



# ETHICAL BEHAVIOUR BY-LAW

<b>RESPONSIBILITY:</b>	Chief Executive Officer			
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**1 DEFINITIONS**

- "CGA"** means Commonwealth Games Australia Limited, formerly known as the Australian Commonwealth Games Association Inc trading as Commonwealth Games Australia.
- "Athlete"** means an athlete who:
- (a) receives financial or other assistance from CGA; or
  - (b) has been nominated for appointment to, or appointed as a member of, any Team.
- "Board"** has the same meaning as in the Constitution
- "Bullying"** means when a person or group of people repeatedly behaves unreasonably towards another person and the behaviour creates a risk to health and safety.
- "Chef de Mission"** means the CGA Chef de Mission appointed for a particular Games.
- "Chief Executive Officer"** means the Chief Executive Officer of CGA.
- "Child Abuse"** means physical or emotional harming or exploitation of children, whether sexual or otherwise and includes, but not limited to:
- (a) derogatory or inappropriate behaviour;
  - (b) non-accidental injury to children;
  - (c) inappropriate touching;
  - (d) physical, emotional or sexual abuse; or
  - (e) insensitivity towards children with cultural or religious differences.
- "Constitution"** means the Constitution of CGA including any by-law enacted pursuant to the Constitution.
- "Direct Discrimination"** means:
- (a) when a person ("Discriminator") treats or proposes to treat another person ("Aggrieved Person") less favourably on the ground of the Aggrieved Person's Disability, Race, Sexuality, marital status, religion, colour or age, in circumstances that are the same or are not materially different to circumstances in which the Discriminator treats or would treat a person without or not of the Disability, Race, Sexuality, marital status, religion, colour or age; and
  - (b) for the purposes of paragraph (a), circumstances in which the Discriminator treats or would treat the Aggrieved Person are not materially different because of the fact that different accommodation or services may be required by the Aggrieved Person as a result of the Aggrieved Person's

Disability, Race, Sexuality, marital status, religion, colour or age.

**“Disability”**

in relation to a person means:

- (a) a total or partial loss of a part of the body or of the person’s bodily or mental functions;
- (b) the presence in the body of organisms causing or capable of causing disease or illness;
- (c) the malfunction, malformation or disfigurement of a part of the person’s body;
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (e) a disorder, illness or disease that affects a person’s through processes, perception or reality, emotions or judgments or that results in disturbed behaviour;

and includes a disability that:

- (f) presently exists;
- (g) previously existed but no longer exists;
- (h) may exist in the future; or
- (i) is imputed to a person.

**“Games”**

means the Commonwealth Games or any other sporting competition or event in which any Team is to compete or participate.

**“Harassment”**

means offensive, abusive, belittling, threatening or any unwelcome behaviour directed towards another person for any reason whatsoever.

**“Indirect Discrimination”**

means where a person requires another person (“Aggrieved Person”) with the Disability, Race, Sexuality, marital status, religion, colour or age to comply with a requirement or condition:

- (a) with which a substantially higher proportion of persons without the Disability, Race, Sexuality, marital status, religion, colour or age comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the Aggrieved Person does not or is not able to comply.

- "Official"** means all persons who:
- (a) administer, manage, coach, assist or are otherwise involved in sport and receive financial or other assistance from CGA (other than as an Athlete); or
  - (b) are appointed by CGA as a member of any Team.
- "Race"** means a person's racial makeup and includes the culture, custom or beliefs of a particular race.
- "Relevant Persons"** means the persons to whom this By-Law applies as described in clause 2.1.
- "Sexuality"** means a person's gender or sexual orientation such as heterosexuality, homosexuality, bisexuality and transgender or trans-sexual.
- "Team"** means any Australian Commonwealth Games Team or other team appointed by CGA.
- "Team Membership Agreement"** means the Agreement including its schedules setting out the terms and conditions governing appointment to and continued membership of any Team.
- "Vilification"** means the act of inciting hatred, contempt or ridicule towards a person based on a person's Disability, Race, Sexuality, marital status, religion, colour or age.

- 1.1. Except so far as the contrary intention appears in this By-Law, an expression has in this By-Law the same meaning as in the Constitution.
- 1.2. Headings are for convenience only and do not affect the interpretation of this By-Law.
- 1.3. Reference to one gender includes each other gender.
- 1.4. The singular includes the plural and the plural includes the singular.

## **2 COMPLIANCE WITH THIS BY-LAW**

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- 2.1 This By-Law applies to:
- (1) Athletes;
  - (2) Officials; and
  - (3) Directors of the Board, officers and employees of CGA.
- 2.2 All Relevant Persons must not, by their acts or omissions, engage or participate in:
- (1) Direct Discrimination;
  - (2) Indirect Discrimination;
  - (3) Harassment;
  - (4) Bullying;

- (5) Vilification;
  - (6) Child Abuse; or
  - (7) conduct which if publicly known would bring or be likely to bring that person, his/her sport or CGA into disrepute or censure.
- 2.3 All Relevant Persons must provide assistance and information to CGA as requested by the Board or the Chief Executive Officer to enable CGA to properly implement this By-Law.
- 2.4 For the avoidance of doubt, this By-Law does not apply to the appointment of athletes and officials as members of Teams where Sexuality, age, experience, capabilities and athletic performance or any combination of these factors are relevant in appointing the athletes or officials.

### **3 BREACHES OF THIS BY-LAW**

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- 3.1 Where a person alleges a breach of this By-Law or CGA has other reason to believe a breach of this By-Law may have occurred, then:
- (1) if the alleged breach concerns an Athlete or Official during the team membership period of the Team of which the Athlete or Official is a member, the alleged breach will be addressed by the Chef de Mission of that Team unless the alleged breach is in respect of the acts or omissions of the Chef de Mission of that Team, in which case the alleged breach will be addressed by the President (if not the Chef de Mission) or Vice President present at the Games in which the Team is participating; and
  - (2) if the alleged breach arises other than as described in paragraph (1) of this clause, it will be addressed by the Chief Executive Officer unless the alleged breach is in respect of the acts or omissions of the Chief Executive Officer, in which case the alleged breach will be addressed by the President.
- 3.2 Where it is alleged that a Relevant Person has breached this By-Law, the following procedure will apply:
- (1) the Chef de Mission, Chief Executive Officer or President addressing an alleged breach of this By-Law may, in his or her absolute discretion, appoint a person to investigate and obtain evidence as to whether the breach has occurred;
  - (2) the Relevant Person concerned will be provided with a written notice specifying the particulars of the alleged breach together with copies of all written statements obtained from witnesses and any other evidence;
  - (3) the Relevant Person concerned will have the opportunity to respond in writing or in person to the written notice;
  - (4) any person appointed pursuant to paragraph (1) of this clause 3.2:
    - (a) may interview such persons as he or she believes will assist in determining whether or not the alleged breach of this By-Law occurred; and
    - (b) obtain such other evidence as he or she believes is relevant to the alleged breach; and
  - (5) the person addressing the alleged breach of this By-Law will, if requested by the person alleging a breach of this By-Law or the Relevant Person concerned,

conduct a hearing into the alleged breach. Any such hearing will be conducted as soon as is practicable and informally with the initial objective of achieving a conciliated conclusion of the allegation provided that if this conciliation does not occur or is genuinely objected to, the person addressing the alleged breach may then determine whether or not the allegation has been established.

3.3 Subject to sub-clauses 3.3(4), (5) and (6), all persons concerned must keep confidential and not comment publicly on or disseminate to any person information concerning:

- (1) the fact of and details of any allegation that a Relevant Person has breached this By-Law;
- (2) all evidence obtained on behalf of CGA or provided by any person in connection with the alleged breach of this By-Law; and
- (3) the fact, details and outcome of any hearing into the alleged breach of this By-Law;

except that:

- (4) in the event that the alleged breach is resolved by conciliation, CGA will release a public statement in such form as is agreed by the parties;
- (5) in the event that the alleged breach is established other than by conciliation, CGA will release a public statement in such form as agreed by the parties or, failing agreement, as determined by the person addressing the alleged breach; or
- (6) in any event CGA may release a public statement or statements in such form as it determines appropriate in all the circumstances if the fact of or details of the alleged breach has become publicly known (whether through a breach of this clause 3.3 or otherwise).

3.4 If a breach of this By-Law is established and if:

- (1) the Relevant Person concerned is a member of a Team, then that Relevant Person will be subject to sanctions described in the Team Membership Agreement;
- (2) the Relevant Person receives financial or other assistance from CGA as an Athlete or Official, then that relevant person will be ineligible for any future assistance for such period as is determined appropriate in the circumstances and may in the absolute discretion of the Chief Executive Officer of CGA be required to repay part or the whole of the financial or other assistance received prior to a breach of this By-Law;
- (3) the Relevant Person is an employee of CGA, then such sanction as is determined by the Chief Executive Officer after giving the Relevant Person concerned the opportunity to be heard on this aspect;
- (4) the Relevant Person is a Director of the Board or an official of CGA (other than as an employee), such sanction as is determined by the Board after giving the Relevant Person concerned the opportunity to be heard on this aspect; and
- (5) the Relevant Person may be required to undergo counselling or rehabilitation as directed by CGA.