



SELECTION APPEALS POLICY

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Contents

<u>1. DEFINITIONS AND INTERPRETATION</u>	3
<u>2. OBJECTIVE OF THIS POLICY</u>	5
<u>3. APPLICATION</u>	5
<u>4. GENERAL RULES</u>	5
<u>5. APPEAL PROCESS</u>	7

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this MPA Selection Appeals Policy the following words have the corresponding meaning:

Appeal means an appeal, however described, against non-selection to a Team for an Event.

Appeal Tribunal means a Tribunal convened in the NST Appeals Division for the purpose of hearing a 'Final Appeal' in accordance with cl. 5.3 of this Selection Appeals Policy.

Appellant means a person who has commenced a '**Selection Appeal**' in the NST whether in the General Division (First-Instance Appeals) or the Appeals Division (Final Appeal).

Athlete means a registered athlete member of MPA.

AUD means Australian Dollars.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

Child means a person under the age of 18 years.

Event means a UIPM sanctioned or other competition for which an MPA Team is selected to compete.

Event Specific Selection Criteria means the relevant parts of the MPA **Selection Policy or Policies** which detail the selection criteria adopted by MPA to the selection of Athletes to an MPA Team to compete at a specific Event.

Hearing Tribunal means a Tribunal convened in the NST General Division for the purpose of hearing a 'First-Instance Appeal' in accordance with Part 5.2 this Selection Appeals Policy.

Interested Party has the meaning given in clause 4.4.

MPA means Modern Pentathlon Australia, the governing body for modern pentathlon in Australia.

National Sports Tribunal means the Australian Government entity established by the *National Sports Tribunal Act 2019*, comprised of the General Division, the Anti-Doping Division, and the Appeals Division.

Non-Selected Athlete means any Athlete who is not selected by MPA to a Team for an Event.

NST means the National Sports Tribunal, and all of its three Divisions.

NST Legislation means the *National Sports Tribunal Act 2019* (Cth) (NST Act) and all legislative and notifiable instruments made under the NST Act.

NST Procedure means the process and procedure by which the NST operates, including as set out in the NST Act; the *National Sports Tribunal Rule 2020*; and

the *National Sports Tribunal Practice and Procedure Determination 2021* as and in effect at the time of the commencement of a Selection Appeal.

Official means any person selected or appointed under an MPA Selection Policy who is not an athlete.

Pentathlon Expert means an expert tribunal witness with particular expertise in modern pentathlon, drawn from a pool of suitably qualified experts provided by MPA, appointed under paragraph 68(1)(b) of the NST Act to provide assistance to the NST in the arbitration of a selection appeal by responding to specific questions posed by the NST relating to technical aspects of modern pentathlon.

Policy means this MPA **Selection Appeals Policy** which documents the selection appeal process, as amended by MPA from time to time.

President means the President of MPA (or the Vice-President of MPA in the absence of the President).

Selection Appeal has the meaning given to that term in cl. 4.1.

Selected Athlete means any Athlete selected by MPA to a Team for an Event.

Selection Policy means the MPA policy or policies that describes the general principles and specific selection criteria that apply to the selection of all MPA Teams and Squads, as amended by MPA from time to time.

Service charges means the charges that may be payable to the NST to cover the cost of the arbitration under section 46 of the NST Act (which may include the cost of services provided by a Pentathlon Expert).

Squad means a National squad of athletes selected by MPA from time to time for the purpose of talent identification and athlete development.

Team means an Australian Modern Pentathlon Team selected by MPA to represent Australia at an Event.

Written Notice means notice in writing by letter, email or other written means of communication.

1.2. Interpretation

- (a) Unless the context otherwise requires, reference to:
 - (i) a clause is to a clause of this Policy;
 - (ii) the singular includes the plural and the converse also applies.
- (b) If a person to whom this Policy applies consists of more than one person, then this Policy binds them jointly and severally.
- (c) A reference to time, day or date is to time, day or date in Sydney, Australia.
- (d) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

- (e) Headings are for convenience only and do not form part of this Policy or affect its interpretation.

2. OBJECTIVE OF THIS POLICY

- 2.1. This Policy sets out the Selection Appeal process to be applied in respect of the selection of all MPA Teams.
- 2.2. This Policy, read and applied with Selection Policy or Policies and the applicable Selection Criteria, forms the **MPA Selection Policy** for any relevant Event for which MPA selects a Team.
- 2.3. The **MPA Selection Policy** exhaustively sets out the parameters, process and criteria (both eligibility and performance) that will be applied to determine the selection of individuals for an Event or in a team generally.

Nomination to a Third Party Responsible for Selection for an Event

- 2.4. For completeness, MPA notes that in respect of certain Events (for instance, the Olympics, Paralympics or the Commonwealth Games), MPA does not select athletes or officials, but rather nominates them to another entity (for example the Australian Olympic Committee, Paralympics Australia or Commonwealth Games Australia) that is responsible for the final selection of athletes for the Event.
- 2.5. For convenience, where no other Selection or Nomination Policy administered by a Third Party for such an Event as described in cl. 2.4 above applies, the **MPA Selection Policy** for an Event will apply to the nomination process undertaken by MPA for these Events as though the term 'selection' is interchangeable with the term 'nomination'.

3. APPLICATION

- 3.1. This Policy applies to:
- (a) Athletes; and
 - (b) MPA.
- 3.2. Athletes have a right of appeal against their non-selection to a Team for an Event, except where a specific Selection Policy excludes such a right.

4. GENERAL RULES

- 4.1. A Non-Selected Athlete may appeal against their non-selection to an MPA Team for an Event (Selection Appeal) in accordance with the procedures set out in cl. 5 of this policy. For clarity, Athletes can only appeal their non-selection for an MPA Team that has been formally selected under the provisions of the relevant Selection Policy.
- 4.2. In the event that two or more Selection Appeals are brought under this Selection Appeals Policy and it appears to the NST that:

- (a) the Selection Appeals involve a common question; or
- (b) the relief claimed in them are in respect of, or arise out of, the same instance of selection; or
- (c) there is some other reason for it being desirable to have the Selection Appeals consolidated,

the Selection Appeals must, so far as practicable, be consolidated and heard together and the Athletes involved in the Selection Appeals must provide reasonable assistance to the NST to achieve this outcome.

Parties to a Selection Appeal (First Instance and Final Appeals)

4.3. The Parties to a Selection Appeal will be:

- (a) the Appellant;
- (b) MPA; and
- (c) any Interested Party.

4.4. An Interested Party to a Selection Appeal must be either:

- (a) a Selected Athlete for the Team which is the subject of the Selection Appeal; or
- (b) a Non-Selected Athlete otherwise eligible for selection to the Team which is the subject of the Selection Appeal.

4.5. MPA and the Appellant must identify and propose to the NST Athletes who may be Interested Parties. Athletes may also identify themselves to the NST as potential Interested Parties.

4.6. In the event that any doubt should arise as to the eligibility of a person as an Interested Party, MPA will determine the matter in its absolute discretion.

4.7. An Athlete identified as a potential Interested Party must, in order to participate in the Selection Appeal, indicate to the NST that they wish to be a Party to the Selection Appeal.

4.8. In accordance with the NST Procedure an Interested Party:

- (a) must receive notice of the Selection Appeal from the NST;
- (b) must be given the opportunity to make submissions in the Selection Appeal and give evidence;
- (c) must receive a copy of the determination handed down by the NST; and
- (d) will be bound by any such determination.

4.9. An Interested Party may lodge a Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal in which it has participated as an Interested Party.

- 4.10. For the avoidance of doubt, an Athlete identified as a potential Interested Party in a First Instance Appeal, but who does not participate in that First Instance Appeal will not be permitted to lodge a Final Appeal in respect of a decision or determination that is made by an NST in a First Instance Appeal.
- 4.11. A person who receives notice from the NST of their identification as an Interested Party may decline to participate as an Interested Party at any time, in which case that person will automatically waive any rights afforded an Interested Party, including the right to lodge a Final Appeal.

5. APPEAL PROCESS

5.1. Steps prior to Selection Appeal

- (a) A Non-Selected Athlete must not commence a Selection Appeal in the NST unless the provisions of this cl. 5.1 have been complied with.
- (b) Within 48 hours of the time that a Non-Selected Athlete receives notice of their non-selection, the Non-Selected Athlete must provide Written Notice to the President of MPA that the Non-Selected Athlete disputes their non-selection.
- (c) The Non-Selected Athlete must provide reasons to support their notice of dispute. The Written Notice must be accompanied by an AUD200 application fee, which will be refunded to the Athlete should the outcome of the dispute or appeal process result in their selection for the Team for the Event.
- (d) Within 48 hours of the Non-Selected Athlete providing Written Notice to the President of the MPA in accordance with cl. 5.1(b), the President of MPA must provide the Non-Selected Athlete with a written statement of the MPA's reasons supporting the non-selection of the Non-Selected Athlete.
- (e) Within 24 hours of a Non-Selected Athlete receiving MPA's written statement in accordance with cl. 5.1(c), the Non-Selected Athlete must provide a written response to the President of MPA which indicates whether the Non-Selected Athlete intends to proceed to a hearing of their Selection Appeal in accordance with cl. 5.2.
- (f) The Parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with this cl. 5.1, made on a without prejudice basis and kept confidential between the Parties.
- (g) For the avoidance of doubt, any formal written notice (and reasons) or statement made by the President or the Non-Selected Athlete in accordance with 5.1 (b)-(e) may be submitted to the NST for the purposes of the First instance Appeal and or Final Appeal.
- (h) For clarity, time periods referred to in cl. 5.1 may be extended by agreement of MPA and the Non-Selected Athlete in advance.

5.2. First Instance Appeal to the General Division of the NST

- (a) A Selection Appeal must be heard in the General Division of NST in the first instance.
- (b) A Non-Selected Athlete may bring a Selection Appeal to the General Division of the NST for hearing on one or more of the following grounds, which the Non-Selected Athlete (Appellant) bears the onus of making out:
 - (i) that the Selection Policy was not properly applied by MPA with respect to the Non-Selected Athlete;
 - (ii) the Non-Selected Athlete was not afforded a reasonable opportunity by MPA to satisfy the Selection Policy;
 - (iii) MPA was affected by actual bias in making its decision to not select the Non-Selected Athlete; and
 - (iv) there was no material on which MPA's decision could be reasonably based.

Making an Application for a Selection Appeal

- (c) A Non-Selected Athlete wishing to make an application for a Selection Appeal by the General Division of the NST must, within 24 hours of indicating to the President of MPA their intention to proceed to a hearing of their Selection Appeal under cl 5.1:
 - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Non-Selected Athlete; and
 - (ii) pay any filing fee required by the NST.

For clarity, unless agreed by MPA and the Non-Selected Athlete, an extension of time to make an application for a Selection Appeal may be granted by the NST under this clause only in extenuating circumstances outside the control of the Non-Selected Athlete concerned.

- (d) Service Charges may also be payable to the NST, which will be negotiated as between the Parties and the NST at the Preliminary Conference, and Determined by the NST President. Generally, Service Charges will be apportioned evenly between the Appellant and MPA.

Selection Appeal Procedure

- (e) A First-Instance Selection Appeal heard in the General Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all MPA First Instance Selection Appeals:

- (i) A Pentathlon Expert may be appointed by the NST President to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the *National Sports Tribunal Practice and Procedure Determination 2021*.
 - (ii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
 - (iii) The NST must provide Written Notice to the Parties of its **determination** as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a **statement of the reasons** for its determination within 3 Business Days of notifying the Parties of its determination.
 - (iv) The determination of the NST is final and binding on the Parties and, subject only to an appeal to the Appeals Division of the NST pursuant to cl. 5.3, no party may institute proceedings in any other court or tribunal.
- (g) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 5.4).

Selection Appeal Outcomes – Reconsideration and Redetermination

- (h) The NST may uphold or dismiss a First Instance Selection Appeal.
- (i) Subject to cl. 5.2(k), where the NST upholds a First-Instance Selection Appeal overturning the original selection decision, the NST must refer any subsequent decision regarding the Appellant's non-selection or if required, any broader decision regarding selection of the Team for the Event back to the MPA for reconsideration and redetermination.
- (j) In reconsidering and determining the Appellant's non-selection or if required, any broader decision regarding selection of the Team for the Event, MPA must observe the principles of natural justice. Any decision made by MPA regarding the Appellant's nomination after such referral, is final and binding on the Appellant, subject only to the Appellant commencing an appeal to the Appeals Division of the NST in accordance with cl. 5.3.
- (k) Notwithstanding cl. 5.2(i) the NST may itself determine the issue of the Appellant's selection, or broader decision regarding selection of the Team for the Event where the NST determines that:

- (i) it would be impractical to refer the selection decision for redetermination to MPA given the time available; or
 - (ii) in making its original decision, MPA had such disregard for proper application of the Selection Policy that a reasonable person would apprehend that it is unlikely that the Selection Policy would be applied properly by MPA if the decision regarding the Appellant's non-selection was referred back to MPA.
- (l) Prior to making a determination under cl. 5.2(k) the NST must advise the Parties that the NST intends to make such a determination and provide the Parties with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 5.2(l).

5.3. Final Appeal to the Appeals Division of the NST

- (a) Any second and final instance appeal (Final Appeal) must be heard by the Appeals Division of the NST.
- (b) A Final Appeal may be lodged either:
 - (i) after the determination of a First Instance Selection Appeal by the NST but before reconsideration and redetermination; or
 - (ii) after reconsideration and redetermination (whether re-determined by MPA or the NST).
- (c) A Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal may only be lodged by a party to the First Instance Selection Appeal.

Making an Application for a Final Appeal

- (d) MPA or an Athlete eligible to appeal a determination or decision of the General Division of the NST must, within 48 hours after the Final Appellant is notified of the relevant decision under cl 5.3(b):
 - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Final Appellant; and
 - (ii) provide a copy of the NST Application Form to the other Parties
 - (iii) pay any filing fee required by the NST.

For clarity, unless agreed by MPA and the athlete who's selection is the subject of the appeal, an extension of time to make an application for a Final Appeal may be granted by the NST under this clause only in extenuating circumstances outside the control of the Final Appellant concerned.

- (e) Service Charges may also be payable to the NST, which will be negotiated as between the Parties and the NST at the Preliminary Conference, and Determined by the NST President. Generally, Service Charges will be apportioned evenly between the Final Appellant and MPA.

Final Selection Appeal Procedure

- (f) A Final Selection Appeal heard in the Appeals Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all MPA Final Selection Appeals:
 - (i) A Pentathlon Expert may be appointed by the NST President to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the *National Sports Tribunal Practice and Procedure Determination 2021*.
 - (ii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
 - (iii) The NST must provide Written Notice to the Parties of its determination as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a statement of the reasons for its determination within 3 Business Days of notifying the Parties of its determination.
- (h) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 5.4).

Final Appeal Outcomes – Reconsideration and Redetermination

- (i) The NST may uphold or dismiss a Final Selection Appeal.
- (j) Subject to cl. 5.3(l) where the NST upholds a Final Selection Appeal overturning the determination of the NST in the first instance Selection Appeal, or the substituted decision of MPA, the NST must refer any subsequent decision regarding selection of the Team for the Event back

to the MPA for reconsideration and redetermination.

- (k) In reconsidering and determining any subsequent decision regarding selection of the Team for the Event, MPA must observe the principles of natural justice. Any subsequent decision made by MPA regarding the selection of the Team for the Event after such referral, is final and binding.
- (l) Notwithstanding cl. 5.3(j), the NST may itself determine the issue of the Final Appellant's selection where the NST determines that:
 - (i) it would be impractical to refer the redetermination back to MPA given the time available; or
 - (ii) in making its substituted decision, MPA had such disregard for proper application of the Selection Policy Part A and/or Part B that a reasonable person would apprehend that it is unlikely that the Selection Policy Part A and/or Part B would be applied properly by MPA if the decision regarding the Appellant's non-selection was referred back to MPA.
- (m) Prior to making a determination under cl. 5.3(l) the NST must advise the Parties that the NST intends to make such a determination and provide the Parties with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 5.3(m).
- (n) The determination handed down by the Appeal Panel with respect to an Appeal is final and binding on the Parties.

5.4. Where an application to deal with a dispute requires expedition

- (a) If, on receiving an application for arbitration of a Selection Appeal, the NST President is satisfied that it is necessary to deal with the application expeditiously, the NST President is to convene a preliminary conference (if appropriate) and then immediately appoint one or more NST members to deal with the dispute.
- (b) The NST President and the appointed NST member(s) are to take all steps necessary to deal with the dispute as expeditiously as the case requires. This may include, but is not limited to, waiving compliance with any provision of the NST (Practice and Procedure) Determination 2021 that a party to the dispute would otherwise have to comply with.