



Can I still claim compensation in Victoria if I signed a waiver?

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Signing a waiver before an activity doesn't necessarily mean you've given up your right to compensation if you're injured. Many Victorians assume a waiver closes the door on any claim - but that's not always the case. The laws around waivers are complex, and several factors determine whether a waiver can actually be enforced.

This blog explores how waivers work in [public liability claims in Victoria](#), when they may or may not be enforceable, and what options may be available if you've been injured after signing one.

Waivers are commonly used in activities involving perceived risk, such as:

- gyms and fitness centres;
- sporting and recreational activities;
- adventure tourism and leisure experiences;
- school or community events;
- rental or hire agreements.

In Australia, signing a waiver does not automatically prevent a claim for compensation – whether a claim can be made depends on several factors, including the wording of the waiver, the circumstances of the injury and how Australian law treats liability exclusions.

This blog explores how waivers work in public liability claims in Victoria, when they may or may not be enforceable, and what options may be available if you have been injured after signing one.

What is a waiver and how does it affect your rights?

A waiver is an agreement between the provider of an activity and the participant. It means that the participant acknowledges any risks and that they subsequently waive any right to sue if an injury occurs. It is important to note that a waiver may not always be in a form. It could also be a sign that states “enter at your own risk” or wording to that effect. It could also be included in the fine print when booking an activity online.

What to check before you sign a waiver

If you have not yet signed a waiver, you should ensure to read through the agreement carefully and allow yourself plenty of time to understand it. If you do not understand any part of it, don't be afraid to ask for clarification.

You may be able to amend the waiver before signing it; however, the amendments would need to be agreed upon by the provider as well. Be cautious of waivers that might broadly exclude any legal rights or specify that injuries are not covered, even in the event of negligence, or where there is a financial cap on liability, such as covering injury claims only up to \$1,000.

Step 1: Is the waiver actually valid?

In order for a waiver to be valid and enforceable, the courts will carefully examine the wording of the waiver and how it was presented to the injured person. A waiver may be invalid or unenforceable where it does not comply with Australian Consumer Law or general contract principles.

For example, a waiver must comply with the Australian Consumer Law, which contains certain protections, such that generally you cannot waive liability for death or serious injury caused by the business's negligence during the supply of services as per section 139A of the Competition and Consumer Act (Australian Consumer Law) 2010 in the Commonwealth.

A waiver may be invalid if:

- it attempts to exclude liability for [personal injury](#) caused by a failure to exercise reasonable care and skill;
- it is unclear, vague, or written in overly broad terms;
- it was not properly brought to the injured person's attention;
- the injured person did not have a genuine opportunity to understand or consent to the terms;
- It was hidden in fine print or bundled into general terms and conditions.

If a waiver is invalid, it will not prevent a public liability claim.

Step 2: Was there a breach of duty of care or negligence?

If the waiver was valid, then the next question is whether the injury was caused by a breach of duty of care or negligence.

Although waivers do extinguish some rights, they do not take away the legal obligation on providers to operate safely and without negligence. Therefore, if you can prove that a duty of care was breached or the accident occurred because of the operator's negligence, then you may still be entitled to claim compensation.

A breach of duty or negligence may be found where:

- equipment was faulty, unsafe, or poorly maintained;
- premises were unsafe or contained hazards that were not addressed;
- safety instructions were inadequate or misleading;
- staff were not properly trained or supervised;
- Industry safety standards or regulations were not followed.

A waiver does not protect a party from liability for negligent acts that go beyond the ordinary risks of an activity. If negligence contributed to the injury, a [public liability claim](#) may still succeed.

Step 3: Was the injury the result of an obvious risk?

However, if the injury came as a result of an obvious risk associated with them, you may be unlikely to be able to bring a claim.

Obvious risk is an important point in most civil claims regarding recreational activities and compensation. An obvious risk is something that a reasonable person would have been aware of, as defined by section 53 of the Wrongs Act 1958 in Victoria.

For example, if you undertake an activity at an indoor trampoline centre, then it is possible that you might sustain minor injuries relating to your feet, such as a sprained ankle, as a result of the nature of the activity. This is seen as an obvious risk of undertaking the activity.

But if that risk was caused by faulty equipment at the trampoline centre, then it is not considered a risk that is inherent to trampolining. For example, if your injury occurred due to faulty equipment, you may be able to pursue a claim of negligence against whoever is responsible for the maintenance of such equipment.

When should you get legal advice about a waiver claim in Victoria?

Public liability claims involving waivers can be legally complex, and vary from case to case. You should seek legal advice if:

- you were injured after signing a waiver;
- you are unsure whether the waiver is enforceable;
- the injury was caused by unsafe conditions or equipment;

- a business or insurer says you have no right to claim.

If you've been injured in a public place or during an organised activity in Victoria - even after signing a waiver - it's worth getting advice before assuming you have no options. [At Guardian Injury Law, our Melbourne-based team helps injured Victorians understand their rights and assess public liability claims.](#) Contact us today for an obligation-free discussion. Getting advice early can make a significant difference to the outcome of your claim.

Contacting Guardian Injury Law

[1300 700 761](tel:1300700761)

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This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.