

COTA WA Website Terms and Conditions

These Terms are between you and Council on the Ageing WA Inc ABN 79 970 893 100 (referred to as **We, Our** or **Us**).

Your Acceptance

These are the terms on which We permit Users (referred to as **You** or **Your**) to:

- (a) access and use Our website at <https://www.cotawa.org.au/> (**Website**) including using the services and functionality made available through the Website;
- (b) view and interact with any content, Information, communications, advice, text or other material provided by Us or Our Related Entities on the Website (**Service Content**); and
- (c) communicate with Us.

You agree to be bound by these Terms when you use, browse or access any part of the Website.

The Website is subject to change at any time without notice and may contain errors. We may from time to time review and update these Terms including to take account of new Laws, products or technology. Your use of the Website will be governed by the most recent Terms posted on the Website. By continuing to use the Website, You agree to be bound by the most recent Terms.

1. Definitions and Interpretation

1.1 Definitions

ACL means Australian Consumer Law being Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award or loss, whether based in contract, civil, common law, tort (including negligence) or statute and whether involving a Party, Third Party or otherwise.

Confidential Information means:

- (a) Information that at the time of disclosure by a Disclosing Party is identified to the Receiving Party as being confidential; and
- (b) all other Information belonging or relating to a Disclosing Party, or any Related Entity of that Disclosing Party, that is not generally available to the public at the time of disclosure other than by reason of a breach of these Terms or which the Receiving Party

knows, or ought reasonably to be expected to know, is confidential to that Disclosing Party or any Related Entity of that Disclosing Party.

Disclosing Party means the Party to whom Information belongs or relates.

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute in the relevant jurisdiction.

Information means any information, whether oral, graphic, electronic, written or in any other form, including:

- (a) forms, memoranda, letters, specifications, processes, procedures, statements, formulae, technology, inventions, trade secrets, research and development information, know-how, designs, plans, photographs, microfiche, business records, notes, accounting procedures or financial information, sales and marketing information, names and details of customers, suppliers and agents, employee details, reports, drawings and data;
- (b) copies and extracts made of or from that information and data, whether translated from the original form, recompiled, partially copied, modified, updated or otherwise altered; and
- (c) samples or specimens disclosed by either Party.

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, inventions, designs, copyright, trademarks, brand names, product names, domain names, database rights, rights in circuit layouts, plant breeder's rights, know how, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals, divisions and extensions of these rights.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that has the force of law.

Loss means any loss, damage, cost or expense.

Party means you or Us.

Personal Information means Information or an opinion (including Information or an opinion forming part of a database), whether true or not, and whether recorded in a material form, electronic form or otherwise, about an identified individual or an individual who is reasonably identifiable and includes anything that is defined as personal information or as sensitive information in the relevant Privacy Laws.

Privacy Law means any applicable Law, statute, regulation, ordinance, code, standard or requirements of any government, governmental or semi-governmental body which relates to privacy or health Information, including without limitation the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles under that Act, the *Spam Act 2003 (Cth)* and the *Do Not Call Register Act 2006 (Cth)*, and any Australian (including State or Territory) legislation from time to time in force which relates to or affects privacy rights or Personal Information.

Receiving Party means the Party to whom Information is disclosed or who possesses or otherwise acquires Information belonging or relating to a Disclosing Party.

Related Entity has the meaning given to that term in the *Corporations Act 2001 (Cth)*.

Terms means these agreed terms.

Third Party means any party other than Us or you.

User means any person who access and uses the Website or Service Content.

1.2 Interpretation

In these Terms, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of these Terms;

- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) a reference to a party is to a party to these Terms and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) the word "person" includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (i) the word "month" means calendar month and the word "year" means 12 months;
- (j) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (k) a reference to a thing includes a part of that thing;
- (l) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (m) wherever "include", "for example" or any form of those words or similar expressions is used, it must be construed as if it were followed by "(without being limited to)";
- (n) money amounts are stated in Australian currency unless otherwise specified;
- (o) a reference to time is to Perth, Australia time;
- (p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body;
- (q) any agreement, representation, warranty or indemnity in favour of two or more parties (whether those parties are included in the same defined term or not) is for the benefit of them jointly and severally; and
- (r) any agreement, representation, warranty or indemnity by two or more parties (whether those parties are included in the same defined term or not) binds them jointly and severally.

2. Service Content

- 2.1 The Website is owned and operated by Us or on Our behalf.
- 2.2 The Service Content on the Website is for general information and promotional purposes only. We do not warrant or make any representations as to any Third-Party products or services described or referred to on the Website. Any use of the Service Content, materials or Information by another person or organisation is at your own risk.
- 2.3 The Service Content on the Website is obtained and developed from a variety of sources including but not limited to collaborations with Third Parties and Information provided by Third Parties under licence. Inclusion of Service Content on the Website is not an endorsement of any organisation, product, service or advice.
- 2.4 All Intellectual Property Rights, including copyright, in the Website and Service Content are owned or licensed by Us or Our Related Entities. You must not copy, modify or transmit any part of the Website or Service Content.
- 2.5 The Website and Service Content may also contain Our, or Our Related Entities', trademarks, logos and trade names, which may be registered or otherwise protected by Law. You are not permitted to use any trademarks, logos or trade names appearing on the Website or Service Content without Our prior written consent.
- 2.6 We grant you a non-exclusive and non-transferable licence to use the Website and Service Content for your own personal use, subject to the restrictions specified elsewhere in these Terms. It is not to be otherwise used for commercial exploitation.
- 2.7 If you have a complaint regarding any Service Content, Our sole obligation will be to review any written complaint notified to Us and, if We see fit, in Our sole discretion, to modify or remove the particular Service Content.

3. Access and Communication

- 3.1 Subject to the consumer guarantees provided for in the ACL, We do not warrant that you will have continuous access to the Service Content or the Website.
- 3.2 We will not be liable if the Service Content or Website is unavailable to you due to computer downtime attributable to malfunctions, upgrades, preventative or remedial maintenance activities, interruption in telecommunications supply or otherwise.
- 3.3 We do not guarantee the delivery or security of communications over the internet as such communications rely on Third Party service providers, and electronic communication (including electronic mail) is vulnerable to interception by Third Parties.
- 3.4 We do not provide, and have no control over, communications, networks or services, the internet or other technology required or used across the Website and accept no responsibility

for any direct or indirect Loss in any form associated with them, whether due to congestion, technical malfunction, viruses or otherwise.

4. Prohibited Uses

You agree that in accessing and using the Website, you will not engage or attempt to engage in any activities that:

- (a) download (other than page caching), transmit, copy, store, reformat or otherwise modify any element of the Website or Service Content;
- (b) impersonate or falsely claim to represent a person or organisation;
- (c) are commercial, including selling, marketing, advertising or promoting goods or services, except if expressly permitted by these Terms;
- (d) frame the Website or the Service Content without Our express written consent;
- (e) post, link to, or otherwise communicate or distribute any misleading, deceptive, inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or Information, or otherwise use the Website in a manner which is unlawful or would infringe the rights of another person including any Intellectual Property Rights;
- (f) bypass (or attempt to bypass) any security mechanisms imposed by the Website;
- (g) provides access or links to any material (including links to peer to peer network trackers/beacons) which may infringe the Intellectual Property Rights of another person;
- (h) deletes or alters or attempts to delete or alter attributions, legal notices, trademarks or copyright marks on any material contained in the Website;
- (i) knowingly posts, introduces or transmits, or permits the posting, introduction or transmission of a virus, worm, Trojan horse, malware, spyware, disabling or malicious device or code, time bomb, or any other software or hardware or configuration that may cause harm or change to the Website;
- (j) breach or circumvent any applicable Laws in using or accessing the Website;
- (k) damage or tamper with the operation of the Service Content; and
- (l) use the Website or Service Content in a manner which is unlawful or would infringe the rights of another person, including any Intellectual Property Rights.

5. Links and advertisements

- 5.1 The Website may contain links to other websites. We have not reviewed all of the Third-Party websites linked on the Website and are not responsible for and will not be liable in respect of their content or accuracy (including websites linked through advertisements). We provide those links as a ready reference for searching for Third Party goods and services on the internet and not as an endorsement, support or sponsorship of those websites, their operators, the goods, services or content that they describe.
- 5.2 Facebook, LinkedIn, YouTube and other Third-Party websites which are linked to the Website, are not covered by these Terms, and may have their own terms and conditions and privacy policy. If you choose to access these Third Party linked sites, you do so at your own risk. We are not responsible for and will not be liable in respect of the content or operation of those websites or any of the goods, services or content that they describe. We are not responsible for and will not be liable in respect of any incorrect link to an external website.

6. Confidentiality

6.1 Obligations of confidentiality

Subject to clauses 6.2, the Receiving Party must:

- (a) keep the Confidential Information confidential and not directly or indirectly disclose, divulge or communicate any Confidential Information to, or otherwise place any Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Confidential Information coming into its possession or control;
- (c) only use the Confidential Information for the purposes of performing, and to the extent necessary to perform, its obligations under these Terms;
- (d) not memorise, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under these Terms; and
- (e) take all reasonable steps to ensure that any person to whom the Receiving Party is permitted to disclose Confidential Information under clause 6.2 complies at all times with the terms of this clause 6 as if that person were a Receiving Party.

6.2 Exceptions

The obligations of confidentiality under clause 6.1 do not apply to:

- (a) any Confidential Information that:
 - (i) is disclosed to the Receiving Party by a Third Party entitled to do so, whether before or after the date of these Terms;
 - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not otherwise acquired from the Disclosing Party directly or indirectly; or
 - (iii) is generally available to the public at the date of these Terms or subsequently becomes so available other than by reason of a breach of these Terms; or
- (b) any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order or applicable Law if, to the extent practicable and as soon as reasonably possible, the Receiving Party:
 - (i) notifies the Disclosing Party of the proposed disclosure;
 - (ii) consults with the Disclosing Party as to its content; and
 - (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure.

6.3 Authorised disclosure

- (a) A Receiving Party may disclose Confidential Information to any Related Entity, employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party (each a **Recipient**) only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:
 - (i) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed; and
 - (ii) the Recipient undertakes to the Receiving Party (for the benefit of the Disclosing Party) to be bound by the obligations in this clause 6 as if the Recipient were a Receiving Party in relation to the Confidential Information to be disclosed to the Recipient.
- (b) The Receiving Party is liable for any breach of this clause 6 by a Recipient as if the Recipient were a Receiving Party in relation to the Confidential Information disclosed to the Recipient.

6.4 Breach of Confidence

Each Party must promptly notify the other Party if it becomes aware of any unauthorised access, use or disclosure of all or any part of the Confidential Information and must give that other Party all reasonable assistance in connection with any claim which it may institute in connection with that unauthorised access, use or disclosure.

6.5 Return or destruction of Confidential Information

Immediately on the written request of the Disclosing Party, a Receiving Party must:

- (a) cease the use of all Confidential Information of or relating to the Disclosing Party (or any Related Entity of the Disclosing Party);
- (b) deliver to the Disclosing Party all documents and other materials in its possession or control containing, recording or constituting that Confidential Information or, at the option of the Disclosing Party, destroy, and certify to the Disclosing Party that it has destroyed, those documents and materials; and
- (c) upon delivery of the Confidential Information under clause 6.5(b), permanently delete that Confidential Information from all electronic media on which it is stored, so that it cannot be restored.

7. Privacy

7.1 Any Personal Information submitted by you (whether Personal Information of you or another individual which you have the necessary consents to provide) to Us may be handled as contemplated by Our Privacy Policy (which can be found at <https://www.cotawa.org.au/privacy-policy/>) and as otherwise permitted by applicable Privacy Laws. You agree that, by using the Website or communicating with Us, you have read the Privacy Policy, understood its contents and consented to its requirements.

7.2 You must not upload any Personal Information of another individual to the Website unless you first make them aware of Our Privacy Policy and have their consent to upload such Personal Information.

8. Warranties, Consumer Guarantees and Limitation of Liability

8.1 We have used our best endeavours to ensure all Information, graphics, audio and video and other items appearing on the Website are correct and up-to-date at the time of publication. We do not represent or warrant the accuracy or completeness of the Service Content or that the Website is free from any errors, omissions or defects.

8.2 Subject to clause 8.3, any representation, warranty, condition, guarantee or undertaking that would be implied in these Terms by Law, trade, custom or usage is excluded to the maximum extent permitted by Law.

- 8.3 Nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on by the ACL or any other applicable Law that cannot be excluded, restricted or modified by agreement.
- 8.4 To the fullest extent permitted by Law, Our liability for a breach of a non-excludable guarantee referred to in the clause 8.3 is limited to:
- (a) in the case of goods supplied or offered by us, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
or
 - (iv) the payment of the cost of having the goods repaired; or
 - (b) in the case of services supplied or offered by us:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 8.5 Subject to clause 8.3, We are not liable to you for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data, loss of reputation or loss of revenue (irrespective of whether the loss or damage is caused by or relates to breach of contract, tort (including negligence), statute or otherwise) arising out of or in connection with the Website, the Service Content or all links to or from the Website.
- 8.6 Subject to this clause 8, Our maximum aggregate liability for all proven Losses and Claims arising out of or in connection with these Terms or the use of the Website, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the sum of \$10.

9. Indemnity

You agree and acknowledge that you will fully indemnify Us in respect of all Loss, damages, costs and expenses (including legal fees on a full indemnity basis), fines, penalties, Claims, demands and proceedings however arising, whether at common law (including negligence) or under statute, in connection with:

- (a) any breach of these Terms by you;
- (b) your use of the Website or Service Content, including any wrongful, wilful or negligent act or omission;
- (c) your communications with Us; or
- (d) your use of Third Party websites linked to the Website.

10. Termination of your access to the Website

- 10.1 We may at any time immediately terminate your access (including restricting access) to the Website or any feature of the Website for any reason (including due to your breach or alleged breach of these Terms) in our sole discretion and without prior notice.
- 10.2 This paragraph 10.2 and paragraphs 6, 7, 8, 9 and 12 will survive termination of your access to the Website in accordance with paragraph 10.1 and will continue to Our benefit and be enforceable by Us.

11. International Use

We make no representation or warranty that any competition, offering or content accessible through the Website is appropriate or available for use in locations outside Australia. If you choose to access the Website from other locations, you do so at your own risk and are responsible for compliance with all applicable laws. You are not authorised to access the Website from any location where doing so would be illegal.

12. General

12.1 Entire understanding

These Terms contains the entire understanding between the Parties concerning the subject matter of these Terms and supersedes, terminates and replaces all prior agreements and communications between the Parties.

12.2 No adverse construction

These Terms, and any provision of these Terms, are not to be construed to the disadvantage of a Party because that Party was responsible for its preparation.

12.3 No waiver

- (a) A failure, delay, relaxation or indulgence by a Party in exercising any power or right conferred on the Party by these terms does not operate as a waiver of that power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under these terms.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

12.4 Severability

Each provision of these Terms is severable from the others and no severance of a provision will affect any other provision.

12.5 Successors and assigns

These Terms bind and benefit the Parties and their respective successors and permitted assigns under clause 12.6.

12.6 No assignment

You cannot assign or otherwise transfer the benefit of these Terms without Our prior written consent. We are permitted to assign or otherwise transfer the benefit of these Terms without your prior consent.

12.7 Communication and Notice

You consent to Us contacting you by electronic means including through email.

12.8 Governing Law and jurisdiction

These Terms are governed by and must be construed in accordance with the Laws in force in the State of Western Australia, Australia. The Parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms, its performance or subject matter.

12.9 Operation of indemnities

Unless these terms expressly provides otherwise:

- (a) each indemnity in these Terms survives the expiry or termination of these Terms; and
- (b) a Party may recover a payment under an indemnity in these terms before it makes the payment in respect of which the indemnity is given.