



# **COMMONWEALTH GAMES AUSTRALIA LIMITED**

## **CONSTITUTION**

**COMPANY LIMITED BY GUARANTEE**

**ACN 629 915 448**

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## TABLE OF CONTENTS

Part 1. Definitions and interpretation.....	1
1.1.    Definitions.....	1
1.2.    Interpretation.....	3
1.3.    Replaceable rules.....	3
Part 2. Preliminary.....	3
2.1.    Objects.....	3
2.2.    Powers.....	4
Part 3. Income and payments.....	5
3.1.    Application of income.....	5
Part 4. Membership.....	5
4.1.    Members.....	5
4.2.    Membership Class definitions.....	6
4.3.    Limited liability.....	7
4.4.    Voting of Members.....	7
4.5.    Ceasing to be a Member.....	7
Part 5. By-laws: Grievances and Discipline of Members.....	8
5.1.    Jurisdiction.....	8
5.2.    By-laws.....	8
Part 6. General Meetings.....	8
6.1.    Annual General Meeting (AGM).....	8
6.2.    Board may convene a General Meeting.....	8
6.3.    Members may convene a General Meeting.....	9
6.4.    Notice of General Meeting.....	9
6.5.    No other business.....	9
6.6.    Entitlement of a Member to attend General Meeting.....	9
6.7.    Postponement of General Meeting.....	9
6.8.    Written notice of postponement of General Meeting.....	10
6.9.    Non-receipt of notice.....	10
Part 7. Proceedings at General Meetings.....	10
7.1.    Number for a quorum.....	10
7.2.    Requirement for a quorum.....	10
7.3.    Quorum and time.....	10
7.4.    Adjourned meeting.....	11

7.5.	President to preside over General Meetings.....	11
7.6.	Conduct of General Meetings.....	11
7.7.	Appointment of auditor .....	11
7.8.	Adjournment of General Meeting .....	11
7.9.	Notice of adjourned meeting.....	11
7.10.	Questions decided by the majority .....	12
7.11.	Declaration of results .....	12
7.12.	Poll.....	12
7.13.	Objection to voting qualification .....	12
7.14.	Election of Directors.....	12
7.15.	Circular resolutions of Members .....	13
Part 8. Members' Forum .....		14
8.1.	Members' Forum .....	14
Part 9. Board of Directors .....		14
9.1.	Composition of the Board .....	14
9.2.	Commencement of Term .....	14
9.3.	Eligibility and Disqualifying Positions .....	14
9.4.	Nomination for election.....	15
9.5.	Term of office of Elected Directors .....	15
9.6.	President and Vice-President.....	15
9.7.	Elected Director elected at General Meeting .....	16
9.8.	Appointed Directors .....	16
9.9.	Casual vacancy .....	16
9.10.	Remuneration of Directors.....	16
9.11.	Honorarium.....	17
9.12.	Removal of Director .....	17
9.13.	Vacation of Office .....	17
9.14.	Directors of CGA .....	17
Part 10. Powers of the Board .....		17
10.1.	Powers of the Board .....	17
10.2.	Role of the President .....	18
10.3.	Awards .....	18
Part 11. Proceedings of Directors.....		18
11.1.	Board Meetings.....	18

11.2.	Notice of Board Meetings.....	18
11.3.	Questions decided by majority .....	19
11.4.	Quorum .....	19
11.5.	Effect of vacancy .....	19
11.6.	President to preside at Board meeting.....	19
11.7.	Circulating resolutions .....	19
11.8.	Validity of acts of Directors .....	20
11.9.	Conflicts .....	20
11.10.	Minutes .....	20
Part 12.	Telecommunication meetings.....	20
12.1.	Telecommunication Meeting.....	20
Part 13.	Chief executive officer .....	20
13.1.	Appointment of CEO.....	20
13.2.	Powers, duties and authorities of CEO.....	20
13.3.	CEO to attend meetings.....	21
Part 14.	Company Secretary .....	21
14.1.	Appointment of Company Secretary .....	21
14.2.	Suspension and removal of Company Secretary .....	21
14.3.	Powers, duties and authorities of Company Secretary .....	21
Part 15.	Committees .....	21
15.1.	Committees and delegations of Board powers.....	21
15.2.	Powers delegated to committees.....	21
15.3.	Committee meetings.....	21
Part 16.	Selection of Team members.....	22
16.1.	Selection of team members.....	22
Part 17.	Foundation / Trusts .....	22
17.1.	CGA may establish Foundations or Trusts .....	22
Part 18.	By-laws .....	22
18.1.	Making and amending by-laws.....	22
18.2.	Effect by-laws.....	22
Part 19.	Inspection of Records.....	22
19.1.	Right of Members to Inspect Records.....	22
Part 20.	Accounts .....	23
20.1.	Accounting Records.....	23

Part 21. Service of Documents .....	23
21.1. Document includes notice.....	23
21.2. Methods of service on a Member .....	23
21.3. Methods of service on CGA.....	23
21.4. Time of service .....	23
Part 22. Indemnity .....	24
22.1. Indemnity of Officers.....	24
22.2. Insurance.....	24
Part 23. Patrons.....	24
23.1. Patron in Chief and Patron .....	24
Part 24. Winding up .....	25
24.1. Contributions of Members on winding up .....	25
24.2. Excess property on winding up .....	25
Part 25. Changes to the Constitution .....	25
25.1. Procedure for amending the Constitution.....	25
Part 26. Transition Provisions .....	26
26.1. Adoption of this Constitution.....	26
26.2. First elections.....	26
26.3. Members of ACGA.....	26

## Part 1. Definitions and interpretation

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### 1.1. Definitions

(a) In this Constitution unless the context requires otherwise:

**Act** means the *Corporations Act 2001* (Cth);

**ACGA** means Australian Commonwealth Games Association Incorporated;

**Annual General Meeting** or **AGM** means the annual meeting of CGA;

**Appointed Director** means a Director who has been appointed to the Board by the Elected Directors in accordance with Part 9.8;

**Associate Member** means a legal person or natural person who has been admitted as a Member of CGA in accordance with Part 4.2(c);

**Board** means the Board of Directors of CGA as constituted from time to time;

**Business Day** means any day except a Saturday or Sunday or other public holiday in Victoria;

**By-law** means any by-law approved by the Board which shall be binding on all Members, but shall not include policies or terms of reference;

**CGA** means Commonwealth Games Australia Limited and its predecessors, including the ACGA;

**Ceased Program Sport Members** means the class of Member described in 4.2(a);

**Chief Executive Officer** or **CEO** means the person appointed by the Board pursuant to Part 13.1;

**Committee** means a committee established under Part 15.1;

**Company Secretary** means a company secretary appointed by the Directors under Part 14.1;

**Constitution** means this constitution as amended from time to time, and a reference to a particular Part (also known as a clause) is a reference to a Part of this Constitution;

**Current Cycle** means the period immediately after the closing ceremony of the previous Games until the end of the closing ceremony of the next Games;

**Date of Incorporation** means the date on which the Australian Securities and Investments Commission approved CGA's incorporation as a company limited by guarantee;

**Director** means a Director of CGA and includes Elected Directors and Appointed Directors;

**Disqualifying position** means a position described in Part 9.3;

**Elected Director** means a Director who has been elected in accordance with Parts 9.4 and 9.5;

**Federation** means the Commonwealth Games Federation;

**Games** means the Commonwealth Games and the Commonwealth Youth Games as the context requires;

**General Meeting** means a general meeting of Members and includes the AGM;

**Life Member** means a natural person who has accepted such a nomination in accordance with Part 4.2(d);

**Member** means a legal or natural person, including an organisation, who is a member of CGA in accordance with Part 4;

**Members' Forum** means a forum as described in Part 8.1;

**Membership Class** means one of the grounds of Members described in Part 4.2;

**Member Delegate** means a natural person who has been nominated by an eligible Member to vote on the Member's behalf at a General Meeting;

**National Sporting Organisation** means any organisation that is a National Federation that is a Member of CGA and includes Program Sport Members;

**Officer** has the meaning given to it in Section 9 of the Act;

**Official Position** means a person who holds a position, whether elected or appointed, as President, Vice-President, Company Secretary, Treasurer, Director or equivalent of a body corporate or organisation;

**Patron** means a patron appointed in accordance with Part 23.1;

**President** means the role described in Part 9.6;

**Program Sport Member** means the class of Member described in 4.2(a);

**Recognised International Federation** means those International Federations as are recognised from time to time by the Federation;

**Recognised Sports** means sports which are the Australian affiliates of the International Federations recognised by the Federation as a Recognised International Federation and listed as Recognised Sports by the Federation;

**Special resolution** means a resolution that can only be passed by at least 75% of those entitled to vote on the resolution casting a vote in favour of the resolution.

**State Division** means an organisation which has been recognised by the Board as representing CGA in the relevant State or Territory;

**Team Members** means those athletes and officials selected to represent CGA at the Games; and

**Telecommunications Meeting** means the contemporaneous linking together of persons in oral communications by telephone, audio-visual or other instantaneous means approved by the Directors, and conducted in accordance with Part 12.1.

**Vice-President** means the role described in Part 9.6.

## **1.2. Interpretation**

- (a) Except as otherwise provided, this Constitution shall be construed with reference to the provisions of the Act and terms used in this Constitution unless otherwise defined shall be taken as having the same meaning as they have when used in the Act.
- (b) Words importing persons include organisations.
- (c) A reference to an organisation means a body corporate.
- (d) Words importing the singular include the plural number and vice versa.
- (e) Words importing one gender include the other.
- (f) A reference to any statute includes every amendment, re-enactment or replacement of that statute and any subordinate legislation made under that statute (such as regulations).

## **1.3. Replaceable rules**

The replaceable rules in the Act do not apply to CGA.

## **Part 2. Preliminary**

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### **2.1. Objects**

- (a) The objects of CGA shall be as follows:
  - i. to administer, control and co-ordinate the participation of Program Sport Members and their respective athletes and officials in the Games;
  - ii. to create interest in, and promote the ideals of the Games throughout Australia;
  - iii. to ensure the proper and adequate representation of and participation by Australia at the Games through the bodies in Australia controlling those sports conducted at the Games;
  - iv. to promote and foster high performance by Australian athletes competing at the Games;
  - v. to represent Australia at congresses of the Federation and upon other bodies and to other persons concerned in the conduct and promotion of the Games;
  - vi. to strive to ensure that all sports on the Games program are kept free of performance enhancing drugs;
  - vii. to facilitate the implementation of such drug testing programs as CGA deems appropriate and to supply to Program Sport Members information about such programs and to support and uphold the drug testing programs and policies of the Federation, and the Program Sport Members;
  - viii. to ensure that the good name and wellbeing of CGA and the Games is not denigrated or damaged in any way by unbecoming conduct of organisations and/or individuals associated with the Games;
  - ix. to abide by and uphold the Constitution of the Federation;



- x. to do all other things which are considered necessary to further the aims and objects of CGA; and
- xi. to connect meaningfully with all Australians by embracing diversity and inclusiveness, utilising the Commonwealth Games as a platform to share our story to inspire and unite communities.

## **2.2. Powers**

- (a) The powers of CGA shall be those of a natural person and without limiting the generality of the foregoing shall be to:
  - i. make By-Laws, policies, and procedures to facilitate the objects of CGA which are not inconsistent with the terms of this Constitution or with the rules from time to time of the Federation;
  - ii. impose upon and collect from Members subscriptions, fees, levies and other charges for the carrying out of the objects of CGA;
  - iii. control the appointment of personnel to represent Australia at the Games, including athletes, managers, officials, coaches, medical and paramedical personnel and any other personnel deemed by the Board necessary to carry out the objects of CGA, and promote and foster high performance by Australian athletes competing at the Games;
  - iv. control the raising of finance and its allocation and expenditure in connection with the objects of CGA;
  - v. raise money by appeals to Federal, State and Territory Governments, to the public of Australia, by levies on Members, by holding functions and by any other appropriate method;
  - vi. make representations to governments at all levels and to other authorities and organisations in regard to any matter affecting the interests of CGA;
  - vii. borrow money with or without security for the carrying out of the objects of CGA;
  - viii. own property both real and personal, for use by CGA in the carrying out of its objects and to invest monies of CGA as may be determined by CGA from time to time;
  - ix. invest funds in the name of CGA;
  - x. institute legal proceedings for the protection of its properties and rights and in the carrying out of its objects;
  - xi. require Members to furnish any payments, information and returns required by CGA in respect of relevant matters and within the scope of the activities of CGA;
  - xii. create such committees and commissions as are reasonably required for the proper conduct of the business of CGA;

- xiii. delegate, insofar as is not expressly or implicitly prohibited by this Constitution, any of its powers or functions to committees, commissions, Board, Members or bodies or persons not Members or connected with CGA;
- xiv. invite representatives of the Program Sports, Recognised Sports and Associate Members to attend Board meetings and General Meetings;
- xv. co-operate and liaise with bodies and persons charged with the preparation for and conducting of the Games and to undertake and carry out specific duties and responsibilities for the preparation and conduct of such Games;
- xvi. facilitate drug testing on Team Members either during competition or at such other times as the Board may deem appropriate and to impose sanctions in accordance with the policies from time to time adopted by the Board;
- xvii. engage employees, officers and consultants upon such terms and conditions as the Board deems necessary from time to time;
- xviii. fine, reprimand, suspend, expel or otherwise deal with a Member or a Team Member who is in breach of the terms of this Constitution;
- xix. create and operate one or more Foundations or Trusts in accordance with this Constitution;
- xx. do all other things as are deemed necessary by CGA in pursuit of its objects.

### **Part 3. Income and payments**

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#### **3.1. Application of income**

- (a) All CGA's profits (if any), other income and property, however derived, must be applied only to promote its objects as described in Part 2.1.
- (b) CGA must not make distributions to its Members, except for:
  - i. grants and/or subsidies to any Member which is itself a non-profit or corporate and only if it is for the advancement of the purposes of such Member and/or CGA;
  - ii. entering into any bona fide arm's length commercial arrangement with any Member for the advancement of the objects described in Part 2.2 .

### **Part 4. Membership**

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#### **4.1. Members**

- (a) Each Member must belong to at least one Membership Class;
- (b) The Membership Classes are:
  - i. Program Sport;
  - ii. State Division;
  - iii. Associate Member; and
  - iv. Life Member.

- (c) The nomination to or transfer between Membership Classes by Members is at the discretion of the Board, where appropriate.
- (d) The Board may require any Member or any Membership Class to pay membership fees as part of that Membership from time to time.
- (e) All Members may attend General Meetings however not all Members may vote, as outlined in Part 4.2.

#### 4.2. Membership Class definitions

- (a) Program Sport Members:
  - i. must be governed by a National Sporting Organisation or similar governing body;
  - ii. must be approved by the Federation as a sport that will be on the program of the Current Cycle for the Commonwealth Games;
  - iii. are entitled to have two delegates attend and vote at General Meetings;
  - iv. only one National Sporting Organisation can represent a Program Sport Member;
  - v. shall cease to be eligible for this Membership Class (**Ceased Program Sport Members**) if:
    - a. in the Board's view, their governing organisation no longer fits the definition of a National Sporting Organisation (or similar); and/or
    - b. the associated sport is no longer included as a sport that will be on the program of the Current Cycle for the Commonwealth Games.
  - vi. which are no longer eligible for this Membership Class, cease to be Program Members immediately at the conclusion of the closing ceremony of the Games and are eligible to become Associate Members.
- (b) State Division Members:
  - i. must have had their constitution approved by CGA and be accepted by the Board as representing CGA in the relevant State or Territory to be accepted for membership of CGA, provided that there must not be more than one State Division Member in any State or Territory;
  - ii. are entitled to have one delegate attend and vote at General Meetings;
  - iii. must raise and contribute funding as the Board deems appropriate from time to time (and to report on fund raising activity to the Board on a regular basis as the Board deems appropriate);
  - iv. must attend meetings that may be convened by CGA to provide reports on their activities; and
  - v. must foster and promote the ideals of the Games in their respective State or Territory.

(c) Associate Members:

- i. may include sports not currently on the Games program, but may be in future as Federation Recognised Sports or 'optional' sports, or have been program sports previously;
- ii. may include other relevant sporting organisations;
- iii. must be approved by the Board;
- iv. may attend General Meetings but are not eligible to vote.

(d) Life Members:

- i. must have, in the view of the Board, rendered exceptional service to CGA;
- ii. must have their Life Membership approved by a Special Resolution at a General Meeting;
- iii. may attend General Meetings but are not eligible to vote.

#### **4.3. Limited liability**

Members have no liability in that capacity except as described in Part 24.1.

#### **4.4. Voting of Members**

At General Meetings, those entitled to vote shall be:

- i. two delegates nominated by each Program Sport Member (each delegate may cast one vote each); and
- ii. one delegate nominated by each State Division Member, who may cast one vote.

#### **4.5. Ceasing to be a Member**

(a) An organisation or a person ceases to be a Member:

- i. on resignation made in writing to the Company Secretary;
- ii. if deemed by the Board not to have met the requirements of the constitution;
- iii. in the case of a natural person on:
  - a. their death; or
  - b. becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- iv. in the case of an organisation on:
  - a. being dissolved or otherwise ceasing to exist;
  - b. having a liquidator or provisional liquidator appointed to it; or
  - c. being insolvent.

- (b) In submitting a written notice of resignation, a Member must specify whether such resignation is immediate or with effect from a specified date occurring not more than 30 days after the service of the notice.
- (c) A Member remains liable after resignation for all money due by the Member to CGA.
- (d) CGA at a General Meeting shall have the power, by a seventy-five percent (75%) majority of those Members entitled to vote, to expel a Member.

## **Part 5. By-laws: Grievances and Discipline of Members**

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### **5.1. Jurisdiction**

All Members will be subject to, and must submit to, the jurisdiction, procedures, penalties and appeal mechanisms of CGA set out in the by-laws.

### **5.2. By-laws**

Without limiting the matters that may be referred to in the by-laws, the Board may make any by-laws:

- i. for the hearing and determination of grievances by any Member who feels aggrieved by a decision or action of the CGA;
- ii. disputes between Members relating to the conduct or administration of CGA;
- iii. for the discipline of Members; and
- iv. for the formation and administration of an appeals tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question.

## **Part 6. General Meetings**

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### **6.1. Annual General Meeting (AGM)**

(a) AGMs of CGA are to be held:

- i. within 18 months after registration of CGA; and
- ii. after the first AGM, at least once each calendar year and within five months after the end of its financial year.

(b) The date and venue of the AGM is to be determined by the Board.

### **6.2. Board may convene a General Meeting**

The Board may convene a General Meeting.

### **6.3. Members may convene a General Meeting**

- (a) General Meetings must be convened upon the written request of not fewer than fifty percent of the Program Sport Members. The request must:
  - i. be in writing; and
  - ii. state any resolution to be proposed at the meeting; and
  - iii. be signed by the Program Sport Members making the request.
- (b) If so requested, the Board must:
  - i. call the meeting within twenty-one (21) days of receipt of the request; and
  - ii. hold the General Meeting within two (2) months of receipt of the request.

### **6.4. Notice of General Meeting**

- (a) The Company Secretary shall advise in writing all Members of the proposed date of each AGM at least sixty (60) days before the date of the meeting.
- (b) Any notices of motion from Members must be received by the Company Secretary no less than thirty (30) days prior to the AGM.
- (c) At least twenty-one (21) days' notice of the time and place of a General Meeting, must be given to all Members, together with:
  - i. the business to be conducted;
  - ii. in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
  - iii. any notice of motion received from any Member or Director; and
  - iv. a list of all nominations received for any positions to be elected at the relevant General Meeting.

### **6.5. No other business**

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

### **6.6. Entitlement of a Member to attend General Meeting**

If a Member owes membership fees that are more than 90 days overdue, they shall not (if normally entitled) be entitled to vote on any CGA business and shall not be entitled to representation at General Meetings until all fees and other monies due and payable are paid.

### **6.7. Postponement of General Meeting**

Where a General Meeting (including an AGM) is convened by the Board, they may, if they think fit, postpone the meeting to a date and time they determine. However, this Part does not apply to a General Meeting convened by:

- i. the Board at the request of Program Sport Members; or
- ii. a court.

#### **6.8. Written notice of postponement of General Meeting**

- (a) Notice of the cancellation or postponement of a General Meeting prior to the meeting occurring must specify the:
  - i. reasons for the postponement;
  - ii. new date and time for the meeting; and
  - iii. the place where the meeting is to be held.
- (b) Notice of the postponement of a General Meeting must be given to:
  - i. each Member entitled to attend the General Meeting; and
  - ii. each other person entitled to notice of a General Meeting under the Act.

#### **6.9. Non-receipt of notice**

The non-receipt of a notice convening or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the postponement of that meeting.

### **Part 7. Proceedings at General Meetings**

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#### **7.1. Number for a quorum**

The number of Program Sport Members or State Division Members who must be present and eligible to vote for a quorum to exist at a General Meeting is not less than fifty percent of the delegates representing Program Sport Members.

#### **7.2. Requirement for a quorum**

- (a) An item of business may not be transacted at a General Meeting unless a quorum is present when the meeting proceeds to consider it.
- (b) If a quorum is present at the beginning of the meeting it is taken to be present throughout the meeting unless the chair of the meeting (on their own motion or at the request of a Program Sport who is present) declares otherwise.

#### **7.3. Quorum and time**

If there is no quorum present within thirty (30) minutes after the time set out in the notice of meeting then the meeting is adjourned to any day, time and place the chair reasonably decides.

#### **7.4. Adjourned meeting**

If a quorum (determined in accordance with Part 7.1) is not present within thirty (30) minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **7.5. President to preside over General Meetings**

- (a) The President is entitled to preside as chair at General Meetings.
- (b) If a General Meeting is convened and there is no President, or the President is not present within fifteen (15) minutes after the time set out in the notice of meeting or is unable or unwilling to act, the following may preside as chair (in order of entitlement):
  - i. the Vice-President;
  - ii. a Director chosen by a majority of the Directors present;
  - iii. the only Director present; or
  - iv. a delegate of a Program Sport Member chosen by a majority of the Program Sport Members present.

#### **7.6. Conduct of General Meetings**

- (a) The chair has charge of the general conduct of the meeting.
- (b) The chair may, having regard where necessary to the Act, terminate discussion on any matter whenever they consider it necessary for the proper conduct of the meeting.
- (c) A decision by the chair under this Part is final.
- (d) The President shall submit, in conjunction with the CEO, to each AGM a written report on the activities of CGA subsequent to the preceding AGM.

#### **7.7. Appointment of auditor**

A properly qualified auditor or auditors shall be appointed by the Members and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Act.

#### **7.8. Adjournment of General Meeting**

- (a) The chair must adjourn a General Meeting if a majority of delegates of Program Sports present and entitled to vote at the meeting agree or direct the chair to do so.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the Program Sport Members present.
- (c) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

#### **7.9. Notice of adjourned meeting**

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for twenty-one (21) days or more.



- (b) In that case, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

#### **7.10. Questions decided by the majority**

Except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **7.11. Declaration of results**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) A declaration by the chair that a resolution has on a show of hands been carried, or carried unanimously, or carried by acclamation, or by a particular majority, or lost, and an entry to that effect in the minutes of the meetings of CGA, is conclusive evidence of the fact.
- (c) Neither the chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

#### **7.12. Poll**

- (a) If a poll is properly demanded in accordance with the Act, it must be taken in the manner and at the date and time agreed by the meeting, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

#### **7.13. Objection to voting qualification**

An objection to the right of a person to attend or vote at a General Meeting:

- i. may not be raised except at that meeting; and
- ii. must be referred to the chair, whose decision is final.

#### **7.14. Election of Directors**

- (a) Election of Directors shall be by exhaustive ballot at the relevant General Meeting on papers prepared by the Company Secretary.
- (b) The exhaustive ballot will be conducted as a poll as follows:
  - i. rounds of voting for each position of Director to be filled will be held, the first of which will include all nominees for that position;
  - ii. each Member entitled to vote will have one vote on each poll;

- iii. in the event that a nominee receives the majority of the votes, a resolution will be passed in favour of the election of the nominee;
- iv. should no nominee receive a majority of the votes, the nominee with the fewest number of votes will be eliminated from the second and each subsequent round;
- v. in the event that more than one nominee has an equal number of votes and that number of votes is the least number of votes then:
  - a. provided that there remains at least one nominee for the subsequent round, all of those nominees with the least amount of votes will be eliminated from each of the subsequent rounds of voting;
  - b. if eliminating all nominees with the least number of votes would result in there being no nominees remaining then, subject to the direction of the chair (who may call for a re-vote of the last round of voting), the position up for election will be treated as a casual vacancy to be dealt with in accordance with Part 9.9;
- vi. rounds of voting will be continued with one or more nominees being eliminated from each round until a nominee receives the majority of the votes or only two nominees remain;
- vii. in the last round of two nominees, a resolution is passed in favour of the election of the nominee who receives the majority of the votes; and
- viii. in the event that no nominee in the last round of voting receives a majority then, subject to the direction of the chair (who may call for a re-vote of the last round of voting) the position up for election will be treated as a casual vacancy to be dealt with in accordance with Part 9.9.

**7.15. Circular resolutions of Members**

- (a) The Board may put a resolution to the Members to pass a resolution without a General Meeting being held (a circular resolution).
- (b) A circular resolution is passed if a majority of the Members entitled to vote on the resolution sign or agree to the circular resolution.
- (c) Members may sign:
  - i. a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - ii. separate copies of the document may be used for signing by the Members if the wording of the resolution and statement is identical in each copy.
- (d) CGA may send a circular resolution by email to the Members and the Members may agree to the circular resolution by sending a reply email to that effect.
- (e) CGA may utilise electronic voting software for a circular resolution and Members cast their vote by logging in and agreeing to the resolution.

- (f) The resolution is passed when the majority of Members have signed or otherwise agreed to the circular resolution in the manner set out in Part 11.7(b).

## **Part 8. Members' Forum**

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### **8.1. Members' Forum**

- (a) CGA will conduct at least one Members' Forum each year.
- (b) The Members' Forum will provide the opportunity for Members to have input into strategic and governance matters as well as operational items that require consultation and alignment across Members and other key stakeholders, who may also attend by invitation.
- (c) The Members' Forum shall have no decision-making authority for CGA under this Constitution but may be delegated other powers as deemed appropriate by the Board from time to time.

## **Part 9. Board of Directors**

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### **9.1. Composition of the Board**

There are to be no less than seven and no more than nine Directors, being:

- i. seven Elected Directors, which includes the President; and
- ii. up to two Appointed Directors.

### **9.2. Commencement of Term**

The maximum term for an Elected Director, as described in Part 9.5, shall commence from the 2018 AGM.

### **9.3. Eligibility and Disqualifying Positions**

- (a) A person may not hold office if they:
  - i. are an employee of CGA, a State Division, a Program Sport Member or an Associate Member; or
  - ii. have been CEO of CGA at any time within three years prior to the nomination of that person for election as a Director (both a **Disqualifying Position**).
- (b) A Director who accepts a Disqualifying Position must notify the other Directors of that fact immediately and is deemed to have vacated office as Director.
- (c) A person elected or appointed as a Director at the time of holding a Disqualifying Position must immediately resign from that Disqualifying Position.

#### **9.4. Nomination for election**

- (a) At least (forty-five) 45 days prior to the proposed date of the AGM at which a resolution or resolutions will be proposed to fill a vacancy in the position of Elected Director, the Company Secretary will request nominations from Members for elections to positions falling vacant, which must be received no less than thirty (30) days prior to the AGM.
- (b) Nominations for positions will be received by the Company Secretary.
- (c) A nomination must:
  - i. specify if the nominee is nominated as Elected Director;
  - ii. be in writing on the prescribed form and signed by the nominee; and
  - iii. be signed by the nominator.

#### **9.5. Term of office of Elected Directors**

- (a) Subject to Part 26.2, the term of office is four (4) years.
- (b) An Elected Director holds office until the end of the AGM nearest to when their term of office expires.
- (c) With the exception of the AGM in the calendar year prior to a Games being held, the Members will vote to elect two new Directors to replace that number of existing Elected Directors, being the Directors whose terms of office expire at that meeting.
- (d) Directors will be replaced in order of time served.
- (e) An Elected Director (including the President) whose term of office expires, is eligible for election or re-election for a maximum of three (3) terms or twelve (12) years only, subject to Part 9.6(f).
- (f) An Elected Director may serve a maximum of three (3) terms of office in total.

#### **9.6. President and Vice-President**

- (a) The President shall be elected by Members at the AGM in the calendar year of the Games.
- (b) The President shall represent CGA nationally and internationally, and in their absence, the Vice-President shall act as President.
- (c) The Vice-President shall be elected by the Board at the first Board meeting immediately after the AGM.
- (d) A person may hold the office of Vice-President only for as long as they are a Director.
- (e) A Director appointed Vice-President under this Part may be removed from that office by the Directors at their absolute discretion.
- (f) The maximum term for the President is three (3) terms. Any terms previously served as an Elected Director or Appointed Director do not contribute to the calculations of the President's maximum term of office.

### **9.7. Elected Director elected at General Meeting**

At a General Meeting:

- i. at which an Elected Director retires; or
  - ii. at which, there is a vacancy in the office of an Elected Director,
- the Members may fill the vacancy by electing someone to that office.

### **9.8. Appointed Directors**

(a) In addition to the Elected Directors, the Directors may themselves appoint up to two Appointed Directors because of their special business acumen and/or technical skills as per the Nominations Committee Charter.

(b) A Director appointed under this Part 9.8:

- i. will serve on the Board for an initial term of up to two (2) years from their date of appointment;
- ii. may be eligible for appointment or re-appointment as an Appointed Director or election as an Elected Director; and
- iii. may serve a maximum of twelve (12) years in office in total as an Appointed or Elected Director.

### **9.9. Casual vacancy**

(a) The Directors may at any time appoint a person to be a Director to fill a casual vacancy.

(b) A casual vacancy may be filled:

- i. in the case of an Elected Director, by the Directors as a casual vacancy;
- ii. in the case of Appointed Director in accordance with Part 9.8.

(c) A Director who takes office under this Part 9.9:

- i. in the case of a replacement for an Elected Director must have their position confirmed by resolution at the next AGM; and
- ii. if so confirmed, holds office until the end of the term of the Elected Director who caused the casual vacancy; and
- iii. in the case of a replacement for an Appointed Director, holds office for an initial term of up to two (2) years as determined by the Board.

### **9.10. Remuneration of Directors**

Subject to Part 9.11, a Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Act, may be:

- i. paid by CGA for services rendered to it; and
- ii. reimbursed by CGA for their reasonable travelling, accommodation and other expenses when:

- a. travelling to or from meetings of the Directors, a Committee or CGA; or
- b. otherwise engaged on the affairs of CGA.

#### **9.11. Honorarium**

CGA may pay a Director an honorarium as approved by the Board.

#### **9.12. Removal of Director**

- (a) Members may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office in accordance with the Act.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with this Part cannot be re-appointed as a Director within two years of their removal.

#### **9.13. Vacation of Office**

The office of a Director becomes vacant if the Director:

- i. is removed in accordance with Part 9.12;
- ii. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- iii. resigns office by noting in writing to CGA;
- iv. accepts, is appointed to, or becomes the holder of, a Disqualifying Position and does not resign from that Disqualifying Position;
- v. is not present personally at three consecutive Board meetings without leave of absence from the Board; or
- vi. is convicted of an indictable offence.

#### **9.14. Directors of CGA**

Directors of CGA are bound by the constitution and entitled to attend General Meetings but shall have no vote at General Meetings.

### **Part 10. Powers of the Board**

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#### **10.1. Powers of the Board**

The Board shall have sole charge of all affairs of CGA and the Board shall appoint and dismiss the CEO and shall have all powers given to it under Part 2.2 of this Constitution and under the Act, and also the power to do all such things as may appear to the Board to be necessary for the efficient management of CGA and the administration of its affairs. The Board may delegate to the CEO the power (subject to such reservations on the power as are decided by the Board) to manage the affairs of CGA in accordance with Part 13.2 of this Constitution.

## **10.2. Role of the President**

The President shall act as a liaison between the Board and the CEO, and exercise and perform such other powers and duties as may be delegated by the Board from time to time. More specifically, the President shall be responsible for:

- i. leading the Board to carry out its functions, including but not limited to ensuring approved policies are in place to help ensure sound and compliant governance and management of CGA;
- ii. partnering with the CEO to ensure the Board's directives, policies, and resolutions are carried out;
- iii. co-ordinating an annual performance review of the CEO;
- iv. setting priorities and creating agendas for meetings of the Board;
- v. chairing Board and General Meetings and Strategic Forums of CGA; serving as an ambassador of CGA and advocating its mission to internal and external stakeholders; and
- vi. representing CGA at General Assemblies of the Federation and other international forums.

## **10.3. Awards**

The Board shall have power to create categories of awards to Members and individuals.

## **Part 11. Proceedings of Directors**

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### **11.1. Board Meetings**

- (a) Subject to Part 11.1(b), the Board may meet together to conduct business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least three times in each calendar year.
- (c) A Director, may, and the Company Secretary on the request of a Director must, convene a Board meeting.

### **11.2. Notice of Board Meetings**

- (a) Notice of a Board Meeting must be given to each Director.
- (b) The notice must:
  - i. specify the day, time and place of the meeting;
  - ii. state the business to be transacted; and
  - iii. be given at least three days before the meeting, unless all Directors otherwise agree to a shorter period of notice.
- (c) If a Director does not receive the notice of a meeting, or a complete notice, as required under Part 11.2(b) that non-receipt or incomplete notice does not in itself invalidate anything done at the meeting.

### **11.3. Questions decided by majority**

A question arising at a Board Meeting is to be decided by a majority of votes of the Directors present.

### **11.4. Quorum**

The quorum for a Board Meeting is at least two-thirds of the Directors in office.

### **11.5. Effect of vacancy**

- (a) The continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

### **11.6. President to preside at Board meeting**

- (a) The President is entitled to preside as chair at Board Meetings.
- (b) If the President is not present and able and willing to act within fifteen (15) minutes after the time appointed for a meeting or has signified an intention not to be present and be able and willing to act, the Vice-President may preside as chair.
- (c) If both the President and Vice-President are not present, another Director shall be nominated to act as chair.
- (d) The chair of the meeting will not have a casting vote.

### **11.7. Circulating resolutions**

- (a) The Directors may pass a resolution without a Board meeting being held if the majority of Directors who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Each Director may sign:
  - i. a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - ii. separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (c) CGA may send a circular resolution by email to the Board and the Directors may agree to the circular resolution by sending a reply email to that effect.
- (d) CGA may utilise electronic voting software for a circular resolution and Directors cast their vote by logging in and agreeing to the resolution.
- (e) The resolution is passed when the majority of Directors has signed or otherwise agreed to the circular resolution in the manner set out in Part 11.7(b) or Part 11.7(c).



### **11.8. Validity of acts of Directors**

Everything done at a Board meeting or a Committee meeting, or by a person acting as a Director, are valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them were disqualified or had vacated office.

### **11.9. Conflicts**

- (a) A Director shall declare to the Board that Director's interest in any matter in which any conflict of interest arises as defined by the Act, and if determined by the Board, that Director must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter.
- (b) In the event of uncertainty under 11.9(a), the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned to the next meeting.
- (c) The Company Secretary shall maintain a register of declared interests.

### **11.10. Minutes**

The Board must cause minutes of meetings to be made.

## **Part 12. Telecommunication meetings**

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### **12.1. Telecommunication Meeting**

A General Meeting or a Board Meeting may be held by means of a Telecommunication Meeting, provided that the number of Members or Directors (as applicable) participating is not less than the quorum required.

## **Part 13. Chief executive officer**

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### **13.1. Appointment of CEO**

- (a) The Board must appoint a CEO.
- (b) The CEO shall hold office pursuant to the terms of an employment agreement between the CEO and CGA. The employment agreement will govern the respective rights and obligations of the CEO and CGA.

### **13.2. Powers, duties and authorities of CEO**

- (a) The CEO shall manage the affairs of CGA.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO is subject at all time to the control of the Board.

- (c) The CEO's role will be to implement the strategies, plans and policies approved by the Board and will be responsible for the management and direction of CGA and its finances.

### **13.3. CEO to attend meetings**

The CEO is entitled, subject to a determination otherwise by the Board, to attend all meetings of CGA, all meetings of the Board and any committees and may speak on any matter, but does not have a vote.

## **Part 14. Company Secretary**

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### **14.1. Appointment of Company Secretary**

- (a) There must be at least one Company Secretary who is to be appointed by the Board.
- (b) The Company Secretary may be the CEO.
- (c) The Company Secretary shall be the Public Officer for the Company.

### **14.2. Suspension and removal of Company Secretary**

The Board may suspend or remove a Company Secretary from that office.

### **14.3. Powers, duties and authorities of Company Secretary**

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, determined by the Board.

## **Part 15. Committees**

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### **15.1. Committees and delegations of Board powers**

The Board may delegate any of their powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants) and may vary or revoke any delegation.

### **15.2. Powers delegated to committees**

A Committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Board.

### **15.3. Committee meetings**

Committee meetings are governed by the provisions of this Constitution dealing with Directors' meetings as far as they are capable of delegation.

## **Part 16. Selection of Team members**

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### **16.1. Selection of team members**

Notwithstanding anything in this Constitution contained to the contrary, the control of the selection and appointment of Team Members shall be vested in and exercised by the Board.

## **Part 17. Foundation / Trusts**

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### **17.1. CGA may establish Foundations or Trusts**

- (a) The CGA may, at its discretion, establish one or more Foundations or Trusts upon such terms as the Association may determine or as may be agreed by the Board.
- (b) The primary purpose of the Foundation or Trust will be the preservation of the assets of the Association for the betterment of the Commonwealth Games movement in Australia and/or all of the Program Sports or such other sports as the Board shall determine.

## **Part 18. By-laws**

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### **18.1. Making and amending by-laws**

The Board may from time to time make by-laws which in their opinion are necessary for the control, administration and management of CGA's affairs and may amend, repeal and replace those by-laws.

### **18.2. Effect by-laws**

A by-law:

- i. is subject to this Constitution;
- ii. must be consistent with this Constitution; and
- iii. when in force, is binding on all Members and has the same effect as a provision in this Constitution.

## **Part 19. Inspection of Records**

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### **19.1. Right of Members to Inspect Records**

- (a) Members shall have the right to inspect documents of CGA as permitted by the Act.
- (b) Requests for inspection of documents of CGA by Members will be made to the Board in writing via the Company Secretary and determined by the Board, provided that such requests are reasonable and not frivolous.

## **Part 20. Accounts**

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### **20.1. Accounting Records**

- (a) The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.
- (b) The financial year commences on 1 July in each year.

## **Part 21. Service of Documents**

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### **21.1. Document includes notice**

In this Part 21, document includes a notice.

### **21.2. Methods of service on a Member**

CGA may give a document to a Member:

- i. personally;
- ii. by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- iii. by sending it to a fax number or electronic address nominated by the Member.

### **21.3. Methods of service on CGA**

A Member may give a document to CGA:

- i. by delivering it to the Registered Office;
- ii. by sending it by post to the Registered Office; or
- iii. by sending it to the electronic address nominated by CGA.

### **21.4. Time of service**

- i. A notice sent by post within Australia is taken to be given 3 Business Days after posting.
- ii. A notice sent by post to or from a place outside Australia is taken to be given 7 Business Days after posting.
- iii. A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number or electronic address).

## **Part 22. Indemnity**

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### **22.1. Indemnity of Officers**

(a) Every person who is or has been:

- i. a Director;
- ii. a CEO; or
- iii. a Company Secretary,

is entitled to be indemnified out of the property of CGA against:

- i. every liability incurred by the person in that capacity (except a liability for legal costs); and
- ii. all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigator nature, in which the person becomes involved because of that capacity.

(b) Notwithstanding Part 22.1(a), CGA is not required to indemnify any person:

- i. forbidden by statute to indemnify the person against the liability or legal costs; or
- ii. an indemnity by CGA of the person against the liability or legal costs would, if given, be made void by statute.

### **22.2. Insurance**

CGA may pay a premium in respect of a contract insuring a person who is or has been a Director or Officer against:

- (a) any liability incurred by the person as a Director or Officer which does not arise out of wilful breach of duty in relation to CGA or any liability which is prohibited by the Act; and
- (b) any liability for costs or expenses incurred by the person in defending proceedings, whether civil or criminal, and whatever their outcome.

## **Part 23. Patrons**

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### **23.1. Patron in Chief and Patron**

- (a) The Governor General of the Commonwealth of Australia for the time being will be invited to be Patron in Chief.
- (b) The Prime Minister of the Commonwealth of Australia for the time being will be invited to be the Patron.

## **Part 24. Winding up**

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### **24.1. Contributions of Members on winding up**

- (a) In the event CGA is wound up, present Members (being persons who are Members at the date CGA commences to be wound up) and past members (being persons who were Members at any time during the 12 months immediately preceding the commencement of the winding up), must contribute to CGA's property such monies and other assets necessary to:
- i. Discharge CGA's debts and liabilities at the date CGA is wound up and costs, charges and expenses properly incurred in connection with the winding up; and
  - ii. Adjust the rights of the contributories among themselves.
- (b) Notwithstanding any other provision of this Constitution, no present Member or past Member need contribute more than an aggregate of \$1.00 to the winding up of CGA.

### **24.2. Excess property on winding up**

- (a) If on the winding up or dissolution of CGA, and after satisfaction of all its debts and liabilities, any property remains, that property must be given to one or more registered charitable institution(s):
- i. with charitable purposes similar to those of CGA; and
  - ii. whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as imposed under this Constitution.
- (b) That charity is, or those bodies are, to be determined by a special resolution of Members at or before the time of winding up, or failing that determination, by a judge who has or acquires jurisdiction in that matter.

## **Part 25. Changes to the Constitution**

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### **25.1. Procedure for amending the Constitution**

- (a) The Members may amend this Constitution by passing a Special Resolution.
- (b) Any Notice of Motion to alter this Constitution shall be given to the Company Secretary in writing not less than sixty days before the date of the meeting at which the amendment is to be moved. The Company Secretary shall advise all Members at least thirty days before such meeting of the full text of such motion and the date of meeting. The Motion shall specify the clause as sought to be amended so as to indicate clearly the intent of the amendment.

## **Part 26. Transition Provisions**

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### **26.1. Adoption of this Constitution**

This Constitution comes into force and has full effect from the later of the beginning of the AGM in November 2018, and registration of CGA as a company limited by guarantee. Before this Constitution comes into force the Board and CGA may take any actions the Board deems appropriate to prepare for this Constitution coming into force, including in relation to the election of Directors. For the avoidance of doubt, the constitution of the incorporated association ACGA, registered in the Australian Capital Territory, shall remain in force and effect until the beginning of the AGM in November 2018, at which time it will lapse.

### **26.2. First elections**

- (a) In order to rotate the terms of office for Directors, the first election of Directors will be as follows:
  - i. President for a four (4) year term.
  - ii. Two (2) Directors for a four (4) year term.
  - iii. Two (2) Directors for a two (2) year term and
  - iv. Two (2) Directors for a one (1) year term.
- (b) Each term thereafter will be four (4) years.
- (c) Voting will be in accordance with Part 7.14 of this constitution.
- (d) There are no elections at the AGM in the calendar year prior to the Games.

### **26.3. Members of ACGA**

Subsequent to the Date of Incorporation and conditional on the termination of ACGA, the following membership classes described in the ACGA constitution will be granted corresponding Membership of CGA:

- i. all Program Sport members;
- ii. all State Division members; and
- iii. all Life Members.