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## MEMORANDUM

**To:** Presidents & Secretaries-General/CEOs - National Federation (NFs) Summer & Winter Program Sports

**cc:** AOC Executive; AOC Athletes' Commission; Brent Espeland ASC; Peter Fricker AIS; Michael Mercer; Fiona de Jong; Mike Tancred

**From:** Craig Phillips – Secretary-General

**Date:** 25 November 2008

**Subject:** **Changes to the AOC Olympic Team Selection and Ethical Behaviour By-Laws**

The Australian Olympic Committee (AOC) recently amended the AOC Olympic Team Selection By-Law and Ethical Behaviour By-Law (By-Laws). Amended copies of the By-Laws and Guide to Selection are enclosed and are also available on the AOC website - [olympics.com.au](http://olympics.com.au) (under The AOC/Reports & Policies/Constitutions, By-Laws, Charters & Additional documents).

These amendments are primarily designed to address issues that arose in relation to selection of the 2008 Australian Olympic Team. The amendments follow an extensive review which included consultation with Olympic Appeals Consultants, the Court of Arbitration for Sport (CAS), AOC Athletes' Commission, select National Federations (NFs), select NF Appeal Tribunal members, members of the AOC Executive and AOC Selection Committee members.

A summary of the key changes follow:

### **AOC Olympic Team Selection By-Law (Selection By-Law)**

The key amendments to the revised Selection By-Law relate to firstly, the standard of conduct expected of athletes selected in and seeking selection to an Australian Olympic Team and secondly, the procedure of appeals.

### *(a) Conduct of athletes*

Under the revised Selection By-Law an athlete is still required to disclose information about any conduct which may have brought him or his sport into disrepute, but also whether the conduct would be inconsistent with the best interest, image or values of the AOC or whether the result of the conduct would be that the athlete's membership was not in the best interests of the Team.

The revised documentation provides some guidance on the kind of conduct that prospective Team members will be required to disclose, specifically, convictions or charges with any serious offence involving alcohol, drugs, any sex offence or any offence which is punishable by imprisonment.

Importantly, these conduct provisions are subject to the AOC's sole and absolute discretion.

Another significant change is a more significant disclosure obligation on the athlete. Previously the obligation to disclose information arose at the time of nomination by the NF. Under the revised Selection By-Law the AOC will require athletes to disclose all relevant information concerning conduct issues from the time they are first recognised in the Shadow Team through to selection to the Team and continuing to the period of their membership of the Team.

Finally, the revised Selection By-Law further clarifies the decision making process regarding conduct issues that may arise prior to or during an Olympic Games. Prior to an Olympic Games, the AOC Executive will delegate authority about these matters to a sub-committee. During the Games, the Chef de Mission will have the sole and absolute authority to make decisions regarding conduct – necessary to enable decisions to be taken quickly if required.

In so doing, these changes reflect the view of the AOC that athletes must, at all times, conduct themselves in an appropriate manner in order to become and remain a member of an Australian Olympic Team.

### *(b) Appeal Procedures*

The most significant changes to the Selection By-Law relate to NFs providing written reasons for their selection decision and a circuit breaker to appeals which are upheld and referred back to a selection panel.

In respect of NF Appeals Tribunal decisions, the 2008 Olympic Appeals Consultants recommended that NFs provide written reasons for decisions at the time the nominated teams are announced. While this may seem reasonable in the abstract, the AOC recognises it may be impractical for many NFs.

Instead the revised Selection By-Law highlights the requirement for NFs to first provide an opportunity for athletes to discuss the decision with those responsible for counseling the athlete and then provide the opportunity to further discuss it with an Olympic Appeals Consultant.

A written statement as to the reasons for non nomination must be provided by the NF selection panel within 48 hours of the athlete advising of their intention to appeal and prior to the athlete serving the grounds of appeal. Previously NFs were required to provide reasons some time prior to the NF Appeals Tribunal hearing, which was usually after the athlete had submitted the grounds of their appeal.

The revised Selection By-Law has also been changed to be more definitive about the time within which appeals must be made and documentation submitted, as well as providing flexibility for the relevant person within the NF to agree to an extension of time in appropriate cases.

There has been an important change to the process for the establishment of NF Appeals Tribunal. NF Appeals Tribunals will continue to consist of three persons, namely a legally qualified person to act as Chairman, a person with knowledge of the sport and a person with experience and skills suitable to the function of the Tribunal who is familiar with the selection process and documentation.

Clause 10 of the By-Law has been amended to propose that all three Appeal Tribunal members continue to be appointed by the NF, however, two are to be selected from a list coordinated by the AOC, and one (the person with knowledge of the sport) is a choice left exclusively to the individual NF.

The reason for this change is to seek more consistency and certainty from decision making at Appeals Tribunals and to ensure that there is some independence about the persons who sit on the appeals. The objection previously was that the decision which is the subject of the athlete's appeal is a decision by the NF itself and the NF, under clause 10.1 determines who is to sit on the hearing of the appeal, notwithstanding that the NF is a party to the appeal. That gives rise to an apprehension of bias and that risk can be reduced through this change.

It is intended that the persons to be listed by the AOC would be identified by NFs and the AOC as persons with the relevant expertise or qualifications and available on a pro-bono basis. This list should allow greater efficiency in appointing the Appeal Tribunal panel rather than the NFs having to find relevant persons from their own contacts in times before the Games when resources are stretched.

Finally, in order to provide circuit breakers in relation to nomination decisions that are then returned to the NF after an appeal has been upheld, we have described these as 're-nomination' decisions, from which the grounds of any subsequent appeal are very limited. Where as the initial appeal to the NF Appeal Tribunal is relatively broad, any subsequent appeal to CAS in relation to re-nomination will be limited to actual bias and unreasonableness (in the sense of irrational). We expect that this will limit the number and ambit of disputes to CAS and consequently costs for all parties involved.

### **AOC Ethical Behaviour By-Law (Ethical Behaviour By-Law)**

Amendments have been made to the Ethical Behavior By-Law to ensure terminology is consistent with the revised Selection By-Law. The significant changes have occurred in clauses 3 and 4 that deal with appropriate conduct and breaches of the By-Law respectively.

In all other respects the Ethical Behaviour By-Law remains unchanged.

Similar changes have also been reflected in the AOC's draft Olympic Team Membership Agreement for Athletes and Officials. It is anticipated the Vancouver 2010 Team Membership Agreement will be made available to Winter NFs by February 2009 and the draft London 2012 Team Membership Agreement available in November 2010.

Please ensure the revised By-Laws are widely distributed to athletes, support personnel and other interested parties who may seek to rely on them in the coming years. With the 2010 Australian Olympic Winter Team nomination and selection process about to commence I particularly encourage Winter NFs to be familiar with the key provisions of the revised By-Laws.

Kind regards

A handwritten signature in black ink, appearing to read 'C. Phillips', written in a cursive style.

**CRAIG PHILLIPS**