

**AUSTRALIAN OLYMPIC COMMITTEE**  
(ABN 33 052 258 241)  
(Registered Number A0004778J)



**OLYMPIC TEAM SELECTION BY-LAW**

**1. DEFINITIONS & INTERPRETATION**

1.1 In this By-Law, the following words have the following respective meanings:

- “AOC Anti-Doping By-Law”** means AOC Anti-Doping By-Law as in force from time to time.
- “Athlete”** means those athletes who:
- (a) participate in a particular sport;
  - (b) are recognised by the NF controlling that sport in Australia as competitors suitable and eligible for nomination to the AOC for selection in a Team;
  - (c) have signed a Consent to Shadow Team Membership Form annexed to the Nomination Criteria; and
  - (d) if a minor, has also provided a Parents/Guardians Acknowledgment for Minors Form signed by a parent or guardian in the form annexed to the Nomination Criteria.
- “CAS”** means the Court of Arbitration for Sport.
- “CAS Costs”** means the costs and expenses of the Court of Arbitration for Sport of and incidental to an appeal to the Court of Arbitration for Sport as provided for in clause 12.
- “Games”** means an Olympic Games and Olympic Winter Games.
- “IF”** means an International Federation.
- “NF”** means a National Federation.
- “Nomination Criteria”** means the criteria in respect of a particular sport adopted by the NF controlling that sport in Australia for the nomination of Athletes to the AOC for selection as a member of a Team.
- “Officials”** means the armourers, assistant section managers, boatmen, chiropractors, coaches, conditioners, farriers, gear stewards, grooms, massage therapists, medical practitioners, mechanics, meteorologists, nutritionists, physiotherapists, psychologists, section managers, shipwrights, sports scientists, technicians, veterinarians and other

officials of the Team;

<b>“Participation Criteria”</b>	means the participation and qualification criteria howsoever named for a particular sport in respect of a particular Games and any other conditions regarding eligibility to compete in those Games as determined from time to time by the IOC and the IF controlling that sport and in accordance with the requirements of the Olympic Charter.
<b>“Party”</b>	means an Athlete or National Federation who or which is a party to an appeal to the Court of Arbitration for Sport as provided for in clause 11.
<b>“Selection Criteria”</b>	means the criteria in respect of a particular sport adopted by the AOC for selection for Athletes as members of a particular Team.
<b>“Shadow Team”</b>	means those Athletes who are recognised by the AOC as potential members of a particular Team.
<b>“Team”</b>	means an Australian Olympic Team or an Australian Olympic Winter Team.
<b>“Team Member”</b>	means an Athlete or Official selected by the AOC as a member of a particular Team;
<b>“Team Membership Agreement”</b>	means the AOC’s Australian Team Membership Agreement for Athletes or Officials for a particular Games in respect of which they have been selected.
<b>“Written Notice”</b>	means notice in writing by letter, facsimile, email or other written means of communication.

1.2 This By-Law is to be interpreted as follows:

- (1) Words not defined in this By-Law have the meaning ascribed to them in the Constitution of the AOC unless a contrary meaning appears from the context.
- (2) Unless the context otherwise requires, reference to:
  - (a) the singular includes the plural and the plural includes the singular and words importing one gender include the others;
  - (b) 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
  - (c) a party includes the party’s executors, administrators, successors and permitted assigns and substitutes.
- (3) To the extent that this By-Law is inconsistent with the Code of Sports – Related Arbitration of the Court of Arbitration for Sport, this By-Law prevails and amends the Code to that extent.
- (4) If a person to whom this By-Law applies consists of more than one person, then this By-Law binds them jointly and severally.
- (5) A reference to time, day or date by which an obligation or act must be performed or otherwise is to Sydney, Australia time, day or date.

- (6) The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.
- (7) 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;
- (8) 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.
- (10) Headings are for convenience only and do not form part of this By-Law or affect its interpretation.

## **2. APPLICATION OF THIS BY-LAW**

This By-Law applies to:

- (1) Athletes;
- (2) Officials;
- (3) NFs; and
- (4) the AOC.

## **3. SHADOW TEAM**

### **3.1 Each NF will:**

- (1) advise the AOC of the Athletes who consent to being members of the Shadow Team within its sport;
- (2) provide or make available to each Athlete and all other individuals and organisations with a legitimate interest in the nomination and selection procedures for a particular Games:
  - (a) the AOC's Guide to Olympic Team Selection;
  - (b) its Nomination Criteria (and all amendments thereto) adopted in respect of selection to a particular Team pursuant to clause 5;
  - (c) the AOC's Selection Criteria for the sport controlled by the NF in respect of selection to a particular Team; and
  - (d) this AOC Selection By-Law.
- (3) cause each such Athlete to sign a Consent to Shadow Team Membership Form and retain the original signed Consent Form; and

in accordance with the time frames advised by the AOC to each NF from time to time in respect of a particular Games.

### **3.2 The AOC will recognise each Athlete of which it is advised pursuant to clause 3.1 as a member of the Shadow Team in respect of a particular Games on condition that each Athlete:**

- (1) is and continues to be eligible to participate in a particular Games as an Australian competitor

pursuant to the applicable Participation Criteria unless expressly agreed otherwise in writing by the AOC on an Athlete by Athlete basis;

- (2) (a) has not at any time engaged in conduct (whether publicly known or not), which has brought or would have the tendency to bring the Athlete or the Athlete's sport into disrepute or censure, or which would 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 in the best interests of the Australian Olympic Team or Shadow Team;,  
has
  - (b) has not at any time been convicted of, or charged with, any serious offence involving alcohol or drugs, or any sex offence, or any offence which is punishable by imprisonment;
  - (c) has and will continue to honestly and fully disclose information to the Athlete's NF and the AOC concerning any conduct that might be in breach of (a) above or concerning any criminal offence of whatever nature, with which the Athlete has been charged, or of which the Athlete has been convicted, and consents to the Athlete's NF and the AOC making enquiries to relevant authorities for any details of the 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;
  - (d) acknowledges that any matter arising under (a), (b) or (c) above is to be determined, or breach thereof excused, by the AOC in its sole and absolute discretion.
- (3) has not breached the AOC Anti-Doping By-Law, unless the Athlete has already been sanctioned for the breach and has completed the sanction imposed; and
  - (4) has been available for sample collection and has provided accurate and up to date whereabouts information on a regular basis to the Athlete's NF and as that NF directs pursuant to the World Anti-Doping Code;

3.3 The AOC may recognise an Athlete as a member of a Shadow Team in respect of a particular Games notwithstanding that the Athlete has not been chosen as such by the relevant NF. In such case, the recognition of the Athlete concerned will be conditional on the Athlete signing a Consent to Shadow Team Membership Form.

#### **4. SELECTION CRITERIA**

4.1 In respect of each sport on the programme of a Games and for each Games, the AOC will adopt Selection Criteria and will forward a copy of the same to the NF for the relevant sport.

4.2 The Selection Criteria will, at all times, be subject to any applicable Participation Criteria. In the event that the Selection Criteria are inconsistent in any way with any applicable Participation Criteria, the latter will prevail to the extent of that inconsistency. The Selection Criteria are not inconsistent with any applicable Participation Criteria merely because the Selection Criteria impose a higher qualification standard or lesser number of participants than as stated in any applicable Participation Criteria.

#### **5. NOMINATION CRITERIA**

5.1 In respect of each Team and subject to the prior written approval of the AOC, each NF will adopt Nomination Criteria by the latter of:

- (1) a reasonable time (and as a guide 12 months) prior to its first nomination event for the relevant Games; or
- (2) such other date as the AOC may in its absolute discretion determine for a particular sport, discipline or event for the relevant Games or categories of sports, disciplines or events for those Games.

AOC approval may be given subject to such conditions as the AOC determines.

5.2 Nomination Criteria in respect of a particular Team will be at all times subject to:

- (1) the applicable Participation Criteria; and
- (2) the applicable Selection Criteria.

In the event that the Nomination Criteria are inconsistent in any way with the applicable Participation Criteria and the Selection Criteria, the latter will prevail to the extent of that inconsistency.

5.3 An NF must not alter or amend any Nomination Criteria without the prior written approval of the AOC.

5.4 Each NF must apply its Nomination Criteria:

- (1) fairly so as to ensure that no Athlete is nominated to the AOC where another Athlete is or other Athletes are entitled to be nominated in priority; and
- (2) to determine which Athletes the NF will nominate to the AOC to participate in disciplines or team events where:
  - (a) under the applicable Participation Criteria for a Games the AOC has qualified to participate in an event and there is a need to determine the Athlete or Athletes who will be nominated to participate in that event; and
  - (b) the number of Athletes who have satisfied the requirements of clause 6.1 exceed the number(s) permitted under clause 6.2.

5.5 Each NF must promptly develop and submit to the AOC for its approval its policy for assisting and counselling Athletes seeking nomination and selection and must not alter or amend this policy without the prior written approval of the AOC. The NF's policy in this regard must conform to best practice and, without limiting this in any way, must require the NF to:

- (1) regularly advise Athletes seeking nomination and selection as to their individual performances and progress against all applicable criteria; and
- (2) counsel unsuccessful aspirants for nomination and selection; and
- (3) fully co-operate with and assist the Tribunal and CAS in any appeal pursuant to clause 11.

## **6. NOMINATION OF ATHLETES**

6.1 Only those NFs that have adopted an anti-doping policy that conforms with the World Anti Doping Code pursuant to the AOC's Anti-Doping By-Law may nominate Athletes for selection to a particular Team.

6.2 In respect of nomination to the AOC for selection to a particular Team, each NF will only nominate

those Athletes who have:

- (1) demonstrated to the satisfaction of the NF that they are not suffering any physical or mental impairment that would prevent them and each of them from competing in the relevant Games to the highest possible standard;
  - (2) demonstrated that they have complied with the applicable Participation Criteria for the relevant Games (unless expressly agreed otherwise in writing by the AOC on an Athlete by Athlete basis);
  - (3) met the applicable Nomination Criteria and in the case of team events or disciplines, the team has qualified under the applicable Participation Criteria;
  - (4) in the case of events or disciplines for individual Athletes, met the applicable Nomination Criteria;
- and
- (5) signed the Athlete Nomination Form as issued by the AOC from time to time.

6.3 In the case of any event or discipline of a particular Games, an NF may not nominate more Athletes than permitted under the applicable Participation Criteria or any lesser number(s) as may be:

- (1) stipulated in writing by the AOC; or
- (2) otherwise agreed between the AOC and the NF;

6.4 An NF must not represent that its nomination of any Athlete to the AOC will guarantee or secure selection to the relevant Team.

6.5 Each NF is solely responsible for securing at its cost and expense all permissions and clearances required in respect of its nominated Athletes to participate in the relevant Games. The NF specifically acknowledges that the responsibility and liability of the AOC in respect of injury or illness to any Athlete whilst a member of a Team will be limited in the manner to be described in any applicable Team Membership Agreement.

6.6 In respect of any particular Team, the AOC will advise each NF of the deadline or deadlines as the case may be by which each NF must advise the AOC of its nominations. All nominations by the NF must occur before the applicable deadline, provided that the AOC may at its sole and absolute discretion extend this deadline:

- (1) where a nomination by an NF has been set aside on appeal and, in the AOC's opinion, there is insufficient time to re-nominate Athletes between the date of the appeal decision and the deadline originally advised by the AOC;
- (2) where an appeal against non-nomination has been commenced prior to the initial applicable deadline, to allow an NF to make a nomination to the AOC subsequent to and consistent with the outcome of the appeal; or
- (3) where the AOC considers it is in the best interests of the Team.

## **7. SELECTION OF ATHLETES**

7.1 Selection of Athletes to a Team will be conducted solely by the AOC according to the applicable Selection Criteria.

7.2 Selection of each Athlete to a particular Team will be conditional upon the AOC confirming to its own satisfaction that the Athlete has met all applicable criteria for nomination and selection and that the Athlete:

- (1) has signed the applicable Team Membership Agreement for that Team;
- (2) has continued to satisfy the applicable Participation Criteria (unless expressly agreed otherwise in writing by the AOC on an Athlete by Athlete basis);
- (3)
  - (a) has not at any time engaged in conduct (whether publicly known or not), which has brought or would have the tendency to bring the Athlete or the Athlete's sport into disrepute or censure, or which would 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 in the best interests of the Australian Olympic Team;
  - (b) has not at any time been convicted of, or charged with, any serious offence involving alcohol or drugs, or any sex offence, or any offence which is punishable by imprisonment;
  - (c) has and will continue to honestly and fully disclose information to the Athlete's NF and the AOC concerning any conduct that might be in breach of (a) above or concerning any criminal offence of whatever nature, with which the Athlete has been charged, or of which the Athlete has been convicted, and consents to the Athlete's NF and the AOC making enquiries to relevant authorities for any details of the 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;
  - (d) has acknowledged that any matter arising under (a), (b) or (c) above is to be determined, or breach thereof excused, by the AOC in its sole and absolute discretion.
- (4) has not breached the AOC Anti-Doping By-Law, unless the Athlete has already been sanctioned for the breach and has completed the sanction imposed;
- (5) has been available for sample collection and has provided accurate and up to date whereabouts information on a regular basis to the Athlete's NF and as that NF directs pursuant to the World Anti Doping Code;
- (6) has achieved results of medical assessment and testing to the complete satisfaction of the AOC; and
- (7) has satisfied any additional preconditions advised in writing to the Athlete by the AOC prior to or at the time of selection.

## **8. SELECTION OF OFFICIALS**

8.1 The selection by the AOC of Officials to any Team will be solely conducted by the AOC in its absolute discretion.

8.2 The AOC may advise NFs in respect of any Team of the AOC's determination of the number of Officials that may be selected as members of the Team and the positions available to Officials. Any requirements of the AOC concerning Officials are guidelines only and are not nomination or selection

criteria. The AOC may amend these requirements at any stage, whether generally or specifically to an individual Official's position.

- 8.3 Each NF will develop standards to govern the NF's nomination of Officials to the AOC for selection as members of a particular Team. These standards will be subject to the approval of the AOC and must be provided to the AOC no later than 12 months prior to the Games in which the Team will participate.
- 8.4 NFs may nominate to the AOC persons the NF considers suitable for selection as Officials of a Team but in so doing will only nominate those persons it believes:
- (1) are suitable and qualified to fill the required positions in respect of the section of the Team concerning the sport controlled by the NF;
  - (2) has capabilities, skills and experience that accord with the requirements of the AOC as advised from time to time; and
  - (3) will work efficiently and harmoniously with the Chef de Mission and Deputy Chefs de Mission of the relevant Team appointed by the AOC.
- 8.5 All nominations of Officials by an NF must be on the form issued from time to time by the AOC.
- 8.6 The AOC may select any person as an Official of a particular Team and is not obliged to follow the nominations of any NF.
- 8.7 The selection of each Official will be conditional upon him or her signing the applicable Team Membership Agreement for the Team to which the Official is selected.
- 8.8 There is no appeal against any Official's selection or non-selection by the AOC.

## **9. OLYMPIC APPEALS CONSULTANTS**

For each Games, the AOC will appoint one or more independent senior lawyers (each designated "the Olympic Appeals Consultant"). They will be available to discuss with an Athlete, who may have appealed or may wish to appeal, the reasons for non-nomination by the NF to the AOC or non-selection by the AOC, after the Athlete has discussed the reasons with those responsible for counselling under clause 5.5(2). Each Olympic Appeals Consultant will not provide legal advice to Athletes concerning the prospects of success of any appeal but will ensure that the Athlete fully understands the reasons for the decision in question, and the process of any appeal and will facilitate a consultative process between the Athlete and the NF or the AOC as the case may be. The AOC and the NF will fully co-operate with each Olympic Appeals Consultant.

## **10. NF APPEALS TRIBUNALS**

- 10.1 Each NF must establish an Appeals Tribunal that will consist of the following persons appointed by the Board of the NF, with appointments of persons referred to in (1) and (3) from a list co-ordinated by the AOC:
- (1) a barrister or solicitor or other legally qualified person who will act as Chairman;
  - (2) a person with a thorough knowledge of the Sport and who preferably has had recent international competition experience in the Sport; and
  - (3) one other person of experience and skills suitable to the function of the Tribunal and familiar with the Olympic selection process and documentation;

who will constitute a quorum for the purpose of hearing and determining any appeal pursuant to clause 11.1(1), provided that with the consent of all parties to an appeal, the Tribunal may be constituted by two members, one of whom must be a barrister or solicitor or other legally qualified person who will act as Chairman.

10.2 No person appointed by an NF to its Appeals Tribunal may hear and consider any appeal pursuant to clause 11.1(1) if he or she is a member of the Board of the NF or its selection panel or if by reason of his or her relationship with:

- (1) the appellant;
- (2) any member of the Board of the NF;
- (3) any member of the NF's selection panel; or
- (4) any persons whose interests may be affected by the outcome of the appeal;

he or she would be reasonably considered to be other than impartial.

10.3 Should an appellant or other party to an appeal challenge the impartiality of any member of the Appeals Tribunal, the challenge will be determined by the Chairman sitting alone.

10.4 Each Appeals Tribunal will be bound by the following requirements:

- (1) it must observe the principles of natural justice;
- (2) it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
- (3) it will conduct its hearings with as little formality and technicality and with as much expedition as the proper consideration of the matter permits;
- (4) hearings may occur in such manner as the Chairman decides, including telephone or video conferencing;
- (5) each appellant must establish one or more grounds of appeal to the reasonable satisfaction of the Tribunal with full regard to the importance and gravity of the issue;
- (6) the parties to an appeal will not be entitled to be represented by a barrister or solicitor save with the leave of the Appeals Tribunal, which leave will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions as the Appeals Tribunal thinks fit;
- (7) if a question of law arises during the course of a hearing, the parties may seek an adjournment in order to obtain legal advice;
- (8) it will give its decision, and may give an oral decision, on any appeal as soon as practicable at the conclusion of or after the hearing, and will provide the chief executive officer of its NF, the appellant and other parties to the appeal with a statement of the reasons for its decision as soon as practicable after the hearing; and
- (9) whilst the Appeals Tribunal will as a matter of usual practice refer the question of re-nomination back to the relevant NF for determination in accordance with the applicable Nomination Criteria, where it determines to uphold any appeal against the non-nomination of an Athlete, then it may itself conclusively determine the issue of re-nomination where:

- (a) it has determined that:
  - (i) it would be impractical to refer the issue of re-nomination back to the NF in the time available in which entries to the Games must be submitted by the AOC; or
  - (ii) there has been such a disregard of the Nomination Criteria by or on behalf of the NF that a reasonable person could reasonably conclude that it is unlikely the Nomination Criteria will be properly followed and/or implemented; and
- (b) prior to making the determination in paragraph (a), it has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:
  - (i) the possibility of it making such a determination; and
  - (ii) that it may itself conclusively determine the issue of re-nomination; and

permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.
- (10) Where the Appeals Tribunal refers the question of re-nomination back to the relevant NF for determination in accordance with the applicable NF Nomination Criteria and the Appeals Tribunal's reasons to uphold the appeal, the NF determination of re-nomination after such referral will be final and binding on the Athletes, and all other persons whose interests may be affected, subject to any appeal to CAS from that determination as provided in Clause 11.14.

## **11. APPEALS PROCESS FOR ATHLETES**

- 11.1 Any appeal or dispute regarding an Athlete's nomination or non-nomination by an NF to the AOC will be addressed according to the following procedure:
  - (1) the appeal or dispute will be first determined by the Appeals Tribunal established by the NF controlling the relevant sport pursuant to clause 10; and
  - (2) any appeal from the determination of the Appeals Tribunal under clause 11.1(1) will be heard by the Appeals Arbitration Division of CAS.
- 11.2 In the event that there is more than one appeal to an Appeals Tribunal or to CAS that impacts upon the nomination (or selection) of a team to compete in a Games as part of a team sport, or in respect of the same position for an individual Athlete, then such appeals must so far as is practicable be consolidated and heard together.
- 11.3 If the Appeals Tribunal or CAS is of the view that the outcome of an appeal against non-nomination, re-nomination, non-selection or re-selection may affect the interests of any person in addition to the appellant, it must, so far as is practicable, require that notice be given to such other person and will permit that person to participate in the hearing of the appeal as an affected party, to make submissions and to be bound by the award. The AOC is an interested party to any such appeal to CAS and the parties are required to provide the AOC with the relevant appeal papers and permit the AOC to participate and make submissions at the hearing of the appeal.
- 11.4 Should a person who receives notification pursuant to the preceding clause 11.3 elect not to participate in the hearing as an affected party and be bound by the decision then, that person will forfeit his or her right of appeal against the decision.

- 11.5 The sole grounds for any appeal to an Appeals Tribunal are that:
- (1) the applicable Nomination Criteria have not been properly followed and/or implemented;
  - (2) the appellant was not afforded a reasonable opportunity by the NF to satisfy the applicable Nomination Criteria;
  - (3) the nomination decision was affected by actual bias; or
  - (4) there was no material on which the nomination decision could reasonably be based.
- 11.6 Subject to clause 11.9, any appeal by an Athlete against non-nomination to the AOC must be made to the Appeals Tribunal. Any appeal must accord with the following procedure:
- (1) the appellant must serve a written Notice of Appeal upon the chief executive officer of the relevant NF or its authorised delegate within 48 hours of the appellant having received written notice of the decision against which the appeal is made (or within such time as the chief executive officer of the relevant NF or its authorised delegate may allow); and
  - (2) the appellant must serve a written notice of the Grounds of Appeal, accompanied by a non-refundable deposit of \$100 payable to the NF, upon the chief executive officer of the relevant NF or its authorised delegate, by no later than the close of business 5 working days after serving the Notice of Appeal (or within such time as the chief executive officer of the relevant NF or its authorised delegate may allow).
- 11.7 Within 48 hours of the NF having been served the Notice of Appeal, the NF's selection panel must serve the appellant with a written statement as to the reasons for the decision against which the appeal is made, and at the hearing of the appeal the NF may make any oral submissions to support those reasons.
- 11.8 The decision of the Appeals Tribunal will be binding on the parties and, subject only to any appeal to CAS pursuant to clause 11.11, it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than the said Appeals Tribunal. In particular, and without restricting the generality of the foregoing and for further and better assurance notwithstanding that such provisions have no applicability, there will be no right of appeal under section 38 of the Commercial Arbitration Act, 1984 (NSW) or equivalent in any of the Australian states or territories or to apply for the determination of a question of law under section 39(1)(a) of such Act or equivalent in any of the Australian states or territories.
- 11.9 Where an Athlete wishes to appeal a decision against non-nomination and the relevant NF so agrees in writing, the appeal to the Appeals Tribunal may be directly referred to the Appeals Arbitration Division of CAS and in which instance the Grounds of Appeal must be one or more of the grounds described in clause 11.5 and the CAS panel will be vested with the powers of the Appeals Tribunal.
- In such instance,
- (1) the appeal will be solely and exclusively resolved by CAS according to the Code of Sports-Related Arbitration and applying the law of New South Wales ;
  - (2) CAS may extend the time limits set out in clause 11.6;
  - (3) the provisions of clause 11.12 will apply to any such appeal in so far as they are relevant;
  - (4) there will be no subsequent appeal from the decision of CAS;
  - (5) the parties consent to the Grounds of Appeal, the names of the arbitrators and the date for

hearing being made public and the award and the reasons being made public; and

- 11.10 The sole grounds for any appeal against a decision of the Appeals Tribunal are:
- (1) that there was a breach of the rules of natural justice by the Appeals Tribunal; or
  - (2) that the decision of the Appeals Tribunal was in error on a question of law.
- 11.11 Subject to this By-Law, any appeal from a decision of the Appeals Tribunal must be solely and exclusively resolved by the Appeals Arbitration Division of CAS according to the Code of Sports-Related Arbitration and applying the law of New South Wales.
- 11.12 The decision of CAS will be final and binding on the parties and it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than CAS. In particular, and without restricting the generality of the foregoing and for further and better assurance notwithstanding that such provisions have no applicability, there will be no right of appeal under section 38 of the Commercial Arbitration Act, 1984 (NSW) or equivalent in any of the Australian states or territories or to apply for the determination of a question of law under section 39(1)(a) of such Act or equivalent in any of the Australian states or territories.
- 11.13 An Athlete wishing to appeal to CAS against a decision of an Appeals Tribunal must serve a written Notice of Appeal to CAS, upon the chief executive officer of the NF or its authorised delegate, within 48 hours of the Athlete having received written notice of the Appeals Tribunal decision (or within such time as the chief executive officer or its authorised delegate may allow) and must then file a Statement of the Grounds of Appeal with CAS by no later than the close of business 5 working days after serving the Notice of Appeal (or within such time as CAS may allow). An extension of time may be granted under this clause only in extenuating circumstances outside the control of the Athlete concerned.
- 11.14 Subject to the Olympic Charter and this By-Law, any appeal or dispute, regarding an Athlete's selection or non-selection as a member of a Team by the AOC, or regarding re-nomination under clause 10.4(10) or clause 11.19 by the NF or re-selection under clause 11.20 by the AOC, will be solely and exclusively resolved by the Appeals Arbitration Division of CAS according to the Code of Sports-Related Arbitration and applying the law of New South Wales. The decision of CAS will be final and binding on the parties and no party will institute or maintain proceedings in any court or tribunal other than CAS. In particular, and without restricting the generality of the foregoing and for further and better assurance notwithstanding that such provisions have no applicability, there will be no right of appeal under section 38 of the Commercial Arbitration Act, 1984 (NSW) or equivalent in any of the Australian states or territories or to apply for the determination of a question of law under section 39(1)(a) of such Act or equivalent in any of the Australian states or territories.
- 11.15 An Athlete wishing to appeal to CAS against non-selection to a Team by the AOC, or re-nomination or re-selection as the case may be, must serve a written Notice of Appeal to CAS upon the AOC Secretary-General or Director of Sport within 48 hours of having received written notice of the decision (or within such time as the AOC Secretary-General or Director of Sport may allow) and must then file a Statement of the Grounds of Appeal with CAS by no later than the close of business 5 working days after serving the Notice of Appeal (or within such time as CAS may allow).
- 11.16 The sole grounds of appeal against non-selection, re-nomination or re-selection are that the decision:
- (1) was affected by actual bias; or
  - (2) is obviously or self-evidently so unreasonable or perverse that it can be said to be irrational.
- 11.17 All appeals to CAS will be heard by a panel comprising three arbitrators, unless the parties agree to a sole arbitrator pursuant to R50 of the Code of Sports-Related Arbitration. The parties consent to the

Grounds of Appeal, the names of the arbitrators and the date of hearing being made public and the award and the reasons being made public.

11.18 The power of the CAS panel to review the facts and the law pursuant to Rule 57 of the Code of Sports Related Arbitration will be initially limited to determining whether the appellant has made out one or more of the grounds of appeal pursuant to clauses 11.10 or 11.16 as appropriate.

11.19 If CAS determines to uphold any appeal against non-nomination of an Athlete, it will as a matter of usual practice refer the question of re-nomination back to the relevant NF selection panel for determination in accordance with the applicable Nomination Criteria. CAS may itself conclusively determine the issue of re-nomination where CAS:

- (1) has determined that:
  - (a) it would be impractical to refer the issue of re-nomination back to the NF in the time available in which entries to the Games must be submitted by the AOC; or
  - (b) that there has been such a disregard of the Nomination Criteria by or on behalf of the NF that a reasonable person could reasonably conclude that it is unlikely the Nomination Criteria will be properly followed and/or implemented; and
- (2) prior to making the determination in paragraph (1), has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:
  - (a) the possibility of it making such a determination; and
  - (b) that it may itself conclusively determine the issue of re-nomination; and
 permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.

Where CAS refers the question of re-nomination back to the relevant NF for determination in accordance with the applicable Nomination Criteria and the reasons for CAS' determination to uphold the appeal, the NF determination of re-nomination after such referral will be final and binding on the Athletes and all other persons whose interests may be affected, subject to any appeal to CAS as provided in Clause 11.14.

11.20 If CAS determines to uphold any appeal against non-selection of an Athlete, it will as a matter of usual practice refer the question of re-selection back to the AOC for determination in accordance with the applicable Selection Criteria and this Selection By-Law. CAS may itself conclusively determine the issue of re-selection where CAS:

- (1) has determined that it would be impractical to refer the issue of re-selection back to the AOC in the time available in which entries to the Games must be submitted by the AOC; and;
- (2) prior to making the determination in paragraph (1), it has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:
  - (a) the possibility of it making such a determination; and
  - (b) that it may itself conclusively determine the issue of re-selection; and
 permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.

- 11.21 If CAS determines to uphold any appeal against re-nomination or re-selection, it will conclusively determine the issue of re-nomination or re-selection as the case may be once and for all between the parties, subject to permitting the parties and all persons who may be affected by the determination, the opportunity to make submissions and give evidence in respect thereof.

## **12. COSTS AND EXPENSES OF APPEAL PROCESS**

Under Rule 64 of the Code of Sports-related Arbitration, CAS determines which party will bear the costs of any appeal or in which proportion the parties will share these costs and expenses.

In all appeals to CAS pursuant to this By-Law, the following provisions will apply with regard to the costs of the appeal under Rules 64 of the Code of Sports-related Arbitration:

### **12.1 CAS Appeal where there is a Sole Arbitrator**

- (1) Where the parties have agreed to a sole arbitrator pursuant to clause 11.17, any party instituting the appeal (whether under clauses 11.9, 11.11 or 11.14) must pay the CAS appeal fee of \$500 associated with the appeal. The AOC will pay the CAS Costs which, by agreement between CAS and the AOC, are fixed at \$2,500.
- (2) If such an appeal is successful the AOC will reimburse the application fee of \$500 to the party who paid it.
- (3) If such an appeal is unsuccessful, 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 12 (1), namely \$1,250.

### **12.2 CAS Appeal to a Panel of Three Arbitrators**

- (1) Where the parties do not agree to a sole arbitrator as provided for in clause 11.17, any party instituting the appeal (whether under clauses 11.9, 11.11 or 11.14) must pay the CAS application fee of \$500 associated with that appeal. The AOC will contribute the sum of \$2,500 towards the CAS Costs and the parties shall, subject to any award of CAS to the contrary, be liable to pay to CAS, in equal shares, any CAS Costs in excess of \$2,500.
- (2) In the event that CAS requires payment in advance of the estimated CAS Costs, the parties shall make such advance payment in equal shares.
- (3) As part of its award in respect of any appeal heard by a panel of three of its arbitrators, CAS may make a ruling regarding the payment of the CAS Costs in excess of \$2,500 including a ruling that one party reimburse to the other party on account of estimated CAS Costs.
- (4) If the appeal to the three member CAS panel is successful, the AOC will reimburse the application fee of \$500 to the party who paid it.
- (5) If the appeal to the three member CAS panel is unsuccessful, 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 12 (4), namely a reimbursement of \$1,250.

### **12.3 Provisions Applicable to all Appeals**

- (1) In consideration of the AOC's commitments contained in clause 12(1) and 12(4), in any appeal before CAS (whether under clauses 11.9, 11.11 or 11.14) the costs of the successful party will be limited to the sum of \$5,000 under any award by CAS on a contribution towards

that successful party's legal costs (being costs other than any CAS Costs paid or payable by the successful party).

- (2) In determining whether to make a ruling in any award that one party makes any, and if so what, contribution towards the CAS Costs (to the extent that those CAS Costs have not been paid by the AOC or contributed to by the AOC as provided for in clause 12(1) and 12(4)) CAS will have particular regard to:
- (a) whether and to what extent the Athlete concerned has utilized an Olympic Appeals Consultant before commencing his or her appeal;
  - (b) whether and to what extent the NF concerned has co-operated with and assisted any Olympic Appeals Consultant utilized by the Athlete concerned;
  - (c) whether and to what extent the successful party's relevant factual and legal position had been disclosed to the other party or parties prior to the commencement of the appeal;
  - (d) the failure of any party to fully disclose his, her or its relevant factual and legal position to the other party before or at the commencement of the appeal; and
  - (e) the matters referred to in R64.5 and such other matters as the CAS panel deems relevant.

### 13. INDEMNITY

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.

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.

### 14. APPLICATION OF LAWS

This By-Law is governed by the laws applicable in 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 Games of the XXVIIIth Olympiad

**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