



# Getting it right ...

## Guidelines for selection

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**A practical guide to the issues associated with selecting representative teams and individuals for sporting events**

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## A Introduction

The purpose of this manual is to help sporting organisations and selectors 'get it right' when choosing individuals and representative teams for sporting events.

For sporting organisations the aim is to select the best possible representatives for each particular competition. In doing this they must develop a selection process which allows the athletes fair and full opportunity to display their worthiness for selection and then also ultimately gives them the best possible opportunity to fulfil the aims of the organisation at the competition.

For most high performance athletes, selection in a major representative team is the pinnacle of years of hard work and training. Selection can be euphoric. Rejection can be devastating.

It would be fair to say that many of the individuals who are vested with the responsibility for making selections do not have a great deal of opportunity to train for the task. They must rely on their own common sense, experience and knowledge of high performance sport. Selection is a difficult process, with many contributing factors, interests and emotions involved. If the selection process is clearly and widely understood, seen to be fair, transparent and unbiased, then selection disputes will be minimised and results will be optimised.

This manual is a 'hands-on' guide to understanding all the issues associated with the selection process. That process includes:

- deciding on the selection philosophy
- development of selection criteria
- production of a written selection policy document
- wide distribution and communication of the policy
- the selection process itself, including appeal process
- right through to the final step of assessing the success of the process with a view to improvements for next time.

The manual is designed to encourage best practice in the selection process. It emphasises careful planning, communication with stakeholders (including athletes), the use of clear and precise selection criteria, and consideration of flexibility, to enable the best possible team to be selected.

There is a detailed index divided into major sections and then into subsections that can be referenced either on a section-by-section basis or read and studied as a whole. Most sections have a summary at the end of the section, for easy reference and emphasis on important issues. Appendixes to the manual include example clauses and other documents referred to in the body of the document.

Many of the examples and references are for selection for major events, however the principles should be the same for selection for major games, world championships, national championships, junior events, smaller international competitions, institute programs, and state or national squads. Of course the level of detail and complexity will vary, but overall the process and key elements should be similar.

**Note:** The Australian Olympic Committee's (AOC'S) member national sporting organisations should use this manual as a guide only when developing Olympic selection policies, as the AOC has developed specific procedures for Olympic team nomination and selection for national sporting organisations to follow.

## **B Legal issues**

### **B(i) Introduction**

The emphasis of this manual is on dealing with the practical issues arising from selection. The increasing professionalism of sport and the advent of public funding and accountability have meant that in recent times the selection process has come under the scrutiny of the legal system. This has been through both the domestic courts and such specialist tribunals as the Court of Arbitration for Sport (CAS).

The main aim of the selection process should be to enable selection of the best possible representatives for each particular competition, **not** to avoid appeal. It is important, however, to understand the possible legalities involved in the selection process. The purpose of this section is to briefly outline legal issues involved in the selection process and give some examples of how those issues have been dealt with by the domestic courts and sports tribunals.

Even though the domestic courts and specialist sports tribunals have indicated a reluctance to become involved in selection decisions, they have been prepared to become involved in reviewing the process, and setting aside selection decisions if those decisions have not been reached fairly and in accordance with the process put in place by a particular sports association. For this reason, it is important that the individuals involved in determining and implementing selection policies have a thorough understanding of good process.

A number of the issues referred to in this section will be dealt with in more detail in the body of the document. They are mentioned now in order to bring them to the attention of those given the responsibility of developing and finalising the selection process before that process starts.

### **B(ii) Selection process and ‘the courts’**

There are three possible forums in which an athlete might ultimately appeal against a selection decision: CAS, the domestic courts (such as the relevant state Supreme Court), and a sport’s internal appeals tribunal. Note that the AOC’s Olympic Team Selection By-Law prescribes the establishment of an NSO internal appeals tribunal to deal with nomination disputes in the first instance.

An internal appeals tribunal is usually the most simple and cost-effective method for all and in most cases is effective in settling the dispute. This is discussed further in section D.

An appeal can only be lodged with CAS if CAS is the appeals body specified in the relevant selection policy, or if it is agreed between the parties (that is, the sporting organisation and the athlete) after a dispute has arisen, that they will present the case to

CAS. If the selection policy or subsequent agreement also contains a provision that the appeal to CAS will be final and there will be no further appeal to the courts (an 'exclusion provision'), then the domestic courts cannot hear any appeal. This is due to provisions in legislation (each state's *Commercial Arbitration Act*) that make exclusion provisions binding as long as arbitration is to be conducted by an international body. CAS meets this requirement because its seat is in Lausanne. In 2000, in a selection dispute between an athlete and the Judo Federation of Australia, the NSW Court of Appeal confirmed that the Supreme Court could not hear any appeals against decisions of CAS where there was a valid exclusion provision.

If the appeals body specified in the relevant selection policy or agreed to between the parties is not CAS (that is, an internal appeals tribunal), then the domestic courts may hear appeals from selection disputes and might not find an 'exclusion provision' binding. This means that any sport using its own appeals panel without provision for further appeal to CAS leaves it open for athletes to appeal to the courts instead.

In some circumstances (for example, Olympic nomination or non-nomination) an athlete may elect, with the agreement of the relevant NSO, to have the dispute heard directly by CAS. In this instance CAS assumes the powers of the internal appeals tribunal. This is often the case where time is of the essence.

## **Domestic courts**

Best practice dictates that sporting associations should put in place an appeals process that attempts to deny access to the domestic courts for appeal (refer to section D).

Even where it is open for an athlete to appeal to the domestic courts, the courts have generally been reluctant to become involved in the internal affairs of sporting organisations. However, they will hear cases where the athlete shows that he or she has a proper action at law, or 'justiciable issue'. This will arise when:

- there has been a **breach of natural justice** (refer to section B[iii]) by the sporting organisation
- there has been a **breach of contract**. In 1996, the Supreme Court of New South Wales held that the publishing of selection criteria and athletes' subsequent attempts to be selected were not enough to constitute a contract between the Australian Yachting Federation and its athletes. However, if athletes have signed off on selection policies, filled out application forms and/or competed in events specifically run for selection purposes, it is still open for a court to find that a contract exists. This would bind the sporting organisation to the terms of the contract, that is, the selection criteria. The courts may also find a breach of contract if a sporting organisation has failed to abide by its own constitution or by-laws
- there has been an **unreasonable restraint of trade** on the athlete by the sport. In order to argue this ground, an athlete must first show that the sport is his or her 'trade', which most athletes vying for Australian selection would be able to do. Simply

not being selected, however, is never enough to show a restraint of trade — the non-selection must have been unreasonable. This would only be proved by an athlete if the selection decision was unreasonable on grounds such as a failure to follow a published selection criteria

- the athlete can show there has been **unlawful discrimination** in the selection process. ‘Unlawful discrimination’ is defined in law as unreasonable discrimination on certain specified grounds, including gender, race, physical impairment or pregnancy

While sport is generally exempt from sex discrimination legislation with respect to its participants, in 1996 a female team manager appealed to the Equal Opportunity Commission against her non-selection on the basis of sex discrimination (although the appeal failed on the ground that she could not establish that, but for discrimination on the basis of her gender, she had a high degree of assurance of success in being selected). The appeal highlights that sports selecting team management and coaching positions should be aware of discrimination laws and should seek advice on a case-by-case basis.

With respect to physical impairment, anti-discrimination legislation does again allow for some reasonable discrimination based on this in relation to sport. The definition of disability includes the presence of disease and illness, and the relevance of this to sport was highlighted in 1992 when some Australian basketball players expressed their misgivings at the prospect of playing against ‘Magic’ Johnson at the Olympics due to his HIV-positive status. However, to exclude Johnson from the American team for this reason would have been unreasonable discrimination based on his physical impairment (illness), and the US Olympic Committee rightfully allowed him to retain his place.

In regard to selection, many sports require medical examinations and fitness assessments, either as part of the selection process or following selection but prior to competition. Should such an assessment reveal evidence of an infectious disease which has not yet affected an athlete’s ability to perform, the sport concerned needs to take care that subsequent actions do not amount to unreasonable discrimination. At the same time, an athlete may have signed a team agreement under which they have an obligation to disclose such a condition, or the athlete may have acknowledged that they can be directed not to participate in an event because of an unacceptable risk they pose to themselves or others. In such circumstances, a proper process must be in place and followed for communicating this to the athlete concerned. In relation to Olympic NSOs, medical assessments are governed by AOC policies and processes.

Again, assessment of whether the discrimination is ‘unlawful’ should be made on a case-by-case basis and with professional advice where needed.

The type of relief offered by domestic courts to selection disputes will depend on the cause of action. While it may be possible for an athlete to seek an injunction to compel a sporting organisation to select them, courts are likely to be reluctant to take actions that substitute

the court's decision for that of the selectors. In most cases, they are more prone to order that the sport correct the breach of natural justice or contract and then make the selection decision again having due regard to these matters.

## **Court of Arbitration for Sport**

Most selection disputes nowadays are heard by CAS rather than the domestic courts, either in the first instance or as the final appeals body.

Many of the disputes heard by CAS are actually about eligibility — that is, an athlete's eligibility under the relevant international federation or International Olympic Committee or major event organiser's rules to represent the country's team for which they have been selected. It is therefore important for each sport to know these eligibility rules and apply them correctly. This will be discussed further in section C(v). It is a good idea to build these rules into the selection policy so that there can be no conflict between the two.

As with the domestic courts, CAS will not substitute its decision on a selection dispute for that of the relevant selectors. In a 2002 case between an athlete and Skiing Australia, CAS said: *'The decision whether or not to nominate the Appellant is not a decision which this Panel can or should consider. The matter must be remitted to the Selection Panel for their determination'*. Again, CAS will determine whether or not the initial selection decision was properly made and, if not, return it to the sport's selectors to make again having regard to the matters raised at appeal.

Generally, the only ground on which CAS will hear a selection appeal is that the selection criteria have not been properly followed and/or implemented. Successful appeals based on this ground have included instances where:

- selectors have failed to consider the exercise of discretion where it was allowed for under the policy
- procedures set out in the selection policy relating to the conduct of selection events were not properly followed
- selection criteria were amended retrospectively after the conduct of selection events
- the guarantee of selection provided to an athlete prior to the conduct of selection events was subsequently withdrawn.

Selection criteria may also be deemed by CAS not to have been properly followed and/or implemented where there has been a failure of natural justice in their implementation. For example, in a 2000 case between a swimmer and the Japanese Amateur Swimming

Federation, the CAS arbitrator stated that a selection decision may be quashed if selection criteria, established prior to selection events, are not communicated to the athletes — a clear failure of natural justice.

## **B(iii) Obligations of the sporting organisation**

The sporting organisation selecting a team has obligations to fulfil in making those selections. Mostly these obligations are to the athletes concerned in the selection process. Athletes' rights mirror the organisation's obligations. By fulfilling its obligations to the athletes, a sporting organisation will also fulfil its obligation to its members, government, sponsors and the public to select an appropriate team in a fair and proper manner.

The legal obligations included in selection decisions reflect those imposed on other decision makers subject to the rules of administrative law or, in the case of an Olympic team, the Olympic Charter. The following standards reflect best practice to ensure a sporting organisation fulfils its obligations with respect to selection decisions:

- **Decisions should be made in accordance with the principles of natural justice**

Natural justice imposes an obligation for fair procedures to be put in place and decisions to be made in accordance with those procedures. An essential element of natural justice is that an athlete has received **knowledge of the issue**, it is critical that individuals have been made aware of the selection policy and criteria and that the policy has been communicated to the members. For example, a published selection policy should be adopted, communicated to members in a timely manner and then the selection decision made in accordance with that policy. There are two aspects to the concept of natural justice:

- 1 The opportunity to be heard** — in selection terms, this translates into the opportunity for an athlete to meet published selection criteria. This means criteria must be made available to athletes in enough time for them to meet all criteria. This aspect of natural justice is obviously also of great relevance to appeals and will be discussed in section D. This requirement may also impose an obligation on sports to ensure selection criteria are capable of being met by all appropriate athletes and are not unreasonable.
- 2 No bias** — selectors must bring no bias to the selection decision. This includes actual or perceived bias. Perceived bias should be dealt with by having a robust policy in place for dealing with conflict of interest. This will be discussed at further length in section F(v).

- **Decisions should be made taking account of relevant considerations and ignoring irrelevant ones**

The easiest way to ensure that this happens is for the selection policy to outline the types of considerations that may be relevant for the exercise of any discretion by selectors. Decisions should then take account of these guidelines. Care does need to be taken, however, to ensure that these guidelines are not then treated as actual selection criteria if they are not (refer to section C[vii]). Where the policy contains

absolute discretion for the selectors, common sense should guide which considerations are relevant and which may be irrelevant, taking into account the stated selection philosophy (refer to section C[iii]).

- **Decisions must not be unreasonable**

Any selection decision that is so unreasonable that no reasonable person could have exercised their power to decide in that way should, and will, be open to successful appeal. For example, the use of selectors' discretion to select an athlete with obviously no chance of success at the relevant event, ahead of another athlete who has a good chance of such success, where the stated selection philosophy is solely to win medals at the event, is likely to be seen as an unreasonable exercise of that discretion.

- **Decisions must not be made under direction**

Where a selection decision involves the exercise of discretion, selectors must not act under the direction or influence of any other person.

- **Decisions must be made under proper authority**

Selection decisions must be made in accordance with the published selection policy. This policy must also be properly authorised in accordance with the sporting organisation's constitution, which usually includes endorsement of both the policy and the selection decisions by the Board.

- **Decisions must be made in good faith**

The requirement of selectors that they act in good faith is closely aligned with the other obligations outlined in this section, but is also wider than each of them. For example, to act in good faith means that a selector should bring all of their relevant knowledge and experience to bear in making the selection decision. Good faith also embodies the concept of selectors acting with honesty, good intentions and a conviction as to the correctness of the decisions they make.

Besides these obligations in making sound selection decisions, the sporting organisation is further obliged to take a number of steps following selection. These include, at a minimum, informing all athletes of the outcomes of selection and providing an avenue of appeal for aggrieved athletes that they are also informed about. Other steps that are highly recommended will be discussed throughout this manual.

## Summary

- In modern sport the selection process has increasingly come under legal scrutiny, which sports should be aware of when drafting selection policies.
- There are three possible appeals forums:
  - internal appeals tribunal
  - Court of Arbitration for Sport
  - domestic courts
- An appeal can only be lodged with CAS when CAS is the appeals body specified in the relevant selection policy or if it is agreed between the parties to present to CAS.
- Domestic courts are reluctant to become involved in the internal affairs of sporting organisations. Any appeals through domestic courts can be a long process.
- If an internal appeals tribunal is the only appeals body specified, the possibility is left open for appeals to the domestic courts.
- The best policies specify CAS in the first instance or after an internal appeals tribunal (depending on the sport and situation) and as the **final** appeals body.
- The main legal issues include:
  - breach of natural justice
  - breach of contract
  - unreasonable restraint of trade
  - unlawful discrimination
  - eligibility
  - the process of conducting selection not being correctly followed.
- The sport should be aware of its obligations and the rights of the athletes.

## C Development of the selection policy

### C(i) Introduction

Any selection policy is an overall plan for how selection will take place. It should include:

- a philosophy (aim)
- selection criteria or standards
- a process through which athletes will be judged which may involve trials or events
- an appeal process.

The final plan will be expressed in a selection policy document.

These guidelines should assist in fulfilling the requirements of the various bodies, but a thorough understanding of their requirements is necessary.

**Note:** Olympic team selection is the responsibility of the AOC. When an individual sporting association embarks on the task of developing its nomination criteria for the Olympic team it must comply with the AOC's requirements pursuant to the Olympic Selection By-Law. A sport is responsible for developing nomination criteria that determine which athletes are to be nominated to the AOC for selection. Only athletes who have satisfied the requirements of the nomination criteria and the AOC selection criteria will be eligible for selection by the AOC. This information is available on the AOC web site ([www.olympics.com.au](http://www.olympics.com.au)).

The situation is similar for Commonwealth Games and Paralympic teams where selection is ultimately the responsibility of the Australian Commonwealth Games Association (ACGA) and the Australian Paralympic Committee (APC) respectively.

### C(ii) Timing

It is important that those who have the responsibility of developing and finalising the selection policy realise that the process will be time consuming. It is not something that can or should be done 'overnight'. Nor should it be done under the pressure of a fast approaching deadline.

Sufficient time needs to be allowed in order to work through all the stages of the process, to allow for proper consideration of the issues and for feedback from stakeholders, and then to work through any difficulties encountered at any particular stage. Refer to section B(iii) regarding the sporting organisation's obligation that athletes have adequate notice of all performance standards against which they will be judged. This notice means athletes must be given enough time to identify and properly prepare (train) to meet those standards.

For example, if a particular event were to be used as a qualifying event for the next Olympics, then athletes ideally should know of that fact at least 12 months prior to the date of the event. If the event is in February of the Olympic year the policy document would need to be published by February **the year before**.

Careful consideration also needs to be given to the timing of any selection trial/s relative to the event the selection is for. Timing should be such that athletes are able to prepare optimally for the main event, and that staff have enough time to attend to all logistical and administrative requirements.

### **C(iii) Selection philosophy (the aim of the process)**

The first step in the development of the selection policy is to determine what the aim of the selection process itself is to be. The aim of the selection process will almost certainly be determined by the type of event/championship being considered.

For example:

- For a world junior championship event the aim may be to pick all athletes with the ability to achieve a medal result at that particular junior world championship, together with other athletes identified as having the potential to develop into representatives at the senior international level.
- For a world championship the aim may be to select all athletes capable of a top-eight performance at world championships, together with any other athlete identified as adding value to the team as a whole and increasing the chances of any team member achieving a medal result.
- At an Olympic Games the aim may be to select only those athletes who have the ability to finish in the top eight.
- For a development event it may simply be to select athletes to gain experience in order to develop for the future.

Each of the examples set out above may require the adoption of a different type or form of selection criteria in order to achieve the stated aim (refer to section C[v] and [vi] for more detail).

The aim of the process should be to enable selection of the best possible team in line with the overall philosophy/ aim for the event. Consideration must be given not only to how to enable the best team to be selected but also how the selection process enhances the optimisation of performance at the event itself.

### **Who should be responsible for determining and implementing the selection philosophy?**

Members of the high performance team, including the head coach or other high performance program leader, are entrusted with the responsibility for all aspects of high performance and will be judged, at least in part, by results at major championships. As a

matter of common sense these individuals should have significant input. The head coach, high performance director or equivalent persons responsible for the relevant area of high performance (or junior development) are logical candidates for determining an appropriate selection philosophy which may then need to be submitted to the Board for final approval.

## **C(iv) Implementing the philosophy and planning the policy**

Once the selection philosophy has been decided on, the task is then to decide, on a step-by-step basis, how that philosophy is to be implemented.

- **Who should be responsible for determining how the philosophy will be implemented?**

For all the reasons set out in C(iii), the leader of the high performance program (or sub-area) should be given the responsibility to lead the process.

- **Who should have input to the policy?**

Those responsible for developing the policy should consult with all the knowledgeable and interested parties. Those parties should be consulted in person or invited to submit written opinion/s which should be given due consideration during the decision-making process. Input should be sought from the following:

- head coach and other members of the high performance team
- elite athletes and past elite athletes
- high performance coaches from within the sport and even from other sports
- other parties respected for their knowledge and/or experience in sport at the elite level.

- **External influences**

The realities of modern sport will almost certainly mean the organisation will need to at least consult, if not seek input from, a number of interested parties from outside the sport when considering their selection policy. Sponsors, for example, may have rights that enable them to dictate the timing or the venue for a selection trial or other event that will be part of the selection qualifying process.

The international federation (or event organisers) will set qualifying times or performances and restrict entrants for major championships. It will also set time limits for qualifying performances and a date before which all individual entries for a particular championship must be submitted. All of those factors will influence decisions in relation to the selection policy.

For multi-sport events such as the Olympic, Paralympic or Commonwealth Games, NSOs will need to comply with the requirements of the relevant policies or by laws established by organisations such as the AOC, APC or ACGA.

The Australian Sports Commission, Australian Institute of Sport, state institutes and academies and state governments all have a direct interest through their respective contributions to sport. The interest of these bodies is the same as that of sporting organisations — to ensure the best possible team is selected, particularly in nominated ‘benchmark events’ that are key indicators to success of sports.

### **Method of selection**

How to give athletes the opportunity to trial and demonstrate their ability must be considered. Some common methods of allowing athletes the opportunity to vie for selection are:

- selection trial
- multiple selection trials
- specified events within a whole season
- rankings
- head-to-head competitions
- selection camp.

It is important to note that the method/s chosen should not only provide the opportunity for the best possible team to be selected, but specifically the best possible team for the event/competition they are being selected for. In addition, the selection process must enhance the ability for the athletes to then maximise their performances at the time of the event.

Issues to be considered include:

- timing of selection relative to the event
- course or condition specifics of any trial events
- involvement of tactics or interdynamics (for example, will a local competition with lower depth and quality change the tactics and even outcomes relative to an international competition?)
- applicability of the selection method to the event for which the athletes are being selected
- do ranking methods accurately reflect the ranking of athletes for the specific event?

### **C(v) Considering selection criteria**

Selection method and criteria must be complementary and designed to achieve the desired aims and outcomes of the selection process. Selection criteria are the actual principles or standards on which eligible athletes will be judged for selection. Those standards can either be objective, subjective or a combination of both.

## **Selector's discretion**

A selection policy that gives selectors discretion when they make their decisions is one that gives the selectors the liberty of making decisions as they see fit, either absolutely or within limits set by the policy.

When a sporting organisation chooses between objective selection criteria on one hand and subjective selection criteria on the other, it is really making a decision on how much liberty (or discretion) it gives to its selectors in the decision-making process. If purely objective selection criteria are chosen, the selectors have more of an administrative role. If however, purely subjective criteria are used, selectors play a much more active role in the selection process.

The role of selectors and their use of discretion is discussed next (refer to section F).

## **Objective selection criteria**

An example of an objective selection criterion (or standard) is as follows:

Any athlete who finishes 1st or 2nd at the selection trial **and** who has achieved the qualifying standard during the qualifying period will be automatically selected in the team.

Purely objective criteria do not allow the discretion of the selectors to influence selection decisions. If a particular athlete achieves all of the listed criteria, the athlete has a **right** to be selected. This right will be enforced/protected either through the courts or via the appeal process (refer to section D).

## **Subjective selection criteria**

An example of a purely subjective selection criterion is as follows:

The selectors will name the three athletes who, in their opinion, have the best chance of achieving a medal result at the [year] Olympic Games. This discretion is absolute.

In this example, there are no actual or tangible standards against which athletes will be judged or against which they will be compared with other athletes. The selection decision is based entirely on the collective opinion of the selectors as to the ability of individual athletes to achieve results at the championship or event in question. The athlete has no right to selection by virtue of any particular performance or achieving any particular standard and therefore the athlete's rights are limited to the organisation fulfilling its obligations as set out in section B(iii).

## **Combination of objective and subjective criteria**

Selection criteria involving various combinations of objective and subjective criteria can be used, for example:

'The 1st and 2nd placed athletes at the selection trial, having achieved the qualifying time within the qualifying period will be automatically selected for the [team]. A third member may be added to the team at the discretion of the selectors. This discretion is absolute and need not be exercised by the selectors.

The example set out above is a simple combination of objective/subjective criteria. Examples of more complicated and/or sophisticated clauses are set out in Appendix 1.

The choice of selection criteria is arguably the most significant decision that will be made in regard to the selection policy. That choice will have consequences for the organisation, the sport in general and for the athletes vying for selection. The implications and consequences need firstly to be identified, and then carefully considered, by those developing the selection policy.

### **Advantages of objective selection criteria**

- **Certainty** — using purely objective selection criteria, if set out in clear and precise language, creates an overall atmosphere of certainty in relation to the selection policy. Such criteria usually involve selection standards, selection trial/s and a 'first past the post is in the team' criterion that is easy to understand and follow by athletes, coaches, media and interested parties.
- **The athletes/coaches are often happy** — as discussed in section C(vi) many athletes and their coaches like objectively based selection criteria as they know exactly what they have to do.
- **Replicates the big occasion 'pressure'** — most advocates of objective-based selection criteria point to the fact that the 'first past the post at the selection trial' replicates the pressure and atmosphere that athletes will be subjected to if they are successful in making the team. This is particularly relevant if the team being considered is for a major championship such as the Commonwealth Games, world championships or Olympic Games. The argument is that the pressures associated with training, peaking and producing your best performance at a cut-throat/s trial will give the athletes invaluable experience at all those aspects of championship performance if they make the team, or alternatively for the future.
- **Selectors' role is straight forward** — purely objective selection criteria in effect means that athletes select themselves. This being the case, the selectors' job becomes predominantly an administrative one. The selectors end up focusing on ensuring the proper process is followed, crossing t's and dotting i's and naming a team. They do not select the team. This means they avoid having to use their discretion and perhaps make difficult decisions based on subjective assessments of the ability of various athletes.

## Disadvantages of objective selection criteria

- **Lack of flexibility** — with purely objective-based selection criteria there is always a chance that the sport's outstanding individual athletes will fail to make the team because, for any number of legitimate reasons, they do not meet the rigid selection standard and/or do not get full opportunity to prove their worthiness for selection. An athlete may be ill or injured and not able to compete at a selection trial, or could be injured in a selection trial itself, or be affected by extreme conditions or circumstances. The result is that the best team may not be selected and/or athletes who may be regarded as certainties for the team, and who could still even be regarded as overwhelming favourites for outstanding individual success at the championship event being considered, do not ultimately represent Australia in a major championship.
- **Timing of peak performance** — the flipside to the argument that a 'one-off' major selection trial replicates championship pressure (see above), is the equally legitimate argument that forcing athletes to peak for a one, or even more than one, selection trial/s places them at a significant physiological and psychological disadvantage when their major focus should be only one physical and emotional peak for the year — that being the major championship for which they are vying for selection. This argument can be further advanced by considering the fact that many of the outstanding athletes from other countries (with less depth) may be pre-selected for major championships. This pre-selection gives those athletes the advantage of timing their physical preparation for one peak only.
- **Pressure of selection is not always equal** — objective criteria, especially when associated with trial events, do not carry equal pressure for all triallists. For example, a young, inexperienced and/or less credentialed athlete with no pressure and 'nothing to lose' may have an exceptional day at a trial and qualify for the team by way of right over an athlete with a proven track record at major events. For the well credentialed athlete, a cut-throat objective qualification process can carry more pressure than the major event itself as they may have 'everything' to lose. A young, inexperienced athlete winning their way into the team may not in fact be ready for the pressures of the competition for which they are being selected and the selection process may not have prepared them for this. The result may be that the best team is not selected.

## Advantages of subjective selection criteria

- **Flexibility** — the major advantage of subjective selection criteria, is that it provides the flexibility for a range of circumstances, gives athletes a broader opportunity to demonstrate their ability for selection and allows the selectors to pick what, in their opinion, is the best possible team. Most team sports use subjective criteria for this reason.

- **Keep the stars happy** — most of any sports' superstars/outstanding champions and their coaches generally like the security of knowing that selectors may have the discretion to pick them if things go wrong at a trial or they are injured or ill at the time of selection.
- **Selectors can 'tailor' the team** — subjective criteria enable the selectors to pick a champion team rather than have a team of champions forced on them. This aspect is most significant in team sports or in sports/events where an element of team tactics or flexibility in personnel is an advantage (refer to section C[vi]). It also allows selectors to select athletes that are most suited to the event's particular course or conditions (for example, hilly, flat, windy).
- **Peaking** — not having a rigid trial/s or event/s allows athletes, who are expected to perform well at major championships, the luxury of gearing all their training and emotion towards one single peak for the year at the major championship. It may also allow athletes who have sustained an injury enough time to undertake a recovery process which will ensure they are at their best for the major competition.
- **Qualitative approach** — selectors have been chosen because of their knowledge and understanding of the sport and the policy, including selection criteria and the aims of the policy. A good case can be put forward that they are the best people to determine who should be in a particular team or event. Where subjective criteria are involved, especially the use of discretion, those people who have been chosen as the most capable of making those decisions actually get to make a decision.

### **Disadvantages of subjective-based selection criteria**

- **Discontent among athletes/coaches** — as discussed later in this document (Section C[vi]), most athletes and their coaches prefer objective-based criteria. They like to know exactly what they have to **do**, with a preference for being able to earn their spot by right of performance in a selection trial or event. They may be worried about the outcome of subjective criteria before selection, and not agree with it after selection.
- **Pressure on selectors** — in situations where selectors have significant discretion when making their decisions, they come under significant pressure from the various parties interested in the outcome of their decisions (the athletes, coaches, media, bodies such as the Australian Commonwealth Games Association and AOC, and the particular sport's officials). Much of this pressure can be averted by the organisation ensuring that right selectors are chosen (refer to section F); that the process is clear and transparent; that selection policy and criteria are well publicised and settled early; and that all stakeholders have been informed and educated about the process and criteria (refer to section E). As noted above, it can equally be argued that the selectors are the most appropriate people to make these difficult decisions.

- **Softer options for athletes** — it is often argued that giving selectors discretion is a softer option for the athletes because they are aware that they can still be selected even if they fail in a particular event. It must be noted, however, that subjective criteria allowing selectors discretion will almost always allow selectors to consider the competitive record of athletes under consideration for selection, which will include performances at the selection trial/s.
- **Risk of misunderstanding** — subjective criteria, especially those involving discretion in the hands of selectors, are often misunderstood by athletes, their coaches and other interested parties (such as the media). This, however, can be averted through the adoption of practices set out in this manual (a well-worded policy document, early publication and education of interested parties).
- **Risk of appeals** — subjective criteria have historically been subject to more appeals by athletes, the consequences of which are well known (stress, costs, adverse publicity) and often impacts on the performance of the athletes, as individuals and across the sport. This can be averted by a well thought out and executed process.

### **Combination subjective/objective criteria**

Depending on the sport and its selection philosophy, it could be argued that a combination of subjective and objective criteria is the ideal compromise. The disadvantages of purely objective or purely subjective criteria can be minimised while still enjoying the major advantages that both forms of criteria have to offer.

The combination of objective/subjective criteria is most often used in sports that can select a number of different individuals for a particular event within the sports program, for example, three athletes in each of the events on the track and field program. In those circumstances, one or two positions may be available by right of performance achieved on a purely objective basis and the third or remaining position may be left to be selected at the discretion of the selectors. In some team sports, part of the team could be selected objectively by physical tests or standards and then others added at the discretion of the coach.

### **Pre-selection**

Pre-selection involves the concept of selecting certain athletes, or a certain class of athletes, prior to the time at which the majority of athletes will be selected to any team. For example, if a team for the Olympic Games was due to be announced in March of the Olympic year, a pre-selection clause may involve athletes from a certain class (for example, current world champions) being eligible to have their selection announced by October of the year prior to the Olympic year. This allows them to focus on training for the event.

The appropriateness of pre-selection for any particular sport will be determined by a number of factors. Those factors include:

- **Nature of the sport** — all of the matters set out previously may have some bearing on the appropriateness of pre-selection for any particular sport. For example, the opportunity to ‘tailor’ a team may be lost through pre-selection if the team is small.
- **Quality of athletes available** — if a particular sport has one, or a small number, of truly outstanding prospects for a particular team, then pre-selection may well be the way for the organisation to ensure that those athletes will be in the team and to give them the security and all of the advantages, as set out previously, that comes with the knowledge that you have been selected well in advance of a major championship. This must be balanced against eliminating the pathway for new and rising talents.
- **Number of team places available** — the total number of team places available in either a particular event or a total team is a matter that will have a bearing on the appropriateness of pre-selection. If there are only a small number of positions available, pre-selecting one or more athletes to those positions will have the effect of drastically reducing opportunities for athletes other than those pre-selected.

A pre-selection clause can be either objective, subjective or a combination of both. Further, the ultimate inclusion in the team of any pre-selected athletes can be made the subject of that athlete meeting performance goals or standards at a time closer to the championship event in question.

### **Conditional selection**

In some circumstances it may be useful to give selectors the discretionary right to select an athlete subject to that athlete fulfilling certain conditions in the future, set by the selectors at the time of making the selection decision. Conditions may involve attainment of a performance standard or the successful fulfilment of a fitness assessment.

Conditional selection is a useful tool to cover a situation of a stand-out athlete who has been ill, injured or out of form and whose injury or form status needs to be closely monitored following the announcement of the team and any deadline for entries to a particular championship.

The right to make selection conditional on the attainment of future conditions can only be given to the selectors as part of their discretion. If it is to be used as an option in the selection policy it is recommended that it be set out in a specific clause.

An example of a conditional selection clause is set out at Appendix 1(7).

### **Taking into account extenuating circumstances**

Regardless of how much planning and thought goes into the decisions regarding selection, the outcome can be dictated by circumstances unforeseen and out of the control of those drafting the policy. It is very important when developing selection policy to consider all possible extreme circumstances that may affect selection. It must then be decided if

exceptional circumstances will be considered as part of the policy and to what extent, and how is the sport prepared to take them into consideration. Ultimately any selection policy must aim to give all eligible athletes full, fair and equal opportunity to demonstrate their worthiness for selection.

- **What is an extenuating circumstances clause?** — an extenuating circumstances clause in a selection policy is one drafted to give selectors the ability to select an athlete, or athletes, who by reason of the ‘extenuating’ circumstances have failed to meet the published selection criteria.
- **The purpose of an extenuating circumstances clause** — the purpose of an extenuating circumstances clause is to allow the selectors flexibility to consider the reasons why a particular athlete may have failed to meet the selection criteria, and notwithstanding that failure, to exercise a discretion to name that athlete or athletes in the team. The discretion to make such a decision can be limited to particular defined situations and circumstances or can be less-specific and more all-encompassing.
- **Extenuating circumstances** — common sense should really dictate the circumstances that are covered by an extenuating circumstances clause. Some of the most obvious are:
  - injury, illness
  - equipment failure
  - any legitimate unexpected reason that results in an athlete being unable to compete in trials or other events used as the basis of selection criteria (for example, family bereavement)
  - failure to finish a selection trial or event for any legitimate, unexpected reason.
- **Advantages of an extenuating circumstances clause** — the obvious and most compelling advantage of the extenuating circumstances clause is the flexibility it gives to selectors to name athletes in the team who, but for the extenuating circumstances, would certainly have made the team. In this era of public funding and accountability, it can be argued that NSOs have a responsibility to the government and the public to ensure that their very best athletes are included in teams for major events if those athletes are in good form and otherwise available to compete at the time of the championships. The aim of this clause is to ensure the best athletes/best team is able to be selected.
- **Disadvantages of an extenuating circumstances clause** — the often-used arguments against the inclusion of an extenuating circumstances clause is similar to those used in relation to subjective selection criteria (refer to section C[v] and C[vi]). If not well thought out and expressed, an extenuating circumstances clause can undermine the overall philosophy of the policy and/or the sport. There is the possibility that an athlete who has met the published criteria may be replaced by an athlete who has had extenuating circumstances taken in consideration. If an

extenuating circumstances clause is badly drafted, it may invite appeals from unsuccessful athletes who feel that their circumstances are extenuating and warrant the selectors favouring them. If the concept is used too broadly it can almost have the effect of rendering the selection policy worthless.

- **Drafting an extenuating circumstances clause** — careful consideration needs to be given to the drafting of an extenuating circumstances clause. The task is not a particularly difficult one (and in fact may not be necessary at all) when the selection criteria already include subjective elements or discretion. Examples of such a clause are set out in Appendix 1(8)(a) and (b).

Drafting an extenuating circumstances clause for a policy based on objective criteria is considerably more difficult. In order to avoid confusion, consideration needs to be given to defining with precision the exact circumstances in which the overriding discretion is to be given to the selectors. Such clauses need to be considered and drafted on a case-by-case basis. For that reason, no example of such a clause is included in Appendix 1.

Extenuating circumstances clauses should be seen as a reasonable compromise between the desire for a strict performance-based objective selection policy and the need to cover contingencies that would result in the best possible team not being selected due to unforeseen or extreme circumstances.

It must be noted that the existence of an extenuating circumstances clause does not mean it must be applied.

### **Cover all contingencies**

Make sure that all contingencies are covered in the selection criteria, even those that may be remote, such as the cancellation of a selection event or a dead-heat in a selection race.

Consideration should also be given to a situation where, because of an unexpected rise in performance level, an athlete who has not previously met a minimum performance criteria set by an organisation for team selection eligibility, wins a selection event. Such a contingency needs to have been considered in advance and a decision made as to whether that athlete will be eligible to be selected and in what circumstances.

Other considerations will be whether reserves are to be named in a team, and, if so, at what point. Provision should also be made for replacing athletes in a selected team after selection, if the need arises. Circumstances around the replacement of athletes or provisions for naming reserves may be governed by a third party, for example, the event organising committee.

## Eligibility criteria

Besides the selection criteria used as the basis for selection decisions, the selection policy should include any conditions or requirements an athlete must meet before being eligible for selection to the team (eligibility criteria). Generally there are two types of eligibility criteria:

- **Those imposed by the international federation or event organising committee** — these include things such as nationality requirements, international ranking and age limitations where applicable. Also the method of qualifying for a championship may affect which athletes are eligible. These criteria should be included in the selection policy as advised by the relevant organisation so that there is no confusion about eligibility for the team. CAS hears many appeals on these issues.
- **Those imposed by the sport itself** — it is recommended that the sport make it a general eligibility requirement for teams that athletes at all times comply with the NSO's code of conduct and otherwise conduct themselves in a way that has not, and is not likely to, bring their sport or the national team into disrepute. Other general eligibility criteria may include requiring athletes to sign an application for team selection. This application may bind the athlete to the selection process as set out in the policy, including the appeal process. Note that this may then have some legal ramifications as the selection policy may be regarded as a contract between the sport and the athlete, to which **both** must adhere (refer to section B[ii]).

The sport may also wish to impose specific performance criteria before an athlete can be eligible for selection, such as achieving a particular performance standard within specific dates. In considering the inclusion of this type of eligibility criteria, flexibility should be allowed in order to cover contingencies such as illness, injury or loss of form resulting in quality athletes failing to meet stated criteria (refer to 'extenuating circumstances' clause above).

An example of an eligibility clause encompassing general eligibility criteria set by an international federation, the NSO and specific performance criteria set by the NSO is set out in Appendix 1(9).

## Requirements before and after selection

Both before and after selection, athletes may be required to do one or more things to have their place on the team confirmed. Any such requirements should be included in the selection policy. These might include:

- **signing a team agreement** — this is always required, for example, by the AOC before Olympic team selection. Most NSOs require athletes to sign a team agreement and/or code of conduct, which should be provided to all athletes in contention as soon as it is available so that they may seek appropriate advice if required

- **ongoing medical, injury and fitness assessments** — note that these should not constitute discrimination (refer to section B[ii]). The requirement to undergo these assessments will bind the athletes if it is set out in the selection policy, and particularly if the athlete has had to sign an application form for selection or a team agreement which should also include those extra conditions.

## **C(vi) Making the right choice in selection criteria**

### **Refer back to the selection philosophy**

The final decision in relation to selection criteria should only be made after careful consideration of the different options available. Thought needs to be given to the consequences of choosing one form of criteria over an alternative. Always keep the selection philosophy in mind. **What is the ultimate aim of the selection process?**

With the four examples set out at C(iii) it is almost certain that four different types of selection criteria would be required to achieve the desired results. **'Horses for courses' — consider the specific characteristics of the sport.**

Each sport has its own unique characteristics that may well influence the appropriateness of a particular set of selection criteria being considered. For example:

- **Team sports** — clearly the very nature of most team sports makes subjectively based criteria generally appropriate. The selection philosophy will almost always be to select the team that is most capable of representing the organisation and therefore subjective elements such as team harmony and balance must come into consideration. These matters are generally not capable of being determined satisfactorily on an objective basis. Many team sports first use objective criteria to select a squad from which the team is ultimately picked on a subjective basis.
- **Individual sports** — if it is accepted that some form of subjective criteria are appropriate for team sports, the opposite proposition is that individual sports by their nature are best served by the use of objective criteria. **This is not necessarily the case!** Individual sports vary greatly in their nature. Swimming for instance, and to a lesser extent track and field athletics, are conducted in strictly regulated environments (50-metre pool, 400-metre track) with the rules of competition making most competition results comparable on an objective basis. Swimming is a classic 'closed environment sport' where weather, wind conditions and even tactics play very little part. This is not the case with all individual sports. An individual sport such as triathlon is affected by numerous factors such as course design, the weather, race tactics and team tactics. As a result, performances in different events are harder to compare and the level of performance of a particular athlete can vary significantly from event to event. Similarly many highly technical sports inherently have high variability and thus some subjectivity should be considered in selection policies.

- **Individual sports with a ‘team flavour’** — a number of sports that are technically ‘individual’ sports, offering only individual medals, involve a team element. The cycling road race, for example, offers only individual medals but the nature of the sport is such that it is almost impossible for an athlete to win one of those medals unless they are supported by a strong team of individuals committed to riding team tactics. As we have seen increasingly in distance running events and in triathlon races, team tactics are also starting to play a significant role in other individual sports.
- **Individual sports with other ‘team restrictions’** — some individual sports such as weightlifting, judo and track cycling have team size limitations that restrict team numbers to less than the total of individual gold medals on offer. As a result, some form of flexibility/discretion in selection criteria is a necessity for these teams.
- **The nature of some individual events** — the nature of some events within the program of an individual sport sometimes makes objective criteria less appealing and subjective elements more appropriate. For example, a very hilly marathon course in a humid and hot climate may demonstrably suit a particular athlete, or class of athletes, better than their more fancied or credentialed rivals. This is particularly the case where there is no suitable test event that can replicate the event conditions or course.

## Competing interests

Various competing interests, both internal and external to the sport, will need to be considered when the final decision on selection criteria is being made.

Those interests include:

- **athletes** — the majority of athletes will always prefer objective selection criteria — they want to know how they can ‘select themselves’
- **established performers** — often favour pre-selection and/or selection discretion in order that they can be selected if for some reason they fail to compete or perform in a selection event
- **coaches** — most coaches will have a tendency to favour the interests of the particular athlete who they coach at any given time
- **high performance team** — tend to like sufficient flexibility in criteria to ensure that all the sport’s champion athletes end up in the team and are able to have their peak performance in the major championship
- **external influences** — refer to section C(i) and (iv).

Ultimately, the decision regarding selection criteria will be a ‘trade-off’ between certainty and flexibility. The right choice will be determined by considering and weighing up all of the factors set out in section C(v) and (vi). All possible circumstances should be considered and the policy should ensure that all eligible athletes have the best possible opportunity to demonstrate their worthiness for selection, with the result that the best possible team is selected and has the best possible chance to meet the objectives of the sport at the relevant competition.

## **C(vii) Drafting the policy document**

Once all aspects of the selection process have been decided on and settled, including the selection criteria and all the matters set out above, the organisation has its selection policy. That policy now needs to be expressed in a written document.

### **Who should draft the document?**

It must be noted that drafting a good policy document is not an easy task. The person given the task of drafting the policy document should be someone with a thorough knowledge of the selection policy and preferably with recent experience in drafting such documents. If finances are not a limiting factor, the best person for the task is a lawyer, preferably with relevant knowledge and experience.

If the organisation has recently had a selection policy drafted by an experienced lawyer or other suitable person and that policy document has proven to be a good one (well set out, easy to understand and inclusive of all the matters required) it is possible for a person such as the high performance director and/or head coach to use that document as a template for drafting a new or current policy. Again, care should be taken here. Doing a cut and paste on a badly worded policy, or one that is inappropriate for the team being selected, just compounds mistakes or inadequacies with the document. Further, it is important to consider any changes to qualification systems or matters specific to the upcoming event.

A reasonable compromise for most organisations may be to have the person responsible for the policy prepare a draft of the policy document and then have that draft finalised by an experienced lawyer.

### **General rules of drafting**

- Set the document out in a logical sequential manner (see example of selection policy sequence at Appendix 2).
- Ensure the document is expressed in a clear, practical and unambiguous manner.
- Avoid using legal terms (for example, 'pursuant to' or 'hereunder').

### **What must/should be included?**

- **'Introduction' clause** — this is an introductory clause that sets out the factual circumstances of the policy, including the nature of the sporting organisation and the team that is being selected. Further, this clause should spell out that it is the athlete's responsibility to read and understand the policy document, and seek legal advice if they are unclear about its operation or effect.
- **'Power to amend' clause** — this is a clause that gives the organisation the power to amend the criteria. This will be rare and should not be about amending the core selection criteria. It is to allow the organisation to cover unforeseen contingencies,

drafting errors, changes in international qualification standards or the requirements of national governing bodies such as the AOC. An example of such a clause is set out in Appendix 1(12). It must be noted that the courts have held that a change in selection criteria after the selection event will be a ground for invalidating selections made according to the amended policy.

- **Eligibility criteria (if required)** — refer to section C(v).
- **All selection criteria** — performance standards, selection events, training regime or relevant dates (including making application for selection).
- **Extenuating circumstances** — need to state whether extenuating circumstances will be considered and, if so, what circumstances.
- **Date for selecting the team.**
- **Date for announcing the team.**
- **Appeal process** — refer to section D.
- **Additional obligations** — refer to section C(v) in relation to medical fitness assessment, team agreement, etc.

### Other matters to consider for inclusion

- **Selection philosophy** — if the selection philosophy is to be included in the policy document (normally at the beginning or in the introductory paragraph) it should be done carefully and in a manner that clearly indicates that the philosophy is **not** part of the selection criteria. This can be done by putting it in on the title page prior to any of the formal parts of the document. An example philosophy statement is set out in Appendix 1(1).

**Note:** If the philosophy is included in the policy document and there is any ambiguity in the selection criteria resulting in an appeal, the criteria will be judged by the tribunal against the philosophy.

- **Explaining discretion** — if selectors' discretion is part of the process, it is often useful to highlight the word 'discretion' in bold, and/or use a phrase such as '... the remaining position/s will be filled at the **discretion** of the selectors'.
- **Factors taken into account in the exercise of discretion** — careful consideration needs to be given to whether the factors that the selectors are to take into consideration when exercising their discretion are to be set out in the relevant clause. Listing the factors can be used as a means of communicating to the athletes the matters that are important in the eyes of the selectors when they come to exercise their power. The disadvantage of listing the factors is that athletes, and coaches, historically look on the nominated factors as criteria in themselves.

Even when factors are listed, those factors need to be weighed up by the selectors and can/will be given different emphasis or weight in varying circumstances. History has shown that many appeals are based on athletes trying to establish to an appeal

body that they deserve the selection more than a selected athlete on the basis of the factors set out as guidelines to the use of discretion.

A useful way to solve the dilemma of trying to give athletes some indication of the matters which selectors may take into consideration, but not having those matters misinterpreted as selection criteria in themselves, is to add explanatory statements to the clause that set out clearly, in plain English, that the factors are not selection criteria, they are purely matters to be taken into consideration by the selectors, and that those matters can be taken into consideration on their own, in combination or with any other matters not listed but relevant to the selection of such a team. See example in Appendix 1(5).

### **Example clauses**

Appendix 1 sets out a number of examples for many of the clauses that should commonly be found in the selection policy.

These examples are not designed to be ‘cut and pasted’ into your policy. The clauses should be reviewed before they are adapted for your own circumstances.

For Olympic sports, the AOC provides NSOs with a comprehensive nomination criteria template to assist with drafting. NSOs should consider using this template in the first instance.

## **C(viii)      Dotting the i’s and crossing the t’s — compliance**

It is extremely important that all stages of the selection process comply with the organisation’s constitution and by-laws.

From time to time this may mean carefully checking the constitution of the organisation to ensure that it supports the best-practice way an organisation needs to conduct its selection process (and *vice versa*), and updating if necessary.

The selection policy document must be ratified by the Board, or whoever is stipulated in the NSO’s constitution to do so (for example, CEO, president, sub-committee). If this is not done, a successful appeal could be based on the fact that the policy itself has no legal effect.

## Summary

- Think about what you are trying to achieve and set your goals (selection philosophy).
- Consult stakeholders and consider their input.
- Have your best-qualified individuals develop the policy.
- Determine criteria with reference to the philosophy:
  - consider all possible scenarios, consequences and options
  - consider the use of flexibility/discretion versus pure objective criteria according to what is best for your sport to ensure the best possible team is selected.
- Draft the policy in clear, unambiguous language and consider all contingencies.
- Make sure each stage of the process is compliant with the organisation's rules and regulations.
- Allow plenty of time to settle the policy and have it published early — do not allow time pressure to influence the process.

## D Appeal process

### D(i) Introduction

The process for appealing a decision of the selectors should be determined at the same time as the selection process and should be set out in the selection policy (refer to section D[vi] to [ix]). This does not mean that the detail of everything set out below, such as the composition of an internal appeal panel and the hearing procedure, needs to be in the selection policy, although you may choose to include them. They must at least be available to athletes on request as written 'appeals rules'. At a minimum, however, the selection policy should set out who an athlete can appeal to, and how such an appeal can be initiated.

The fact that an appeal is made against a selection decision does not mean that the selection process was necessarily flawed. Rather than being seen as an entirely negative experience, appeals can also be viewed as a positive process allowing athletes to fully exercise their rights and also providing protection to a robust initial selection process, by allowing an independent third party to review and endorse the policy decision.

**Note:** Once again, it must be emphasised that the AOC has specific requirements and provisions for the appeal process in relation to Olympic teams. These requirements are set out in the Olympic Team Selection By-Law, available on the AOC web site ([www.olympics.com.au](http://www.olympics.com.au)).

A number of decisions will need to be made with regard to important aspects of the appeal process. Those decisions include the following:

- Should the appeals tribunal be constituted from within the organisation, or should it be a specialist external body such as CAS?
- How many stages will be involved in the appeal process, that is, will the decision of the appeals tribunal be the subject to further review?
- What are to be the grounds of appeal, and if a review of the appeals tribunal's decision is to be allowed, what is the basis of that review to be?
- What are the powers of the appeals tribunal — if an appeal is successful, what happens next?
- What will be the procedure and rules of the appeals tribunal?

## D(ii) Choice of appeals tribunal

Essentially the choice to be made is between appointing an appeal panel internally to the organisation and/or using CAS. Some of the various issues which should be considered when deciding between CAS and an internal appeals tribunal are:

- **Cost** — the average cost of an appeal to CAS is quite high for both the athlete and the sporting organisation involved, as compared to an internal appeals tribunal. If the athlete's appeal to CAS is successful, the sport may also be ordered to pay the athlete's costs. It is unusual for an athlete to be ordered to pay the sport's costs in a selection dispute, although the incidences of this happening are increasing. This is especially the case in appeals that are viewed by CAS as frivolous.
- **Expertise** — CAS provides a readily accessible pool of expert arbitrators to hear appeals, which may not be otherwise available to a sporting organisation. As will be discussed below, the grounds of an appeal or review are normally limited to procedural or legal matters only. In these circumstances the expertise offered by CAS arbitrators may be seen as more appropriate than an internal appeals tribunal constituted by less-experienced persons.
- **Timeliness** — appeals to CAS generally take longer than an appeal through an internal tribunal. However, this saving in time can be negated if an internal appeal leads to a further appeal being made to the domestic courts. There can also be provisions for CAS to hear a matter on an urgent basis within as little as 48 hours.
- **Independence** — while all sport appeals tribunals should be independent, CAS is often perceived by athletes to be a more independent process than an internal tribunal.
- **One or two-step appeal process** — rather than choose between an internal appeals tribunal and CAS, a process where appeal is available to the former and then the latter may be adopted. Timeliness again becomes an issue in such a process, particularly if both appeal options are used. However, the use of an internal body before CAS may in fact reduce the time taken for appeal if the matter is settled at that stage.
- **Availability of appeal to domestic courts** — as outlined in section B, if only an internal appeals tribunal is allowed for in a selection policy, it may be open for an athlete to appeal further to the domestic courts and for those courts to find jurisdiction. If CAS is used either in the first instance or as a final appeals body, and an 'exclusion provision' is also adopted (stating that there shall be no further appeal to the courts from decisions of CAS — see Appendix 1), then no appeal to the courts will be available.
- **External requirements** — a sport may be required to use CAS to hear selection disputes, for example by the AOC in the case of Olympic nomination.

### **D(iii) One or two-step appeal process**

Regardless of whether the appeals tribunal is to be constituted internally or by CAS, the decision needs to be made as to the status of decisions made by the appeals tribunal. Are decisions to be the subject of further appeal or review, or are they to be regarded as final? As set out above, an advantage of a two-step process, especially if the second appeal level is to CAS, is that such a process may ensure that domestic courts are excluded from any appeal. Grounds for successfully arguing this proposition will increase if an 'exclusion provision' is also adopted. If an internal appeals tribunal is in the policy as the only avenue of appeal, it is possible (but rare) for the appeal to be taken to the domestic courts.

### **D(iv) Grounds of appeal and/or review**

Theoretically, an appeal can be a rehearing, allowing the selection decision to be reheard on its merits. This approach is now almost never adopted. There are good reasons for this being the case. Apart from being time consuming, members of the appeals tribunal would need to have the same skill set and experience as selectors. This will almost never be the case. For this reason it is now almost a universal practice that sporting organisations limit grounds of appeal to a review of the process by which any particular selection decision was made. The wording of the most commonly used ground of appeal is as follows:

The athlete's omission from the team was as a result of a failure by the selection committee to properly apply the selection criteria set out in this policy.

That clause is often combined with another or others that reflect the athletes' right to natural justice and a rational decision (refer to section B).

If a decision is made to allow an appeal of the appeals tribunal's decision, the grounds of such an appeal should again be limited. The most commonly used grounds are:

- a breach of the rules of natural justice by the appeals tribunal, or
- that the decision of the appeals tribunal is otherwise wrong in law.

### **D(v) Powers of the appeals tribunal**

The written appeal rules need to clearly set out what happens if a particular selection appeal is successful. For reasons already discussed (that tribunal members will not be those with the experience and ability to make selection decisions — especially ones involving discretion) the matter should be sent back to the selectors for further consideration and decision by them. In the absence of any specific wording in appeal rules, this is the approach most commonly adopted by CAS (refer to section B).

## **D(vi) Initiating the appeal**

It is essential that details of how an athlete can initiate an appeal against a selection decision be contained within the selection policy. These details should include:

### **Time limits**

The amount of time that an athlete has to lodge an appeal against a selection decision should be specified. Ideally, this time frame will be quite short, as it is important to finalise teams as quickly as possible. A period of 48 hours after the announcement of selection decisions is acceptable. The time should also be as specific as possible, for example, *'by 5.00pm on the second business day following the announcement of the team'*. If appeals are available to CAS and a shorter time frame is not specified in the policy, the CAS rules allow for appeals for 21 days from the notification of the relevant decision.

### **How to lodge an appeal**

This may not necessarily be directly to CAS or the internal appeal panel in the first instance. For example, the athlete may be required to lodge a notice of appeal to the organisation's CEO in the first instance so that the appeals procedure may be set in motion. This also allows both athlete and the selectors more time in which to prepare complete statements.

### **Fees required for lodging an appeal**

If the appeals tribunal is CAS, fees and charges for the arbitration will be set by that body. If an internal appeals tribunal is hearing the appeal, regardless of eventual cost distribution, an initial 'lodgement' fee for an appeal should be set at a level appropriate for the type of organisation and team. This will have the effect of minimising the number of spurious appeals lodged by athletes.

### **Counselling**

If there is a post-selection counselling procedure set out in the policy, the athlete may be required to move through this process before being allowed to proceed to appeal. This allows an opportunity for the athlete to air grievances in a less-formal manner and possibly have their concerns addressed through the procedure.

## **D(vii) Procedures: using the Court of Arbitration for Sport**

Where CAS is appointed as the appeals tribunal, procedures for the appeal are set out in the Code of Sports-related Arbitration (available at [www.tas-cas.org/en/code/frmco.htm](http://www.tas-cas.org/en/code/frmco.htm)). If CAS is the appeals tribunal, relevant officers from the sporting organisation should familiarise themselves with this document.

## **D(viii) Composition of internal appeals tribunal**

Where an internal appeals tribunal is used, the composition of this body need not be set out in the selection policy, but must be decided on well in advance of any selection decisions being made. The members of the appeal panel should be kept informed of the dates and outcomes of selection decisions.

The chair of the appeals tribunal should preferably have legal qualifications. Questions of procedure during appeals are likely to be legal in nature and the chair should be able to deal with them appropriately. Also, if the appealing athlete is to be allowed legal representation, the chair of the panel needs to be qualified to suitably respond.

Besides the chair, two or three other members of the appeals tribunal should be appointed based on experience and skills. These skills are not necessarily the same as those for selectors (refer to section F[iii]). However, if the appeals tribunal will be substituting their selection decision for the original, some of the same experience is essential.

The most important skill for panel members is the ability to allow the athlete to be heard in a fair and impartial manner. For this reason, the issue of bias is very important in relation to appeals tribunal members. It may be wise to have a 'pool' of possible appeals tribunal members that may be drawn from on a case-by-case basis to prevent any possibility of a perceived conflict of interest. This is particularly so in a sporting context where it is likely that any appointed officers will have some connection to one or more athletes within the sport.

## **D(ix) Procedures and rules: using internal appeals tribunal**

Again, the procedures to be followed by an internal appeals tribunal need not be set out in the selection policy, but should be available to athletes on request. When deciding on these procedures, the following matters should be taken into account:

- **The level of formality** — one of the advantages of an internal appeals tribunal is that a more informal procedure may be adopted. However, this should not be at the cost of ensuring that natural justice is provided to the athlete.
- **How the tribunal will receive submissions from the athlete and the chair of selectors.**
- **How the hearing is to be conducted** — will written submissions only be accepted or will there be some opportunity for the athlete to present a case in person? As long as the athlete is presented with a proper opportunity to be heard, this may be in person or in writing. It may be appropriate to allow the chair of the appeals tribunal to decide on the hearing procedures on a case-by-case basis for flexibility. For example, if the tribunal members and athlete all reside in the same city, holding a hearing in person may be suitable, but not if they are scattered around the country.

- **Whether the athlete will be allowed legal representation** — while not always essential to provide a fair hearing, international standards (adopted by, for example, CAS and the World Anti-doping Agency) are to allow legal representation at the athlete's expense.
- **How other athletes that may be affected by the decision of the appeals tribunal will be afforded the opportunity to be heard** — any appeal of a selection decision will, by its nature, affect athletes besides the person appealing. It is important that these athletes are also accorded natural justice, in particular the right to be heard. Will they be invited to make submissions to the appeals tribunal in the first instance, or at some later time?
- **Costs** — who will be paying the expenses incurred by the appeals tribunal? Will the sporting organisation bear all of these, or will the athlete be asked to contribute? Will the athlete only be required to contribute if the appeal is unsuccessful? If some contribution will be required from the athlete, they must be informed of this prior to the appeal commencing (that is, immediately after lodging a notice of appeal).

Examples of appeals clauses that may be included within the selection policy are provided at Appendix 1. Clause 11 is an example of a simple one-level (no further right of appeal) appeal process involving an internal appeals tribunal. A good example of a two-staged appeal process is set out in the Olympic Team Selection By-Law which can be found on the AOC web site ([www.olympics.com.au](http://www.olympics.com.au)).

The appeal process and rules should be in place prior to selection decisions being made, so that any disputes about those decisions can be settled fairly, impartially and in a timely fashion. It should be remembered that the appeals process is not necessarily only there for when the selection procedure is 'broken'. It provides important protection for athletes' rights, and a support mechanism for the original selection process.

## Summary

- Choose appropriate appeals tribunal. This will be CAS, an internal appeals tribunal or a combination.
- Decide on procedures for appeals. These should be in the form of written 'appeal rules' which should be publicly available at the same time as the selection policy.
- If using an internal appeals tribunal, appoint members or a pool of possible members before selection decisions are made.
- Decide on the grounds of appeal and articulate them clearly.
- Ensure appeal procedures provide natural justice to all affected athletes.
- Set time limits and procedures for initiating an appeal.
- Ensure that a statement of the right to appeal and the procedures and costs for initiating an appeal are included in the selection policy document.
- Ensure all other procedures, including costs, are available to athletes on request.

## **E Publish, promote and educate**

### **E(i) Introduction**

The ultimate success of the selection policy will not only be determined by the selection criteria and the policy document. What the organisation chooses to do following Board approval of the selection policy will have a significant bearing on the overall outcome of the selection process. It has been shown in the past that many of the negative issues arising from selection, such as drawn out appeals, athlete dissatisfaction and negative media, could have been substantially eliminated by intelligent promotion and education of the selection policies involved.

As long as selection criteria have been carefully considered and a precise well-drafted policy document prepared, this part of the process should be easy.

### **E(ii) Publish**

Publish the policy document as soon as possible on the organisation's web site. Communicate and advertise the fact that the policy is available and consider mailing electronic copies to all interested parties.

Continually advertise warnings on the web site of impending important dates, such as the close for applications for selection, qualification periods for performances and selection events.

### **E(iii) Promote and educate**

Promote and educate all the relevant stakeholders, especially the athletes and their coaches. Explain the intended operation of the policy and explain and promote the rationale behind it.

The following are suggestions for a coordinated promotion and education program:

- **Invite enquiries** — appoint someone within the high performance team who has a thorough knowledge and understanding of the policy as a reference point for all enquiries within the organisation. Advertise this on the web site.
- **Independent legal advice** — encourage independent legal advice be obtained by interested parties if they require or need advice on the operation of the policy independent of the organisation and the high performance team.
- **Clinics/seminars** — organise education clinics or seminars in each state, at national events or at high performance training camps. Invite all potential team members and their coaches, and also have it open to other interested parties.

- **Discretion and the appeals process** — experience has shown that the concept of discretion and the operation of the appeals process are two areas of selection that are the most misunderstood by both athletes and their coaches. Consideration should be given in the overall promotion and education program to carefully explaining the concept of discretion and how it operates and, importantly, how it impacts on an athlete's right of appeal (refer to section C(v) on the operation of discretion).
- **Grounds of appeal** — when discussing appeals, attention should be focused on the grounds of appeal set out in the selection policy document. Athletes are often under the mistaken belief that they can mount a successful appeal by establishing that they were a better choice for the team than that athlete selected. Athletes should be advised to focus on the listed grounds and consider any case they may have against the criteria and those grounds of appeal.
- **Educate the selectors** — refer to section F(vi) regarding the ongoing education of selectors.
- **Explanatory memorandum** — consideration should be given to the publishing of selection memorandum setting out a summary of the selection criteria, the intended operation of the policy and all the important dates. This document can also include reference to the designated high performance team member for enquiries and encourage use of external lawyers for independent advice if required. It should be emphasised in the document that the document itself is only a summary and has no legal effect. It is for the convenience of interested parties and is not a substitution for reading and understanding the document itself. An example of such of a memorandum is included at Appendix 3.

## F Selecting the selectors

### F(i) Introduction

The most critical people in the selection process (besides the athletes) are the selectors. They are the people that must properly follow and/or implement the selection policy and selection criteria. They must also bring special skills to bear in any exercise of discretion in order to select the best team possible in accordance with the selection philosophy.

As with selecting athletes and selecting support staff for the team (refer to section I), when it comes to selecting the selectors, sports should follow a process which includes:

- philosophy/aim for selectors
- identifiable and defined criteria, standards, attributes for selectors
- a process for selecting.

The importance of the role of the selectors increases as the extent of subjectivity in the selection policy increases. When the selectors have the responsibility of subjectively selecting athletes, it is essential they have the highest possible understanding of the nature of performance in the event/s athletes are being selected to perform in.

### F(ii) Who appoints selectors?

Selectors should be officially appointed to the selection panel by the Board of the sporting organisation. This appointment should be made in accordance with the constitution of the organisation. It is important to ensure that the constitution contains the authority to appoint selectors. This may be expressed or implied — for example, that the Board has authority to appoint selectors may be implicit in a power to do all things connected with or facilitating the efficient running of the sport or sending away representative teams.

Nominations for selectors may come from a variety of sources, including:

- **Recommendations from the high performance director, head coach or other official** — these people are well placed to know others with the appropriate skill set to be a selector (to be discussed below). Where nominations have come from within the organisation, care must be taken by the eventual selector to avoid any perception of ‘acting under direction’ (refer to section B[iii]).
- **A public call for nominations** — this should be done carefully to ensure that people with appropriate skills are targeted, and there are sufficient grounds provided to reject nominations by vocal constituents who do not necessarily have suitable experience to become selectors.
- **Through state-based organisations and/or other affiliated associations.**

### **F(iii) The selectors**

The knowledge required by voting selectors is fairly self-evident. They need to know the specific requirements for success in the relevant sport, and have familiarity with the functioning and needs of athletes in representative teams. They must also thoroughly understand and be able to properly apply the selection criteria.

Specific knowledge of the athletes involved in the selection process will be essential to the selectors at some point. For this reason, appointing the leader of the program (for example, the national performance director, head coach, junior head coach) as a selector should be considered. This may, on occasion, raise questions of bias if this person has established relationships with some athletes and not others, but this should be capable of management with a robust conflict of interest policy (refer to section F[v]). It should also be remembered that the leader of the program will only be one vote on a panel of selectors. If it is decided not to appoint the leader of the program as a voting selector, they should be available at the time of selection meetings in order to provide their specialist knowledge to the selectors.

It must be acknowledged that, in most sports, it is difficult to find people with the requisite skills and knowledge to be selectors who do not have some continuing interaction with the sport, and therefore possibly with athletes vying for selection. Again, a good conflict of interest policy will help to deal with this, but another approach is to appoint enough selectors so that those with any conflict can step back from consideration of that part of the team with which they have a conflict. For example, if one selector coaches male athletes in contention for the team, appointing a substitute selector simply to consider the male team allows the selector with a conflict to step down from that discussion. In this way, four or five selectors may be appointed with only three voting at any one time. Conversely all selectors may have a conflict, but may balance each other out. For example, all heads of state programs may form the selection panel. While all would have a bias towards their state, the net result would be one bias to each state. The advantage of this type of selection panel would be the high level of knowledge of all possible eligible athletes around the country.

In general, the following qualities should be sought in voting selectors:

- **Knowledge** — of the athletes vying for selection and of the demands and high performance characteristics of the sport.
- **Respect for the policy** — a selector should demonstrate respect for the selection philosophy and the policy put in place to achieve its goals in the performance of their responsibilities.
- **Fairness** — a selector should ensure that each athlete vying for selection is considered appropriately. They should act without bias and in a way that does not give rise to a perception of bias. They should be proactive and thorough in disclosing

any interests that could conflict, or appear to conflict, with the selection decision. A selector should not accept gifts of any kind where this could be reasonably perceived to compromise their impartiality.

- **Independence** — a selector should perform their selection responsibilities independently and free from influence external to the selection process.
- **Respect for persons** — a selector should be patient, dignified and courteous to other panel members, athletes, coaches, officials and others with whom they deal. Selectors should endeavour to understand and be sensitive to the needs of individual athletes being considered for selection.
- **Diligence and efficiency** — a selector should be diligent in undertaking their selection responsibilities, and take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary to the selection process.
- **Integrity** — selectors should act honestly and truthfully in the performance of their selection responsibilities. They should not use their position as selectors to improperly obtain, or seek to obtain, benefits, preferential treatment or advantage for themselves or anyone else. They should behave at all times in a way that maintains the integrity and good reputation of the selection panel.
- **Accountability and transparency** — selectors are accountable for decisions and actions taken and, notwithstanding any confidentiality obligations, should be as open as possible about their decisions and actions taken in the performance of their selection responsibilities.

The types of people that a sporting organisation might draw from to appoint selectors include:

- recently or previously retired athletes
- prior coaches, or coaches who are not currently coaching any athletes in contention for selection (or if this is not possible, coaches who all coach athletes in contention, so that bias is neutralised by an even spread, for example, the four coaches of the sport's four national training centres, where all of the athletes in the team will come from)
- technical officials with a broad knowledge base in the relevant sport
- masters-level athletes — these people are involved in and passionate about the sport, usually without a conflict of interest at the elite level and often have a broad base of other skills to bring to the panel
- others with specialist knowledge of the sport and how athletes perform, for example sport scientists, prior team managers, even journalists in the area as long as they have no current role that creates a conflict of interest.

## F(iv) Role of the chair

The chair of selectors may require a slightly different skill set from other selectors due to the difference in roles. Obviously, the chair will chair selection meetings, however their role requires further clarification. In defining the role of chair and therefore specifying the skills required, the following considerations should be taken into account:

- **Having a non-voting member of the selection panel as chair** — this means that the chair can focus their attention on ensuring that the selection policy and criteria are properly followed and/or implemented rather than making arguments for or against selection of athletes. This also means that the chair need not have as specific or thorough a sport knowledge as required by the other selectors, although some such knowledge is preferred.
- **Legal qualifications are a useful attribute in the chair** — as with appeals, questions of procedure are likely to be legal in nature and the chair should be able to deal with them appropriately. In particular, a lawyer with administrative law experience will best understand the concepts of natural justice and the obligations of the organisation in connection with selection, although all lawyers will have some exposure to these. The sporting organisation may decide to have legal qualifications as a requirement of being appointed as chair.
- **Previous management experience or familiarity with chairing other bodies are also valuable skills for the chair** — this may be in addition to, or instead of, legal qualifications.
- **The chair must have good communication skills** — this encompasses both verbal communication skills and written skills. The chair may be called on to draft statements of reasons for selection decisions to provide to CAS or another appeals body.
- **The chair's role should include responsibility for ensuring that all other selectors know the content and intent of the selection policy.**
- **Organisation of selection meetings** — the chair should technically bear the responsibility for organising selection meetings (although in practice this is often done through the sporting organisation's administrative staff).
- **Taking of minutes** — the chair should be responsible for recording minutes of selection meetings in the absence of a dedicated minutes secretary.
- **It is the chair's responsibility to control any exercise of discretion by the selectors allowed for in the selection policy** — this includes ensuring that the obligations of the organisation with respect to selection decisions (outlined in section B [iii]) are met when discretion is exercised; for example, that relevant considerations are taken into account and irrelevant considerations ignored, that the exercise of discretion is not unreasonable, etc.
- **Conflict of interest** — the chair must also enforce the organisation's conflict of interest policy with respect to all selection decisions.

## **F(v) Conflict of interest**

As mentioned previously, in most sports the pool of people who have appropriate knowledge and skills to be selectors is quite small. This means that there is a high likelihood of individual selectors, from time to time, having a conflict of interest in relation to a selection process. A conflict of interest might occur when, for example:

- a selector coaches a particular athlete vying for selection
- a selector is closely aligned to a club for which an athlete vying for selection competes
- a selector is a family member or close friend of an athlete vying for selection
- any circumstance where a selector has a relationship with an athlete or athletes vying for selection, or stands to gain in any way from the outcome of a selection decision.

These potential conflicts can be managed by either balancing the conflict of interest (that is, all selectors have conflicts that balance each other out) and/or having in place a robust conflict of interest policy for selectors. The chair of selectors must rigorously apply this policy to each selection decision. An example of such a policy is at Appendix 4. A conflict of interest policy should include:

- an obligation on selectors to make any actual or perceived conflict or interest known to the chair and other panel members as soon as they become aware of it
- the authority for the chair to ask the conflicted selector to step aside from a particular selection decision where appropriate due to the nature of the conflict
- procedures to be followed when a conflicted selector has been asked to step aside.

## **F(vi) Ongoing education**

The role of selector may be onerous, especially when there is significant depth of athletes and when exercise of discretion is allowed for in the selection policy. Therefore selectors should receive ongoing support and education in relation to the following types of issues:

- the selection philosophy, criteria and policy in general
- athletes involved in the selection process, their progress, performance, injury and health status
- conflict of interest — what situations may constitute a conflict of interest and what to do if they arise
- respect for the responsibility of the position and the importance of confidentiality
- other facets of the selection process, for example the proper use of discretion.

The responsibility for this education may fall on the chair of selectors, the high performance director or head coach, CEO or other officer of the organisation. Selectors should also take some responsibility for their own ongoing education and development.

## Summary

- Selectors should be appointed in accordance with the constitution of the organisation, usually by the Board.
- Selectors must have good knowledge of the specific requirements for success in the sport, including the functioning and needs of representative teams.
- It is generally good practice for the leader of the program (high performance, elite, junior, etc.) to be involved in the selection process. Coordinate and/or recommend the appointment of selectors, be a selector, or at least be available to provide information to the selectors.
- The chair person of the selectors can be voting or non-voting. They must have good communication and organisational skills as well as a thorough knowledge of the policy and process of selection. It may be useful for this person to have legal qualifications.
- Selectors need to have a range of appropriate qualities.
- Sporting organisations should have a conflict of interest policy in place.
- Selectors should be well educated on their role and responsibilities.

## G Selection meetings

Meetings between selectors need to occur for every selection decision made under the policy. The format of these meetings and their procedures need not always be the same.

### G(i) Format of meeting

Not all selection meetings need be face-to-face, although this is almost always preferable if possible. The following types of meetings might be held:

- **In person** — ideally, selectors would meet in person to discuss and confirm all selection decisions. In practice, this is not always possible and may be nearly impossible due to time commitments, cost, and the probability that selectors will live in different cities. It is very important, however, to try to overcome these issues when decisions involving the exercise of discretion are to be made, especially if the decision is likely to be contentious. Discussion in these cases will always be best facilitated in person. The venue for face-to-face meetings of selectors should be somewhere neutral (the sporting organisation's office is probably best if available) and business-like. It also should be comfortable and well-equipped — selection meetings may take a long time.
- **By telephone** — in reality, most selection meetings will be held over the phone. This should be done by conference call with a reputable provider so that lines are clear and secure. Telephone meetings still allow for discussion between selectors, and are easier if selectors are based in different localities.
- **By email** — consensus between selectors may be arrived at by email if necessary. However, this should never be the vehicle used for the exercise of discretion, where discussion is a critical component to due diligence being exercised. Email may be appropriate for confirmation of 'automatic' (that is, objective) selections.

### G(ii) Procedure

It is up to the chair of selectors to decide on the procedures for a selection meeting within the parameters (if any) set out in the selection policy or relevant by-laws. This is one reason that it is preferable to have a non-voting chair (refer to section F[iv]) so that they can focus on the process of the meeting. Meeting procedures should be outlined to all participants at the beginning of the meeting or some time beforehand. Some points to consider in deciding on meeting procedures are:

- **Who will be present?** — the meeting may involve more than just the selectors. For example, the high performance director or head coach (if not a selector) may attend to provide information, as may a legal advisor.

- **Who will take minutes?** — attendance of a dedicated minutes secretary is ideal. In the absence of such a person, the chair is usually best placed to take minutes.
- **The selection policy** — the agenda for the meeting should be based on this document.
- **Order of selections** — The confirmation of any objective (automatic) selections is usually an easy way to commence a selection meeting before progressing to any exercise of discretion. It should be confirmed that all selectors agree with the automatic selections and any interpretation of the policy.
- **Exercising discretion** — if there is discretion to be exercised, all selectors should have the opportunity to freely discuss the selection. It is the role of the chair to ensure each has the chance to be heard.
- **Matters to be considered** — in the exercise of discretion, the points set out in section B(iii) should be borne in mind, particularly that there should be no bias, all relevant matters and no irrelevant matters should be taken into consideration, and decisions must be reasonable, in good faith and not made under direction.
- **Conflict of interest** — the chair should ensure that any conflict of interest policy is adhered to at all times.
- **Voting** — ideally selectors may reach unanimous selection decisions through discussion. If this does not appear possible, the chair should call for a vote. If a vote is deadlocked through the use of a conflict of interest policy or for another reason, consider allowing the chair to then cast a vote also. Voting rights, procedures and requirements should be stipulated as part of developing the selection process.
- **Confidentiality** — it is vitally important that selectors are diligent in keeping selection matters and discussions held within meetings (especially relating to discretionary decisions) confidential and confined to the selection meeting itself.

## H Announcement of the team

The selection process does not end with the selection of athletes. Selection decisions must be communicated to stakeholders. The organisation should have a strategy for the release of this information. The following matters should be borne in mind when planning for team announcements:

- **Preliminaries** — before a team can be finalised and announced, all necessary approvals must first be sought and received, for example, from the Board, AOC, ACGA, APC, etc.
- **Advising athletes** — both successful and unsuccessful athletes may be advised of the outcomes of selection prior to a public announcement. This is a good practice, particularly for respecting unsuccessful athletes who will be disappointed. Counselling services may be offered to these athletes and may in fact be required by other stakeholders, for example, the AOC.
- **Formal announcement** — the format that this will take should be carefully considered. It is one of the major highlights for any sport within the media. How a press release/media conference will be managed should be decided on in conjunction with the sport's usual media advisor and any other stakeholder, for example, the international federation, AOC, ACGA, APC, etc.
- **Handling queries** — these are likely to come from two main sources — unsuccessful athletes and the media. One point of contact for each of these types of queries is recommended. For example, all media enquiries should be handled by the one person such as the media director, while all athlete enquiries should be dealt with by the high performance director, head coach or similar. The correct person to direct queries to should be included in the formal team announcement.

# I Selection of support staff

Selection of support staff for the team is also an important consideration for any sporting organisation.

The basic process should be similar to any team selection policy, including:

- a philosophy/aim for selection
- selection criteria, standards, desired attributes of the staff
- a process for selection which is clear and well communicated

In addition, the important points to consider when appointing support staff include:

- what the athletes need in order to perform at their best, and who/how these needs will best be supported
- clear identification of what the staff needs to achieve, what kind of staff are needed (for example, coach, manager and physiotherapist), their roles and responsibilities
- choosing an appropriate selection process. This is almost always subjective, but may include criteria (for example, coaches must have minimum of Level 2 accreditation)
- communicating that process to all possible relevant parties
- deciding whether the process will be open to applications or simply selected based on knowledge of the person and their past experience with the team/sport
- ensuring the process is fair, transparent, and well understood
- identifying who is responsible for selecting the support staff
- outlining clear roles, responsibilities, expectations, lines of communication and reporting levels
- implementing a code of conduct policy for team coaches and other support personnel
- ensuring the staff are the best possible as individuals and as a team, to support the needs of the athletes.

## **J Assessment of the process/policy**

The final part of the selection process should be a critical assessment of the policy in terms of the outcome as measured against the initial aim/philosophy and the mechanics of the how the outcome was achieved. Did the policy produce the best team in the circumstances? If not, why not? What improvements, if any, can be made for the future?

The assessment process itself can be one that is conducted internally, or the organisation may see some benefit in having an outside party conduct an independent assessment and prepare a report. If consideration is given to the outside party option, it is critical that this party has a thorough understanding of the particular sport in question and all of the issues involved in selection that have been dealt with in this manual.

Feedback should be sought from all of the interested parties/stakeholders. This could be in the form of a written questionnaire and/or an open forum inviting discussion. The aim of the review should be to determine what parts of the process were successful, what were unsuccessful if any, and how the process can be improved for the future.

Even a policy that has proven to be successful in terms of its outcome can be improved. This should be the aim of the organisation — learn from experience with a view to updating, or fine-tuning a successful policy to fit the particular needs of the next team or selection situation as it arises in the future.

## K Summary

Look at selection as a process involving philosophy, criteria, a policy document, communication, selection itself and education of stakeholders. As the important parts of the process are being developed and finalised (selection criteria, performance standards, timing of trials, etc.) always refer back to the aim of the process (for example, to pick all athletes capable of reaching the top eight at the next Olympic Games).

Do not be afraid to develop the best option for the sport, the one that in the opinion of those who are developing the policy has the best chance of maximising the results in terms of the stated aim.

Do not be afraid to develop the best possible policy just because it may not be popular with some of the interested parties. Educate the stakeholders as to the aim of the process and why the organisation has gone down the particular path it has. Do not let the prospect of appeals stop the organisation from doing the job as best it can. Thorough preparation will minimise the chance of appeals and make the process more likely to be an overall success.

It is acknowledged that sporting organisations may not necessarily have the resources (legal and/or financial) to incorporate all of the suggestions set out in this manual. The suggestions are put forward as proposals for best practice if the circumstances allow. It should, however, be noted that cutting corners in an effort to save costs at the preparation and implementation stage of the selection process may ultimately end up being an example of false economy when compared with the expense incurred and damage done as a result of not getting it right the first time.

## **L Useful contacts**

Australian Sports Commission  
PO Box 176 BELCONNEN ACT 2616  
Tel: 61 2 6214 1111  
(Sports consultants should be the first point of call for all NSOs)

Australian Olympic Committee  
Level 3, 1 Atchison Street, ST LEONARDS NSW 2065  
Tel: 61 2 8436 2100  
Fax: 61 2 8436 2198  
Email: [aoc@olympics.com.au](mailto:aoc@olympics.com.au)  
Web site: [www.olympics.com.au](http://www.olympics.com.au)

Australian Commonwealth Games Association  
173 Drummond Street, CARLTON VIC 3053  
PO Box 49, CARLTON SOUTH VIC 3053  
Tel: 61 3 9654 4755  
Fax: 61 3 9654 7311  
Email: [acga@ausport.gov.au](mailto:acga@ausport.gov.au)  
Web site: [www.commonwealthgames.org.au](http://www.commonwealthgames.org.au)

Australian Paralympic Committee  
1 Herb Elliott Avenue, Sydney Olympic Park, HOMEBUSH BAY NSW 2140  
PO Box 596, SYDNEY MARKETS NSW 2129  
Tel: 61 2 9704 0500  
Fax: 61 2 9746 0189  
Email: [auspara@paralympic.org.au](mailto:auspara@paralympic.org.au)  
Web site: [www.paralympic.org.au](http://www.paralympic.org.au)

Court of Arbitration for Sport  
Web site: [www.tas-cas.org/default.htm](http://www.tas-cas.org/default.htm)

Australian and New Zealand Sports Law Association  
Unit 3 ,56–58 Cook Street, RANDWICK NSW 2031  
Tel: 61 2 9398 9559  
Fax: 61 2 9398 9559  
Web site: [www.anzsla.com.au](http://www.anzsla.com.au)

Also refer to Guidelines for Athlete Support Through Selection Processes and Major Events, available on the Australian Sports Commission web site ([www.ausport.gov.au/nso/advice.asp](http://www.ausport.gov.au/nso/advice.asp)).

# Appendix 1: Example clauses

## 1 Statement of selection philosophy

a The [name of championships] provide competition at the very highest level and are of importance and relevance in developing successful athletes. [NSO] is committed to selecting athletes whose current results and/or previous major international results indicate that the athlete is capable of being competitive at the world level, in the case of the [name of championships] this means in the top ten for individual events and top five in team events.

**or**

b The national junior team for the world junior championships will be selected with the following overriding objectives:

- i to achieve a top-four performance in all events at the world junior championships
- ii to identify and prepare athletes for the transition into national elite programs.

## 2 Objective selection criteria

a Any athlete who finishes first or second at the selection trial and who has achieved the qualifying standard during the qualifying period will be automatically selected in the team.

**or**

b The athlete who is ranked highest on the [international federation rankings] as of [insert date] will be awarded automatic selection to the team.

## 3 Subjective selection criteria

a The selectors will name the three athletes who, in their opinion, have the best chance of achieving a medal result at the [name of championships].

**or**

b The selectors shall identify athletes for selection to the team based on ensuring a mixture of talent, with particular regard to an athlete's demonstrated ability for teamwork and team cohesion for the overall success of the team.

#### **4 Combination of objective and subjective selection criteria**

- a The first and second placed athletes at the selection trial, having achieved the qualifying time within the qualifying period will be automatically selected for the [name of championships]. A third member may be added to the team at the discretion of the selectors. This discretion is absolute and need not be exercised by the selectors.

**or**

- b The first eligible athlete at the selection trial will be automatically selected provided that they attain the A qualifying standard during the trial or has previously done so since [insert date].

Provided that the first placegetter is also automatically selected, the second eligible athlete at the trial will also be an automatic selection provided they have attained the A qualifying standard during the trial or have previously done so since [insert date].

Unfilled positions in individual events may be filled by the selectors at their discretion from among all athletes who have attained at least the B qualifying standard.

In any trial where an unqualified or B qualified athlete defeats an A qualified athlete then all selections for such events will also be at the discretion of the selectors.

#### **5 Factors to be taken into account in the exercise of discretion**

- a In exercising their discretion, the selectors may consider any factor, or combination of factors that is, in the opinion of the selectors, relevant for consideration when selecting an elite Australian team. Without in any way limiting the discretion of the selectors as set out in this clause, the selectors may consider the following:
- i performances in the selection trials
  - ii performances in the previous world championships and/or World Cup events
  - iii overall consistency of performance at an international level
  - iv individual strengths that may contribute to the performance of the team as a whole
  - v willingness and ability to fill and/or complete a role that may enhance Australia's medal potential

- vi the benefit of exposure to international racing to any athlete who, in the opinion of the selectors, has the potential to represent Australia at future Olympic Games.

**or**

- b In general, an athlete will only be considered for selection by discretion if they are considered by the selectors to be on a rapid improvement curve and/or possess high potential in future international events and/or attain a performance that would place the athlete in the final of the [name of championships].

## **6 Pre-selection**

- a Athletes may be eligible to be pre-selected at the discretion of the selectors. To be eligible for pre-selection athletes must have:
  - i attained the qualifying standard at any time between [insert dates]
  - ii have been an individual medallist at the previous world championships
  - iii complied with all requirements of this selection policy.

**or**

- b The selectors may select an athlete or athletes early to the team based, in the opinion of the selectors, on outstanding international performances in the previous 18 months.

## **7 Conditional selection**

The selection committee may make the discretionary selection of any particular athlete subject to the athlete meeting further conditions. Those further conditions may include achieving a particular result in a future race, completing a fitness trial to the satisfaction of the head coach or any other condition that, in the opinion of the selection committee, is reasonable in the circumstances of the particular athlete.

If a particular athlete's discretionary selection is made subject to the athlete meeting further conditions, those conditions will be communicated to the athlete in question prior to the team being announced. The fact that the athlete's selection is conditional will be mentioned at the team announcement and if considered appropriate by the selection committee, the additional conditions may also be announced.

## **8 Extenuating circumstances**

- a Athletes (other than those exempted by the selectors in advance) who fail to compete in the selection events because of illness, injury or family

bereavement may still be selected provided that all other qualifying conditions have been met in advance of their non-participation. A medical certificate provided by a doctor nominated or authorised by [NSO] will be required in cases of illness or injury.

**or**

- b 1 In considering the performances of athletes at events, trials, training camps or other attendances required under these criteria, the respective national selection committees may, at their discretion, give weight to extenuating circumstances.
- 2 For the purposes of clause 1 above, extenuating circumstances means an inability to compete, attend training camps or perform at an optimum level arising from:
  - 2.1 injury or illness
  - 2.2 travel delays
  - 2.3 equipment failure
  - 2.4 bereavement or personal misfortune, and/or
  - 2.5 any other factors reasonably considered by [insert person responsible] to constitute extenuating circumstances.
- 3 Athletes unable to compete at events, trials, training camps or other attendances required under these criteria must advise the [insert person responsible] in writing of this fact and the reasons thereof as soon as practicable after the extenuating circumstances arise.
- 4 In the case of injury or illness, athletes will be required to undergo a medical examination by a doctor or doctors nominated by [insert person responsible].
- 5 A decision in each case of extenuating circumstances will be made by the respective national selection committee on an individual basis.

## **9 Eligibility criteria**

Only athletes qualified according to the terms of this section will be eligible for selection in the team.

- a [NSO] general eligibility criteria:
  - Complete and sign the application and declaration form in Annexure 1 and return it to [NSO] no later than [date].
  - Complete and sign the 2006 athlete agreement.

- At all times abide by [NSO]'s code of conduct and act in a manner that does not bring the sport of [sport name] or the national team into disrepute.
  - All members of the team will be required to sign an Australian Sports Anti-doping Authority drug testing form within 14 days of announcement of their selection in the team or put within [no.] days announcement in the team.
- b [NSO] specific eligibility criteria:
- have achieved the qualifying standard within the qualifying period, or
  - have been a member of last year's world championship team, or
  - have placed first, second or third in last year's national championship.
- c [International federation] general eligibility criteria:
- Satisfy the [international federation] rules regarding nationality and citizenship, which are based on the conditions laid down in the charter of the International Olympic Committee. In summary, athletes must:
    - be a citizen or national of Australia
    - be a current [NSO] member
    - not have represented another country in the last three years.
  - As of the [no.] day of [month] be ranked in the top 50 on the [international federation] ranking list.

## 10 Requirements after selection

- a Following selection of the team as set out in this policy, all members of the team will be required to comply with the following additional requirements:
- i All members of the team are expected to meet minimum standards of behaviour for team members while assembled, travelling or training as part of the team. Any team member who does not meet that minimum standard of behaviour in the assessment of the head coach will be dismissed from the team.
  - ii All team members must immediately inform the head coach of any illness or injury that could reasonably impact on the athlete's ability to perform at the level expected of the athlete at the [name of championships].
  - iii All team members will be required to submit to a medical examination conducted by the medical director or his nominee not less than three weeks prior to the [name of championships].

- iv If at any time prior to departure for the [name of championships] any team member is assessed as injured, ill or unfit, that team member may be withdrawn from the team at the discretion of the head coach.
- v Team members will be required to attend a pre-championships camp at [name of venue] prior to the [name of championships].

**or**

- b During the period between the announcement of the team and the date of departure, athletes must demonstrate that they are physically fit, performing well and likely to compete at a level appropriate to the competition/s for which they have been selected.

During the period between the announcement of the team and the date of departure, assessment shall be made from time to time as to the selected athletes' standard of fitness, their progress in training and their preparedness for the event in which they have been selected. Such assessment shall be directed and be under the control of the head coach. If, as a result of such assessment, it is considered by the manager, after consultation with the other team officials, that by reason of ill health, injury or some other matter, a selected athlete has not maintained their fitness or standard of performance so as to be able to represent Australia at a standard comparable to that exhibited so as to gain selection, the manager shall immediately notify the head coach, who shall have the power to withdraw that athlete from the team.

## **11 Appeals**

### **1 Right of appeal**

- a An eligible athlete who fails to be selected for the team pursuant to the process and criteria set out in this policy may appeal against omission from the team as set out in this section.
- b The sole grounds of any appeal are that:
  - i the athlete's omission from the team was as a result of a failure by the selection committee to properly apply the selection criteria set out in this policy, or
  - ii there was no material on which the selection decision could reasonably be based.
- c Any appeal under this clause will proceed in accordance with the procedure set out below.

## **2 Notice of appeal**

- a Any eligible athlete wishing to appeal against their omission from the team must lodge a notice of appeal in writing in the form set out at Appendix 1 to this policy to be received by the CEO of [NSO] by 5.00pm on the second business day following the announcement of the decision the subject of the appeal. The notice of appeal must set out the grounds on which the appeal is made.
- b After lodging the notice of appeal as set out in subclause 2(a) above, the appellant (the athlete making the appeal) must file a summary of all the arguments and/or submissions that the athlete wishes to be considered in support of their appeal together with an outline of all the evidence that will be relied on in support of those arguments and/or submissions. This document must be received by the CEO of [NSO] by 5.00pm on the fifth clear day following the announcement of the decision the subject of the appeal.
- c The summary of arguments and submissions in support of the athlete's appeal must be accompanied by an appeal fee of \$500. If the appeal fee is not filed at the same time, and received by the CEO as required by this section, the athlete will be presumed to have withdrawn their appeal.
- d The appellant can withdraw an appeal at any time.
- e The time limits for lodging the notice of appeal, summary of arguments and submissions and the appeal fee are mandatory. Failure to comply with these time limits will, at the absolute discretion of the appeals tribunal, result in the appeal being dismissed without consideration on the merits.

## **3 Constitution of appeals tribunal**

- a The appeals tribunal shall be constituted by any three persons available to hear the appeal, which must include the following:
  - i a person with a thorough knowledge of the sport and who preferably has had recent international competition experience in the sport
  - ii another person of experience and skills suitable to the function of the appeals tribunal
  - iii a barrister or solicitor who will chair the appeals tribunal.
- b No member of the appeals tribunal may be a party to or directly interested in the matter under consideration.

#### **4 Functions of the appeals tribunal**

The appeals tribunal has no power of selection or re-selection. The appeals tribunal may review the matter/s set out in the appeal and may (as appropriate) refer the matter back to the selection committee for consideration. The decision of the appeals tribunal will be binding on the parties and neither party may institute or maintain proceedings in any court or tribunal other than the Court of Arbitration for Sport.

#### **5 Hearing of the appeal**

- a The appeals tribunal shall, as soon as practical after receiving the appeal documents, investigate and consider the matter and determine whether:
  - i the matter should be dismissed because, in the opinion of the appeals tribunal, there is no credible evidence, submission or argument on which the appeals tribunal could be satisfied that a ground of the appeal can be made out, or
  - ii the appeal should be the subject of a hearing as set below.
- b If the appeals tribunal determines the matter should be dismissed under clause 5(a)(i) above that decision is final and the appeal has failed. If the appeals tribunal determines that the appeal should be dismissed without a hearing, the appellant's appeal fee of \$500 is forfeited to [NSO] as the costs of the appeal. If the appeals tribunal determines the matter warrants a hearing, the appeals tribunal will advise the appellant and set the date for such a hearing as soon as practicable and necessary having regard to the timing of selection and the proximity of relevant events.
- c The appeals tribunal must conduct any appeal hearing in accordance with clause 5(b) as follows:
  - i it must observe the principles of natural justice
  - ii it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit
  - iii it will conduct its hearings with as little formality and technicality and with as much expedition as the proper consideration of the matter permits
  - iv hearings may occur in such manner as the chair decides, including telephone or video conferencing
  - v the appellant must establish one or more grounds of appeal to the reasonable satisfaction of the appeals tribunal having regard to the importance and gravity of the issue

- vi the parties to an appeal may be represented at a hearing.
- d following consideration of all information that the appeals tribunal considers relevant, the appeals tribunal shall arrive at a finding. A decision of the appeals tribunal may be by a majority decision:
  - i the appeals tribunal shall notify the CEO of its finding as soon as practicable
  - ii if the appeals tribunal considers the ground/s alleged by the appellant to be made out, it shall recommend that selection committee reconsider the selection of the relevant team position
  - iii where the appeals tribunal considers that a ground of appeal has been made out, it may stipulate that all or part of the appeal fee be refunded to the appellant
  - iv The selection committee shall comply with any direction of the appeals tribunal to reconsider the selection of the relevant team position
  - v any further selection decision of the selection committee under the direction of the appeals tribunal shall be final and binding, and no other further appeal shall be available to the appellant in respect of that selection.

## **12 Power to amend**

This policy can be amended at any time by [NSO] if [NSO] is of the opinion that such an amendment is necessary as a result of any change in the [international federation] guidelines, to give effect to the policy following discovery of a drafting error or oversight or for any other reason determined to be in the best interests of [NSO] by [NSO]. [NSO] shall not be responsible or liable in any way to anyone as a result of any such amendment.

## Appendix 2: Example of logical sequence for selection policy

- 1 Introduction — refer to section C(vii), p. 30
- 2 Definitions
- 3 Selection philosophy — refer to section C(iii), p. 16
- 4 Eligibility criteria — refer to section C(v), p. 27
- 5 Pre-selection criteria — refer to section C(v), p. 23
- 6 Selection criteria
  - Pre-selection
  - Selection events
  - Objective criteria — refer to section C(v), p. 19
  - Discretionary criteria — refer to section C(v), p. 19
    - Factors to be taken into account in exercise of discretion — refer to section C(vii), pp. 31–2
  - Extenuating circumstances — refer to section C(v), p. 24
  - Conditional selection — refer to section C(v), p. 24
- 7 Dates of selection — refer to section C(vii), p. 31
- 8 Announcement of the team — refer to section H, p. 51
- 9 Requirements after selection — refer to section C(v), p. 27
- 10 Appeal process — refer to section D, pp. 34–40
- 11 Power to amend policy — refer to section C(vii), p. 30
- 12 Appendixes, for example:
  - Application for selection
  - Notice of appeal
  - Team agreement.

## **Appendix 3: Example of explanatory memorandum**

The [name of championships] selection policy is now available on the [NSO] web site. The policy has also been distributed widely to athletes, coaches and administrators.

It is the responsibility of all prospective team members and their coaches to read and make sure they understand the policy and how it operates.

If anyone has a specific query in relation to the intended meaning or operation of the policy, they can contact [high performance director] or [other contact] on [insert contact details].

By way of assistance, the following provides a summary of the intended meaning and operation of the policy.

### **Eligibility**

In order to be eligible for the team, prospective team members must complete and sign the application form which is attached as Appendix 1 to the policy. This application involves a declaration by prospective team members that they will be bound by the policy and appeal process set out as part of the policy.

[Insert details of any other eligibility criteria].

### **Team size**

[NSO] can select up to a maximum of [insert number] athletes to represent Australia at the [name of championships].

### **Selection by right of performance (automatic selection)**

Athletes can gain selection to the team by right of performance in [insert number] selection race/s. Up to a maximum of [insert number] team positions are available by right of performance in the selection race/s.

The selection races are [insert details].

The first placed eligible Australian athlete at [selection race 1] will be automatically selected in the team, subject to that athlete finishing in the top-five positions overall.

The highest placed eligible Australian athlete at [selection race 2] will be automatically selected in the team provided that:

- the athlete finishes in the top-three positions overall
- the highest placed eligible Australian athlete has not already qualified for the team through right of performance at selection race 1.

[etc.]

## **Selection at the discretion of the selectors**

The final team positions will be awarded at the discretion of the selectors ([insert clause number] of the policy).

Athletes and coaches should ensure they understand the way the process of discretionary selection works.

[Insert clause number] sets out specific matters that the selectors **may** consider in exercising their discretion. Those matters are, as always, not to be regarded as selection criteria as such. They are matters that the selectors may take into consideration together with other factors or matters not listed that are in the opinion of the selectors relevant to the selection of the team.

## **Announcement of the team**

Athletes who have met automatic team position criteria will be announced within 72 hours of the completion of the selection event.

Any discretionary additions to the team must be announced by [insert date].

## **Appeal process**

The appeal process is set out in [insert clause number/s] of the selection policy. Athletes should familiarise themselves with the process, including the grounds of appeal. Again, if there are any queries in this regard, please contact [high performance director] or [other contact] as set out above.

## Appendix 4: Example of conflict of interest policy

- 1 Where, in the opinion of the selection panel, an actual conflict of interest arises for any selector with respect to any athlete under consideration by the selection panel, then the selector to whom that conflict attaches will not take part in any exercise of discretion with respect to that athlete.
- 2
  - a 'Conflict of interest' is defined as a situation where a selector has a personal interest in any athlete under consideration for selection.
  - b Where a selector has a potential or actual conflict of interest, the selector must immediately notify the chair of selectors.
  - c Where a disclosure about a potential or actual conflict of interest is made to the chair of selectors, the chair may:
    - i in the case of a potential conflict of interest, authorise the selector to continue involvement in the selection process as long as an actual conflict does not materialise
    - ii require the selector to cease taking part in the selection process, or
    - iii authorise the selector to continue involvement in the selection process but not take part in any exercise of discretion with respect to the relevant athlete.

## Appendix 5: Examples of code of conduct policy

### D1 General code of conduct

As a member of [the organisation], a member association or an affiliated club or a person required to comply with [the organisation]'s member protection policy, you must meet the following requirements in regard to your conduct during any activity held or sanctioned by [the organisation], a member association or an affiliated club and in any role you hold within [the organisation], a member association or an affiliated club:

- 1 Respect the rights, dignity and worth of others.
- 2 Be fair, considerate and honest in all dealings with others.
- 3 Be professional in, and accept responsibility for, your actions.
- 4 Make a commitment to providing quality service.
- 5 Be aware of, and maintain an uncompromising adherence to, [the organisation]'s standards, rules, regulations and policies.
- 6 Operate within the rules of the sport, including national and international guidelines, which govern [the organisation], the member associations and the affiliated clubs.
- 7 Do not use your involvement with [the organisation], a member association or an affiliated club to promote your own beliefs, behaviours or practices where these are inconsistent with those of [the organisation], a member association or an affiliated club.
- 8 Demonstrate a high degree of individual responsibility especially when dealing with persons under 18 years of age, as your words and actions are an example.
- 9 Avoid unaccompanied and unobserved activities with persons under 18 years of age, wherever possible.
- 10 Refrain from any form of harassment of others.
- 11 Refrain from any behaviour that may bring [the organisation], a member association or an affiliated club into disrepute.
- 12 Provide a safe environment for the conduct of the activity.
- 13 Show concern and caution towards others who may be sick or injured.
- 14 Be a positive role model.
- 15 Understand the repercussions if you breach, or are aware of any breaches of, this code of behaviour.

## **Appendix 6: Acronyms**

ACGA Australian Commonwealth Games Association

AOC Australian Olympic Committee

APC Australian Paralympic Committee

CAS Court of Arbitration for Sport

NSO National sporting organisation