



# ROWING AUSTRALIA SELECTION APPEALS POLICY

**Policy Name:** Rowing Australia Selection Appeals Policy

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## 1. DEFINITIONS AND INTERPRETATION

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### 1.1. Definitions

In this RA Selection Appeals Policy the following words have the corresponding meaning:

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

**Appeal Tribunal** means a Tribunal convened in the NST Appeals Division for the purpose of hearing a 'Final Appeal' in accordance with cl. 5.3 of this Selection Appeals Policy.

**Appellant** means a person who has commenced a '**Selection Appeal**' in the NST whether in the General Division (First-Instance Appeals) or the Appeals Division (Final Appeal).

**Athlete** means an athlete who nominates for selection to a Team.

**AUD** means Australian Dollars.

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

**CEO** means the Chief Executive Officer of the referenced organisation.

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

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

**Event Requirements** means the requirements for an Event set out in documentation issued and amended by RA from time to time.

**Hearing Tribunal** means a Tribunal convened in the NST General Division for the purpose of hearing a 'First-Instance Appeal' in accordance with Part 5.2 this Selection Appeals Policy.

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

**National Sports Tribunal** means the Australian Government entity established by the *National Sports Tribunal Act 2019*, comprised of the General Division, the Anti-Doping Division, and the Appeals Division.

**NST** means the National Sports Tribunal, and all of its three Divisions.

**NST Legislation** means the *National Sports Tribunal Act 2019* (Cth) (NST Act) and all legislative and notifiable instruments made under the NST Act.

**NST Procedure** means the process and procedure by which the NST operates, including as set out in the NST Act; the *National Sports Tribunal Rule 2020*; and the *National Sports Tribunal Practice and Procedure Determination 2021* as and in effect at the time of the commencement of a Selection Appeal.

**Official** means any person selected or appointed under by RA who is not an athlete.

**Parties** has the meaning given in clause 4.3.

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

**RA** means Rowing Australia Limited, the Governing body for rowing in Australia.

**Rowing Expert** means an expert tribunal witness with particular expertise in rowing, drawn from a pool of suitably qualified experts provided by RA, appointed under paragraph 68(1)(b) of the NST Act to provide assistance to the NST in the arbitration of a selection appeal by responding to specific questions posed by the NST relating to technical aspects of rowing.

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

**Selection Ombudsman** means the person or persons appointed by the High Performance Committee under the Selection Policy.

**Selected Athlete** means any Athlete selected by RA to a Team for an Event.

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

**Selection Policy** means the RA policy or policies that describes the general principles and Selection Criteria that apply to the selection of all RA Teams and Squads (including, without limitation, any annexures and the Event Requirements), as amended by RA from time to time.

**Selectors** means the panel of selectors under the Selection Policy.

**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 which may include the cost of services provided by a Rowing Expert.

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

**Team** means an Australian Rowing Team selected by RA to represent Australia at an Event.

## 1.2. Interpretation

- (a) Unless the context otherwise requires, reference to:
  - (i) a clause is to a clause of this Policy;
  - (ii) the singular includes the plural and the converse also applies.
- (b) If a person to whom this Policy applies consists of more than one person, then this Policy binds them jointly and severally.

- (c) A reference to time, day or date is to time, day or date in Canberra, Australia.
- (d) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (e) Headings are for convenience only and do not form part of this Policy or affect its interpretation.

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

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- 2.1. This Policy sets out the Selection Appeal process.
- 2.2. This Policy, read and applied with Selection Policy or Policies and the applicable Selection Criteria, forms the **RA Selection Policy** for any relevant Event for which RA selects a Team.
- 2.3. The **RA Selection Policy** exhaustively sets out the parameters, process and criteria (both eligibility and performance) that will be applied to determine the selection of individuals for an Event or in a team generally.

### *Nomination to a Third Party Responsible for Selection for an Event*

- 2.4. For completeness, RA notes that in respect of certain Events (for instance, the Olympics, Paralympics or the Commonwealth Games), RA does not select athletes or officials, but rather nominates them to another entity (for example the Australian Olympic Committee, Paralympics Australia or Commonwealth Games Australia) that is responsible for the final selection of athletes for the Event.
- 2.5. For convenience, where no other Selection or Nomination Policy administered by a Third Party for such an Event as described in cl. 2.4 above applies, the **RA Selection Policy** for an Event will apply to the nomination process undertaken by RA for these Events as though the term 'selection' is interchangeable with the term 'nomination'.

## **3. APPLICATION**

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- 3.1. This Policy applies to:
  - (a) Athletes;
  - (b) RA.
- 3.2. An Athlete has a right of appeal against the following (except where a specific Selection Policy or this Policy excludes such a right):
  - (a) a decision of the Selectors not to select the Athlete to a Team for an Event;
  - (b) a decision of the Selectors not to select or invite the Athlete for

progression pursuant to the Event Requirements;

- (c) a decision by RA to remove the Athlete from consideration for selection to the Team, a Squad or (if applicable) the Team or a Squad itself.
- 3.3. For the avoidance of doubt, an Athlete has no right of appeal against any of the following:
- (a) the size or rowing discipline of boat or crew in which the Athlete has been allocated to compete at the Event for which the Athlete sought selection;
  - (b) a decision by RA under paragraph 2.7.3 of the Selection Policy not to select a particular boat to compete at an event for which the Athlete sought selection;
  - (c) an act or omission of the Selection Ombudsman (including, but not limited to, a refusal by the Selection Ombudsman to deal with a complaint, and a recommendation given by the Selection Ombudsman to the selectors following an investigation by the Selection Ombudsman);
  - (d) any determination made under any of paragraphs 3.1(g), 3.1(h) and 4.2.1(e) of the Selection Policy (minimum performance standards and/or benchmarks);
  - (e) any determination of an Athlete's satisfaction of the mandatory requirements specified in paragraph 2.1 of the Selection Policy;
  - (f) a decision by selectors not to select a boat, where two or more boats for a squad of Athletes achieve the minimum performance standards with an Athlete or Athletes in common across the boats.
- 3.4. Without limiting cl 3.3, where an Athlete is selected for a boat to race at an international Olympic or Paralympic qualification event and the boat fails to qualify at that event, then the Athlete has no right to challenge or appeal any selection decision in relation to any other boat that has already qualified for participation at the Olympic or Paralympic Games.
- 3.5. For clarity, Officials have no right of appeal against their non-selection/appointment to a Team for an Event.
- 3.6. For clarity, Under 23, Under 21 and Junior Athletes have no right of appeal.

#### **4. GENERAL RULES**

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- 4.1. An Athlete may appeal against a decision referred to in cl 3.2 (**Selection Appeal**) in accordance with the procedures set out in cl. 5 of this policy.

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:

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

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

*Parties to a Selection Appeal (First Instance and Final Appeals)*

4.3. The Parties to a Selection Appeal will be:

- (a) The Appellant;
- (b) RA; and
- (c) where the Selection Appeal is commenced in the Appeals Division of the NST in accordance with cl. 5.3 by an Interested Party, shall also include that Interested Party.

4.4. An Interested Party to a Selection Appeal must be a Selected Athlete for the Team which is the subject of the Selection Appeal.

4.5. RA shall determine the Interested Parties in its absolute discretion.

4.6. An Interested Party may lodge a Final Appeal in accordance with cl. 5.3 but not a First Instance Appeal.

*Legal Representation*

4.7. The Parties to an appeal (whether a First Instance Appeal or a Final Appeal) will not be entitled to be represented by a barrister or solicitor save with the leave of the NST, which will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions at the NST thinks fit.

## **5. APPEAL PROCESS**

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### **5.1. Steps prior to Selection Appeal**

- (a) An Athlete must not commence a Selection Appeal in the NST unless the provisions of this cl. 5.1 have been complied with.
- (b) Before submitting written notice in accordance with cl. 5.1(c), the Athlete must first have met and discussed the relevant decision with the Selection Ombudsman and attended a debrief with one or more of the Selectors regarding that decision (whether in person or by any means of communication). Failure to attend a debrief in accordance with this cl.

5.1(b) will preclude an Athlete from proceeding with an appeal under this Policy.

- (c) The Athlete must give written notice of his or her appeal to the RA Performance Director within 48 hours of the announcement of the decision against which the appeal is made by signing and delivering to the RA Performance Director a notice of the appeal in the form attached as Schedule 1 (**Notice of Appeal Form**). The Notice of Appeal Form must be accompanied by a non-refundable deposit to RA of \$200 (**Notification Fee**).
- (d) Within 48 hours of the Athlete providing the Notice of Appeal Form to the RA Performance Director in accordance with cl. 5.1(c), the RA Performance Director must provide the Athlete with a written statement of RA's reasons supporting the decision regarding the Athlete (**Reasons for Decision**). The Reasons for Decision should not exceed two pages in length.
- (e) Within 48 hours of the Athlete receiving the Reasons for Decision in accordance with cl. 5.1(d), the Athlete must provide the RA Performance Director with the Athlete's grounds of appeal to support the appeal (**Grounds of Appeal**). The Grounds of Appeal should not exceed two pages in length.
- (f) Within 24 hours of the RA Performance Director receiving the Grounds of Appeal in accordance with cl. 5.1(e), the RA Performance Director may provide the Athlete with a response to the Grounds of Appeal (**Reply**). The Reply should not exceed one page in length and should be limited to matters that are responsive to the Grounds of Appeal.
- (g) Within 24 hours of the expiry of the time to provide the Reply in accordance with cl. 5.1(f), the Athlete must provide a written response to the RA Performance Director which indicates whether the Athlete intends to proceed to a hearing of their Selection Appeal in accordance with cl. 5.2.
- (h) The Parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with this cl. 5.1, made on a without prejudice basis and kept confidential between the Parties.
- (i) For the avoidance of doubt, the Notice of Appeal Form, Reasons for Decision, Grounds of Appeal and any Reply may be submitted to the NST for the purposes of the First instance Appeal and or Final Appeal.
- (j) For clarity, time periods referred to in cl. 5.1 may be extended by agreement of RA and the Athlete in advance.
- (k) In the case of an appeal by an Athlete against any failure to be selected in a Team or selection or invitation for progression pursuant to the Event Requirements, then:
  - (i) the announcement of the decision can arise from omission to name the Athlete in a Team or Squad or list of invitees for progression;



- (ii) the time for appealing the decision shall commence on the first announcement of a decision under which the Athlete is omitted from selection or further consideration of selection;
- (iii) the Athlete shall have only one right of appeal in respect of the circumstances leading to omission under the first announcement.

## 5.2. **First Instance Appeal to the General Division of the NST**

- (a) A Selection Appeal must be heard in the General Division of NST in the first instance.
- (b) An Athlete may bring a Selection Appeal to the General Division of the NST for hearing on one or more of the following grounds, which the Athlete (**Appellant**) bears the onus of making out:
  - (i) that the Selection Policy was not properly applied by RA with respect to the Appellant;
  - (ii) the Appellant was not afforded a reasonable opportunity by RA to satisfy the Selection Policy;
  - (iii) RA was affected by actual bias in making its decision; and
  - (iv) there was no material on which RA's decision could be reasonably based.

### *Making an Application for a Selection Appeal*

- (c) An Athlete wishing to make an application for a Selection Appeal by the General Division of the NST must, within 24 hours of indicating to the RA Performance Director their intention to proceed to a hearing of their Selection Appeal under cl 5.1:
  - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Athlete; and
  - (ii) pay any filing or application fee required by the NST (**First Instance Application Fee**).

For clarity, unless agreed by RA and the Athlete, an extension of time to make an application for a Selection Appeal may be granted by the NST under this clause only in extenuating circumstances outside the control of the Athlete concerned.

- (d) Service Charges may also be payable to the NST. The Service Charges will be apportioned equally between the Parties unless RA, in its sole and absolute discretion, determines to bear the whole of the Service Charges for the First Instance Selection Appeal. If RA makes such a determination, it will advise the Athlete in writing.
- (e) Where the NST upholds a First Instance Selection Appeal, any Notification Fee, First Instance Application Fee and Service Charge paid by the Appellant will be reimbursed by RA.

#### *Selection Appeal Procedure*

- (f) A First-Instance Selection Appeal heard in the General Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below, which apply to all RA First Instance Selection Appeals:
  - (i) A Rowing Expert may be appointed by the NST CEO to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the *National Sports Tribunal Practice and Procedure Determination 2021*.
  - (ii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
  - (iii) The NST must provide written notice to the Parties of its **determination** as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a **statement of the reasons** for its determination within 3 Business Days of notifying the Parties of its determination.
  - (iv) The determination of the NST is final and binding on the Parties and, subject only to an appeal to the Appeals Division of the NST pursuant to cl. 5.3, no party may institute proceedings in any other court or tribunal.
- (g) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 5.4).

#### *Selection Appeal Outcomes – Reconsideration and Redetermination*

- (h) The NST may uphold or dismiss a First Instance Selection Appeal.

- (i) Subject to cl. 5.2(k), where the NST upholds a First-Instance Selection Appeal overturning the original decision, the NST must refer the question or matter the subject of the appeal back to RA for reconsideration and redetermination.
- (j) In reconsidering and redetermining the question or matter the subject of the appeal, RA must observe the principles of natural justice. Any decision made by RA regarding the Appellant after such referral, is final and binding, subject only to the Appellant commencing an appeal to the Appeals Division of the NST in accordance with cl. 5.3.
- (k) Notwithstanding cl. 5.2(i) the NST may itself determine the issue of the Appellant's selection, or broader decision regarding selection of the Team for the Event where the NST determines that:
  - (i) it would be impractical to refer the decision for redetermination to RA given the time available; or
  - (ii) in making its original decision, RA had such disregard for proper application of the Selection Policy that a reasonable person would apprehend that it is unlikely that the Selection Policy would be applied properly by RA if the decision was referred back to RA.
- (l) Prior to making a determination under cl. 5.2(k) the NST must advise the Parties and any Interested Party of the possibility of it making such a determination and that it may itself determine the issue of the selection, and provide the Parties and any Interested Party with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 5.2(l).

### 5.3. Final Appeal to the Appeals Division of the NST

- (a) Any second and final instance appeal (**Final Appeal**) must be heard by the Appeals Division of the NST.
- (b) A Final Appeal may be lodged either:
  - (i) after the determination of a First Instance Selection Appeal by the NST but before reconsideration and redetermination; or
  - (ii) after reconsideration and redetermination (whether re-determined by RA or the NST).

- (c) A Final Appeal may be lodged by:
  - (i) a party to the First Instance Selection Appeal; or
  - (ii) an Interested Party if the Interested Party, after reconsideration and redetermination (whether re-determined by RA or the NST), is not selected to a Team for an Event, not selected or invited for progression pursuant to the Event Requirements or is removed from considered for selection to the Team, a Squad or (if applicable) the Team or Squad itself.

*Making an Application for a Final Appeal*

- (d) RA or an Athlete eligible to appeal a determination or decision of the General Division of the NST (**Final Appellant**) must, within 24 hours after the Final Appellant receives the reasons for the decision notified under cl 5.3(b):
  - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Final Appellant; and
  - (ii) provide a copy of the NST Application Form to the other Parties; and
  - (iii) pay any filing or application fee required by the NST (**Final Application Fee**).

For clarity, unless agreed by RA and the athlete whose selection is the subject of the appeal, an extension of time to make an application for a Final Appeal may be granted by the NST under this clause only in extenuating circumstances outside the control of the Final Appellant concerned.

- (e) If the Final Appellant is an Interested Party, RA will reimburse the Interested Party a sum equal to the difference between the Final Application Fee paid by the Interested Party and the First Instance Application Fee paid by the Appellant in respect of the First Instance Selection Appeal.
- (f) Service Charges may also be payable to the NST. Service Charges will be apportioned equally between the Parties unless:
  - (i) the Final Appellant was the Appellant in the First Instance Selection Appeal and the First Instance Selection Appeal was dismissed – in which case the Final Appellant will bear the whole of the Service Charges for the Final Appeal;

- (ii) in all other scenarios – RA, in its sole and absolute discretion, determines to bear the whole of the Service Charges for the Final Appeal. If RA makes such a determination, it will advise the other Parties in writing.
- (g) Where the NST upholds a Final Appeal, any Final Application Fee and Service Charges for the Final Appeal paid by the Final Appellant will be reimbursed by RA.

#### *Final Selection Appeal Procedure*

- (h) A Final Selection 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 RA Final Selection Appeals:
  - (i) A Rowing Expert may be appointed by the NST CEO to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the *National Sports Tribunal Practice and Procedure Determination 2021*.
  - (ii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
  - (iii) The NST must provide written notice to the Parties of its determination as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a statement of the reasons for its determination within 3 Business Days of notifying the Parties of its determination.
- (i) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 5.4).

#### *Final Appeal Outcomes – Reconsideration and Redetermination*

- (j) The NST may uphold or dismiss a Final Appeal.
- (k) Subject to cl. 5.3(m) where the NST upholds a Final Appeal overturning the determination of the NST in the First-Instance Selection Appeal, or the substituted decision of RA, the NST must refer the question or matter the subject of the appeal back to the RA for reconsideration and redetermination.

- (l) In reconsidering and redetermining any question or matter the subject of the appeal, RA must observe the principles of natural justice. Any decision made by RA regarding the selection of the Team for the Event after such referral, is final and binding.
- (m) Notwithstanding cl. 5.3(k), the NST may itself determine the issue of selection where the NST determines that:
  - (i) it would be impractical to refer the decision for redetermination back to RA given the time available; or
  - (ii) in making its substituted decision, RA had such disregard for proper application of the Selection Policy that a reasonable person would apprehend that it is unlikely that the Selection Policy would be applied properly by RA if the decision was referred back to RA.
- (n) Prior to making a determination under cl. 5.3(m) the NST must advise the Parties that the NST intends to make such a determination and provide the Parties with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 5.3(n).
- (o) The determination handed down by the Appeal Panel with respect to an Appeal is final and binding on the Parties.

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

- (a) If, on receiving an application for arbitration of a Selection Appeal, the NST CEO is satisfied that it is necessary to deal with the application expeditiously, the NST CEO is to convene a preliminary conference (if appropriate) and then immediately appoint one or more NST members to deal with the dispute.
- (b) The NST CEO and the appointed NST member(s) are to take all steps necessary to deal with the dispute as expeditiously as the case requires. This may include, but is not limited to, waiving compliance with any provision of the NST (Practice and Procedure) Determination 2021 that a party to the dispute would otherwise have to comply with.

## Schedule 1

### ROWING AUSTRALIA Notice of Appeal Form

#### Instructions

1. This form should be used by an Athlete (***Appellant***) who wishes to appeal a decision of the kind referred to in clause 3.2 of the RA Selection Appeals Policy to the National Sports Tribunal.
2. An Appellant may only pursue a hearing of their appeal if the Appellant, before submitting this form:
  - a. has met and discussed the relevant decision with the Rowing Australia Selection Ombudsman and;
  - b. attends a debrief with one or more of the Selectors regarding the that decision (whether in person or by any other means of communication).
3. This form must be completed and signed by the Appellant.
4. Once completed and signed, this form must be provided to the Performance Director of Rowing Australia within 48 hours of the announcement of the decision against which the Appeal is made.
5. This form will only be accepted if the Appellant pays the sum of \$100 to Rowing Australia and that sum is received within 72 hours of the announcement of the decision against which the Appeal is made. This fee is non-refundable.

#### 1. Athlete details

<b>Name:</b>	
<b>Address:</b>	
<b>Phone:</b>	
<b>Email:</b>	

## 2. Appeal Grounds

Appellant to 'tick' which ground of appeal he or she will rely on in bringing the appeal. The sole grounds for any appeal to the NST are that:

	Ground of Appeal	RA Selection Appeals Policy ref.	
a)	the Selection Policy was not properly applied with respect to the Appellant	5.2(b)(i)	<input type="checkbox"/>
b)	the Appellant was not afforded a reasonable opportunity by RA to satisfy the Selection Policy	5.2(b)(ii)	<input type="checkbox"/>
c)	RA was affected by actual bias in making its decision	5.2(b)(iii)	<input type="checkbox"/>
d)	there was no material on which RA's decision could be reasonably based	5.2(b)(iv)	<input type="checkbox"/>

## 3. Payment details of Rowing Australia

<b>Account Name:</b>	Rowing Australia Limited
<b>BSB:</b>	062 900
<b>Account Number:</b>	1099 5628
<b>Payment description:</b>	Team Appeal, followed by First Name, Last Name of Appellant

Signed by the Appellant

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Date .....