

# **BOWLS AUSTRALIA SELECTION APPEALS POLICY**

**Policy Name:** Selection Appeals Policy

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## **1. DEFINITIONS AND INTERPRETATION**

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### **1.1. Definitions**

In this Policy the following words have the corresponding meaning:

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

**Appellant** means a person who has commenced a **Selection Appeal** in the NST.

**Athlete** means a registered athlete member of BA.

**AUD** means Australian Dollars.

**BA** means Bowls Australa Limited the Governing body for Bowls in Australia.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne, Australia.

**CEO** means the Chief Executive Officer of BA.

**Child** means a person under the age of 18 years.

**Event** means a FIS sanctioned or other competition for which a Team is selected to compete.

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

**Hearing Tribunal** means a Tribunal convened in the NST General Division for the purpose of hearing a Selection Appeal in accordance with clause 5.2 of this Policy.

**Interested Party** has the meaning given in **clause 4.4**.

**National Sports Tribunal** or **NST** means the Australian Government entity established by the NST Act.

**Non-Selected Athlete** means any Athlete who is not selected by BA to a Team

**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 a BA Selection Policy who is not an athlete.

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

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

**Selected Athlete** means any Athlete selected by BA to a Team.

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

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

**Team** means an Australian Bowls Team selected by BA 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 Melbourne, 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.
- (f) Any failure to give any notice or follow any process under this Criteria does not invalidate such notice or process and does not give rise to an appeal in respect to the notice or process.

## **2. OBJECTIVE OF THIS POLICY**

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- 2.1. This Policy sets out the Selection Appeal process to be applied in respect of the selection of all BA Teams and Squads.
- 2.2. This Policy, read and applied with Selection Policy or Policies and the applicable Selection Criteria in those Selection Policy or Policies, forms the BA Selection Policy for any relevant Event for which BA selects a Team.
- 2.3. The BA 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, in respect of certain Events (for instance, the Olympics, Paralympics or the Commonwealth Games), BA does not select athletes or

officials, but rather nominates them to another entity (for example the Australian Olympic Committee (AOC), Paralympics Australia (PA) or Commonwealth Games Australia (CGA)) 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 **clause 2.4** applies, the BA Selection Policy for an Event will apply to the nomination process undertaken by BA for these Events as though the term 'selection' is interchangeable with the term 'nomination'.

### **3. APPLICATION**

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- 3.1. This Policy applies to:
- (a) Athletes;
  - (b) BA.
- 3.2. Subject always to the BA Selection Policy and this Policy, Athletes may appeal against their non-selection to a Team for an Event, except where a specific Selection Policy excludes such a right
- 3.3. A Selected Athlete can not appeal their selection or non-selection to a particular event or discipline within the programme of an Event.

### **4. GENERAL RULES**

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- 4.1. A Non-Selected Athlete may appeal against their non-selection to a Team or Squad (**Selection Appeal**) in accordance with the procedures in **clause 5**. Athletes can only appeal their non-selection for a Team that has been formally selected under the provisions of the relevant Selection Policy.
- 4.2. If 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*

- 4.3. The Parties to a Selection Appeal will be:
- (a) the Appellant;
  - (b) BA; and
  - (c) any Interested Party.
- 4.4. An Interested Party to a Selection Appeal must be either a:

- (a) Selected Athlete for the Team or Squad which is the subject of the Selection Appeal; or
  - (b) Non-Selected Athlete otherwise eligible for selection to the Team or Squad which is the subject of the Selection Appeal.
- 4.5. BA 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. If any doubt should arise as to the eligibility of a person as an Interested Party, BA shall determine the matter in its absolute discretion. There is no appeal from a determination made under this **clause 4.6**.
- 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. 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.

## **5. APPEAL PROCESS**

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### **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 **clause 5.1** have been complied with.
- (b) Within two business days of the time that a Non-Selected Athlete receives notice of their non-selection, the Non-Selected Athlete must provide Written Notice to the CEO of BA that the Non-Selected Athlete disputes their non-selection. Such Written Notice must also set out the grounds of appeal upon which the Non-Selected Athlete is relying for their appeal.
- (c) The Non-Selected Athlete must provide reasons to support their notice of dispute. The Written Notice must be accompanied by an AUD500 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 24 hours of the Non-Selected Athlete providing Written Notice to the CEO of the BA in accordance with **clause 5.1(b)**, the CEO must provide the Non-Selected Athlete with a written statement of the BA's reasons supporting the non-selection of the Non-Selected Athlete.
- (e) Within 24 hours of a Non-Selected Athlete receiving BA's written statement in accordance with **clause 5.1(c)**, the Non-Selected Athlete must provide a

written response to the CEO of BA which indicates whether the Non-Selected Athlete intends to proceed to a hearing of their Selection Appeal in accordance with clause 5.2.

- (f) The Parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with this **clause 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 CEO or the Non-Selected Athlete in accordance with **clause 5.1(b)-(e)** may be submitted to the NST for the purposes of the Appeal.
- (h) For clarity, time periods referred to in **clause 5.1** may be extended by agreement of BA and the Non-Selected Athlete in advance.

## 5.2. Appeal to the General Division of the NST

- (a) A Selection Appeal must be heard in the General Division of NST.
- (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 BA with respect to the Non-Selected Athlete; and
  - (ii) there was no material on which BA'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 CEO their intention to proceed to a hearing of their Selection Appeal under **clause 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 BA 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 CEO. Generally, Service Charges will be apportioned evenly between the Appellant and BA.

### *Selection Appeal Procedure*

- (e) A 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 BA Selection Appeals:

- (i) 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.
  - (ii) 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.
  - (iii) The determination of the NST is final and binding on the Parties and 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 **clause 5.4**).

*Selection Appeal Outcomes – Reconsideration and Redetermination*

- (h) The NST may uphold or dismiss a Selection Appeal.
- (i) Where the NST upholds a 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 BA for reconsideration and redetermination.
- (j) Any decision made by BA regarding the Appellant's nomination after such referral, is final and binding on the Appellant.

**5.3. Left blank**

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

- (a) If, on receiving an application for a Selection Appeal, the NST is satisfied that it is necessary to deal with the application expeditiously, the NST will convene a preliminary conference (if appropriate) and then immediately appoint one or more NST members to deal with the appeal.
- (b) The NST and the appointed NST member(s) must take all steps necessary to deal with the appeal as expeditiously as the matter 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.