



GRIEVANCE & DISCIPLINE BY-LAW

RESPONSIBILITY:	Chief Executive Officer			
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PART 1 – GRIEVANCE PROCEDURE

1.1. DEFINITIONS

- (a) For the purposes of this by-law, a **dispute** is defined as, but not limited to:
 - (i) the result of a failure of a Member to comply with, uphold the purposes of, adhere to, or observe the practices of the Commonwealth Games Australia (CGA) Constitution, by-laws, policies, regulations or agreements; or
 - (ii) the discovery of any criminal activity perpetrated by a Member during or in connection with CGA events, activities or programs.
- (b) A **grievance** is defined as, but not limited to:
 - (i) an issue relating to a formal complaint that has been submitted in writing to the CEO or Board relating to CGA rules, policies and by-laws between:
 - (a) a Member and another Member or Members; or
 - (b) a Member and CGA.
- (c) Any grievance submitted anonymously will not be acted upon.
- (d) Any grievance submitted with the CEO or the Board will not be acted upon, if it is deemed in the absolute discretion of the CEO or Board, to be frivolous or vexatious.

1.2. APPLICATION

- (a) This grievance procedure applies to disputes or grievances under this By-Law between—
 - (i) a Member and another Member or Members; or
 - (ii) a Member and CGA.
- (b) A Member must not initiate a grievance procedure in relation to a matter that is the subject of a disciplinary procedure until the disciplinary procedure has been completed.

1.3. PARTIES MUST ATTEMPT TO RESOLVE THE DISPUTE

- (a) The parties to a dispute or grievance must attempt to resolve the dispute between themselves within 14 days of the dispute coming to the attention of each party.

1.4. APPOINTMENT OF MEDIATOR

- (a) If the parties to a dispute or grievance are unable to resolve the dispute between themselves within the time required by clause 1.3(a), the parties must within 14 days—
 - (i) notify the CEO of the dispute and the CEO will in turn notify the Board; and
 - (ii) agree to or request the appointment of a mediator; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (b) If the dispute or grievance is in relation to the CEO, then a notice requesting that the dispute be heard by the President must be issued within 14 days of the dispute or grievance.
- (c) The mediator must be—
 - (i) a person chosen by agreement between the parties; or
 - (ii) in the absence of agreement—

- a) if the dispute or grievance is between a Member and another Member(s)—a person appointed by the Board; or
 - b) if the dispute or grievance is between a Member and the Board or CGA—a person appointed or employed by the Dispute Settlement Centre of Victoria, or either party may apply to the President of the Law Institute of Victoria to appoint a mediator.
- (d) A mediator appointed by the Board may be a Member or former Member of CGA but in any case must not be a person who—
- (i) has a personal interest in the dispute or grievance; or
 - (ii) is biased in favour of or against any party.

1.5. MEDIATION PROCESS

- (a) The mediator, in conducting the mediation, must—
- (i) give each party every opportunity to be heard; and
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties throughout the mediation process.
- (b) The parties to a mediation shall be permitted to be legally represented at their own cost.
- (c) The mediator must not determine the dispute or grievance.

1.6. FAILURE TO RESOLVE DISPUTE BY MEDIATION

- (a) If the mediation process does not resolve the dispute or grievance, the parties shall refer the matter to the Court of Arbitration for Sport which will resolve the dispute or grievance definitively in accordance with the Code of sports-related arbitration.
- (b) The time limit for referral to the Court of Arbitration for Sport is twenty-one (21) days after the conclusion of the mediation process under clause 1.5(a).
- (c) The arbitration panel will consist of one (1) arbitrator.
- (d) A party who refers a matter to the Court of Arbitration for Sport under this clause 1.6(d):
- (i) surrenders any right they may have to commence proceedings in a court of law in relation to any such dispute or grievance or to file any appeal, review or recourse to any state court or other judicial authority from any arbitral award, decision or ruling issued by the Court of Arbitration for Sport; and
 - (ii) agrees to pay the costs of the Court of Arbitration for Sport before a date for the hearing is set.
- (e) If a party fails or refuses to pay such costs as required under clause 1.6(d), the right to refer the matter to the Court of Arbitration for Sport shall lapse and the party will be deemed to have exhausted the Grievance Procedure.

PART 2 – DISCIPLINE PROCEDURE

2.1 GROUNDS FOR TAKING DISCIPLINARY ACTION

- (a) CGA may take disciplinary action against a Member in accordance with the Constitution or under any By-Law if it is determined that the Member:
 - (i) has failed to comply with the Constitution or any By-Law or Procedure made pursuant to the Constitution;
 - (ii) refuses to advance the objectives of the CGA Constitution; or
 - (iii) has engaged in conduct prejudicial to CGA.
- (b) Any action in relation to disputes or grievances regarding anti-doping must be taken in accordance with the CGA Anti-Doping By-Laws only and not under this By-Law.

2.2 DISCIPLINARY COMMITTEE

- (a) If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a Member, the Board must appoint a Disciplinary Committee to hear the matter and determine what action, if any, to take against the Member.
- (b) The Disciplinary Committee:
 - (i) shall consist of exactly three (3) Members; and
 - (ii) must contain at least one (1) Member who is a current legal practitioner under the national *Uniform Legal Profession Law 2015*.
- (c) A Member of the Disciplinary Committee:
 - (i) must not be a Member or employee of CGA; and
 - (ii) will:
 - a) be a current legal practitioner under the national *Uniform Legal Profession Law 2015*; or
 - b) be a Certified Practising Accountant or Chartered Accountant; or
 - c) have at least 5 years professional experience in a management position; or
 - d) have previously participated as an athlete in elite national or international sport competition for at least 5 years.
- (d) The Chair of the Disciplinary Committee must be a current legal practitioner under the national *Uniform Legal Profession Law 2015*.
- (e) The Members of the Disciplinary Committee must not:
 - (i) be biased against;
 - (ii) in favour of; or
 - (iii) hold any conflict of interest, whether actual or apprehended, in relation to, the Member concerned.

2.3 NOTICE TO MEMBER

- (a) Before disciplinary action is taken against a Member, the CEO must give written notice to the Member:
 - (i) stating that CGA proposes to take disciplinary action against the Member;
 - (ii) stating the grounds for the proposed disciplinary action; and
 - (iii) specifying the date, place and time of the meeting at which the Disciplinary Committee intends to consider the disciplinary action (the ***disciplinary meeting***); and
 - (iv) advising the Member that they may do one or both of the following:
 - a) attend the disciplinary meeting and address the Disciplinary Committee at that meeting, whether in person or via a representative of the Member;
 - b) give a written statement to the Disciplinary Committee at any time before the disciplinary meeting; and
 - (v) setting out the Member's appeal rights under this By-Law.
- (b) The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.

2.4 DECISION OF DISCIPLINARY COMMITTEE

- (a) The Board may appoint such committees as it so requires to deal with such matters as the Board determines, including delegating its authority to the Disciplinary Committee to sanction a Member of CGA in accordance with these By-Laws in the event of a dispute or grievance.
- (b) Parties to a disciplinary meeting shall be permitted to be legally represented at their own cost.
- (c) At the disciplinary meeting, the Disciplinary Committee must:
 - (i) give the Member an opportunity to be heard; and
 - (ii) consider any written statement submitted by the Member.
- (d) After complying with clause 2.4(c), the Disciplinary Committee may:
 - (i) take no further action against the Member; or
 - (ii) apply one or more of the following sanctions:
 - a) reprimand the Member;
 - b) suspend the Membership rights of the Member for a specified period; or
 - c) expel the Member from CGA; or
 - d) any other action deemed appropriate.
- (e) The Suspension of Membership rights or the expulsion of a Member by the Disciplinary Committee under this clause takes effect immediately after the decision is made and communicated to the Member.

- (f) The Board of CGA agrees to abide by any decision made by the Discipline Committee or any decision following any Appeal.

2.5 APPEAL RIGHTS

- (a) A Member whose Membership rights have been suspended or who has been expelled from CGA under this By-Law may give notice to the effect that they wish to appeal against the suspension or expulsion.
- (b) The notice must be in writing and given:
 - (i) to the Disciplinary Committee immediately after the vote to suspend or expel the person is taken; or
 - (ii) to the CEO not later than 48 hours after the receipt of the decision.
- (c) Any appeal under this By-Law must be submitted exclusively by way of appeal to the Court of Arbitration for Sport which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The time limit for appeal is twenty-one (21) days after the receipt of notice concerning the appeal. The arbitration panel will consist of one (1) arbitrator.
- (d) A Member who lodges an appeal under this By-Law:
 - (i) surrenders any right they may have to commence proceedings in a court of law in relation to any such dispute or to file any appeal, review or recourse to any state court or other judicial authority from any arbitral award, decision or ruling issued by the Court of Arbitration for Sport; and
 - (ii) agrees to pay the costs of the Court of Arbitration for Sport before a date for the hearing of the appeal is set.
- (e) If a Member fails or refuses to pay such costs as required under clause 2.5(d)(ii), the appeal shall lapse and the party will be deemed to have abandoned the appeal.

3. REVIEWS

- (a) 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 (2) years and any amendments will be approved by the CGA Board, updated in the CGA Policy register and updated on the CGA website.