

## Olympic Team Nomination and Selection By-Law

## **Contents**

|           |  |           |
|-----------|--|-----------|
| <b>1</b>  | <b>Definitions and Interpretation</b>      | <b>3</b>  |
|           | 1.1 Definitions                            | 3         |
|           | 1.2 Interpretation                         | 5         |
| <b>2</b>  | <b>Application</b>                         | <b>6</b>  |
| <b>3</b>  | <b>NF Continuous Disclosure</b>            | <b>6</b>  |
| <b>4</b>  | <b>Long List</b>                           | <b>7</b>  |
|           | 4.1 NF Long List                           | 7         |
|           | 4.2 AOC Long List                          | 7         |
| <b>5</b>  | <b>Nomination of Athletes</b>              | <b>7</b>  |
|           | 5.1 General                                | 7         |
|           | 5.2 Nomination Criteria                    | 8         |
|           | 5.3 Procedure for Nomination of Athletes   | 9         |
| <b>6</b>  | <b>Selection of Athletes</b>               | <b>10</b> |
|           | 6.1 AOC Selection Committee                | 10        |
|           | 6.2 Selection Requirements                 | 10        |
|           | 6.3 Procedure for Selection of Athletes    | 12        |
| <b>7</b>  | <b>Appointment of Officials</b>            | <b>12</b> |
|           | 7.1 General                                | 12        |
|           | 7.2 Recommendation by NF                   | 12        |
|           | 7.3 Procedure for Appointment of Officials | 13        |
| <b>8</b>  | <b>Priority of Documents</b>               | <b>13</b> |
| <b>9</b>  | <b>Appeals</b>                             | <b>14</b> |
|           | 9.1 Definitions                            | 14        |
|           | 9.2 Application                            | 14        |
|           | 9.3 Olympic Appeal Consultant              | 14        |
|           | 9.4 Appeal Categories                      | 15        |
|           | 9.5 General Rules                          | 15        |
|           | 9.6 Nomination Appeal                      | 16        |
|           | 9.7 Selection Appeal                       | 20        |
|           | 9.8 CAS Procedural Rules                   | 21        |
|           | 9.9 Fast Track Appeal Process              | 23        |
|           | 9.10 Costs and Expenses of Appeal Process  | 27        |
|           | 9.11 Other Appeals                         | 29        |
| <b>10</b> | <b>Indemnity</b>                           | <b>30</b> |
| <b>11</b> | <b>Governing Law</b>                       | <b>30</b> |

# 1 Definitions and Interpretation

## 1.1 Definitions

The following definitions apply unless the context requires otherwise.

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| <b><i>Affected Party</i></b>          | has the meaning given in clauses 9.5(c) and 9.5(g).  |
| <b><i>AOC</i></b>                     | means the Australian Olympic Committee Inc.  |
| <b><i>AOC Anti-Doping Policy</i></b>  | means the anti-doping policy adopted by the AOC that is in force and amended from time to time.  |
| <b><i>AOC Constitution</i></b>        | means the Constitution of the AOC.   |
| <b><i>AOC Executive</i></b>           | means the Executive elected or appointed in accordance with the AOC Constitution.  |
| <b><i>AOC Selection Committee</i></b> | means the committee established by the AOC to select Athletes and appoint Officials to a Team.   |
| <b><i>Appeal</i></b>                  | means a Nomination Appeal or Selection Appeal, and does not include a Fast Track Appeal.   |
| <b><i>Appeal Forum</i></b>            | means an Appeal Tribunal or the Appeals Arbitration Division of CAS.   |
| <b><i>Appeal Tribunal</i></b>         | means a tribunal convened for the purpose of hearing a Nomination Appeal in accordance with clause 9.6(b).   |
| <b><i>Appellant</i></b>               | means an Athlete or other person who has commenced an Appeal or Fast Track Appeal  |
| <b><i>ASADA</i></b>                   | means the Australian Sports Anti-Doping Authority and includes any other organisation designated as the National Anti-Doping Organisation for Australia.   |
| <b><i>ASC</i></b>                     | means the Australian Sports Commission.  |
| <b><i>Athlete</i></b>                 | means a person who: <ul style="list-style-type: none"><li>(a) participates in a sport that is included in the sports programme of a Games; and</li><li>(b) is recognised by the NF governing that sport as eligible for nomination to the AOC for selection to a Team.</li></ul> |

Where this By-Law refers to individuals who are selected by the AOC to participate in a Team, those individuals will also be referred to as Athletes.

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| <b><i>AUD</i></b>                  | means Australian Dollars.   |
| <b><i>Business Day</i></b>         | means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.   |
| <b><i>CAS</i></b>                  | means the Court of Arbitration for Sport.   |
| <b><i>CAS Application Form</i></b> | means the CAS Oceania Registry Application Form, a copy of which is available from the CAS Oceania Registry: c-/ Allens, Deutsche Bank Place, Corner Hunter and Phillip Streets, Sydney NSW 2000, (02) 9230 4000. |
| <b><i>CAS Code</i></b>             | means the Code of Sports-related Arbitration as amended from time to time.  |
| <b><i>CAS Costs</i></b>            | means the costs and expenses of the CAS of and incidental to an appeal to the CAS as provided for in clause 9.10.   |
| <b><i>Chief Executive</i></b>      | means Chief Executive Officer and any representative of a Chief Executive Officer.  |

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| <b>CHF</b>                               | means Swiss Franc.  |
| <b>Child</b>                             | means a person under the age of 18 years.   |
| <b>Child Abuse</b>                       | means physical, emotional, psychological, harming or exploitation of children, whether in person or online, whether a one-off incident or a series of incidents, whether sexual or otherwise and includes, but not limited to: <ul style="list-style-type: none"> <li>(a) derogatory or inappropriate behaviour;</li> <li>(b) non-accidental injury to children;</li> <li>(c) inappropriate touching;</li> <li>(d) physical, emotional, psychological or sexual abuse including groomed or forced involvement in sexual behaviour, verbal or physical conduct or gesture of a sexual nature (e.g. the use of offensive stereotypes based on gender, sexual jokes, threats, intimidation); or</li> <li>(e) insensitivity towards children with cultural or religious differences.</li> </ul> |
| <b>Competition</b>                       | means a race, match, game or sport contest.   |
| <b>Fast Track Appeal</b>                 | means a Nomination Appeal or Selection Appeal heard according to the Fast Track Appeal Process.   |
| <b>Fast Track Appeal Process</b>         | means the process for resolving Athlete nomination and selection disputes where time is of the essence, in accordance with clause 9.9.  |
| <b>Games</b>                             | means any one of the Olympic Games, Olympic Winter Games, Youth Olympic Games and Winter Youth Olympic Games.   |
| <b>Games Period</b>                      | means the period of time between the date that is the “Opening Ceremony” of a Games and the date that is three days after the “Closing Ceremony” of that Games.   |
| <b>IF</b>                                | means International Federation.   |
| <b>Long List</b>                         | means Athletes who are recognised by an NF or the AOC as prospective members of a Team.   |
| <b>Long List Member</b>                  | means a member of the Long List.  |
| <b>Member Protection Policy</b>          | means a policy required by the ASC which is adopted and implemented by an NF which is designed to ensure that the sport governed by the NF is safe, fair and inclusive for everyone involved and recognises the NF's legal obligations to prevent and address discrimination and harassment and to protect children from abuse.   |
| <b>National Anti-Doping Organisation</b> | has the meaning given to that term in the World Anti-Doping Code issued by the World Anti-Doping Agency, as amended from time to time.  |
| <b>National Federation</b>               | means an Australian sporting organisation affiliated to an International Federation which governs a sport included in the sports programme of the Olympic Games or the Olympic Winter Games.  |
| <b>NF</b>                                | means National Federation.  |
| <b>NF's Sport</b>                        | has the meaning give to that term in clause 4.1(a).   |
| <b>Nomination Appeal</b>                 | has the meaning given to that term in clause 9.4(a).  |
| <b>Nominated Athlete</b>                 | Means an Athlete that is nominated for selection to the Team for a Games in accordance with the provisions of clauses 5.1(f) & 5.2(d) and has the meaning clause 5.3(c).  |

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| <b>Nomination Appeal Application</b> | Has the meaning given to that term in clause 9.6(b)(iii).  |
| <b>Nomination Criteria</b>           | means the criteria outlining the requirements for an Athlete to be nominated by an NF to the AOC for selection as a member of a Team for a Games, or failing nomination by an NF governing a sport in the Olympic Winter Games or Winter Youth Olympic Games, the criteria determined for that sport by the AOC in its sole and absolute discretion.   |
| <b>Nomination Date</b>               | has the meaning given to that term in clause 5.3(a).   |
| <b>Nomination Fast Track Appeal</b>  | means a Nomination Appeal heard according to the Fast Track Appeal Process.  |
| <b>Official</b>                      | means a person who administers, manages, coaches, supports, assists or is otherwise involved with a Team including, but not limited to, armourers, assistant team leaders, boat people, caddies, chiropractors, coaches, conditioners, farriers, gear stewards, grooms, medical practitioners, mechanics, meteorologists, nutritionists, physiotherapists, psychologists, shipwrights, soft-tissue therapists, sports scientists, team leaders, technicians, veterinarians, wax technicians and other officials of the Team. |
| <b>Prospective Team Member</b>       | means an Athlete who is considered by an NF to be a prospective member of a Long List or a Team. This includes, without limitation, the members of a national team or squad.   |
| <b>Qualification System</b>          | means the eligibility, participation and qualification criteria for a sport in respect of a Games as determined by the IF controlling that sport and the IOC in accordance with the Olympic Charter.   |
| <b>Selection Appeal</b>              | has the meaning given to that term in clause 9.4(b).   |
| <b>Selected Athlete</b>              | has the meaning given to that term in clause 6.2(c).   |
| <b>Selection Criteria</b>            | means the criteria adopted by the AOC in respect of a Games which outlines the requirements for an Athlete to be selected by the AOC to the Team for that Games.   |
| <b>Selection Fast Track Appeal</b>   | means a Selection Appeal heard according to the Fast Track Appeal Process.   |
| <b>Sport Entries Deadline</b>        | means the date on which entries to a Games must be submitted by the AOC.   |
| <b>Team</b>                          | means the team of Athletes and Officials who are selected and appointed, respectively, by the AOC to participate in and compete at a Games.  |
| <b>Team Member</b>                   | means an Athlete or Official selected by the AOC as a member of a Team.  |
| <b>Team Membership Agreement</b>     | means either or both of the AOC's Team Membership Agreement for Athletes and the AOC's Team Membership Agreement for Officials issued by the AOC in respect of a Games which governs an Athlete's or an Official's participation in that Games.  |
| <b>Team Sponsor</b>                  | means an entity or organisation which has entered into a sponsorship or similar arrangement with the AOC pursuant to which the entity or organisation has provided financial or other accommodation to the AOC in exchange for the AOC providing the entity or organisation with sponsorship rights and benefits.  |
| <b>World Anti-Doping Code</b>        | means the anti-doping code adopted and implemented by the World Anti-Doping Agency.  |
| <b>Written Notice</b>                | means notice in writing by letter, email or other written means of communication.  |

## 1.2 Interpretation

- (a) Words not defined in this By-Law have the meaning ascribed to them in the AOC Constitution unless a contrary meaning appears from the context.

- (b) Unless the context otherwise requires, reference to:
  - (i) a clause is to a clause of this By-Law;
  - (ii) the singular includes the plural and the converse also applies;
  - (iii) persons include incorporated and unincorporated bodies, partnerships, joint ventures and associations and vice versa and their legal personal representatives, successors and permitted assigns and substitutes; and
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns and substitutes.
- (c) If a person to whom this By-Law applies consists of more than one person, then this By-Law binds them jointly and severally.
- (d) A reference to time, day or date is to time, day or date of Sydney, Australia.
- (e) The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
- (f) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the document or any part of it;
- (g) 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.
- (h) Headings are for convenience only and do not form part of this By-Law or affect its interpretation.

## **2 Application**

This By-Law applies to:

- (a) Athletes;
- (b) Officials;
- (c) NFs; and
- (d) the AOC.

## **3 NF Continuous Disclosure**

- (a) Where an NF has a reasonable suspicion that an Athlete, Official, Team Member, Long List Member or Prospective Team Member has:
  - (i) engaged in conduct (whether publicly known or not), which:
    - (A) has brought, brings or would have the tendency to bring, the individual or the individual's sport into disrepute or censure;
    - (B) is, or would have the tendency to be inconsistent with, contrary to, or prejudicial to the best interests, reputation or values of the AOC, or the Olympic Movement; or
    - (C) indicates that the individual's association with the AOC or the Olympic Movement would not be, or would not likely be, in the best interests of the Team, Long List, AOC or the Olympic Movement; or
  - (ii) been convicted of, or charged with, any offence involving violence, alcohol or drugs, Child Abuse, any sex offence or offence relating to betting or gambling on sport, or any offence which is punishable by imprisonment,

that NF must honestly and fully disclose all relevant information to the AOC as soon as reasonably practicable.

- (b) The information that an NF is required to disclose to the AOC pursuant to clause 3(a) includes, but is not limited to, information regarding:
  - (i) the individual concerned;
  - (ii) the individual's conduct;
  - (iii) the circumstances surrounding the individual's conduct; and
  - (iv) the terms of any sanction imposed or proposed to be imposed by the NF in respect of such conduct.

## **4 Long List**

### **4.1 NF Long List**

- (a) For the purposes of identifying Prospective Team Members and assisting the AOC in the administration of Team Members only, an NF may, in respect of the sport for which it is the governing body (**NF's Sport**), choose to recognise Athletes who are eligible for nomination by the NF to a Team, or who are eligible for selection by the AOC to a Team, by identifying those Athletes as members of the NF's Long List.
- (b) Membership of an NF's Long List does not increase, decrease or otherwise affect an Athlete's prospects of being nominated by an NF, or being selected by the AOC, to a Team.

### **4.2 AOC Long List**

- (a) For the purpose of identifying Prospective Team Members only, the AOC may choose to identify Athletes who are eligible for nomination by an NF to a Team, or who are eligible for selection by the AOC to a Team, by designating such Athletes as members of the AOC's Long List.
- (b) The AOC may, in its absolute discretion:
  - (i) recognise an Athlete who is a member of the NF's Long List as a member of the AOC's Long List; and
  - (ii) recognise an Athlete who is not a member of an NF's Long List as a member of the AOC's Long List.
- (c) Membership of the AOC's Long List does not increase, decrease or otherwise affect an Athlete's prospects of being nominated by an NF, or being selected by the AOC, to a Team.

## **5 Nomination of Athletes**

### **5.1 General**

- (a) Where pursuant to a Qualification System the AOC is awarded athlete quota positions for a sport contested at a Games, the NF governing that sport may nominate Athletes to the AOC for selection to the Team for that Games.
- (b) An NF may only make a nomination pursuant to clause 5.1(a) where the NF has adopted and is compliant with:
  - (i) a Member Protection Policy; and
  - (ii) an anti-doping policy that:

- (A) conforms with the World Anti-Doping Code; and
  - (B) conforms with the AOC Anti-Doping Policy.
- (c) In the event an NF elects to nominate an Athlete pursuant to clause 5.1(a), the NF must:
- (i) only nominate the Athlete in accordance with the Nomination Criteria adopted by the NF pursuant to clause 5.2; and
  - (ii) submit its nomination in accordance with the procedure set out in clause 5.3.
- (d) An NF may not nominate more Athletes than are permitted to be nominated under the Qualification System applying to the NF's Sport.
- (e) An NF controlling a sport on the program of the Olympic Games or the Youth Olympic Games may nominate pursuant to 5.1(c) less Athletes than are permitted under the applicable Qualification System.
- (f) An NF controlling a sport on the program of the Olympic Winter Games or Winter Youth Olympic Games must nominate all Athletes permitted under the applicable Qualification System.
- (g) In the event an NF controlling a sport on the program of the Olympic Winter Games or Winter Youth Olympic Games elects to nominate less Athletes than are permitted under the Qualification System, the AOC may in its sole and absolute discretion nominate Athletes for selection to a Team in place of the NF, provided the AOC gives reasonable notice to the NF and:
- (i) nominates Athletes in accordance with the Nomination Criteria adopted by the NF pursuant to clause 5.2; or
  - (ii) where the NF has not adopted a Nomination Criteria pursuant to clause 5.2, the AOC nominates Athletes in accordance with a Nomination Criteria that is adopted by the AOC and that nomination criteria complies with the obligations set out in clause 5.2.
- (h) The AOC is not responsible for and assumes no liability in respect of any injury or illness suffered by an Athlete who is nominated by an NF for selection to a Team.
- (i) In the event the AOC makes a nomination pursuant to clause 5.1(g), the provisions of this clause 5 will apply, with references to the nominating NF will be taken to be references to the AOC in respect of such nomination.

## 5.2 Nomination Criteria

- (a) In order to nominate Athletes for selection to a Team for a Games pursuant to clause 5.1(a), an NF must adopt a Nomination Criteria that applies to the NF's Sport for that Games.
- (b) Unless otherwise authorised by the AOC, a Nomination Criteria adopted by an NF must:
- (i) be in a form acceptable to the AOC;
  - (ii) comply with this By-Law;
  - (iii) comply with the Qualification System applying to the NF's Sport for the Games;
  - (iv) include provisions which state:
    - (A) how objective criteria, if included, will be assessed in determining the nomination of Athletes;



- (B) how subjective criteria, if included, will be assessed in determining the nomination of Athletes; and
  - (C) how, where both objective and subjective criteria is included, the nomination of Athletes will be assessed according to both categories of criteria.
- (c) Prior to publication, an NF must submit its proposed Nomination Criteria in draft form to the AOC for approval by such date as is specified by the AOC.
- (d) The AOC may, in its absolute discretion, approve an NF's draft Nomination Criteria and impose any terms or conditions of approval that the AOC sees fit. If an NF controlling a sport on the program of an Olympic Winter Games or Winter Youth Olympic Games fails to nominate an athlete who has qualified under the applicable Qualification System, the AOC, in its sole and absolute discretion, will determine whether the Athlete will be deemed to be nominated or proposed for the purpose of By-Law 2.1 to Rules 27 and 28 of the Olympic Charter.
- (e) Where the AOC forms a reasonable opinion that an NF's draft Nomination Criteria requires amendment, the AOC must notify the NF of the required amendments. The NF must work collaboratively with the AOC in good faith to amend its draft Nomination Criteria to the satisfaction of the AOC.
- (f) Once approved by the AOC, an NF may not amend or otherwise alter its Nomination Criteria without the AOC's prior written approval.
- (g) An NF must adopt a finalised Nomination Criteria by the latter of:
  - (i) 12 months prior to the first nomination event specified in the Nomination Criteria; or
  - (ii) such other date as the AOC may in its absolute discretion determine for the NF's Sport for the Games.
- (h) Once finalised, an NF must make its Nomination Criteria available to all Athletes participating in the NF's Sport including by publishing the Nomination Criteria on the NF's website or some other publicly accessible domain.

### 5.3 Procedure for Nomination of Athletes

- (a) For each Games, the AOC Selection Committee must set a time and date by which NFs must submit Athlete nominations to the AOC Selection Committee (**Nomination Date**). The AOC Selection Committee must notify NFs of the Nomination Date. Each NF must inform each of the Athletes participating in the NF's Sport of the Nomination Date.
- (b) The AOC Selection Committee may, in its absolute discretion, extend the Nomination Date for one or more NFs for any reason.
- (c) An NF must deliver notice to the AOC Selection Committee by the Nomination Date of each Nominated Athlete. Notice provided by an NF under this clause 5.3(c) must:
  - (i) include such particulars regarding Nominated Athletes as is requested by the AOC Selection Committee; and
  - (ii) be accompanied by written confirmation signed by the Chief Executive of the NF (or equivalent) that each Nominated Athlete has met the NF's Nomination Criteria.

- (d) The AOC Selection Committee may, in its absolute discretion, accept a nomination submitted after the Nomination Date where it is submitted by an NF as a result of an appeal brought in accordance with clause 9.
- (e) Each NF must provide written notice to the Athletes participating in the NF's Sport of their nomination or non-nomination (as the case may be) by no later than:
  - (i) 48 hours prior to the Nomination Date, where such written notice would be received by the Athlete more than 14 days prior to the Sport Entries Deadline; or
  - (ii) 24 hours prior to the Nomination Date, where such written notice would be received by the Athlete within 14 days of the Sport Entries Deadline,
 or such later date as the AOC advises the NF in accordance with clause 5.3(b).

## **6 Selection of Athletes**

### **6.1 AOC Selection Committee**

- (a) The AOC Selection Committee is solely responsible for selecting Nominated Athletes to a Team.
- (b) The AOC Selection Committee will be comprised of:
  - (i) the Chef de Mission;
  - (ii) the Chief Executive of the AOC; and
  - (iii) another member of the AOC Executive.
- (c) The AOC Selection Committee must adopt a Selection Criteria in respect of each Games.

### **6.2 Selection Requirements**

- (a) Subject to clause 6.2(e), in respect of each Games, the AOC Selection Committee may only select a Nominated Athlete to the Team for a Games if the AOC Selection Committee is satisfied that the Nominated Athlete:
  - (i) has satisfied the Qualification System applying to the Athlete's sport;
  - (ii) has satisfied the Nomination Criteria applying to the Athlete's sport and that the Nomination Criteria was properly applied by the NF in nominating the Athlete, or nominated by the AOC pursuant to clauses 5.1(f) and/or 5.2(d);
  - (iii) has satisfied the Selection Criteria adopted by the AOC Selection Committee in respect of the Games;
  - (iv) has signed and will comply with the Team Membership Agreement for Athletes for the Games;
  - (v) has not at any time engaged in conduct (whether publicly known or not) which has brought, brings or would have the tendency to bring the Nominated Athlete or the Athlete's sport into disrepute or censure, or which is or would have the tendency to be inconsistent with, contrary to or prejudicial to the best interests, image or values of the AOC, or as a result of which the Athlete's membership would not be or would not likely be in the best interests of the Team;
  - (vi) has not at any time been convicted of, or charged with, any offence involving violence, alcohol or drugs, or any sex offence, or any offence relating to any betting or gambling activities on sport, or any offence which is punishable by imprisonment;

- (vii) has disclosed any criminal offence of whatever nature, with which the Athlete has been charged, or of which the Athlete has been convicted, and has consented to the Nominated Athlete's NF and the AOC making enquiries to relevant authorities for any details of the Nominated Athlete's criminal record (if any), including details of any charges pending or any spent convictions disclosable by law, and consents to those authorities providing that information in answer to those enquiries;
- (viii) has not breached the AOC Anti-Doping Policy, unless the Nominated Athlete has already been sanctioned for the breach and has completed the sanction imposed;
- (ix) has been available for sample collection for the purpose of conducting anti-doping testing and has provided accurate and up to date whereabouts information within the 3-strike policy allowed for athletes under the Code;
- (x) has completed a medical assessment to the satisfaction of the AOC Selection Committee; and
- (xi) has honestly and fully disclosed to the Nominated Athlete's NF and the AOC, and will continue to honestly and fully disclose until the end of the Games Period, information concerning any conduct that would cause an actual or potential breach of clauses 6.2(a)(i) to 6.2(a)(x),

(collectively, the **Selection Requirements**).

- (b) The AOC Selection Committee has sole and absolute discretion to determine whether a Nominated Athlete has met the Selection Requirements set out in clause 6.2(a).
- (c) To enable the AOC Selection Committee to satisfy itself that a Nomination Athlete has met the Selection Requirements, upon request by the AOC Selection Committee, an NF must provide to the AOC Selection Committee any information that the NF has in its possession and control regarding a Nominated Athlete's compliance with the Selection Requirements or about which it is aware.
- (d) Subject to clause 6.2(e), where the AOC Selection Committee is satisfied that a Nominated Athlete has met the requirements set out in clause 6.2(a), the AOC Selection Committee must select that Nominated Athlete to the Team for a Games (**Selected Athletes**).
- (e) Notwithstanding clause 6.2(a), where the AOC Selection Committee is not satisfied that a Nominated Athlete has met one or more of the Selection Requirements, the AOC Selection Committee may, in its absolute discretion, select that Nominated Athlete on the condition that the Nominated Athlete satisfy certain additional requirements by a date that is prior to the commencement of the Games Period, such additional requirements to be determined by the AOC in its absolute discretion and notified in writing to the Nominated Athlete. Where the AOC Selection Committee is satisfied that a Nominated Athlete has met all additional requirements imposed pursuant to this clause 6.2(e), the AOC Selection Committee may confirm the Nominated Athlete's selection to the Team, at which time the Nominated Athlete will be deemed a Selected Athlete.
- (f) The AOC Selection Committee may amend the Selection Requirements (including by removing requirements or imposing additional requirements) at any time in its absolute discretion. The AOC Selection Committee must provide NFs with Written Notice of any amendments made to the Selection Requirements pursuant to this clause 6.2(f). An NF is responsible for notifying all Athletes participating in the NF's Sport of any such amendments.

### **6.3 Procedure for Selection of Athletes**

- (a) The AOC Selection Committee must notify each NF of the Selected Athletes who participate in the NF's Sport.
- (b) In respect of Athletes participating in the NF's Sport, an NF must notify Selected Athletes of their selection and advise each Nominated Athlete not selected of their non-selection.
- (c) An NF may not publish or make public any information disclosed by the AOC to the NF regarding the selection of Athletes until advised by the AOC. An NF may not publish or make public any information relating to the selection of Athletes which the AOC has classified as confidential, or which a reasonable person in the position of the NF would recognise as confidential, at any time, except to the extent required by Law.
- (d) An NF must ensure its Athletes, directors, officers, employees, agents and contractors are bound to observe an obligation of confidentiality substantially similar to that which is set out in clause 6.3(c).
- (e) A Team Membership Agreement will not be effective in respect of a Selected Athlete until such time as it signed by the Selected Athlete.

## **7 Appointment of Officials**

### **7.1 General**

- (a) The AOC Selection Committee is solely responsible for appointing Officials to a Team and will make appointments in its absolute discretion.
- (b) The AOC Selection Committee will determine the number and type of Officials that will be appointed to a Team and allocated to each sport within that Team in its absolute discretion. The AOC Selection Committee may revise any decision made under this clause 7.1(b) at any time in its absolute discretion.

### **7.2 Recommendation by NF**

- (a) An NF may recommend Officials to the AOC Selection Committee for appointment to the Team provided:
  - (i) the NF is an NF of a Selected Athlete;
  - (ii) each Official who is recommended:
    - (A) is a member of the NF, a member of an affiliated organisation of the NF or has entered into an employment or other contract for service with the NF; and
    - (B) in the opinion of the NF based on reasonable grounds:
      - (1) is suitable and qualified to fill the required positions for the NF's Sport in the Team;
      - (2) will work effectively and harmoniously with the Chef de Mission and Deputy Chef de Mission; and
      - (3) satisfies any standards for the appointment of officials adopted by the AOC from time to time.
- (b) Any recommendation made by an NF pursuant to clause 7.2(a) must be in the form prescribed by, or as otherwise acceptable to, the AOC Selection Committee and must include information to support that the relevant Official has satisfied the requirements set out in clause 7.2(a)(ii).

### 7.3 Procedure for Appointment of Officials

- (a) The AOC Selection Committee may determine a date by which NFs must submit recommendations for Officials. The AOC Selection Committee may accept recommendations for Officials after this date in its absolute discretion.
- (b) The AOC Selection Committee must consider any recommendation made pursuant to clause 7.2(a) but is not obliged to appoint to a Team any Official recommended by an NF.
- (c) The AOC Selection Committee may only appoint Officials to a Team if the AOC Selection Committee is satisfied that:
  - (i) the requirements set out in clause 7.2 have been met; and
  - (ii) the Official:
    - (A) has signed and will comply with the Team Membership Agreement for Officials for the Games;
    - (B) has, if required by the AOC Selection Committee, signed a statutory declaration in relation to:
      - (1) Child Abuse;
      - (2) compliance with the AOC Anti-Doping Policy or any other anti-doping policy or code as directed by the AOC; and
      - (3) any other matter that the AOC requires to be declared, from time to time;
    - (C) has, if required, assisted ASADA in any anti-doping matter or investigation and will continue to do so if required, including by:
      - (1) fully and truthfully answering questions;
      - (2) attending interviews;
      - (3) disclosing information;
      - (4) producing documents; and
    - (D) has, if required, satisfactorily completed a "Working with Children Check", or any equivalent check as notified by the AOC.
- (d) The AOC Selection Committee has sole and absolute discretion to determine whether the requirements set out in clause 7.3(c) have been satisfied.
- (e) For each Games, the AOC Selection Committee must advise NFs of Selected Athletes of the Officials who have been appointed to the Team and who have been appointed to the NF's Sport.
- (f) An Official who is not recommended for, or appointed to, a Team by the AOC Selection Committee has no right of appeal.

### 8 Priority of Documents

To the extent of any inconsistency, the following documents shall be given the following descending order of precedence:

- (a) the AOC Constitution;
- (b) this By-Law;
- (c) the Selection Criteria;

- (d) an NF's Nomination Criteria

## 9 Appeals

### 9.1 Definitions

For the purposes of clause 9 only, the following definitions apply unless the context requires otherwise:

**Games** means the Olympic Games and Olympic Winter Games.

**Nominated Athlete** means any Athlete nominated by their NF for selection to a Team for a Games.

**Non-Nominated Athlete** means any Athlete who is not nominated by their NF for selection to a Team for a Games.

**Non-Selected Athlete** means any Athlete who is not selected by the AOC Selection Committee to a Team for a Games.

**Selected Athlete** means any Athlete selected by the AOC Selection Committee to a Team for a Games.

**Team** means the team of Athletes representing Australia at a Games.

### 9.2 Application

For clarity, the appeal process set out in clause 9 applies to nomination and selection disputes for Teams of an Olympic Games and Olympic Winter Games only. The appeal process set out in clause 9 does not apply to nomination and selection disputes for teams of an Olympic Youth Games or Olympic Youth Winter Games.

### 9.3 Olympic Appeal Consultant

- (a) All Athletes, including Nominated Athletes, Non-Nominated Athletes, Selected Athletes and Non-Selected Athletes, are eligible to consult with an independent party appointed to provide advice to Athletes about the Appeal and Fast Track Appeal process (**Olympic Appeal Consultant**).
- (b) Pursuant to this By-Law, the Olympic Appeal Consultant is authorised to provide:
  - (i) advice about procedural aspects of the Appeal and Fast Track Appeal process, including but not limited to, advice regarding:
    - (A) the operation of provisions under this By-Law which deal with:
      - (1) the nomination of Athletes;
      - (2) the selection of Athletes; and
      - (3) the Appeal and Fast Track Appeal process;
    - (B) the costs involved in commencing and progressing an Appeal and Fast Track Appeal;
    - (C) the prospects of a successful and unsuccessful Appeal and Fast Track Appeal;
    - (D) Appeal and Fast Track Appeal success rates based on historical data; and
  - (ii) information that is specific to the circumstances of the Athlete, including explanations in 'plain English' of:

- (A) the Nomination Criteria and Selection Criteria that applies to the Athlete;
- (B) where an Athlete is a Non-Nominated Athlete or a Non-Selected Athlete:
  - (1) the reasons for the Athlete's non-nomination or non-selection, as the case may be; and
  - (2) how that decision interacts with the Nomination Criteria or Selection Criteria that applies to the Athlete.
- (c) All correspondence, advice and information provided by the Olympic Appeal Consultant to an Athlete must be:
  - (i) kept confidential; and
  - (ii) cost-free to the Athlete.
- (d) By way of this By-Law, an Athlete who seeks information or advice from the Olympic Appeal Consultant acknowledges and irrevocably declares that neither the AOC nor the NF is liable for any loss or damage caused to the Athlete due to any information or advice provided, or not provided, to the Athlete by the Olympic Appeal Consultant.

#### 9.4 Appeal Categories

- (a) A Non-Nominated Athlete may appeal against their non-nomination (***Nomination Appeal***) in accordance with the procedure set out in clause 9.6. A Nominated Athlete has no right of appeal in respect of their nomination or non-nomination to a particular event or discipline within the programme of a Games.
- (b) A Non-Selected Athlete may appeal against their non-selection (***Selection Appeal***) in accordance with the procedure set out in clause 9.7.
- (c) For clarity, the procedures set out in clauses 9.6 to 9.8 (inclusive) do not apply in respect of Fast Track Appeals, in which case the procedure set out in clause 9.9 will apply.

#### 9.5 General Rules

- (a) No later than 6 months prior to the commencement of the Games Period for a Games, the AOC will provide each NF with a list of individuals who are available to sit on an Appeal Tribunal convened in accordance with clause 9.6(b)(v). The list of individuals must include, at minimum:
  - (i) 3 individuals who are solicitors or barristers qualified to practice law in Australia and who could serve as Chairperson; and
  - (ii) 3 individuals who are experienced in Nomination Appeals and Selection Appeals.

The AOC is responsible for amending or updating the list of individuals provided under this clause 9.5(a) if required, and notifying NFs of any such amendments or updates.
- (b) In the event that two or more Appeals or Fast Track Appeals are brought under this clause and it appears to an Appeal Forum that:
  - (i) the Appeals or Fast Track Appeals involve a common question, sport, team, Athlete or NF; or
  - (ii) the relief claimed in them are in respect of, or arise out of, the same instance of nomination or selection; or
  - (iii) there is some other reason for it being desirable to have the Appeals or Fast Track Appeals consolidated,

the Appeals or Fast Track Appeals must, so far as practicable, be consolidated and heard together and the Athletes involved in the Appeals or Fast Track Appeals must provide reasonable assistance to the Appeal Forum to achieve this outcome.

- (c) An Appeal Forum may in its absolute discretion identify a person who is interested in the outcome of an Appeal or Fast Track Appeal as an Affected Party. An Appeal Forum must inform a person of his or her identification as an Affected Party.
- (d) Unless otherwise determined by an Appeal Forum, an Affected Party:
  - (i) must receive notice of the Appeal or Fast Track Appeal from the Appellant;
  - (ii) must be given the opportunity to make submissions in the Appeal or Fast Track Appeal and give evidence;
  - (iii) must receive a copy of the award handed down by the Appeal Forum; and
  - (iv) will be bound by any such award.
- (e) An Affected Party may appeal a decision or award that is made by an Appeal Forum in an Appeal or Fast Track Appeal for which it is an Affected Party.
- (f) A person who receives notice from an Appeal Forum of his or her identification as an Affected Party pursuant to clause 9.5(c) may decline his or her identification as an Affected Party, in which case that person will automatically waive the rights set out in clauses 9.5(d) and 9.5(e).
- (g) The AOC is an Affected Party for the purposes of clause 9.5(c) for all Appeals or Fast Track Appeals heard by the CAS.

## 9.6 **Nomination Appeal**

### (a) **Alternative Dispute Resolution**

- (i) A Non-Nominated Athlete must not commence a Nomination Appeal in an Appeal Tribunal unless the provisions of this clause 9.6(a) have been complied with.
- (ii) Within 48 hours of the time that a Non-Nominated Athlete receives notice of their non-nomination, the Non-Nominated Athlete must provide Written Notice to the Chief Executive of their NF that the Non-Nominated Athlete disputes their non-nomination. The Non-Nominated Athlete must provide reasons to support their notice of dispute.
- (iii) Within 24 hours of the Chief Executive of the NF receiving a Non-Nominated Athlete's notice of dispute in accordance with clause 9.6(a)(ii), the Chief Executive of the NF must provide the Non-Nominated Athlete with a written statement of the NF's reasons for not nominating the Non-Nominated Athlete.
- (iv) Within 24 hours of a Non-Nominated Athlete receiving the NF's written statement in accordance with clause 9.6(a)(iii), the Non-Nominated Athlete must provide a written response to the Chief Executive of the NF which articulates whether the Non-Nominated Athlete intends to proceed to a hearing of their Nomination Appeal in accordance with clause 9.6(b).
- (v) The parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with clause 9.6(a), such communication to be made on a without prejudice basis and kept confidential between the parties.
- (vi) If the dispute is not resolved within 3 Business Days of the Non-Nominated Athlete providing Written Notice to the NF in accordance with clause 9.6(a)(ii) (or



longer, if agreed between the parties), then the Non-Nominated Athlete may proceed to a hearing of their Nomination Appeal in accordance with clause 9.6(b).

**(b) First Instance Appeal to Appeal Tribunal**

- (i) Subject to clause 9.6(b)(ix)(G), a Nomination Appeal must be heard by an Appeal Tribunal in the first instance.
- (ii) A Non-Nominated Athlete may bring a Nomination Appeal to an Appeal Tribunal for hearing on one or more of the following grounds:
  - (A) in making its decision, the NF did not satisfy one or more of the requirements set out in clause 5.3;
  - (B) the applicable Nomination Criteria was not properly applied by the Non-Nominated Athlete's NF;
  - (C) the NF was affected by actual bias in making its decision with respect to the Non-Nominated Athlete; and
  - (D) there was no material on which the NF's decision could be reasonably based.
- (iii) A Non-Nominated Athlete wishing to pursue a hearing of a Nomination Appeal by an Appeal Tribunal must produce a written application to commence a Nomination Appeal (**Nomination Appeal Application**) that:
  - (A) identifies the ground or grounds on which the Nomination Appeal is brought; and
  - (B) encloses a non-refundable sum of AUD\$250.00 payable to the NF.
- (iv) An Appellant must serve a copy of their Nomination Appeal Application on the Chief Executive of the NF and the AOC on the same date, being not more than 24 hours after the date on which the period referred to in clause 9.6(a)(vi) expires.
- (v) Within 24 hours of the Chief Executive of the NF receiving the Appellant's Nomination Appeal Application, the NF must convene an Appeal Tribunal to hear the Appellant's Nomination Appeal. The Appeal Tribunal must be composed of the following individuals, selected by the NF:
  - (A) from among the list of individuals provided by the AOC in accordance with clause 9.5(a):
    - (1) a Chairperson;
    - (2) one individual who is a qualified legal practitioner; and
  - (B) of the NF's own choosing, an individual who possesses a thorough knowledge of the NF's Sport.
- (vi) A person may not be appointed to an Appeal Tribunal by an NF if that individual:
  - (A) is a member of the Board of the NF;
  - (B) was directly involved in the NF's decision to not nominate the Appellant;
  - (C) is personally interested in the outcome of the Nomination Appeal; or
  - (D) would not for any other reason be considered by a reasonable person to be an impartial member of the Appeal Tribunal.

- (vii) The Appellant or an Affected Party may dispute one or more members appointed by an NF to an Appeal Tribunal, such disputes to be determined by the Chairperson sitting alone and in the event the appointment of the Chairperson is the subject of the dispute, by the Chief Executive of the AOC.
- (viii) The following rules apply in relation to the hearing of a Nomination Appeal by an Appeal Tribunal:
  - (A) The onus is on the Appellant to establish, to the reasonable satisfaction of the Appeal Tribunal, that the decision of the NF to not nominate the Appellant is reviewable, based on one or more of the grounds of appeal set out in clause 9.6(b)(ii).
  - (B) Decisions of the Appeal Tribunal, including its determination regarding the outcome of the Nomination Appeal, will be made according to the opinions of the majority. Where the Appeal Tribunal is equally divided in opinion, the decision will be made according to the opinion of the Chairperson.
  - (C) The rules of natural justice must be observed.
  - (D) The hearing must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the matters at hand permit.
  - (E) Hearings may take place in the manner that is determined by the Chairperson, including by telephone or teleconference.
  - (F) The parties to a hearing may have legal representation.
- (ix) The following rules apply in relation to the determination of a Nomination Appeal by an Appeal Tribunal:
  - (A) An Appeal Tribunal may uphold or dismiss a Nomination Appeal.
  - (B) Subject to clause 9.6(b)(ix)(C), where an Appeal Tribunal determines to uphold a Nomination Appeal, the Appeal Tribunal must refer the decision regarding the Appellant's non-nomination back to the Appellant's NF for reconsideration and redetermination.
  - (C) Notwithstanding clause 9.6(b)(ix)(B), the Appeal Tribunal may itself determine the issue of the Appellant's nomination where the Appeal Tribunal determines that:
    - (1) it would be impractical to refer the issue of the Appellant's non-nomination back to the NF in the time available; or
    - (2) in making its original decision, the NF had such disregard for proper application of the Nomination Criteria that a reasonable person would apprehend that it is unlikely that the Nomination Criteria would be applied properly by the NF if the decision regarding the Appellant's non-nomination was referred back to the NF.
  - (D) Prior to making a determination under clause 9.6(b)(ix)(C), the Appeal Tribunal must advise the parties and all Affected Parties (if any) that the Appeal Tribunal intends to make such a determination and provide the parties with a reasonable opportunity to make submissions in relation to the Appeal Tribunal's proposed determination. The Appeal Tribunal must

give proper consideration to any submissions it receives pursuant to this clause 9.6(b)(ix)(D).

- (E) The Appeal Tribunal must provide Written Notice to the parties of its determination regarding the outcome of the Nomination Appeal as soon as reasonably practicable after the conclusion of the hearing and in any event within 3 Business Days of the conclusion of the hearing. The Appeal Tribunal must provide the parties with a statement of the reasons for its determination within 3 Business Days of notifying the parties of its determination.
- (F) The determination of an Appeal Tribunal is final and binding on the parties and, subject only to an appeal to the Appeals Arbitration Division of CAS (the **CAS**) pursuant to clause 9.6(c), neither party may institute proceedings in any other court or tribunal. For the avoidance of doubt, without restricting the generality of the provisions of the *Commercial Arbitration Act 2010* (NSW), the parties agree that neither party will have the right of appeal under sections 34 or 34A or to apply for the determination of a question of law under section 27J of the *Commercial Arbitration Act 2010* (NSW) or equivalent legislation in any of the Australian States or Territories.
- (G) Where the Appeal Tribunal refers the decision regarding the Appellant's non-nomination back to the Appellant's NF in accordance with clause 9.6(b)(ix)(B), the NF must observe the principles of natural justice. Any decision made by the NF 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 CAS in accordance with clause 9.6(c).

**(c) Second Instance Appeal to CAS**

- (i) A Non-Nominated Athlete may appeal:
  - (A) a determination made by an Appeal Tribunal in accordance with clause 9.6(b)(ix); and
  - (B) a decision made by an NF after the question of non-nomination is referred back to the NF by an Appeal Tribunal in accordance with clause 9.6(b)(ix)(G), (both the Appeal Tribunal's determination and the NF's decision, the **Impugned Decision**),  
to the CAS.
- (ii) A Non-Nominated Athlete may bring a Nomination Appeal to the CAS on one or more of the following grounds:
  - (A) in making the Impugned Decision, the Appeal Tribunal or the NF, as the case may be, did not observe the rules of natural justice; and
  - (B) the Impugned Decision was in error on a question of law.
- (iii) A Non-Nominated Athlete wishing to pursue a hearing of a Nomination Appeal by the CAS must:
  - (A) within 48 hours of the Non-Nominated Athlete receiving Written Notice of the Impugned Decision, provide Written Notice to:
    - (1) the Chief Executive of their NF; and
    - (2) the Chief Executive of the AOC,

that the Non-Nominated Athlete intends to appeal the Impugned Decision;

- (B) by no later than 3 Business Days after providing Written Notice in accordance with clause 9.6(c)(iii)(A) (or such other amount of time as the CAS may allow):
  - (1) file a CAS Application Form with the CAS Oceania Registry that sets out the grounds of appeal to the CAS; and
  - (2) pay the non-refundable filing fee of CHF500 to the CAS.

For clarity, an extension of time may be granted under this clause 9.6(c)(iii)(B) only in extenuating circumstances outside the control of the Non-Nominated Athlete concerned; and

- (C) within 24 hours of filing their CAS Application Form with the CAS Oceania Registry, the Non-Nominated Athlete must provide a copy of their CAS Application Form to their NF, the AOC and any Affected Party.
- (iv) The rules set out in clauses 9.8(a) and 9.8(b) apply with respect to the hearing and determination of a Nomination Appeal by the CAS.

## 9.7 Selection Appeal

### (a) Alternative Dispute Resolution

- (i) A Non-Selected Athlete must not commence a Selection Appeal in the CAS unless the provisions of this clause 9.7(a) have been complied with.
- (ii) 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 Chief Executive of the AOC that the Non-Selected Athlete disputes their non-selection. The Non-Selected Athlete must provide reasons to support their notice of dispute.
- (iii) Within 24 hours of the Non-Selected Athlete providing Written Notice to the Chief Executive of the AOC in accordance with clause 9.7(a)(ii), the Chief Executive of the AOC must provide the Non-Selected Athlete with a written statement of the AOC's reasons supporting the non-selection of the Non-Selected Athlete.
- (iv) Within 24 hours of a Non-Selected Athlete receiving the AOC's written statement in accordance with clause 9.7(a)(iii), the Non-Selected Athlete must provide a written response to the Chief Executive of the AOC which articulates whether the Non-Selected Athlete intends to proceed to a hearing of their Selection Appeal in accordance with clause 9.7(b).
- (v) The parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with this clause 9.7(a), made on a without prejudice basis and kept confidential between the parties.
- (vi) If the selection dispute is not resolved within 3 Business Days of the Non-Selected Athlete providing Written Notice to the NF in accordance with clause 9.7(a)(ii) (or longer, if agreed between the parties), then the Non-Selected Athlete may proceed to a hearing of their Selection Appeal by the CAS in accordance with clause 9.7(b).

### (b) First and final instance appeal to the CAS

- (i) A Selection Appeal must be heard by the CAS in the first instance.

- (ii) A Non-Selected Athlete may bring a Selection Appeal to the CAS for hearing on one or more of the following grounds:
  - (A) in making its decision, the AOC did not satisfy one or more of the requirements set out in clause 6.3;
  - (B) the Selection Criteria was not properly applied by the AOC with respect to the Non-Selected Athlete;
  - (C) the Non-Selected Athlete was not afforded a reasonable opportunity by the AOC to satisfy the Selection Criteria;
  - (D) the AOC was affected by actual bias in making its decision to not select the Non-Selected Athlete; and
  - (E) there was no material on which the AOC's decision could be reasonably based.
- (iii) A Non-Selected Athlete wishing to pursue a hearing of a Selection Appeal by the CAS must, within 24 hours of the expiry of the period referred to in clause 9.7(a)(vi) (or within such time as the CAS may allow):
  - (A) provide Written Notice that the Non-Selected Athlete intends to pursue an appeal to the CAS to:
    - (1) the Chief Executive of their NF; and
    - (2) the Chief Executive of the AOC;
  - (B) file a CAS Application Form with the CAS Oceania Registry that sets out the grounds of appeal relied on by the Non-Selected Athlete; and
  - (C) pay the non-refundable filing fee of CHF500 to the CAS.

For clarity, an extension of time may be granted by the CAS under this clause only in extenuating circumstances outside the control of the Non-Selected Athlete concerned.
- (iv) Within 24 hours of filing their CAS Application Form, the Non-Selected Athlete must provide a copy of their CAS Application Form to the AOC and any Affected Party.
- (v) The rules set out in clauses 9.8(a) and 9.8(c) apply with respect to the hearing and determination of a Selection Appeal by the CAS.

## 9.8 CAS Procedural Rules

- (a) The following rules apply in relation to the hearing of an Appeal by the CAS:
  - (i) Subject to the Olympic Charter and this By-Law, any Appeal to the CAS under this By-Law must be resolved by the Appeals Arbitration Division of CAS, according to the CAS Code and applying the law of New South Wales.
  - (ii) All Appeals to CAS will be heard by a panel of arbitrators which will be comprised of three arbitrators, unless the parties agree to a sole arbitrator hearing the Appeal pursuant to Rule 50 of the CAS Code.
  - (iii) The parties are deemed to consent to the following aspects of an Appeal being made public:
    - (A) the grounds of appeal;
    - (B) the names of the arbitrators;

- (C) the date of the hearing;
  - (D) the award; and
  - (E) the reasons supporting the award.
- (iv) The power of the CAS panel of arbitrators to review the facts and the law pursuant to Rule 57 of the CAS Code will be initially limited to determining whether the Appellant has made out one or more of the grounds of appeal.
- (b) The following rules apply in relation to the determination of a Nomination Appeal by the CAS:
  - (i) The CAS may uphold or dismiss a Nomination Appeal.
  - (ii) Subject to clause 9.8(b)(iii), where the CAS determines to uphold a Nomination Appeal, the CAS must refer the decision regarding the Appellant's non-nomination back to the Appellant's NF for reconsideration and redetermination.
  - (iii) Notwithstanding clause 9.8(b)(ii), the CAS may itself determine the issue of the Appellant's nomination where:
    - (A) the CAS determines that:
      - (1) it would be impractical to refer the issue of the Appellant's non-nomination back to the NF in the time available; or
      - (2) in making its original decision, the NF had such disregard for the proper application of the Nomination Criteria that a reasonable person would apprehend that it is unlikely that the Nomination Criteria would be applied properly by the NF if the decision regarding the Appellant's non-nomination was referred back to the NF; and
    - (B) prior to making its determination under clause 9.8(b)(iii), the CAS advises the parties and all Affected Parties (if any) that the Appeal Tribunal intends to itself determine the issue of the Appellant's nomination provides the parties with a reasonable opportunity to make submissions in relation to its proposed determination. The CAS must give proper consideration to any submissions it receives pursuant to this clause 9.8(b)(iii)(B).
  - (iv) Where CAS refers the decision regarding the Appellant's non-nomination back to the Appellant's NF in accordance with clause 9.8(b)(iii), any decision made by the NF regarding the Appellant's nomination after such referral is final and binding on the Appellant.
- (c) The following rules apply in relation to the determination of a Selection Appeal by the CAS:
  - (i) Subject to clause 9.8(c)(ii), where the CAS determines to uphold a Selection Appeal, the CAS must refer the decision regarding the Appellant's non-selection back to the AOC for reconsideration and redetermination.
  - (ii) Notwithstanding clause 9.8(c)(i), the CAS may itself determine the issue of the Appellant's selection where:
    - (A) the CAS determines that:
      - (1) it would be impractical to refer the issue of the Appellant's non-selection back to the AOC in the time available; or

- (2) in making its original decision, the AOC had such disregard for the proper application of the Selection Criteria that a reasonable person would apprehend that it is unlikely that the Selection Criteria would be applied properly by the AOC if the decision regarding the Appellant's non-selection was referred back to the AOC; and
- (B) prior to making its determination under clause 9.8(c)(ii), the CAS advises the parties and all Affected Parties (if any) that the CAS intends to itself determine the issue of the Appellant's selection and provides the parties with a reasonable opportunity to make submissions in relation to its proposed determination. The CAS must give proper consideration to any submissions it receives pursuant to this clause 9.8(c)(ii)(B).
- (iii) Where CAS refers the decision regarding the Appellant's non-selection back to the AOC in accordance with clause 9.8(c)(i), any decision made by the AOC regarding the Appellant's selection after such referral is final and binding on the Appellant.
- (iv) The award handed down by the CAS with respect to an Appeal is final and binding on the parties, subject only to any right of appeal available to an Appellant under the CAS Code, and it is agreed that neither party may institute or maintain proceedings in any court or tribunal other than CAS. In particular, and without restricting the generality of the provisions of the *Commercial Arbitration Act 2010* (NSW), neither party will have the right of appeal under sections 34 or 34A or to apply for the determination of a question of law under section 27J of the *Commercial Arbitration Act 2010* (NSW) or equivalent legislation in any of the Australian States or Territories.

## 9.9 Fast Track Appeal Process

- (a) Where, within 14 days of the Sport Entries Deadline:
  - (i) a Non-Nominated Athlete receives notice of their non-nomination; or
  - (ii) a Non-Selected Athlete receives notice of their non-selection,
 the Non-Nominated Athlete or the Non-Selected Athlete, as the case may be, may bring a Fast Track Appeal to the CAS in accordance with the Fast Track Appeal Process set out in this clause 9.9.
- (b) **Procedure for commencement of Nomination Fast Track Appeal**
  - (i) A Non-Nominated Athlete may bring a Nomination Fast Track Appeal to the CAS only on one or more of the following grounds:
    - (A) in making its decision, the NF did not satisfy one or more of the requirements set out in clause 5.3;
    - (B) the applicable Nomination Criteria was not properly applied by the Non-Nominated Athlete's NF;
    - (C) the NF was affected by actual bias in making its decision with respect to the Non-Nominated Athlete; and
    - (D) there was no material on which the NF's decision could be reasonably based.

- (ii) A Non-Nominated Athlete wishing to pursue a hearing of their Nomination Fast Track Appeal must, within 24 hours of receiving notice of their non-nomination, (or within such time as the CAS may allow) provide the Chief Executive of their NF and the Chief Executive of the AOC with Written Notice that the Non-Nominated Athlete intends to pursue a Nomination Fast Track Appeal to the CAS.
- (iii) Within 24 hours of the NF receiving Written Notice of the Non-Nominated Athlete's intention to pursue a Fast Track Appeal in accordance with clause 9.9(b)(ii), the NF must provide the Non-Nominated Athlete with a written statement of the NF's reasons supporting the non-nomination of the Non-Nominated Athlete.
- (iv) Within 24 hours of receipt of the NF's written statement in accordance with clause 9.9(b)(iii), the Non-Nominated Athlete must:
  - (A) where the Non-Nominated Athlete does not intend to pursue a Nomination Fast Track Appeal, provide Written Notice to the NF articulating that intention; or
  - (B) where the Non-Nominated Athlete does intend to pursue a Nomination Fast Track Appeal:
    - (1) file a CAS Application Form with the CAS Oceania Registry that sets out the grounds of appeal relied on by the Non-Nominated Athlete; and
    - (2) pay the non-refundable filing fee of CHF500 to the CAS.

For clarity, an extension of time may be granted by the CAS under this clause only in extenuating circumstances outside the control of the Non-Nominated Athlete concerned.
- (v) Within 24 hours of filing their CAS Application Form with the CAS Oceania Registry, the Non-Nominated Athlete must provide a copy of their CAS Application Form to the NF, AOC and any Affected Party.
- (vi) By no later than 24 hours after receipt of the Non-Nominated Athlete's CAS Application Form, the NF and any Affected Parties may respond to the Non-Nominated Athlete's grounds of appeal with written submissions to the CAS. The NF and any Affected Parties must file their submissions with the CAS Oceania Registry.

**(c) Procedure for commencement of Selection Fast Track Appeal**

- (i) A Non-Selected Athlete may bring a Selection Fast Track Appeal to the CAS only on one or more of the following grounds:
  - (A) in making its decision, the AOC did not satisfy one or more of the requirements set out in clause 6.3;
  - (B) the Selection Criteria was not properly applied by the AOC with respect to the Non-Selected Athlete;
  - (C) the Non-Selected Athlete was not afforded a reasonable opportunity by the AOC to satisfy the Selection Criteria;
  - (D) the AOC was affected by actual bias in making its decision to not select the Non-Selected Athlete; and



- (E) there was no material on which the AOC's decision could be reasonably based.
- (ii) A Non-Selected Athlete wishing to pursue a hearing of their Selection Fast Track Appeal must, within 24 hours of receiving notice of their non-selection, (or within such time as the CAS may allow) provide the Chief Executive of the AOC with Written Notice that the Non-Selected Athlete intends to pursue a Selection Fast Track Appeal to the CAS.
- (iii) Within 24 hours of the AOC receiving Written Notice of the Non-Selected Athlete's intention to pursue a Selection Fast Track Appeal in accordance with clause 9.9(c)(ii), the AOC must provide the Non-Selected Athlete with a written statement of the AOC's reasons supporting the non-selection of the Non-Selected Athlete.
- (iv) Within 24 hours of receipt of the AOC's written statement in accordance with clause 9.9(c)(iii), the Non-Selected Athlete must:
  - (A) where the Non-Selected Athlete does not intend to pursue a Selection Fast Track Appeal, provide Written Notice to the NF articulating that intention; or
  - (B) where the Non-Selected Athlete does intend to pursue a Selection Fast Track Appeal:
    - (1) file a CAS Application Form with the CAS Oceania Registry that sets out the grounds of appeal relied on by the Non-Selected Athlete; and
    - (2) pay the non-refundable filing fee of CHF500 to the CAS.

For clarity, an extension of time may be granted by the CAS under this clause only in extenuating circumstances outside the control of the Non-Selected Athlete concerned.

- (v) Within 24 hours of filing their CAS Application Form with the CAS Oceania Registry, the Non-Selected Athlete must provide a copy of their CAS Application Form to the AOC and any Affected Party.
- (vi) By no later than 24 hours after receipt of the Non-Selected Athlete's CAS Application Form, the AOC and any Affected Parties may respond to the Non-Selected Athlete's grounds of appeal with written submissions to the CAS. The AOC and any Affected Parties must file their submissions with the CAS Oceania Registry.

**(d) Procedure for hearing of a Fast Track Appeal**

- (i) The following rules apply in relation to the hearing of a Fast Track Appeal by the CAS:
  - (A) Subject to the Olympic Charter and this By-Law, any Fast Track Appeal to the CAS must be exclusively resolved by the Appeals Arbitration Division of CAS, according to the CAS Code and applying the law of New South Wales.
  - (B) All Fast Track Appeals to CAS will be heard by a sole arbitrator;
  - (C) The parties are deemed to consent to the following aspects of a Fast Track Appeal being made public:

- (1) the grounds of appeal;
  - (2) the names of the arbitrators;
  - (3) the date of the hearing;
  - (4) the award; and
  - (5) the reasons supporting the award.
- (D) The power of the CAS arbitrator to review the facts and the law pursuant to Rule 57 of the CAS Code will be initially limited to determining whether the Appellant has made out one or more of the grounds of appeal.
- (e) **Procedure for determination of a Fast Track Appeal**
- (i) The CAS may uphold or dismiss a Fast Track Appeal.
  - (ii) With respect to the determination of a Nomination Fast Track Appeal:
    - (A) Subject to clause 9.9(e)(ii)(B), where the CAS determines to uphold a Nomination Appeal in the Fast Track Appeal Process, the CAS must refer the decision regarding the Appellant's non-nomination back to the Appellant's NF for reconsideration and redetermination.
    - (B) Notwithstanding clause 9.9(e)(ii)(A), the CAS may itself determine the issue of the Appellant's nomination where the CAS determines that:
      - (1) it would be impractical to refer the issue of the Appellant's non-nomination back to the NF in the time available; or
      - (2) in making its original decision, the NF had such disregard for the proper application of the Nomination Criteria that a reasonable person would apprehend that it is unlikely that the Nomination Criteria would be applied properly by the NF if the decision regarding the Appellant's non-nomination was referred back to the NF.
    - (C) Prior to making a determination under clause 9.9(e)(ii)(A), the CAS must advise the parties and all Affected Parties (if any) that the CAS intends to itself determine the issue of the Appellant's nomination and provides the parties and any Affected Parties with a reasonable opportunity to make submissions in relation to its proposed determination. The CAS must give proper consideration to any submissions it receives pursuant to this clause 9.9(e)(ii)(C).
    - (D) Where CAS refers the decision regarding the Appellant's non-nomination back to the Appellant's NF in accordance with clause 9.9(e)(ii)(B), any decision made by the NF regarding the Appellant's nomination after such referral, is final and binding on the Appellant and there is no further right of appeal.
  - (iii) With respect to the determination of a Selection Fast Track Appeal:
    - (A) Subject to clause 9.9(e)(iii)(B), where the CAS determines to uphold a Selection Appeal, the CAS must refer the decision regarding the Appellant's non-selection back to the AOC for reconsideration and redetermination.
    - (B) Notwithstanding clause 9.9(e)(iii)(A), the CAS may itself determine the issue of the Appellant's selection where the CAS determines that:

- (1) it would be impractical to refer the issue of the Appellant's non-selection back to the AOC in the time available; or
  - (2) in making its original decision, the AOC had such disregard for the proper application of the Selection Criteria that a reasonable person would apprehend that it is unlikely that the Selection Criteria would be applied properly by the AOC if the decision regarding the Appellant's non-selection was referred back to the AOC.
- (C) Prior to making a determination under clause 9.9(e)(iii)(A), the CAS must advise the parties and all Affected Parties (if any) that the CAS intends to itself determine the issue of the Appellant's selection and provide the parties with a reasonable opportunity to make submissions in relation to its proposed determination. The CAS must give proper consideration to any submissions it receives pursuant to this clause 9.9(e)(iii)(C).
- (D) Where CAS refers the decision regarding the Appellant's non-selection back to the AOC in accordance with clause 9.9(e)(iii)(B), any decision made by the AOC regarding the Appellant's nomination after such referral, is final and binding on the Appellant and any Affected Parties. There is no further right of appeal.
- (iv) The award handed down by the CAS with respect to a Fast Track Appeal is final and binding on the parties, subject only to any right of appeal available to an Appellant under the CAS Code, and it is agreed that neither party may institute or maintain proceedings in any court or tribunal other than CAS. In particular, and without restricting the generality of the provisions of the *Commercial Arbitration Act 2010* (NSW), neither party will have the right of appeal under sections 34 or 34A or to apply for the determination of a question of law under section 27J of the *Commercial Arbitration Act 2010* (NSW) or equivalent legislation in any of the Australian States or Territories.

#### 9.10 Costs and Expenses of Appeal Process

- (a) In accordance with Rule 64 of the CAS Code, in respect of an Appeal, the provisions set out in this clause 9.10(a) apply with regard to the costs of the Appeal.
- (i) **Appeal to a sole arbitrator**
    - (A) The party instituting the Appeal must pay the CAS application fee of CHF1000 to the CAS.
    - (B) Where the parties have agreed to have their Appeal determined by a sole arbitrator, the AOC will pay the CAS Costs which, by agreement between CAS and the AOC, are fixed at AUD\$2,500.
    - (C) If such an appeal heard by a sole arbitrator is upheld, the AOC will reimburse the application fee of CHF1000 to the party who paid it.
    - (D) If such an appeal heard by a sole arbitrator is dismissed, the AOC will not reimburse the application fee and, in its absolute discretion, the AOC may also require the unsuccessful party to repay to the AOC one half of the CAS Costs referred to in clause 9.10(a)(i)(B), namely AUD\$1,250.
  - (ii) **Appeal to a panel of arbitrators**

- (A) The party instituting the Appeal must pay the CAS application fee of CHF1000 to the CAS.
  - (B) Where the parties do not agree to a sole arbitrator pursuant to clause 9.8(a)(ii), the AOC will contribute the sum of AUD\$2,500 towards the CAS Costs and the parties will, subject to any award of CAS to the contrary, be liable to pay to CAS, in equal shares, any CAS Costs in excess of AUD\$2,500.
  - (C) In the event that the CAS requires payment in advance of the estimated CAS Costs, the parties shall make such advance payment in equal shares.
  - (D) As part of its award in respect of any appeal heard by a panel of three arbitrators, the CAS may make a ruling regarding the payment of the CAS Costs in excess of AUD\$2,500 including a ruling that one party reimburse to the other party on account of estimated CAS Costs.
  - (E) If such an appeal heard by a panel of three arbitrators is upheld, the AOC will reimburse the application fee of CHF1,000 to the party who paid it.
  - (F) If such an appeal heard by a panel of three arbitrators is dismissed, the AOC will not reimburse the application fee and, in its absolute discretion, the AOC may also require the unsuccessful party to repay to the AOC one half of the contribution towards the CAS Costs which the AOC has made pursuant to clause 9.10(a)(ii)(B) namely a reimbursement of AUD\$1,250.
- (b) In accordance with Rule 64 of the CAS Code, with respect to a Fast Track Appeal, the provisions set out in this clause 9.10(b) apply with regard to the costs of the Fast Track Appeal.
- (i) Where a Fast Track Appeal is resolved by the Fast-Track Appeal Process, the Athlete must pay half the CAS application fee, being the sum of CHF500. The NF must pay the remaining half of the CAS application fee, being the sum of CHF500.
  - (ii) The AOC will contribute the sum of AUD\$2,500 towards the CAS Costs and the parties will, subject to any award of CAS to the contrary, be liable to pay to CAS, in equal shares, any CAS Costs in excess of AUD\$2,500.
  - (iii) In the event that the CAS requires payment in advance of the estimated CAS Costs, the parties shall make such advance payment in equal shares.
- (c) **Award of Costs**
- (i) In any Appeal or Fast Track Appeal heard by the CAS, the costs of the successful party will be limited to the sum of AUD\$5,000.
  - (ii) In exercising its discretion with respect to making an award of costs, the CAS may have regard to:
    - (A) the extent to which the Appellant consulted with an Olympic Appeal Consultant before commencing his or her Appeal or Fast Track Appeal;
    - (B) the extent to which the NF cooperated with, and provided reasonable assistance to, the Olympic Appeal Consultant consulting the Appellant, if any;

- (C) the extent to which any party incurred excessive costs relative to the matter at hand (including with respect to the level of legal representation engaged by any party);
- (D) the extent to which any party failed to observe a ruling or direction by the CAS;
- (E) the extent to which any party failed to properly disclose to any other party, matters of factual or legal relevance;
- (F) the matters referred to in Rule 64.5 of the CAS Code; and
- (G) any other matter that the CAS determines in its absolute discretion to be relevant.

### 9.11 Other Appeals

- (a) Subject to clause 9.11(b), there is no right of appeal for an Athlete who is not nominated by their NF to:
  - (i) a team for:
    - (A) a Youth Olympic Games; or
    - (B) a Winter Youth Olympic Games; or
  - (ii) any other games or Competition for which the AOC selects a team of Athletes.
- (b) An Athlete may appeal their non-nomination to a team pursuant to clause 9.11(a), if each party to the appeal, including the NF, the AOC and any Affected Party, provides their written consent, such appeal to be brought on the grounds set out in clause 9.6(b)(ii) and heard by the CAS in accordance with the procedure set out in clauses 9.6(c)(iii) or, where an Athlete receives notice of their non-nomination within 14 days of the Sport Entries Deadline for the relevant games or Competition, in accordance with clause 9.9(b).
- (c) With respect to the determination of an appeal pursuant to this clause:
  - (i) The CAS may uphold or dismiss the appeal.
  - (ii) Subject to clause 9.11(c)(iii), where the CAS determines to uphold the appeal, the CAS must refer the decision regarding the Appellant's non-nomination back to the Appellant's NF for reconsideration and redetermination.
  - (iii) Notwithstanding clause 9.11(c)(ii), the CAS may itself determine the issue of the Appellant's nomination where the CAS determines that it would be impractical to refer the issue of the Appellant's non-nomination back to the NF in the time available.
  - (iv) Any award handed down by the CAS pursuant to clause 9.11(c) is final and binding on the parties and the Appellant will have no further right to appeal the award.
  - (v) Where the CAS refers the decision regarding the Appellant's non-nomination back to the Appellant's NF in accordance with clause 9.11(c)(ii), any decision made by the NF regarding the Appellant's nomination after such referral, is final and binding on the Appellant and there is no further right of appeal.
- (d) There is no right of appeal for an Athlete who is not selected by the AOC to a team pursuant to clause 9.11(a).

## **10 Indemnity**

- (a) Each NF must indemnify the AOC and its directors, officers, employees, servants and agents from and against all claims, demands, actions, proceedings, costs and expenses (including reasonable legal costs calculated on a solicitor and client basis) and liability to third parties arising out of or incidental to any breach of this By-Law by the NF.
- (b) The AOC must indemnify each NF and its directors, officers, employees, servants and agents from and against all claims, demands, actions, proceedings, costs and expenses (including reasonable legal costs calculated on a solicitor and client basis) and liability to third parties arising out of or incidental to any breach of this By-Law by the AOC.

## **11 Governing Law**

This By-Law is governed by the laws of the State of New South Wales.

ADOPTED as a By-Law of the AOC by the Executive on 1 February 2002  
AMENDED by the Executive on 22 March 2002 effective immediately  
AMENDED by the Executive on 21 March 2003 effective immediately  
AMENDED by the Executive on 19 June 2003 effective immediately  
AMENDED by the Executive on 20 November 2003 effective immediately save for the continued application of Clause 5.1 in respect of nomination and selection of athletes for the 2004 Olympic Games AMENDED by the Executive on 3 June 2004 effective immediately  
AMENDED by the Executive on 19 November 2004 effective immediately  
AMENDED by the Executive on 18 November 2005 effective immediately  
AMENDED by the Executive on 20 March 2008 effective immediately  
AMENDED by the Executive on 30 June 2008 effective immediately  
AMENDED by the Executive on 21 November 2008 effective immediately  
AMENDED by the Executive on 21 April 2009 effective immediately  
AMENDED by the Executive on 19 August 2011 effective immediately  
AMENDED by the Executive on 23 November 2011 effective immediately  
AMENDED by the Executive on 8 February 2013 effective immediately  
AMENDED by the Executive on 15 March 2013 effective immediately  
AMENDED by the Executive on 22 November 2013 effective immediately  
AMENDED by the Executive on 6 August 2015 effective immediately  
AMENDED by the Executive on 6 May 2016 effective immediately save for the introduction of Clause 7.1(2) which shall apply after the Closing Ceremony of the 2016 Olympic Games  
AMENDED by the Executive on 3 April 2018 effective immediately  
AMENDED by the Executive on 30 August 2018 effective immediately