



# COMMERCIAL ACTIVITIES BY-LAW

<b>RESPONSIBILITY:</b>	Chief Executive Officer			
<b>NEXT REVIEW DATE:</b>	June 2018			
<b>DOCUMENT REVISION HISTORY:</b>				
Version no.	Approved	Date	By CEO	By BoM
1	Draft - lawyer	18/5/2017	31/5/2017	N/A
2	Final	31/5/2017	31/5/2017	30/6/2017

## 1. PURPOSES

1.1. The purposes of these By-Laws are to:

- (a) complement and extend the operation of applicable Federal and State legislation (including the Commonwealth Games Arrangements Act 2011 (Qld) and Major Sporting Events (Indicia and Images) Protection Act 2014 (Cth)) governing the use and abuse of protected imagery in relation to the Australian Commonwealth Games Team, Commonwealth Games Australia, Commonwealth Games Federation and/or the Commonwealth Games;
- (b) manage and regulate the use of any design, image, photograph, reference or representation related to the Australian Commonwealth Games Team, Commonwealth Games Australia, Commonwealth Games Federation and/or the Commonwealth Games;
- (c) protect the image and reputation of the Australian Commonwealth Games Team, Commonwealth Games Australia, Commonwealth Games Federation and/or the Commonwealth Games;
- (d) advance the commercial interests of the Australian Commonwealth Games Team, Commonwealth Games Australia, Commonwealth Games Federation, the Commonwealth Games and all Program Sports, Teams and Athletes;
- (e) enhance the value of all commercial properties associated with the Australian Commonwealth Games Team, Commonwealth Games Australia, Commonwealth Games Federation and the Commonwealth Games; and
- (f) provide a more secure commercial environment to raise and maintain sponsorship revenue.

## 2. DEFINITIONS

- "Athlete"** means:
- (a) any Person who competes or participates in sport under the authority of a *National Sporting Organisation*; or
  - (b) any Person who is registered as an *Athlete* or competitor or participant (however described) with a *National Sporting Organisation* or with a member of a *National Sporting Organisation* or a club recognised by a *National Sporting Organisation*.
- "Athlete Support Personnel"** means any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other *Person* working with, treating or assisting an *Athlete* participating in or preparing for a *Sport Competition*.
- "Authorised Person"** means the Chief Executive Officer of *CGA* or an employee of *CGA* who has been granted permission in writing by the Chief Executive Officer of *CGA* from time to time to make decisions in relation to the implementation, enforceability and obligations provided for in accordance with, and as required for, under these By-Laws.
- "CGA"** means Commonwealth Games Australia, formerly known as the Australian Commonwealth Games Association (**ACGA**).

<b>"CGF"</b>	means the Commonwealth Games Federation.
<b>"Commonwealth Games"</b>	means the multi-sport event held once every four years under the auspices of the <i>CGF</i> .
<b>"Competition"</b>	means a single race, match, game, singular sport contest, or related event.
<b>"CGA Executive"</b>	means the: <ul style="list-style-type: none"><li>(a) President;</li><li>(b) Two Vice Presidents; and</li><li>(c) Chief Executive Officer,</li></ul> of <i>CGA</i> .
<b>"Director"</b>	means a member of the board of people that manages and oversees the affairs of a <i>National Sporting Organisation</i> .
<b>"Games"</b>	means the <i>Commonwealth Games</i> , Youth Commonwealth Games or any other sporting <i>Competition</i> or event in which a <i>Team</i> is to compete or participate.
<b>"Games Period"</b>	means the period commencing on the earlier of: <ul style="list-style-type: none"><li>(a) the date a <i>Team Member</i> receives his or her <i>Games</i> accreditation; or</li><li>(b) the opening of the official <i>Games</i> accommodation,</li></ul> and ends at midnight the day after the closing ceremony of the <i>Games</i> or on such later date as the <i>Person</i> is formally discharged from the relevant <i>Team</i> .
<b>"Marketing Agreement"</b>	means the Joint Marketing Programme Agreement entered in 2010 by: <ul style="list-style-type: none"><li>(a) <i>CGA</i>;</li><li>(b) <i>CGF</i>;</li><li>(c) Gold Coast 2018 Commonwealth Games Corporation;</li><li>(d) State of Queensland; and</li><li>(e) Gold Coast City Council,</li></ul> or any other marketing programme or agreement that may exist from time to time during a <i>Games Period</i> which has been entered into by <i>CGA</i> and/or <i>CGF</i> .
<b>"National Sporting Organisation"</b>	means any organisation that is (or was at the time of the alleged breach of this By-Law) a member of <i>CGA</i> , and includes any <i>Program Sport</i> .
<b>"Person"</b>	means a natural person or an organisation or other entity, whether incorporated or not.
<b>"Program Sport"</b>	means Program Sport as defined in the <i>CGA</i> constitution, being those Australian Affiliates of the International Federations recognised by the <i>CGF</i> as a Recognised International Federations and in respect of which the <i>CGF</i> has approved that the sport will be on the program of the next following <i>Games</i> .

**"Prohibited Purpose"**

means:

- (a) a commercial purpose; or
- (b) an advertising, licensing, marketing, fundraising, or promotional purpose; or
- (c) would cause a reasonable person to believe that a particular *Person* has a sponsorship arrangement with or, is associated with, or relates to –
  - i. the *Team*; or
  - ii. a *Games*-related entity; or
  - iii. the *Games*; or
  - iv. *CGA*; or
  - v. *CGF*; or
  - vi. an event or program associated with the *Commonwealth Games* whether or not the event or program relates to sport.

**"Team"**

means any Australian *Commonwealth Games Team*, Australian Youth Commonwealth Games Team or other team selected by *CGA*.

**"Team Member"** means:

- (a) a member of a *Team* including a Team Member notified by *CGA* or by signing an *Athlete* or *Athlete Support Personnel* Team Membership Agreement; or
- (b) a person advised by a *National Sporting Organisation* to *CGA* as a person considered suitable as a member of a *Team* and recognised as such by *CGA*.

**3. INTERPRETATION**

3.1. In these By-Laws, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa; and
- (b) the headings are used for convenience only and do not affect the interpretation of these By-Laws; and
- (c) other grammatical forms of defined words or expressions have corresponding meanings; and
- (d) a reference to a document includes the document as modified from time to time and any document replacing it; and
- (e) a reference to a party is to a party to these By-Laws and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; and
- (f) the word 'month' means calendar month and the word 'year' means 12 months;
- (g) 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; and
- (h) a reference to a thing includes a part of that thing; and
- (i) 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; and
- (j) wherever 'include', 'for example' or any form of those words or similar expression is used, it must be construed as if it were followed by '(without being limited to)'; and

- (k) a reference to time is to Australian Eastern Standard Time; and
- (l) 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; and
- (m) if a *Person* to whom these By-Laws apply consists of more than one *Person*, then these By-Laws bind them jointly and severally.

#### 4. COMMENCEMENT

4.1. These By-Laws commence on 1 July 2017.

#### 5. COMMERCIAL ACTIVITIES

5.1. A *National Sporting Organisation* shall not, and shall not authorise or permit any third party to, conduct, promote or organise any activity or program for, related to, or involving, a *Prohibited Purpose*, in which:

- (a) reference is made to any of the following:
  - (i) 2018 Comm Games; or
  - (ii) 2018 Commonwealth Games; or
  - (iii) Australian Commonwealth Games or ACG; or
  - (iv) Australian Commonwealth Games Association or ACGA; or
  - (v) CG18; or
  - (vi) CG2018; or
  - (vii) CG22; or
  - (viii) CG2022; or
  - (ix) CG26; or
  - (x) CG2026; or
  - (xi) CG30; or
  - (xii) CG2030; or
  - (xiii) Comm Games; or
  - (xiv) Commonwealth Games or CG; or
  - (xv) Commonwealth Games Australia or CGA; or
  - (xvi) Commonwealth Games Federation or CGF; or
  - (xvii) GC18; or
  - (xviii) GC2018; or
  - (xix) Gold Coast 2018 Commonwealth Games; or
  - (xx) Gold Coast 2018 Games; or
  - (xxi) Gold Coast Commonwealth Games; or
  - (xxii) Gold Coast Games; or
  - (xxiii) GOLDOC; or
  - (xxiv) the Games; or
  - (xxv) Queen's Baton Relay; or
  - (xxvi) any reference which in the reasonable opinion of the *CGA Executive*, may be reasonably interpreted as referring to any items listed in clause 5.1(a)(i)-(xxv);

or

- (b) reference is made to any sporting event, organisation, and/or *Team* which is organised, associated, and/or affiliated with:
  - (i) CGA; or
  - (ii) CGF;

or

- (c) the *National Sporting Organisation* or any *Team* selected by the *National Sporting Organisation* is represented as having the sponsorship or approval of, or is associated or affiliated with:
- (i) 2018 Comm Games; or
  - (ii) 2018 Commonwealth Games; or
  - (iii) Australian Commonwealth Games or ACG; or
  - (iv) Australian Commonwealth Games Association or ACGA; or
  - (v) CG18; or
  - (vi) CG2018; or
  - (vii) CG22; or
  - (viii) CG2022; or
  - (ix) CG26; or
  - (x) CG2026; or
  - (xi) CG30; or
  - (xii) CG2030; or
  - (xiii) Comm Games;
  - (xiv) Commonwealth Games or CG; or
  - (xv) Commonwealth Games Australia or CGA; or
  - (xvi) Commonwealth Games Federation or CGF; or
  - (xvii) GC18; or
  - (xviii) GC2018; or
  - (xix) Gold Coast 2018 Commonwealth Games; or
  - (xx) Gold Coast 2018 Games; or
  - (xxi) Gold Coast Commonwealth Games; or
  - (xxii) Gold Coast Games; or
  - (xxiii) GOLDOC; or
  - (xxiv) the Games; or
  - (xxv) Queen's Baton Relay; or
  - (xxvi) any representation which in the reasonable opinion of the *CGA Executive*, may be reasonably interpreted as representing any items listed in clause 5.1(c)(i)-(xxv);
- or
- (d) there is use of any language, design, image, photograph, reference or representation (howsoever communicated) of a ceremony, event or competition of a *Commonwealth Games*, or any other intellectual property (including but not limited to the "Commonwealth Games Intellectual Property" as defined in Byelaw 18 of *CGF's* Byelaws) of:
- (i) *CGA*; or
  - (ii) *CGF*,

unless prior consent has been granted in writing by an *Authorised Person*.

5.2. An *Authorised Person* may grant written consent under clause 5.1 of these By-Laws if, the *Authorised Person* is satisfied by the *National Sporting Organisation* that a third party and/or any activity or program for, relating to, or involving, a *Prohibited Purpose* is reasonably considered unlikely to:

- (a) damage, compromise, jeopardise or interfere with an advertising, licensing, marketing, fundraising or promotional activity or program, whether or not for commercial gain, which is associated or affiliated with, or supervised by:
  - (i) the *Team*;
  - (ii) the *Games*;
  - (iii) *CGA*; or

(iv) *CGF*;

or

- (b) bring into disrepute, lower in the standing of the public or otherwise damage the name or image of:
- (i) the *Team*;
  - (ii) the *Games*;
  - (iii) *CGA*; or
  - (iv) *CGF*.

5.3. Any consent granted by an *Authorised Person* must be expressed in writing and contain:

- (a) a description of the design, image, photograph, reference or representation authorised; and
- (b) the name of the *Person* authorised to use the stated design, image, photograph, reference or representation; and
- (c) the date the authority was granted; and
- (d) the duration of the authority; and

will be granted on any such other specified terms and conditions as the *Authorised Person* sees fit.

5.4. An *Authorised Person* retains sole and absolute discretion to withdraw any consent granted in accordance with clause 5.1, and in so doing, may have regard to the criteria specified in clause 5.2.

5.5. A *National Sporting Organisation* shall comply with these By-Laws and take all reasonable steps to:

- (a) seek the written consent of an *Authorised Person* prior to any circumstance in which a reasonable person considers that clarification or consent of an *Authorised Person* should first be sought;
- (b) provide such assistance and information as may be requested from time to time by the *CGA Executive* or an *Authorised Person*;
- (c) use best endeavours to ensure third party compliance with these By-Laws; and
- (d) prevent and/or report any and all instances of ambush marketing related to clause 5.1 of these By-Laws.

5.6. A *National Sporting Organisation* may be deemed responsible for any breach of these By-Laws committed by a third-party connected to or otherwise reasonably considered to be associated with that *National Sporting Organisation*, whether or not for commercial gain.

## 6. GAMES PERIOD

6.1. During the *Games Period* a *National Sporting Organisation*, *Team* and any *Athlete*, *Athlete Support Personnel* or *Director* who is a member or representative of, connected to, or otherwise reasonably considered to be associated with that *National Sporting Organisation* shall not:

- (a) authorise; or
- (b) permit; or
- (c) conduct; or
- (d) organise; or

- (e) promote; or
- (f) participate in; or
- (g) hold out to be in,

any activity or program for, relating to, or involving, a *Prohibited Purpose* without the prior written consent of an *Authorised Person*.

- 6.2. During the *Games Period*, a *National Sporting Organisation* shall ensure that the *National Sporting Organisation* and/or any third party connected to or otherwise reasonably considered to be associated with that *National Sporting Organisation* will not infringe on the intellectual property rights contained in any *Marketing Agreement* provided the intellectual property rights protected in the *Marketing Agreement* are within the knowledge and ambit of the *National Sporting Organisation* or any of its representatives.

## 7. PENALTIES

- 7.1. Any *National Sporting Organisation* in breach of these By-Laws shall be subject to any penalty as determined by the *CGA Executive* having regard to the criteria in clause 7.3. Penalties imposed by the *CGA Executive* may include, but are not limited to:
- (a) a written warning; and/or
  - (b) a suspended financial sanction; and/or
  - (c) a financial sanction (including damages or compensation for loss); and/or
  - (d) suspension of funding to a *National Sporting Organisation*; and/or
  - (e) suspension of a *National Sporting Organisation* or an individual's membership with *CGA*.
- 7.2. Any decision as to a penalty or otherwise for a breach of these By-Laws in accordance with clause 7.1 must be carried by at least fifty per cent (50%) of the *CGA Executive*, with the President holding a casting vote in the event of a deadlock.
- 7.3. In determining the reasonableness of any penalty, the *CGA Executive* will consider whether the penalty is proportionate to the breach, damage suffered and/or opportunity lost by:
- (a) the *Team*; and/or
  - (b) the *Games*; and/or
  - (c) *CGA*; and/or
  - (d) *CGF*; and/or
  - (e) any *National Sporting Organisation* affected by the breach.
- 7.4. Notwithstanding any other provision in these By-Laws, the *CGA Executive* may take into account any factor it deems necessary in considering the reasonableness of any penalty it may impose in accordance with these By-Laws.
- 7.5. If a *National Sporting Organisation* wishes to challenge a penalty imposed under these By-Laws, it must do so in accordance with the Grievance Procedure provided under the Constitution of the *CGA*.



- 7.6. For the avoidance of doubt, any penalty imposed in accordance with these By-laws is in addition to any penalty that may also be imposed under relevant Federal and State legislation (including but not limited to any penalties prescribed under the Commonwealth Games Arrangements Act 2011 (Qld) or the Major Sporting Events (Indicia and Images) Protection Act 2014 (Cth)).

## **8. Reviews**

CGA reserves the right to amend these By-Laws from time to time subject to organisational needs or changes in the law. They will be reviewed at least every two years and any amendments will be approved by the CGA Board of Management, updated in the CGA Policy register and updated on the CGA website.