



TEAM NOMINATION, SELECTION AND APPEALS BY-LAW

RESPONSIBILITY:	Chief Executive Officer			
NEXT REVIEW DATE:	September 2023			
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5	Draft – lawyer	21 December 2021	24 January 2022	9 February 2022

Commonwealth Games Australia
ACN 629 915 448

1. PURPOSE

1.1. The purpose of this By-Law is to:

- (a) govern the process for the nomination and selection of all Athletes and Officials to a Team;
- (b) establish a nomination and selection appeals mechanism dealing with the application of the eligibility and performance criteria;
- (c) ensure a fair and efficient approach to any Program Sport's nomination and appeals, and CGA selection and appeals process in connection with nomination and selection and non-nomination and non-selection of Athletes to a Team; and
- (d) embed the General Division of the NST for First Instance Appeals and the Appeals Division of the NST for Final Appeals consistent with the recommendations set out in the Report of the Review of Australia's Sports Integrity Arrangements (**Wood Review**) which was presented to the Australian Government in March 2018.

2. DEFINITIONS

<i>"Athlete"</i>	means: (a) any Person who competes or participates in sport under the authority of a Program Sport Member; or (b) any Person who is registered as an Athlete or competitor or participant (however described) with a Member or with a member of a Member or a club recognised by a Member.
<i>"Business Day"</i>	means a day on which the banks are open for business in Victoria, Australia other than a Saturday, Sunday or public holiday in Victoria, Australia.
<i>"By-Law"</i>	means this by-law which documents the nomination, selection and appeal processes, as amended by CGA from time to time.
<i>"CGA"</i>	means Commonwealth Games Australia Limited, as the association officially recognised by the CGF for the Australian territory which has exclusive authority for Australia's participation in the Commonwealth Games.
<i>"CGF"</i>	means the Commonwealth Games Federation.
<i>"Commonwealth Games"</i>	means the multi-sport event held once every four years under the auspices of the CGF.
<i>"Commonwealth Youth Games"</i>	means the multi-sport youth event held once every four years under the auspices of the CGF.
<i>"CGA Board"</i>	means the board of directors elected or appointed in accordance with CGA's constitution.
<i>"Final Appeal"</i>	means the final instance of a Nomination Appeal or Selection Appeal, lodged in the Appeals Division of the NST (to be determined by a panel comprising 3 NST members), against a decision or determination that was made by a single NST member of the General Division of the NST in a First Instance Appeal in respect of a dispute relating to an Athlete's non-nomination or non-selection to a Team.
<i>"First Instance Appeal"</i>	means the first instance of a Nomination Appeal or Selection Appeal whereby a single NST member of the General Division of the NST will arbitrate the dispute relating to an Athlete's non-nomination or non-selection to a Team.
<i>"Games"</i>	means the Commonwealth Games, Commonwealth Youth Games or any other sporting competition or event in which a Team is to compete or participate.
<i>"Member"</i>	means any Person that is (or was at the time of an alleged breach of this By-Law) a member of CGA and includes for the avoidance of any doubt) any NSO and any Program Sport.
<i>"Nominated Athlete"</i>	means an Athlete that is nominated by a NSO for selection to a Team in compliance with that NSO's Nomination Policy and section 5 of this By-Law.
<i>"Nominated Official"</i>	means an Official that is nominated by a NSO for selection to a Team in compliance with that NSO's Nomination Policy and section 5 of this By-Law.
<i>"Nomination"</i>	means the nomination of an Athlete by a NSO for consideration by CGA for selection to a Team.

Team Nomination, Selection and Appeals By-Law

"Nomination Appeal"	means an appeal against non-nomination to a Team.																		
"Nomination Appeals Policy"	means the nomination appeals policy set out in Schedule 1 of this By-Law.																		
"Nomination Criteria"	means each of the sport-specific performance criteria and general eligibility criteria (which may include both subjective and objective criteria) that will be applied by the NSO in making its Nominations which must be compliance with the requirements set out in section 5.4 of this By-Law.																		
"Nomination Deadline"	means 5pm on 20 May 2022 (Melbourne time).																		
"Nomination Policy"	means the policy, prepared in accordance with section 5 of this By-Law, pursuant to which the NSO will nominate Athletes and Officials to CGA for consideration for selection as Team Members.																		
"Non-Nominated Athlete"	means any Athlete who is not nominated by their NSO for selection to a Team.																		
"Non-Selected Athlete"	means any Nominated Athlete who is not selected by CGA to a Team.																		
"Non-Selected Official"	means any Nominated Official who is not selected by CGA to a Team.																		
"NSO"	means the National Sporting Organisation of a Program Sport, as defined in CGA constitution, being an organisation that is a National Federation that is a Member and includes a Program Sport Member.																		
"NST"	means the Australian Government entity known as the National Sports Tribunal established by the National Sports Tribunal Act 2019, comprised of the General Division, the Anti-Doping Division, and the Appeals Division.																		
"Official"	means any person who is not an Athlete and includes any coach, trainer, manager, agent, team staff, headquarter personnel, medical, paramedical personnel or any other person working with, treating or assisting an Athlete participating in or preparing for the Games.																		
"Open Athlete Allocation Sports"	means each of the following sports: <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Athletics</td> <td>Badminton</td> <td>Boxing</td> </tr> <tr> <td>Cycling</td> <td>Diving</td> <td>Gymnastics</td> </tr> <tr> <td>Judo</td> <td>Lawn Bowls</td> <td>Squash</td> </tr> <tr> <td>Swimming</td> <td>Triathlon</td> <td>Wrestling</td> </tr> </table>	Athletics	Badminton	Boxing	Cycling	Diving	Gymnastics	Judo	Lawn Bowls	Squash	Swimming	Triathlon	Wrestling						
Athletics	Badminton	Boxing																	
Cycling	Diving	Gymnastics																	
Judo	Lawn Bowls	Squash																	
Swimming	Triathlon	Wrestling																	
"Person"	means a natural person or an organisation or other entity, whether incorporated or not.																		
"Program Sport"	means Program Sport as defined in CGA's constitution, being those Australian affiliates of the International Federations recognised by the CGF as a recognised International Federation and in respect of which the CGF has approved that the sport will be on the program of the next Games.																		
"Qualification System"	means the eligibility, participation and qualification criteria determined by CGF which is to be used by each NSO to nominate and select Athletes for each Qualification System Sport.																		
"Qualification System Sports"	means each the following sports/disciplines: <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Badminton (Team event)</td> <td>Basketball 3X3</td> <td>Beach Volleyball</td> </tr> <tr> <td>Cricket T20 (Women)</td> <td>Hockey</td> <td>Netball</td> </tr> <tr> <td>Para Athletics</td> <td>Para Cycling - Track</td> <td>Para Lawn Bowls</td> </tr> <tr> <td>Para Powerlifting</td> <td>Para Swimming</td> <td>Para Table Tennis</td> </tr> <tr> <td>Para Triathlon</td> <td>Rugby Sevens</td> <td>Table Tennis</td> </tr> <tr> <td>Weightlifting</td> <td>Wheelchair Basketball 3X3</td> <td></td> </tr> </table>	Badminton (Team event)	Basketball 3X3	Beach Volleyball	Cricket T20 (Women)	Hockey	Netball	Para Athletics	Para Cycling - Track	Para Lawn Bowls	Para Powerlifting	Para Swimming	Para Table Tennis	Para Triathlon	Rugby Sevens	Table Tennis	Weightlifting	Wheelchair Basketball 3X3	
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Para Triathlon	Rugby Sevens	Table Tennis																	
Weightlifting	Wheelchair Basketball 3X3																		
"Reserve Athletes"	means any athlete identified by the application of a NSO's Nomination Criteria as a suitable replacement for a Nominated Athlete or Selected Athlete who may no longer be able to assume their role in the Team.																		

<i>"Selected Athlete"</i>	means any Athlete selected by CGA to a Team.
<i>"Selection Appeal"</i>	means an appeal against the non-selection of a Nominated Athlete to a Team by CGA.
<i>"Selection Appeals Policy"</i>	means the selection appeals policy set out in Schedule 2 of this By-Law.
<i>"Selection Criteria"</i>	means the selection criteria determined by CGA and described in section 6.1 of this By-Law.
<i>"Team"</i>	means any the team of athletes and officials who are selected by CGA to participate in the Games.
<i>"Team Member"</i>	means: (a) a member of a Team including a Team Member notified by CGA or by signing a Team Membership Agreement; or (b) a person advised by a Member to CGA as a person considered suitable as a member of a Team and recognised as such by CGA.
<i>"Team Membership Agreement"</i>	means CGA's Team Membership Agreement for Athletes and Officials which governs Athletes' and Officials' participation in the Games.

3. INTERPRETATION

In this By-Law, unless the context requires otherwise:

- 3.1. the singular includes the plural and vice versa; and
- 3.2. the headings are used for convenience only and do not affect the interpretation of this By-Law; and
- 3.3. other grammatical forms of defined words or expressions have corresponding meanings; and
- 3.4. a reference to a document includes the document as modified from time to time and any document replacing it; and
- 3.5. a reference to a party is to a party to this By-Law and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes; and
- 3.6. the word 'month' means calendar month and the word 'year' means 12 months;
- 3.7. the words 'in writing' include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient; and
- 3.8. a reference to a thing includes a part of that thing; and
- 3.9. a reference to all or any part of a statute, rule, regulation or ordinance (**Statute**) includes that Statute as amended, consolidated, re-enacted or replaced from time to time; and
- 3.10. wherever 'include', 'for example' or any form of those words or similar expression is used, it must be construed as if it were followed by '(without being limited to)'; and
- 3.11. a reference to time is to Australian Eastern Standard Time; and
- 3.12. a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**Defunct Body**), means the agency or body that performs most closely the functions of the Defunct Body; and
- 3.13. if a Person to whom this By-Law applies consists of more than one Person, then this By-Law bind them jointly and severally.

4. COMMENCEMENT

This By-Law commences on [DATE]

5. NOMINATION OF ATHLETES AND OFFICIALS BY NSOs

5.1. Introduction

- (a) In respect of each Games, each NSO may nominate Athletes and Officials to be considered by CGA for selection as a Team Member in respect of both Open Athlete Allocation Sports and Qualification System Sports.

- (b) Only CGA, not an NSO, may select Athlete and Officials to be Team Members.
- (c) CGA will only select Athletes to be Team Members from the Athletes that have been nominated by a NSO in accordance with this By-Law.
- (d) Each NSO acknowledges and agrees that the nomination of Officials by a NSO (if any) is a statement of preference only.
- (e) CGA will determine the Officials to be selected to a Team at its absolute and sole discretion.

5.2. Nomination Policy

- (a) Each NSO must develop and adopt a Nomination Policy.
- (b) Each NSO must submit its proposed Nomination Policy to the CGA General Manager of Team Performance & Operations for approval by 31 October 2021 or such other date as agreed between CGA and each NSO.
- (c) Once a NSO's Nomination Policy is approved by CGA, the NSO must:
 - (i) not alter its Nomination Policy without the prior approval of CGA;
 - (ii) publish its Nomination Policy on its website and social media channels;
 - (iii) communicate its Nomination Policy to all potential Athletes and Officials for the Games; and
 - (iv) ensure its Nomination Policy is known and adhered to.

5.3. General Principles for Developing a Nomination Policy

Each NSO must ensure that its Nomination Policy:

- (a) is fair, reasonable, thorough, unambiguous, transparent and easy to understand;
- (b) will be applied with fairness and without bias;
- (c) identifies the relevant person(s) within the NSO that will be responsible for the Nominations;
- (d) is consistent with the NSO's constitution and by-laws (if any) to the extent to which they do not contradict CGA's constitution and by-laws;
- (e) is consistent with any Qualification System and the Selection Criteria applicable to a Program Sport; and
- (f) exist within the framework of any applicable laws.

5.4. Extenuating Circumstances

- (a) In determining whether an Athlete has met a NSO's Nomination Criteria, each NSO may, in its sole and absolute discretion, have regard to extenuating circumstances.
- (b) For the purposes of sections 5.4 and 5.5, "extenuating circumstances" means an inability to compete in, or attend, events, trials, training camps or other competitions arising from:
 - (i) injury or illness;
 - (ii) equipment failure;
 - (iii) travel delays;
 - (iv) bereavement or disability arising from death or serious illness of an immediate family member, which means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling; or
 - (v) any other factor or reason that is considered by the relevant NSO to constitute extenuating circumstances.

5.5. Mandatory Inclusions for a Nomination Policy

Unless otherwise authorised by CGA, CGA will not approve a Nomination Policy unless it:

- (a) clearly identifies each of the NSO's Nomination Criteria;
- (b) includes a requirement that all Athletes must:
 - (i) be Australian citizens;
 - (ii) be members of a NSO or be eligible to represent a NSO;

- (iii) not have breached the then current CGA Anti-Doping By-Law (unless the Athlete or Official has already been sanctioned for the breach and completed the imposed sanction);
- (iv) not by their actions or omissions brought themselves, their NSO or CGA into disrepute or censure; and
- (v) have signed a Team Membership Agreement.
- (c) include provisions which state:
 - (i) how any objective criteria set out in the Nomination Criteria will be assessed in determining the nomination of Athletes;
 - (ii) how any subjective criteria set out in the Nomination Criteria will be assessed in determining the nomination of Athletes; and
 - (iii) how, where both objective and subjective criteria are set out in the Nomination Criteria, the nomination of Athletes will be assessed according to both categories of criteria.
- (d) states the NSO's aims for the Games which align with the NSO's overall high performance strategy to achieve sustained sporting success at the highest level;
- (e) sets out the process the NSO will follow when making its Nominations;
- (f) identifies which (if any) extenuating circumstances (as that term is defined in section 5.4) a NSO will consider when determining whether an Athlete has met a NSO's Nomination Criteria;
- (g) states that all Nomination Appeals must be dealt with in accordance with the Nomination Appeals Policy (as varied from time to time);
- (h) sets out the process the NSO will follow when identifying Reserve Athletes and the circumstances under which a Reserve Athlete will be considered and identified for nomination;
- (i) outlines the process of how and when Athletes are informed of their Nominations; and
- (j) complies with this By-Law.

5.6. Open Athlete Allocation Sports

- (a) CGA will advise each NSO of the number of Athletes it has been allocated for each Open Athlete Allocation Sport by no later than 17 December 2021.
- (b) NSOs are not permitted to nominate more Athletes for Open Athlete Allocation Sports than the number of allocations the NSO has been issued under section 5.6(a).
- (c) NSOs are permitted to nominate less Athletes for Open Athlete Allocation Sports than it has been allocated under section 5.6(a).
- (d) Where a NSO nominate less Athletes for Open Athlete Allocation Sports than it has been allocated under section 5.6(a), the NSO acknowledges that the unused allocations for Open Athlete Allocation Sports are returned to CGA for re-allocation to another Open Athlete Allocation Sport to be determined in CGA's sole and absolute discretion.

5.7. Qualification System Sports

- (a) The nomination, selection and participation of Athletes in Qualification System Sports will be determined in accordance with the relevant then current Qualification Systems.
- (b) Subject always to section 5.7(a), CGA will advise each NSO of:
 - (i) the identity of the Athletes (if any) that have qualified for a slot in a Qualification System Sport 'by name'; and
 - (ii) the maximum number of Athlete slots it has been allocated for each Qualification System Sport, where Australia has qualified for the Qualification System Sport for the Games.
- (c) NSOs are not permitted to nominate more Athletes for Qualification System Sports than the number of allocations the NSO has been issued under section 5.7(b).
- (d) NSOs are permitted to nominate less Athletes for Qualification System Sports than it has been allocated under section 5.7(b).

- (e) NSOs acknowledge and agree that all unused Athlete slots for Qualification System Sports will be redistributed in accordance with the relevant then current Qualification Systems.

5.8. Submission of Nominations

Each NSO must deliver a written notice to CGA, by the Nomination Deadline, which must:

- (a) identify each of its Nominated Athletes and Nominated Officials (if any);
- (b) include such particulars regarding Nominated Athletes and Nominated Officials as requested by CGA;
- (c) be accompanied by written confirmation signed by the CEO of the NSO that each of its Nominated Athletes and Nominated Officials has met each of the Nomination Criteria; and
- (d) be accompanied by written confirmation signed by the CEO of the NSO, together with supporting documentary evidence demonstrating, that each of its Nominated Athletes and Nominated Officials:
 - (i) are up-to-date in their vaccination status against COVID-19 by a vaccine that has been registered, approved or is recognised for that purpose by the Australian Therapeutic Goods Administration as published on its website from time to time and in accordance with CGA's requirements in respect of vaccination from time to time; or
 - (ii) have a valid medical exemption from receiving a COVID-19 vaccine, and that exemption is recorded on the Australian Immunisation Register.

5.9. Appeals for Non-Nomination of Athletes

- (a) All Nomination Appeals must be dealt with in accordance with the Nomination Appeals Policy.

5.10. Notifying Athletes of their Nomination

- (a) NSOs must notify each of its Athletes of the NSOs decision regarding the identity of each of its Nominated Athletes prior to the NSO submitting any Nominations to CGA.
- (b) Unless otherwise agreed by CGA in writing, NSOs and Athletes must keep all decisions regarding Nominations strictly confidential unless and until their selection as Selected Athletes and Team Members is announced publicly by CGA.

5.11. Amendments to the Nomination Policy

- (a) Each NSO is required to seek and obtain CGA's prior approval to any proposed amendments to its Nomination Policy.
- (b) Any amended Nomination Policy must incorporate, for the purpose of version control, the version number and date of the amendment clearly on the document.
- (c) Once any amendments to the Nomination Policy are approved by CGA, NSOs are responsible for:
 - (i) publishing the amended Nomination Policy on the NSO's website and social media channels;
 - (ii) communicating the amended Nomination Policy to all potentially eligible Athletes for the Games, coaches, and other stakeholders; and
 - (iii) ensuring the amended Nomination Policy is known and adhered to.

5.12. Key Nomination Dates

- (a) Subject to section 5.12(b), each NSO must submit its Nominations to CGA prior to the Nomination Deadline.
- (b) Nominations submitted to CGA after the Nomination Deadline will not be accepted unless:
 - (i) the NSO has been granted an extension of time in writing by CGA prior to the Nomination Deadline; or

- (ii) the NSOs Nominations are delayed due to a Nomination Appeal that was commenced prior to the Nomination Deadline.

6. SELECTION OF ATHLETES AND OFFICIALS BY CGA

6.1. Selection Requirements

- (a) CGA is solely responsible for selecting Nominated Athletes and Officials to a Team.
- (b) In respect of each Open Athlete Allocation Sport, CGA may only select Nominated Athletes to the Team if CGA is satisfied (in its sole and absolute discretion) that the Nominated Athlete:
 - (i) has satisfied the Nomination Criteria;
 - (ii) that the Nomination Criteria was properly applied by the each NSO in nominating its Nominated Athletes; and
 - (iii) has signed and will comply with the Team Membership Agreement for Athletes for the Games.
- (c) In respect of each Qualification System Sport, CGA may only select a Nominated Athlete to the Team once CGF has confirmed the Qualification System Sport allocations and if CGA is satisfied that the Nominated Athlete:
 - (i) has satisfied the Qualification System applying to that Qualification System Sport;
 - (ii) has not breached the then current CGA Anti-Doping By-Law (unless the Athlete has already been sanctioned for the breach and completed the imposed sanction);
 - (iii) has not by their actions or omissions brought themselves, their NSO or CGA into disrepute or censure;
 - (iv) has completed all Sport Integrity Australia administrative requirements pertaining to the Commonwealth Games;
 - (v) has satisfied any additional administrative obligations as directed by the Chef de Mission and CGA.
- (d) CGA will select Officials to the Team if CGA is satisfied that the Official:
 - (i) has signed and will comply with the Team Membership Agreement for Officials for the Games; and
 - (ii) has otherwise satisfied CGA's requirements for Selected Officials.
- (e) In addition to the selection requirements set out in sections 6.1(a) to 6.1(d) and subject always to section 6.1(f), CGA will only select Nominated Athletes and Officials to the Team if CGA is satisfied that the Nominated Athletes and Officials are up-to-date in their vaccination status against COVID-19 by a vaccine that has been registered, approved or is recognised for that purpose by the Australian Therapeutic Goods Administration as published on its website from time to time and in accordance with CGA's requirements in respect of vaccination from time to time.
- (f) A Nominated Athlete or Official may be exempt from the vaccination requirements in section 6.1(e) if CGA is satisfied that the Nominated Athletes and Officials has a valid medical exemption from receiving a COVID-19 vaccine, and that exemption is recorded on the Australian Immunisation Register. Even if a Nominated Athlete or Official is medically exempt from being vaccinated, CGA has an absolute discretion to determine whether it is safe for that person to be a Team Member, and if so, on what terms.
- (g) A breach of, or a failure by, a Nominated Athlete or Official to satisfy the requirements of sections 6.1(b) to 6.1(f) may render that Nominated Athlete or Official ineligible for selection to the Team, at the complete and absolute discretion of CGA.

6.2. No Extenuating Circumstances

- (a) In determining whether a Nominated Athlete has met the selection requirements set out in section 6.1, CGA will not have regard to any extenuating circumstances.
- (b) For the purposes of this section, "extenuating circumstances" means an inability to compete in, or attend, events, trials, training camps or other competitions arising from:

- (i) injury or illness;
- (ii) equipment failure;
- (iii) travel delays;
- (iv) bereavement or disability arising from death or serious illness of an immediate family member, which means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling; or
- (v) any other factor or reason that is considered by CGA to constitute extenuating circumstances.

6.3. Notification of Selection of Athletes and Officials

- (a) CGA must notify each NSO in writing regarding which of its Nominated Athletes and Officials that have been selected by CGA as Team Members and which are Non-Selected Athletes and Non-Selected Officials (if any).
- (b) Each NSO must then notify each of its Nominated Athletes and Nominated Officials (if any), in writing, of their selection or non-selection to the Team.
- (c) CGA will not notify a NSO as to which of its Nominated Athletes have been selected to a Team until all Nomination Appeals involving that NSO's Nominated Athletes (if any) have concluded.
- (d) NSOs may not publish or make public any information disclosed by CGA to the NSO regarding the identity of the Nominated Athletes, Nominated Officials, Non-Nominated Athletes, Selected Athletes, Selected Officials and Non-Selected Athletes and Non-Selected Officials without CGA's prior written consent.
- (e) NSOs must ensure its Athletes, Officials, directors, officers, employees, agents and contractors are bound to observe an obligation of confidentiality substantially similar to that which is set out in section 6.3(d).

6.4. Appeals for Non-Selection of Athletes

- (a) All Selection Appeals must be dealt with in accordance with the Selection Appeals Policy.

7. REVIEW OF THIS BY-LAW

CGA reserves the right to amend this By-Law from time to time subject to organisational needs or changes in the law. They will be reviewed at least every four years and any amendments will be approved by the CGA Board, updated in the CGA Policy register and updated on the CGA website.

Schedule 1: Nomination Appeals Policy

1. Definitions

In this Nomination Appeals Policy, the following words have the corresponding meanings:

"Appellant"	means a Non-Nominated Athlete who has commenced a Nomination Appeal in the NST whether in the General Division as a First Instance Appeal or in the Appeals Division as a Final Appeal.
"Athlete"	means a registered athlete member of an NSO.
"AUD"	means Australian Dollars.
"Business Day"	means a day other than a Saturday, Sunday or public holiday in Victoria, Australia.
"By-Law"	means the by-law which documents the nomination, selection and appeal policies and procedures for CGA (as amended from time to time).
"CEO"	means the Chief Executive Officer of the referenced organisation.
"CGA"	means Commonwealth Games Australia Limited, as the association officially recognised by the Commonwealth Games Federation for the Australian territory which has exclusive authority for Australia's participation in the Games.
"Commonwealth Games"	means the multi-sport event held once every four years under the auspices of the Commonwealth Games Federation.
"Commonwealth Youth Games"	means the multi-sport youth event held once every four years under the auspices of the Commonwealth Games Federation.
"Dispute Notice"	has the meaning set out in clause 6.2.
"Final Appeal"	means the final instance of a Nomination Appeal, lodged in the Appeals Division of the NST (to be determined by a panel comprising 3 NST members), against a decision or determination that was made by a single NST member of the General Division of the NST in a First Instance Appeal in respect of a dispute relating to an Athlete's non-nomination for selection to a Team.
"First Instance Appeals"	means the first instance of a Nomination Appeal whereby a single NST member of the General Division of the NST will arbitrate the dispute relating to an Athlete's non-nomination for selection to a Team.
"Games"	means the Commonwealth Games, Commonwealth Youth Games or any other sporting competition or event in which a Team is to compete or participate.
"Interested Party"	means, a Non-Nominated Athlete otherwise eligible for nomination for selection to a Team which is the subject of the Nomination Appeal who has provided the indication referred to in clause 5.4.
"NST"	means the Australian Government entity known as the National Sports Tribunal established by the <i>National Sports Tribunal Act 2019</i> , comprised of the General Division, the Anti-Doping Division, and the Appeals Division.

Team Nomination, Selection and Appeals By-Law

"Nomination Appeal"	means an appeal, however described, against non-nomination for selection to a Team
"Nominated Athlete"	means any Athlete nominated by the NSO for selection to a Team in compliance with that NSO's Nomination Policy and section 5 of the By-Law.
Nominated Representative	means, where a NSO has no CEO, a representative of that NSO as determined by the board of that NSO.
"Nomination Policy"	means the policy, prepared by an NSO in accordance with section 5 of the By-Law, pursuant to which the NSO will nominate Athletes to CGA for consideration for selection to a Team.
"Nomination Appeals Policy"	means this nomination appeals policy as contained in Schedule 1 of the By-Law which documents the process to be followed in connection with all Nomination Appeals, as amended by CGA from time to time.
"Non-Nominated Athlete"	means any Athlete who is not nominated by their NSO for selection to a Team.
"NSO"	means the National Sporting Organisation, of a sport that will be on the program of the next Games, that is responsible for making the nomination decision.
"NST Act"	means the <i>National Sports Tribunal Act 2019</i> (Cth).
"NST Application Form"	means the form titled "Application for General Sports-Related Disputes" available for download at https://www.nationalsporttribunal.gov.au/resources/application-forms-dispute-resolution .
"NST Costs"	means the aggregate of any Service Charges and application fee payable to the NST in connection with either a First Instance Appeal or Final Appeal (as applicable).
"NST Legislation"	means the 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 and any instrument made under the NST Act including but not limited to the <i>National Sports Tribunal Rule</i> and the <i>National Sports Tribunal Practice and Procedure Determination</i> as amended from time to time and in effect at the time of the commencement of a Nomination Appeal.
"NST Registry"	means the NST Registry team is located within the Australian Government Department of Health which provides case management and administrative support.
"Preliminary Conference"	means a conference between the NST and the parties of the Nomination Appeal to discuss, amongst other things, the likely timing and costs of the Nomination Appeal.
"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.

<i>"Team"</i>	means any team of Athletes and officials who are selected by CGA to represent Australia at the Games.
<i>"Written Notice"</i>	means notice in writing by letter, email or other written means of communication.

2. Interpretation

2.1. Unless the context otherwise requires, reference to:

- (a) a clause is to a clause of this Schedule 1; and
- (b) the singular includes the plural and the converse also applies.

2.2. If a person to whom this Schedule applies consists of more than one person, then this Schedule binds them jointly and severally.

2.3. A reference to time, day or date is to time, day or date in Victoria, Australia.

2.4. 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.

2.5. Headings are for convenience only and do not form part of this Nomination Appeals Policy or affect its interpretation.

3. Objective of THIS nomination appeals POLICY

3.1. A Nomination Policy exhaustively sets out (amongst other things) the parameters, process and criteria (both eligibility and performance) that will be applied by a NSO in order to determine the nomination of Athletes for selection for the Games.

3.2. This Nomination Appeals Policy sets out the process that must be followed in relation to any Nomination Appeals.

3.3. Athletes have a right of appeal against their non-nomination for consideration by CGA for selection to a Team and may apply to the NST for arbitration of a Nomination Appeal (except where a specific Nomination Policy excludes such a right).

3.4. Officials do not have a right of appeal against their non-nomination to a Team.

3.5. This Nomination Appeals Policy applies to both Athletes and the NSOs.

4. General rules

4.1. A Non-Nominated Athlete may appeal against their non-nomination for selection to a Team in accordance with the procedures set out in this Nomination Appeals Policy. For clarity, Athletes can only appeal their non-nomination for selection to a Team after their NSO has notified CGA of the identity of each of its Nominated Athletes in accordance with section 5 of the By-Laws.

4.2. In the event that two or more Nomination Appeals are brought under this Nomination Appeals Policy and it appears to the NST that:

- (a) the Nomination Appeals involve a common [question](#); or

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

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

5. Parties to a Nomination Appeal (First Instance Appeals and Final Appeals)

5.1. The Parties to a Nomination Appeal will be:

- (a) the Appellant;
- (b) the NSO; and
- (c) any Interested Parties.

5.2. The NSO and the Appellant must identify to the NST any Athletes who may be Interested Parties. Athletes may also identify themselves to the NST as potential Interested Parties.

5.3. In the event that any doubt should arise as to the eligibility of a person as an Interested Party, the NSO shall determine the matter in its sole and absolute discretion.

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

5.5. In accordance with the NST Procedure, an Interested Party:

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

5.6. An Interested Party may also lodge a Final Appeal in respect of a decision or determination that is made by the NST at the conclusion of a First Instance Appeal.

5.7. A person who receives notice from the NST of their identification as an Interested Party may decline or fail to participate as an Interested Party at any time, in which case that person will automatically waive any rights afforded an Interested Party, including the right to lodge a Final Appeal.

5.8. For the avoidance of doubt, an Athlete identified as a potential Interested Party in a First Instance Appeal, but who does not participate in that First Instance Appeal will not be permitted to lodge a Final Appeal in respect of a decision or determination that is made by an NST in that First Instance Appeal.

6. STEPS PRIOR TO COMMENCING A NOMINATION APPEAL

- 6.1. A Non-Nominated Athlete must not commence a Nomination Appeal in the NST unless the dispute resolution provisions of this clause 6 have first been complied with.
- 6.2. Within 24 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 CEO or Nominated Representative of their NSO that the Non-Nominated Athlete disputes their non-nomination to a Team (**Dispute Notice**). The Non-Nominated Athlete must include the following in the Dispute Notice:
 - (a) reasons to support their decision to dispute their non-nomination; and
 - (b) payment of an AUD\$200 application fee, which will be refunded to the Non-Nominated Athlete should the outcome of the dispute or Nomination Appeal process result in their nomination for selection for the Team.
- 6.3. Within 24 hours of the Non-Nominated Athlete giving the Dispute Notice in accordance with clause 6.2, the CEO or Nominated Representative of their NSO must provide the Non-Nominated Athlete with a written statement setting out the NSO's reasons for its decision not to nominate the Non-Nominated Athlete for selection for the Team.
- 6.4. Within 24 hours of a Non-Nominated Athlete receiving the NSO's written statement in accordance with clause 6.3, the Non-Nominated Athlete must provide a written response to the CEO or Nominated Representative of their NSO advising whether the Non-Nominated Athlete intends to proceed to a hearing of their Nomination Appeal in the General Division of the NST.
- 6.5. The Parties must use their best endeavours, acting in good faith and on a without prejudice basis, to resolve the dispute through confidential communication in accordance with this clause 6.
- 6.6. For the avoidance of doubt, any formal Written Notice or statement made by the CEO or Nominated Representative of the relevant NSO or the Non-Nominated Athlete in compliance with clauses 6.2 - 6.4 may be submitted to the NST for the purposes of the First Instance Appeal and or the Final Appeal.
- 6.7. For clarity, time periods referred to in clause 6 may be extended by agreement between the NSO and the Non-Nominated Athlete in advance, or unilaterally by the NST in exceptional circumstances.

7. FIRST INSTANCE APPEAL TO THE GENERAL DIVISION OF THE NST

- 7.1. A Nomination Appeal must be heard in the General Division of NST in the first instance.

8. GROUNDS FOR A FIRST INSTANCE APPEAL

- 8.1. A Non-Nominated Athlete (the **Appellant**) may bring a First Instance Appeal for hearing on one or more of the following grounds (which the Appellant bears the onus of making out):
 - (a) that the Nomination Policy was not properly applied by the NSO with respect to the Appellant;
 - (b) the Appellant was not afforded a reasonable opportunity by the NSO to satisfy the selection criteria set out in the relevant Nomination Policy;
 - (c) the NSO was affected by actual bias in making its decision to not select the Appellant; and
or

- (d) there was no material basis on which the NSO's decision could be reasonably based.

9. MAKING AN APPLICATION FOR A FIRST INSTANCE APPEAL

- 9.1. An Appellant wishing to make an application for a First Instance Appeal must, within 24 hours of advising the CEO or Nominated Representative of their NSO of their intention to proceed to a hearing of their Nomination Appeal under clause 6.4:
- (a) 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 Appellant; and
 - (b) pay the AUD\$500 application fee as required by the NST.
- 9.2. For clarity, unless the Appellant and their NSO otherwise agree, an extension of time to make an application for a First Instance Appeal may be granted by the NST in extenuating circumstances outside the control of the Appellant .
- 9.3. Service Charges may also be payable to the NST in connection with the First Instance Appeal. These Service Charges will be negotiated as between the parties to the First Instance Appeal and the NST at a Preliminary Conference, and ultimately determined by the CEO of the NST.
- 9.4. CGA will contribute 50% of the NST Costs incurred in connection with the First Instance Appeal above the AUD\$500 application fee payable under clause 9.1(b), up to a total value of AUD\$1,000 with the balance of the Service Charges to be paid by the relevant NSO (Example: If the NST Costs incurred in connection with a First Instance Appeal is AUD\$1,500, CGA will contribute AUD\$500, being 50% of AUD\$1,000 and the relevant NSO will contribute AUD\$500).
- 9.5. Where the outcome of the First Instance Appeal results in the Appellant's nomination for selection for the Team, any application fee and Service Charges paid by the Appellant to the NST will be reimbursed to the Appellant by the NSO.

10. FIRST INSTANCE APPEAL PROCEDURE

- 10.1. A First Instance Appeal will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all the First Instance Appeals:
- (a) Where the NST considers it appropriate to do so and all the involved parties to the First Instance Appeal agree, the NST may determine the First Instance Appeal without a hearing.
 - (b) 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).
 - (c) 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.
 - (d) The determination of the NST is final and binding on the parties and, subject only to a Final Appeal pursuant to clauses 12 - 16, no party may institute proceedings in any other court or tribunal.
- 10.2. The duration of the First Instance Appeal will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also clause 17).

11. FIRST INSTANCE APPEAL OUTCOMES – RECONSIDERATION AND REDETERMINATION

11.1. In concluding a First Instance Appeal, the NST may either:

- (a) uphold the decision of the relevant NSO not to nominate the Appellant for selection to the Team; or
- (b) overturn the decision of the relevant NSO not to nominate the Appellant for selection to the Team.

11.2. The determination handed down by the General Division of the NST with respect to a First Instance Appeal is final and binding on the parties save for the lodgement of a Final Appeal in accordance with clauses 12 - 16.

11.3. In the event that the NST overturns the decision of the relevant NSO not to nominate the Appellant for selection to the Team, the NST will then direct the relevant NSO to reconsider and determine its position regarding Appellant's eligibility and suitability for nomination for selection to the Team in light of the determination of the NST.

11.4. In reconsidering and determining the NSO's position regarding the Appellant's eligibility and suitability for nomination for selection to the Team, the NSO must observe the principles of natural justice.

11.5. Any decision made by the NSO regarding the Appellant's nomination following the direction from the NST in clause 11.3, will be final and binding on the Appellant, subject only to the Appellant lodging a Final Appeal to the Appeals Division of the NST in accordance with clauses 12 - 16.

12. FINAL APPEAL TO THE APPEALS DIVISION OF THE NST

12.1. If the General Division of the NST makes a determination in relation to a First Instance Appeal, a party to that First Instance Appeal may lodge a Final Appeal to appeal the determination of the General Division of the NST.

12.2. For clarity, a Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal may only be lodged by a party to that First Instance Nomination Appeal and can be lodged before or after the reconsideration process in clause 11 has concluded.

13. GROUNDS FOR A FINAL APPEAL

13.1. The Appellant may bring a Final Appeal for hearing on one or more of the following grounds (which the Appellant bears the onus of making out):

- (a) that the determination handed down by the General Division of the NST with respect to a First Instance Appeal breached the rules of natural justice; and or
- (b) that the determination handed down by the General Division of the NST with respect to a First Instance Appeal was affected by a legal error.

14. MAKING AN APPLICATION FOR A FINAL APPEAL

14.1. In order to lodge a Final Appeal, any party eligible to make an application for a Final Appeal must, within 48 hours after their notification of the General Division's determination in relation to the First Instance Appeal under clause 10.1:

- (a) 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 Appellant;
- (b) provide a copy of the required NST Application Form to the other parties to the Final Appeal;
and
- (c) pay the AUD\$1,500 application fee as required by the NST.

14.2. For clarity, unless agreed by the Appellant and their NSO, an extension of time to make an application for a Final Appeal may be granted by the NST in extenuating circumstances outside the control of the Appellant.

14.3. Service Charges may also be payable to the NST in connection with the Final Appeal. These Service Charges will be negotiated as between the parties to the Final Appeal and the NST at the Preliminary Conference, and ultimately determined by the CEO of the NST.

14.4. CGA will contribute 50% of the NST Costs incurred in connection with the Final Appeal above the AUD\$1,500 application fee payable under clause 14.1(c), up to a total value of AUD\$1,000 with the balance of the Service Charges to be paid by the relevant NSO (Example: If the total NST Costs incurred in connection with a Final Appeal is AUD\$3,000, CGA will contribute AUD\$750, being 50% of AUD\$1,500 and the relevant NSO will contribute AUD\$750).

14.5. Each NSO has the right but not the obligation to reimburse an Appellant for the Service Charges it incurs in connection with the Final Appeal.

14.6. Where the outcome of the Final Appeal results in the Appellant's nomination for selection for the Team, any application fee and Service Charges paid by the Appellant to the NST will be reimbursed to the Appellant by the NSO.

15. FINAL APPEAL PROCEDURE

15.1. A Final Appeal heard in the Appeals Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all the Final Appeals:

- (a) Where the NST considers it appropriate to do so and all the involved parties to the Final Appeal agree, the NST may determine the Final Appeal without a hearing.
- (b) 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).
- (c) 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.

15.2. The length of the Final Appeal will vary depending on time available and in accordance with the NST Procedure regarding the expedited resolution of disputes (see also clause 17).

16. FINAL APPEAL OUTCOMES - RECONSIDERATION AND REDETERMINATION

16.1. In concluding a Final Appeal, the NST may either:

- (a) uphold the decision of the First Instance Appeal; or
- (b) overturn the decision of the First Instance Appeal.

- 16.2. The determination handed down by the Appeal Division of the NST with respect to a Final Appeal is final and binding on the parties.
- 16.3. In the event that the NST overturns the decision of the First Instance Appeal, the NST will then direct the relevant NSO to reconsider and determine its position regarding Appellant's eligibility and suitability for nomination for selection to the Team in light of the determination of the NST.
- 16.4. In reconsidering and determining the NSO's position regarding the Appellant's eligibility and suitability for nomination for selection to the Team, the NSO must observe the principles of natural justice.
- 16.5. Any decision made by the NSO regarding the Appellant's nomination following the direction from the NST in clause 16.3, will be final and binding on the Appellant.

17. WHERE AN APPLICATION TO DEAL WITH A DISPUTE REQUIRES EXPEDITION

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

SCHEDULE 2: SELECTION APPEALS POLICY

1. DEFINITIONS

In this Selection Appeals Policy, the following words have the corresponding meanings:

<i>"Appellant"</i>	means a Non-Selected Athlete who has commenced a Selection Appeal in the NST whether in the General Division as a First Instance Appeal or in the Appeals Division as a Final Appeal.
<i>"Athlete"</i>	means a registered athlete member of an NSO.
<i>"AUD"</i>	means Australian Dollars.
<i>"Business Day"</i>	means a day other than a Saturday, Sunday or public holiday in Victoria, Australia.
<i>"By-Law"</i>	means the by-law which documents the nomination, selection and appeal policies and procedures for CGA (as amended from time to time).
<i>"CEO"</i>	means the Chief Executive Officer of the referenced organisation.
<i>"CGA"</i>	means Commonwealth Games Australia Limited, as the association officially recognised by the Commonwealth Games Federation for the Australian territory which has exclusive authority for Australia's participation in the Games.
<i>"Commonwealth Games"</i>	means the multi-sport event held once every four years under the auspices of the Commonwealth Games Federation.
<i>"Commonwealth Youth Games"</i>	means the multi-sport youth event held once every four years under the auspices of the Commonwealth Games Federation.
<i>"Dispute Notice"</i>	has the meaning set out in clause 6.2.
<i>"Final Appeal"</i>	means the final instance of a Selection Appeal, lodged in the Appeals Division of the NST (to be determined by a panel comprising 3 NST members), against a decision or determination that was made by a single NST member of the General Division of the NST in a First Instance Appeal in respect of a dispute relating to an Athlete's non-selection to a Team.
<i>"First Instance Appeals"</i>	means the first instance of a Selection Appeal whereby a single NST member of the General Division of the NST will arbitrate the dispute relating to an Athlete's non-selection to a Team.
<i>"Games"</i>	means the Commonwealth Games, Commonwealth Youth Games or any other sporting competition or event in which a Team is to compete or participate.
<i>"NST"</i>	means the Australian Government entity known as the National Sports Tribunal established by the <i>National Sports Tribunal Act 2019</i> , comprised of the General Division, the Anti-Doping Division, and the Appeals Division.
<i>"Non-Selected Athlete"</i>	means any Athlete who is not selected by CGA to a Team.

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"NSO"	means the National Sporting Organisation, of a sport that will be on the program of the next Games, that is responsible for making the nomination decision.
"NST Act"	means the <i>National Sports Tribunal Act 2019</i> (Cth).
"NST Application Form"	means the form titled "Application for General Sports-Related Disputes" available for download at https://www.nationalsportstribunal.gov.au/resources/application-forms-dispute-resolution .
"NST Costs"	means the aggregate of any Service Charges and application fee payable to the NST in connection with either a First Instance Appeal or Final Appeal (as applicable).
"NST Legislation"	means the 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 and any instrument made under the NST Act including but not limited to the <i>National Sports Tribunal Rule</i> and the <i>National Sports Tribunal Practice and Procedure Determination</i> as amended from time to time and in effect at the time of the commencement of a Selection Appeal.
"NST Registry"	means the NST Registry team is located within the Australian Government Department of Health which provides case management and administrative support.
"Preliminary Conference"	means a conference between the NST and the parties of the Selection Appeal to discuss, amongst other things, the likely timing and costs of the Selection Appeal.
"Selected Athlete"	means any Athlete selected by CGA to a Team in compliance with section 6 of the By-Law.
"Selection Appeal"	means an appeal, however described, against non-selection to a Team.
"Selection Appeals Policy"	means this selection appeals policy as contained in Schedule 2 of the By-Law which documents the process to be followed in connection with all Selection Appeals, as amended by CGA from time to time.
"Selection Criteria"	means the selection criteria determined by CGA and described in section 6.1(b) of these By-Laws.
"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.
"Team"	means any team of Athletes and officials who are selected by CGA to represent Australia at the Games.
"Written Notice"	means notice in writing by letter, email or other written means of communication.

2. INTERPRETATION

2.1. Unless the context otherwise requires, reference to:

- (c) a clause is to a clause of this Schedule 2; and
 - (d) the singular includes the plural and the converse also applies.
- 2.2. If a person to whom this Selection Appeals Policy applies consists of more than one person, then this Selection Appeals Policy binds them jointly and severally.
- 2.3. A reference to time, day or date is to time, day or date in Victoria, Australia.
- 2.4. 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.
- 2.5. Headings are for convenience only and do not form part of this Selection Appeals Policy or affect its interpretation.

3. OBJECTIVE OF THIS SELECTION APPEALS POLICY

- 3.1. The By-Laws exhaustively sets out (amongst other things) the parameters, process and criteria (both eligibility and performance) that will be applied by CGA in order to determine the selection of Athletes for the Games.
- 3.2. This Selection Appeals Policy sets out the process that must be followed in relation to any Selection Appeals.
- 3.3. Athletes have a right of appeal against their non-selection to a Team and may apply to the NST for arbitration of a Selection Appeal.
- 3.4. Officials do not have a right of appeal against their non-selection to a Team.
- 3.5. This Selection Appeals Policy applies to both Athletes and CGA.

4. GENERAL RULES

- 4.1. A Non-Selected Athlete may appeal against their non-selection to a Team in accordance with the procedures set out in this Selection Appeals Policy. For clarity, Athletes can only appeal their non-selection to a Team after CGA has formally notified the relevant NSOs regarding which of its Athletes have been selected to a Team in accordance with section 6.3 of the By-Laws.
- 4.2. In the event that two or more Selection Appeals are brought under this Selection Appeals Policy and it appears to the NST that:
- (d) the Selection Appeals involve a common question; or
 - (e) the relief claimed in them are in respect of, or arise out of, the same instance of selection; or
 - (f) 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.

5. PARTIES TO A SELECTION APPEAL (FIRST INSTANCE APPEALS AND FINAL APPEALS)

- 5.1. The Parties to a Selection Appeal will be:
- (a) the Appellant;
 - (b) CGA; and

- (c) subject to clauses 5.2 – 5.8, an NSO.
- 5.2. The Appellant must identify to the NST the NSO that may wish to be a party to a Selection Appeal. The relevant NSO may also identify itself to the NST as a potential party to a Selection Appeal.
- 5.3. In the event that any doubt should arise as to the eligibility of a NSO as party to a Selection Appeal, CGA shall determine the matter in its sole and absolute discretion.
- 5.4. A NSO identified as a potential party to a Selection Appeal must, in order to participate in the Selection Appeal, indicate to the NST that they wish to be an Interested Party in the Selection Appeal.
- 5.5. In accordance with the NST Procedure, the relevant NSO that becomes a party to a Selection Appeal:
 - (a) must receive notice of the Selection Appeal from the NST;
 - (b) must be given the opportunity to make submissions and give evidence in the Selection Appeal;
 - (c) must receive a copy of the determination handed down by the NST; and
 - (d) will be bound by any determination handed down by the NST.
- 5.6. The NSO may also lodge a Final Appeal in respect of a decision or determination that is made by the NST at the conclusion of a First Instance Appeal.
- 5.7. A NSO who receives notice from the NST of its identification as a potential party to a Selection Appeal may decline or fail to participate in the Selection Appeal at any time, in which case that person will automatically waive any rights afforded a party of a Selection Appeal, including the right to lodge a Final Appeal.
- 5.8. For the avoidance of doubt, a NSO identified as a potential party in a First Instance Appeal, but who does not participate in that First Instance Appeal will not be permitted to lodge a Final Appeal in respect of a decision or determination that is made by an NST in that First Instance Appeal.

6. STEPS PRIOR TO COMMENCING A SELECTION APPEAL

- 6.1. A Non-Selected Athlete must not commence a Selection Appeal in the NST unless the dispute resolution provisions of this clause 6 have first been complied with.
- 6.2. Within 24 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 CEO of CGA that the Non-Selected Athlete disputes their non-selection to a Team (**Dispute Notice**). The Non-Selected Athlete must include the following in the Dispute Notice:
 - (a) reasons to support their decision to dispute their non-selection; and
 - (b) payment of an AUD\$200 application fee, which will be refunded to the Non-Selected Athlete should the outcome of the dispute or Selection Appeal process result in their selection for the Team.
- 6.3. Within 24 hours of the Non-Selected Athlete giving the Dispute Notice in accordance with clause 6.2, the CEO of CGA must provide the Non-Selected Athlete with a written statement setting out CGA's reasons for its decision not to select the Non-Selected Athlete to the Team.
- 6.4. Within 24 hours of a Non-Selected Athlete receiving CGA's written statement in accordance with clause 6.3, the Non-Selected Athlete must provide a written response to the CEO of CGA advising

whether the Non-Selected Athlete intends to proceed to a hearing of their Selection Appeal in the General Division of the NST in accordance with clause 7.

- 6.5. The Parties must use their best endeavours, acting in good faith and on a without prejudice basis, to resolve the dispute through confidential communication in accordance with this clause 6.
- 6.6. For the avoidance of doubt, any formal Written Notice or statement made by the CEO of CGA or the Non-Selected Athlete in compliance with clauses 6.2 - 6.4 may be submitted to the NST for the purposes of the First Instance Appeal and or the Final Appeal.
- 6.7. For clarity, time periods referred to in clause 6 may be extended by agreement between the CEO of CGA and the Non-Selected Athlete in advance, or unilaterally by the NST in exceptional circumstances.

7. FIRST INSTANCE APPEAL TO THE GENERAL DIVISION OF THE NST

- 7.1. A Selection Appeal must be heard in the General Division of NST in the first instance.

8. GROUNDS FOR A FIRST INSTANCE APPEAL

- 8.1. A Non-Selected Athlete (the Appellant) may bring a First Instance Appeal for hearing on one or more of the following grounds (which the Appellant bears the onus of making out):
 - (a) that the Selection Criteria were not properly applied by CGA with respect to the Appellant;
 - (b) the Appellant was not afforded a reasonable opportunity by CGA to satisfy the Selection Criteria;
 - (c) CGA was affected by actual bias in making its decision to not select the Appellant; and or
 - (d) there was no material basis on which CGA's decision could be reasonably based.

9. MAKING AN APPLICATION FOR A FIRST INSTANCE APPEAL

- 9.1. An Appellant wishing to make an application for a First Instance Appeal must, within 24 hours of advising the CEO of CGA of their intention to proceed to a hearing of their Selection Appeal under clause 6.4:
 - (a) 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 Appellant; and
 - (b) pay the AUD\$500 application fee as required by the NST.
- 9.2. For clarity, unless the Appellant and CGA otherwise agree, an extension of time to make an application for a First Instance Appeal may be granted by the NST in extenuating circumstances outside the control of the Appellant.
- 9.3. Service Charges may also be payable to the NST in connection with the First Instance Appeal. These Service Charges will be negotiated as between the parties to the First Instance Appeal and the NST at the Preliminary Conference, ultimately determined by the CEO of the NST.
- 9.4. CGA will contribute 50% of the NST Costs incurred in connection with the First Instance Appeal above the AUD\$500 application fee payable under clause 9.1(b), up to a total value of AUD\$1,000 with the balance of the Service Charges to be paid by the relevant NSO (Example: If the NST Costs incurred in connection with a First Instance Appeal is AUD\$1,500, CGA will contribute AUD\$500, being 50% of AUD\$1,000 and the relevant NSO will contribute AUD\$500).

- 9.5. Where the outcome of the First Instance Appeal results in the Appellant's selection to the Team, any application fee and Service Charges paid by the Appellant to the NST will be reimbursed to the Appellant by CGA.

10. FIRST INSTANCE APPEAL PROCEDURE

- 10.1. A First Instance Selection Appeal will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all First Instance Appeals:
- (a) Where the NST considers it appropriate to do so and all the involved parties to the First Instance Appeal agree, the NST may determine the First Instance Appeal without a hearing.
 - (b) 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).
 - (c) 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.
 - (d) The determination of the NST is final and binding on the parties and, subject only to a Final Appeal pursuant to clauses 12 - 16, no party may institute proceedings in any other court or tribunal.
- 10.2. The duration of the First Instance Appeal will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also clause 17).

11. FIRST INSTANCE APPEAL OUTCOMES - RECONSIDERATION AND REDETERMINATION

- 11.1. In concluding a First Instance Appeal, the NST may either:
- (a) uphold the decision of CGA not to select the Appellant to the Team; or
 - (b) overturn the decision of CGA not to select the Appellant to the Team.
- 11.2. The determination handed down by the General Division of the NST with respect to a First Instance Appeal is final and binding on the parties save for the lodgement of a Final Appeal in accordance with clauses 12 - 16.
- 11.3. In the event that the NST overturns the decision of CGA not to select the Appellant to the Team, the NST will then direct CGA to reconsider and determine its position regarding Appellant's eligibility and suitability for selection to the Team in light of the determination of the NST.
- 11.4. In reconsidering and determining CGA's position regarding the Appellant's eligibility and suitability for selection to the Team, CGA must observe the principles of natural justice.
- 11.5. Any decision made by CGA regarding the Appellant's nomination following the direction from the NST in clause 11.3, will be final and binding on the Appellant, subject only to the Appellant lodging a Final Appeal to the Appeals Division of the NST in accordance with clauses 12 - 16.

12. FINAL APPEAL TO THE APPEALS DIVISION OF THE NST

- 12.1. If the General Division of the NST makes a determination in relation to a First Instance Appeal, a party to that First Instance Appeal may lodge a Final Appeal to appeal the determination of the General Division of the NST.
- 12.2. For clarity, a Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal may only be lodged by a party to that First Instance Selection Appeal and can be lodged before or after the reconsideration process in clause 11 has concluded.

13. GROUNDS FOR A FINAL APPEAL

- 13.1. The Appellant may bring a Final Appeal for hearing on one or more of the following grounds (which the Appellant bears the onus of making out):
- (a) that the determination handed down by the General Division of the NST with respect to a First Instance Appeal breached the rules of natural justice; and or
 - (b) that the determination handed down by the General Division of the NST with respect to a First Instance Appeal was affected by a legal error.

14. MAKING AN APPLICATION FOR A FINAL APPEAL

14.1. In order to lodge a Final Appeal, any party eligible to make an application for a Final Appeal must, within 48 hours after their notification of the General Division's determination in relation to the First Instance Appeal under clause 10.1:

- (c) 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 Appellant;
- (d) provide a copy of the NST Application Form to the other parties to the Final Appeal; and
- (e) pay the AUD\$1,500 application fee as required by the NST.

14.2. For clarity, unless agreed by the Appellant and CGA, an extension of time to make an application for a Final Appeal may be granted by the NST in extenuating circumstances outside the control of the Appellant.

14.3. Service Charges may also be payable to the NST in connection with the Final Appeal. These Service Charges will be negotiated as between the parties to the Final Appeal and the NST at the Preliminary Conference, and ultimately determined by the CEO of the NST.

14.4. CGA will contribute 50% of the NST Costs incurred in connection with the Final Appeal above the AUD\$1,500 application fee payable under clause 14.1(c), up to a total value of AUD\$1,000 with the balance of the Service Charges to be paid by the relevant NSO (Example: If the NST Costs incurred in connection with a Final Appeal is AUD\$3,000, CGA will contribute AUD\$750, being 50% of AUD\$1,500 and the relevant NSO will contribute AUD\$750).

14.5. CGA has the right but not the obligation to reimburse an Appellant for the Service Charges it incurs in connection with the Final Appeal.

14.6. Where the outcome of the Final Appeal results in the Appellant's selection to the Team, any application fee and Service Charges paid by the Appellant to the NST will be reimbursed to the Appellant by CGA.

15. FINAL APPEAL PROCEDURE

15.1. A Final Appeal heard in the Appeals Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all Final Appeals:

- (a) Where the NST considers it appropriate to do so and all the involved parties to the Final Appeal agree, the NST may determine the Final Appeal without a hearing.
- (b) 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).
- (c) 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.

15.2. The length of the Final Appeal will vary depending on time available and in accordance with the NST Procedure regarding the expedited resolution of disputes (see also clause 17).

16. FINAL APPEAL OUTCOMES – RECONSIDERATION AND REDETERMINATION

16.1. In concluding a Final Appeal, the NST may either:

- (a) uphold the decision of the First Instance Appeal; or
- (b) overturn the decision of the First Instance Appeal.

16.2. The determination handed down by the Appeal Division with respect to a Final Appeal is final and binding on the parties.

16.3. In the event that the NST overturns the decision of the First Instance Appeal, the NST will then direct CGA to reconsider and determine its position regarding Appellant's eligibility and suitability for selection to the Team in light of the determination of the NST.

16.4. In reconsidering and determining CGA's position regarding the Appellant's eligibility and suitability for selection to the Team, CGA must observe the principles of natural justice.

16.5. Any decision made by CGA regarding the Appellant's nomination following the direction from the NST in clause 16.3, will be final and binding on the Appellant.

17. WHERE AN APPLICATION TO DEAL WITH A DISPUTE REQUIRES EXPEDITION

17.1. If, on receiving an application for a Selection Appeal, the CEO of the NST is satisfied that it is necessary to deal with the application for a Selection Appeal expeditiously, the CEO of the NST is to convene a Preliminary Conference (if appropriate) and then immediately appoint one or more NST members to deal with the Selection Appeal.

17.2. The CEO of the NST and the appointed NST member(s) are to take all steps necessary to deal with the dispute the subject of the Selection Appeal as expeditiously as the case requires. This may include, but is not limited to, waiving compliance with any provision of the NST Procedure that a party to the dispute would otherwise have to comply with.