvantageous to You or the community; or

(B) that may result in harm or disadvantage to You or the community, that may be suffered by You (or a person for whom or on whose behalf You are acquiring the services) 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 (Victoria)* applies:

(v) Warning under the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*: 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 in these Conditions, Eltham Leisure Centre, is required to ensure that the recreational services it supplies to You:

(A) are rendered with due care and skill;

(B) are reasonably fit for any purpose which you either expressly or by implication, make known to the supplier; and

(C) 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 (Vic)*, the supplier is entitled to ask You to agree that these conditions do not apply to You. If You agree to these Conditions, You will be agreeing that Your rights to sue the supplier under the *Australian Consumer Law and Fair Trading Act 2012 (Vic)* if You are killed or injured because the services were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in these Conditions.

Note: The change to Your rights, as set out in these Conditions, 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 (Vic)* and section 22(3)(b) of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*.

Exclusion of rights under the *Australian Consumer Law (Victoria)*: By agreeing to these Conditions, You agree that the liability of Eltham Leisure Centre for any death or personal injury (as defined in the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*) that may be suffered by You (or a person from whom or on whose behalf You are acquiring the services) resulting from the supply of recreational services is excluded.

5. RELEASE AND INDEMNITY

In consideration of Eltham Leisure Centre accepting this application, to the extent permitted by law, You:

(i) release and will release Eltham Leisure Centre from all Claims that You may have or may have had but for this release arising from or in connection with membership of Eltham Leisure Centre or participation in the Member Activities; and

(ii) release and indemnify Eltham Leisure Centre against any Claim which may be made by You or on the Member's behalf for or in respect of or arising out of the Member's death whether caused by the negligence or breach of contract by Eltham Leisure Centre or in any other manner whatsoever; and

(iii) indemnify and will keep indemnified Eltham Leisure Centre to the extent permitted by law in respect of any Claim by any person:

(A) arising as a result of or in connection with the Member's membership or your participation in any Member Activities; and

(B) against Eltham Leisure Centre in respect of any injury, loss or damage arising out of or in connection with the Member's failure to comply with Eltham Leisure Centre's 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 Eltham Leisure Centre.

6. EXCLUSION OF LIABILITY

(a) All express or implied guarantees, warranties, representations or other terms relating to these Conditions or their subject matter not expressly set out in these Conditions, are excluded from these Conditions to the maximum extent permitted by law.

(b) Nothing in these Conditions excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation that cannot be lawfully excluded or limited. This may include the *Australian Consumer Law*, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

(c) If any guarantee, warranty, term or condition is implied or imposed in relation to these Conditions under the *Australian Consumer Law* or any other applicable legislation and cannot be excluded (**a Non-Excludable Provision**), and Eltham Leisure Centre is able to limit Your remedy for a breach of the Non-Excludable Provision, the liability of Eltham Leisure Centre for breach of the Non-Excludable Provision is limited to one or more of the following at Eltham Leisure Centre's option:

(i) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; or

(ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

(d) Subject to paragraphs (b) and (c) of this clause 6, the parties agree that the total liability of Eltham Leisure Centre to You for loss or damage of any kind whether arising in tort (including negligence), contract, under statute or otherwise is limited to the total amount of fees paid by You under these Conditions.

7. BAR TO PROCEEDINGS

(a) You acknowledge that Eltham Leisure Centre may plead these Conditions as a bar to proceedings now or in the future commenced by or on behalf of You or on behalf of the Member or by any person claiming through You or the Member. Where You commence proceedings against Eltham Leisure Centre, You:

(i) will commence those proceedings in the courts of the jurisdiction in which any incident occurs;

(ii) waive any right to object to the exercise of such jurisdiction;

- (iii) will, where You seek to commence proceedings in another jurisdiction from where any incident occurs, consent (if required by Eltham Leisure Centre) to move those proceedings to the jurisdiction in which any incident occurs including consenting to any application made by Eltham Leisure Centre to remove the proceedings to the jurisdiction in which any incident occurs;
- (iv) will pay the costs of any application made by Eltham Leisure Centre under paragraph (iii) above and will consent to any application for security of costs made at any time by Eltham Leisure Centre; and
- (v) consent to paying Eltham Leisure Centre' legal defence costs of the proceedings (on a solicitor client basis) where Eltham Leisure Centre defends the proceedings.

8. INSURANCE

Insurance is in place that may provide limited cover to You or the Member whilst participating in the Member Activities. You understand that this insurance may not cover You for all injury, loss or damage sustained and You acknowledge that Eltham Leisure Centre does 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 Eltham Leisure Centre.

9. FITNESS TO PARTICIPATE

You declare that You are medically and physically fit and able to participate in the Member Activities. You are not and must not be a danger to Yourself or to the health and safety of others.

10. MEDICAL TREATMENT

You consent to receiving any medical treatment that Eltham Leisure Centre reasonably considers necessary or desirable for You during participation in the Member Activities. You also agree to reimburse Eltham Leisure Centre for any costs or expenses incurred in providing You with medical treatment.

11. SAFETY

You understand and acknowledge the dangers associated with the consumption of alcohol or any mind-altering substance before or during the Member Activities, and You accept full responsibility for any injury, loss or damage associated with the consumption of alcohol or any other mind-altering substance.

12. RIGHT TO USE IMAGE

- (a) You acknowledge and consent to photographs and electronic images being taken of You during Your participation in any member Activities. You acknowledge and agree that such photographs and electronic images are owned by Eltham Leisure Centre and that Eltham Leisure Centre may use the photographs for promotional or other purposes without Your further consent being necessary. Further, You consent to Eltham Leisure Centre using Your name, image, likeness and performance in the Member Activities, at any time, by any form of media, to promote Eltham Leisure Centre.
- (b) You acknowledge and agree that any photography, video-recording or other filming undertaken by You during the Member Activities for commercial purposes is prohibited without the prior written consent of Eltham Leisure Centre and is subject to payment of such charges as may be set by Eltham Leisure Centre on a case by case basis.

13. PRIVACY

You understand that the personal information You provide in this application is collected, used and disclosed in accordance with the Privacy Policy of Eltham Leisure Centre (available at <https://alignedleisure.com.au/privacy-policy/>). You acknowledge that Your personal information may be used and disclosed by Eltham Leisure Centre for the purposes of conducting and administering Your membership, the Member Activities and other related activities across Australia, providing member services or promotional material, complying with legal obligations or otherwise in accordance with Eltham Leisure Centre' Privacy Policy. The holder of Your personal information may share that information with third parties strictly in accordance with and as detailed in the Privacy Policy however Your personal information will not generally be disclosed to anyone outside Australia. For the avoidance of doubt, your personal information will not be sold to other organisations and any marketing communications to you will be in accordance with the requirements under the Privacy Law. You understand that Eltham Leisure Centre' Privacy Policy contains information about how You may access and request correction of Your personal information held by Eltham Leisure Centre or make a complaint about the handling of Your personal information, and provides information about how a complaint will be dealt with by Eltham Leisure Centre. You acknowledge that Your application may be rejected if the information is not provided. If You do not wish to receive promotional material from Eltham Leisure Centre or its partners, sponsors, service providers and other third parties You must advise Eltham Leisure Centre in writing or via the opt-out procedures provided in the relevant communication.

14. NON-TRANSFERABLE

A right to participate in the Member Activities or to be a member of Eltham Leisure Centre (if granted) is non-transferable to other programs or to other people. Any attempt to transfer to another person without the knowledge of Eltham Leisure Centre may result in the cancellation of any rights granted by Eltham Leisure Centre without refund and You may not be permitted to participate in further Member Activities. You also accept that membership fees paid to Eltham Leisure Centre are non-refundable.

15. DIRECT DEBIT

- (a) If paying by direct debit You agree to pay the instalment amount at the agreed payment frequency until Your membership is formally suspended or cancelled.
- (b) To help You understand Your rights and responsibilities when making repayments by direct debit, please see the below detail.
 - (i) We will give you at least fourteen (14) days' notice in writing of any changes to the terms of the direct debit.
 - (ii) We will keep all information relating to Your financial institution account confidential, except where required for the purposes of conducting direct debits with Your financial institution or in connection with claims made on us relating to an alleged incorrect debit.
 - (iii) Please ensure that Your nominated account can accept direct debits. If You are uncertain about this, please check with the financial institution where Your account is held.
 - (iv) Please ensure that there are sufficient cleared funds available in the nominated account to meet each drawing on the due date.

- (v) You must let us know as soon as possible if the nominated account is transferred or closed, or Your account details change.
- (vi) You must give us seven (7) days' notice before the direct debit due date to change the account details from which the funds are being drawn from.
- (vii) You need to give us fourteen (14) days' notice for cancelling Your membership.
- (viii) If You consider that a direct debit repayment has been initiated incorrectly, or if You do not understand any aspect of the direct debit procedure, You should contact reception.
- (ix) There may be a delay in processing the direct debit if there is a public holiday on the day of the debit.
- (x) If we cannot withdraw the nominated amount from Your account (for example there is not enough money in Your account) it may dishonour the withdrawal and a dishonour fee of \$10.00 may apply.
- (xi) Memberships will be cancelled if two consecutive debits are rejected. Memberships will be reactivated once the outstanding amounts have been settled.
- (xii) In the case of an unsuccessful payment the debit may be re-processed.
- (xiii) Under normal circumstances no additional costs will occur above membership costs for direct debits.
- (xiv) In the event that Eltham Leisure Centre ceases to operate its facilities, all financial records will be transferred to the Nillumbik Shire Council (owners of the facilities). The transfer will be made in line with up to date payment card industry compliance regulations.

16. PRICE INCREASES

Eltham Leisure Centre in partnership with Nillumbik Shire Council will adjust membership and service pricing at its absolute discretion only after providing one month's notice via an email to the email address that You have provided.

17. SUSPENSION

Membership suspensions are available for a minimum period of two (2) weeks and a maximum of eight (8) weeks per year. A suspension form must be completed in person at Eltham Leisure Centre facility. At the completion of the suspension period regular membership costs will resume.

18. CANCELLATION

- (a) Membership cancellation at Eltham Leisure Centre requires that a written cancellation request form be completed in person at the facility providing fourteen (14) days' notice.
- (b) Eltham Leisure Centre reserves the right to terminate Your membership in accordance with the following conditions:
 - (i) failure to comply with any of the criteria listed in the conditions of entry (as posted at any Eltham Leisure Centre facility) or the items listed in these Conditions;
 - (ii) action upon a complaint by either a facility member or an employee (or contractor) of Eltham Leisure Centre.

19. CONCESSION DISCOUNT

- (a) Holders of concession memberships are required to present current evidence of concession status within two weeks if requested. Failure to provide updated concession information will result in the membership automatically reverting to the appropriate non-discounted price.
- (b) The following cards will be recognised to qualify for a concession discount;
 - (i) Concession Cards (State and Federal);
 - (ii) Health Care Card;
 - (iii) Pension Card;
 - (iv) Seniors Card;
 - (v) Student Card.

20. ACCESS

- (c) All Members must scan their membership, wrist band or card upon entry to the Eltham Leisure Centre facility at every visit via the entry turnstiles. Scanning is compulsory.
- (d) Wrist band and card replacement costs are applicable if lost or damaged.
- (e) Upon joining Eltham Leisure Centre a photo will be taken for security reasons relating to the safety of our Members. The photograph will not be used for any other purposes and will be stored securely on our database.
- (f) Entry to Eltham Leisure Centre may be refused as a result of unpaid or outstanding membership fees.
- (g) Members who allow their wrist band or card to be used by any other individual to access the facilities may have their membership cancelled.

21. ENTITLEMENTS

- (b) Members have access to the following services within the Eltham Leisure Centre, with the exception of some membership types that have reduced entitlements as listed in this section.
 - (i) Health Club and Group Fitness;
 - (ii) Aquatic Facilities when redevelopment is completed;
 - (iii) Stadium access when not booked; and
 - (iv) Crèche*.

(c) Restricted Memberships

All memberships which are Off Peak or Restricted are limited to accessing the facilities to the following times:

- (i) Monday to Friday 9:30 am to 4:00 pm ;
- (ii) All weekend; and
- (iii) All Public Holiday's

(d) Aquatic Memberships

There is currently no entitlement for Aquatic Members due to the redevelopment.

22. SWIMMING LESSONS

- (a) All participants must abide by the general terms and conditions of the swim school as notified to Members from time to time.
- (b) Participants will participate in swimming lessons utilising the Royal Life Saving Society's (RLSS) 'Swim and Survive Program'.
- (c) The following applies to all swim school members:
 - (i) Certificates of participation and achievement will be issued by Eltham Leisure Centre, on behalf of RLSS, upon completion of a level. Participants will progress through the levels of the program as they attain the skills and confidence required to successfully complete the requirements of each certificate. The rate at which individual participants progress will be assessed on a case by case basis.
 - (ii) The program runs for 46 weeks of the year. Lessons are not conducted on public holidays.
 - (iii) Every effort will be made to adhere to the lesson times that have been provided to you. Management does however reserve the right to change or alter classes as necessary.
 - (iv) Swim school membership includes unlimited swimming throughout the year with an active membership, and additional access to the Pakenham Regional Tennis Centre during Victorian school holiday dates (DiscountedRate)
 - (v) Make-up lessons are available where lessons are missed due to illness. Make-up lessons expire at the completion of each school term and there are no refunds for non-attendance of lessons. Each student is entitled to one make up lesson per term, as a substitute for a missed lesson due to illness or unforeseen circumstances. If more than one make up lesson is requested, a medical certificate is required.
 - (vi) Suspension of swim school membership is offered during the December/January school holidays or membership can be maintained for swimming access. Medical suspensions are available for a minimum of two consecutive lessons and for a maximum of eight missed lessons.
 - (vii) Changing of swim levels occurs from 'infant' levels to 'pre-school and school' and then 'squad' level. There are increased costs, and these will adjust automatically once the swim lesson booking is changed to the next level.
 - (viii) Children under the age of 10 must not be unaccompanied at any time, including during a swimming lesson. They must be accompanied by a parent/guardian at least 16 years or over.
 - (ix) Eltham Leisure Centre is a 'Watch around Water' facilities. Children under 5 years must have an adult in the water within one arm's reach. Children between 5 and 10 years must have a parent or guardian over 16 years actively supervising at all times.
 - (x) Children up to the age of 24 months must wear bathers with elastic waist and leg bands or aqua nappies. Disposable or cloth nappies are not permitted.
 - (xi) Direct debit will occur across twenty-six (26) fortnightly payments and adhere to the same terms and conditions as outlined in clause 15 above. Debits continue over school holiday periods.
 - (xii) Swim school membership will be cancelled if two consecutive debits are rejected. Swim school membership will be reactivated once the outstanding amounts have been settled.
 - (xiii) Cancellations are in accordance with the procedures outlined in clause 18.

23. CHANGES TO OPERATION

- (a) Eltham Leisure Centre may be required from time to time to update the operation of the facilities under its control, including but not limited to:
 - (i) operating hours;
 - (ii) availability of specific facilities or services within facilities;
 - (iii) closure of part of the facility or premises, or of specific equipment, for maintenance; and
 - (iv) changing conditions of entry to the facility.
- (b) Where a change outlined above occurs, Eltham Leisure Centre will use its best endeavours to provide reasonable notice to Members, by way of (including but not limited to) its website, email, SMS and noticeboards.

24. GENERAL

- (a) In the event that Eltham Leisure Centre ceases to operate, Your membership and any payment arrangements will transfer to the Nillumbik Shire Council or its nominated operator.
- (b) These Conditions comprise the entire agreement between the parties in relation to its subject matter and supersede and replace any previous agreement or arrangement between the parties in relation to its subject matter.
- (c) Eltham Leisure Centre reserves the right in its sole discretion to vary these Conditions by providing You with one month's advance notice of any variation. The notice may be provided by any reasonable communication method, including but not limited to Eltham Leisure Centre' website, social media channels, email, SMS or signage.
- (d) Any provision of this Agreement which is void or unenforceable may be severed without affecting the enforceability of other provisions.

- (e) These Conditions are governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.
- (f) You warrant that all information provided to Eltham Leisure Centre is true and correct.