



COMMERCIAL ACTIVITIES BY-LAW

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1. PURPOSE

1.1. The purpose of this By-Law is to:

- (a) complement and extend the operation of applicable Federal and State legislation 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

<i>“Associate Member”</i>	means Associate Member as defined in the <i>CGA</i> constitution, being a legal person or natural person who has been admitted as a member of <i>CGA</i> in accordance with Part 4.2(c) of the <i>CGA</i> constitution.
<i>“Associated Person”</i>	means, in relation to a <i>Member</i> , any <i>Team</i> , <i>Team Member</i> , <i>Athlete</i> , <i>Athlete Support Personnel</i> or <i>Director</i> who is a member or representative of, connected to, or otherwise reasonably considered to be associated with that <i>Member</i> .
<i>“Athlete”</i>	means: <ul style="list-style-type: none">(a) any Person who competes or participates in sport under the authority of a <i>Member</i>; or(b) any Person who is registered as an <i>Athlete</i> or competitor or participant (however described) with a <i>Member</i> or with a member of a <i>Member</i> or a club recognised by a <i>Member</i>.
<i>“Athlete Support Personnel”</i>	means any coach, trainer, manager, agent, team staff, official, medical, paramedical personnel, parent or any other <i>Person</i> working with, treating or assisting an <i>Athlete</i> participating in or preparing for a Sport <i>Competition</i> .
<i>“Authorised Person”</i>	means the Chief Executive Officer of <i>CGA</i> or an employee of <i>CGA</i> who has been granted permission in writing by the Chief Executive Officer of <i>CGA</i> 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.
<i>“CGA”</i>	means Commonwealth Games Australia Limited, formerly known as the Australian Commonwealth Games Association Inc (ACGA).
<i>“CGF”</i>	means the Commonwealth Games Federation.

"Commonwealth Games"	means the multi-sport event held once every four years under the auspices of the <i>CGF</i> .
"Competition"	means a single race, match, game, singular sport contest, or related event.
"CGA Board"	means the Board of Directors as elected or appointed in accordance with the <i>CGA</i> Constitution.
"CGA Sponsorship Agreement"	means any Sponsorship Agreement, Commercial Partnership Agreement or Retail Partnership Agreement entered into by <i>CGA</i> or any other similar agreement that may exist from time to time during a <i>Games Period</i> which has been entered into by <i>CGA</i> .
"Director"	means a member of the board of people that manages and oversees the affairs of a <i>Member</i> .
"Games"	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.
"Games Period"	means the period commencing on the earlier of: <ul style="list-style-type: none">(a) the date a <i>Team Member</i> receives his or her <i>Games</i> accreditation; or(b) the opening of the official <i>Games</i> accommodation, 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> .
"LOC"	means the Local Organising Committee of a <i>Commonwealth Games</i> .
"Life Member"	means Life Member as defined in the <i>CGA</i> constitution, being a natural person who has accepted such a nomination in accordance with Part 4.2(d) of the <i>CGA</i> constitution.
"Marketing Agreement"	means any Joint Marketing Programme Agreement entered into by: <ul style="list-style-type: none">(a) <i>CGA</i>;(b) <i>CGF</i>;(c) an <i>LOC</i>;(d) Federal or State Government of a <i>Games</i>; and(e) City Council of a <i>Games</i>, or any other marketing programme or similar agreement that may exist from time to time during a <i>Games Period</i> which has been entered into by <i>CGA</i> , an <i>LOC</i> and/or <i>CGF</i> , including any such agreement entered into in relation to the 2018 <i>Commonwealth Games</i> (which was hosted in Gold Coast, Australia).
"Member"	means any <i>Person</i> that is (or was at the time of the alleged breach of this By-Law) a member of <i>CGA</i> , and includes for the avoidance of any doubt) any <i>National Sporting Organisation</i> and any <i>Program Sport</i> , <i>State Division</i> , <i>Associate Member</i> or <i>Life Member</i> class member.
"National Sporting Organisation"	means National Sporting Organisation as defined in the <i>CGA</i> constitution, being an organisation that is a National Federation that is a <i>Member</i> , and includes <i>Program Sport</i> class members.
"Person"	means a natural person or an organisation or other entity, whether incorporated or not.

“Program Sport” means Program Sport as defined in the *CGA* constitution, being those Australian Affiliates of the International Federations recognised by the *CGF* as a Recognised International Federations and in respect of which the *CGF* has approved that the sport will be on the program of the next following *Games*.

“Prohibited Purpose” means:

- (a) a commercial purpose; or
- (b) an advertising, licensing, marketing, fundraising, or promotional purpose; or
- (c) anything which 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. an *LOC*; or
 - vi. *CGF*; or
 - vii. an event or program associated with the *Commonwealth Games* or *Commonwealth Games Australia* whether or not the event or program relates to sport.

“State Division” means State Division as defined in the *CGA* constitution, being an organisation which has been recognised by the *CGA Board* as representing *CGA* in the relevant State or Territory.

“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 *Member* 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 2021.

5. COMMERCIAL ACTIVITIES

5.1 A *Member* shall not, and shall not authorise or permit any third party (including any of its *Associated Persons*) to, conduct, promote or organise any activity or program for, related to, or involving, a *Prohibited Purpose*, in which:

- (a) reference is made (whether express or implied) to any of the following:
 - (i) 2018 Comm Games; or
 - (ii) 2022 Comm Games; or
 - (iii) 2018 Commonwealth Games; or
 - (iv) 2022 Commonwealth Games; or
 - (v) Australian Commonwealth Games or ACG; or
 - (vi) Australian Commonwealth Games Association or ACGA; or
 - (vii) CG18; or
 - (viii) CG2018; or
 - (ix) CG22; or
 - (x) CG2022; or
 - (xi) CG26; or
 - (xii) CG2026; or
 - (xiii) CG30; or
 - (xiv) CG2030; or
 - (xv) CG34; or
 - (xvi) CG2034; or
 - (xvii) Comm Games; or
 - (xviii) Commonwealth Games or CG; or
 - (xix) Commonwealth Games Australia or CGA; or
 - (xx) an LOC; or
 - (xxi) Commonwealth Games Federation or CGF; or
 - (xxii) GC18; or
 - (xxiii) GC2018; or
 - (xxiv) Gold Coast 2018
 - (xxv) Gold Coast 2018 Commonwealth Games; or
 - (xxvi) Gold Coast 2018 Games; or
 - (xxvii) Gold Coast Commonwealth Games; or
 - (xxviii) Gold Coast Games; or
 - (xxix) GOLDOC; or
 - (xxx) B2022; or

- (xxxii) Birmingham 2022
- (xxxiii) Birmingham 2022 Commonwealth Games; or
- (xxxiv) Birmingham 2022 Games; or
- (xxxv) Birmingham Commonwealth Games; or
- (xxxvi) Birmingham Games; or
- (xxxvii) the *Games*; or
- (xxxviii) Queen's Baton Relay; or
- (xxxviiii) any reference which in the reasonable opinion of the *CGA Board*, may be reasonably interpreted as referring to any items listed in clause 5.1(a)(i)-(xxxvii);

or

- (b) reference is made (whether express or implied) to any sporting event, organisation, and/or *Team* which is organised, associated, and/or affiliated with:

- (i) *CGA*;
- (ii) an *LOC*; or
- (iii) *CGF*;

or

- (c) the *Member* or any of its *Associated Persons* is represented (whether express or implied) as having the sponsorship or approval of, or is associated or affiliated with:

- (i) 2018 Comm Games; or
- (ii) 2022 Comm Games; or
- (iii) 2018 Commonwealth Games; or
- (iv) 2022 Commonwealth Games; or
- (v) Australian Commonwealth Games or *ACG*; or
- (vi) Australian Commonwealth Games Association or *ACGA*; or
- (vii) *CG18*; or
- (viii) *CG2018*; or
- (ix) *CG22*; or
- (x) *CG2022*; or
- (xi) *CG26*; or
- (xii) *CG2026*; or
- (xiii) *CG30*; or
- (xiv) *CG2030*; or
- (xv) *CG34*; or
- (xvi) *CG2034*; or
- (xvii) *Comm Games*;
- (xviii) *Commonwealth Games* or *CG*; or
- (xix) *Commonwealth Games Australia* or *CGA*; or
- (xx) an *LOC*; or
- (xxi) *Commonwealth Games Federation* or *CGF*; or
- (xxii) *GC18*; or
- (xxiii) *GC2018*; or
- (xxiv) *Gold Coast 2018*
- (xxv) *Gold Coast 2018 Commonwealth Games*; or
- (xxvi) *Gold Coast 2018 Games*; or
- (xxvii) *Gold Coast Commonwealth Games*; or
- (xxviii) *Gold Coast Games*; or
- (xxix) *GOLDOC*; or
- (xxx) *B2022*; or
- (xxxi) Birmingham 2022
- (xxxii) Birmingham 2022 Commonwealth Games; or
- (xxxiii) Birmingham 2022 Games; or
- (xxxiv) *B2022*; or
- (xxxv) Birmingham Commonwealth Games; or

- (xxxvi) Birmingham Games; or
- (xxxvii) the *Games*; or
- (xxxviii) Queen's Baton Relay; or
- (xxxix) any representation which in the reasonable opinion of the *CGA Board*, may be reasonably interpreted as representing any items listed in clause 5.1(c)(i)-(xxxviii);

or

- (d) there is use of any trademark, logo, 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*;
- (ii) an *LOC*; or
- (iii) *CGF*,

unless prior consent has been granted in writing by an *Authorised Person*. A *Member* must take all reasonable steps to procure that none of its *Associated Persons* does (or continues doing) anything which is contemplated by clause 5.1.

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 *Member* 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*;
- (iv) an *LOC*; or
- (v) *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*;
- (iv) an *LOC*; or
- (v) *CGF*.

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

- (a) a description of the trademark, logo, language, design, image, photograph, reference, representation or other intellectual property authorised; and
- (b) the name of the *Person* authorised to use the stated trademark, logo, language, design, image, photograph, reference, representation or other intellectual property; 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 *Member* 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 Board* 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 *Member* 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 *Member* (including any of its *Associated Persons*), whether or not for commercial gain.

6. GAMES PERIOD

6.1. During the *Games Period* a *Member* and its *Associated Persons* 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*. A *Member* must take all reasonable steps to procure that none of its *Associated Persons* does (or continues doing) anything which is contemplated by clause 6.1.

6.2. During the *Games Period*, a *Member* shall ensure that the *Member* and/or any third party connected to or otherwise reasonably considered to be associated with that *Member* (including its *Associated Persons*) will not infringe on the intellectual property rights of *CGA*, or those contained in any *Marketing Agreement* or *CGA Sponsorship Agreement* provided the intellectual property rights protected by *CGA* or in the *Marketing Agreement* or *CGA Sponsorship Agreement* are within the knowledge and ambit of the *Member* or any of its representatives.

7. PENALTIES

7.1. Any *Member* in breach of these By-Laws shall be subject to any penalty as determined by the *CGA Board* having regard to the criteria in clause 7.3. Penalties imposed by the *CGA Board* 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 *Member*; and/or
 - (e) suspension of a *Member* 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 simple majority of the *CGA Board*.
- 7.3. In determining the reasonableness of any penalty, the *CGA Board* 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) an *LOC*; and/or
 - (e) *CGF*; and/or
 - (f) any *Member* affected by the breach.
- 7.4. Notwithstanding any other provision in these By-Laws, the *CGA Board* 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 *Member* wishes to challenge a penalty imposed under these By-Laws, it must do so in accordance with the Grievance Procedure provided under the *CGA Grievance & Discipline By-Law*.
- 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.

8. REVIEWS

CGA reserves the right to amend this By-Law 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, updated in the CGA Policy register and updated on the CGA website.