



Selection Appeals Policy

May 2013

As adopted at 2013 Annual General Meeting

1 **Selection Appeals Tribunal**

- 1.1. The Board will appoint a panel of at least six persons from which the Selection Appeals Tribunal will be constituted. The panel will consist of:
- (1) at least two persons who are each a barrister or solicitor of not less than 5 years standing, one of whom will be appointed by the Board as the President of the Selection Appeals Tribunal;
 - (2) at least two fencers who have retired (preferably recently) from international competition; and
 - (3) at least two persons with experience in the administration of sport.

Each appointee will hold office at the discretion of the Board.

- 1.2. On the receipt by the AFF Secretary-General of a Notice of Appeal, he or she will promptly provide a copy thereof to the President of the Selection Appeals Tribunal who will then appoint from the panel three members to hear and determine the matter. Subject to any panel member being ineligible or unable to hear the matter in question, the President will endeavour to appoint:
- (1) a barrister or solicitor (including the President) to act as chairperson; and
 - (2) one retired fencer and one person with experience in sports administration
- to hear and determine each matter.
- 1.3. In the event that there are insufficient members of the panel available to hear any matter, the President may appoint an independent person or persons not on the panel to the Tribunal for the sole purpose of hearing and determining the matter in question as part of the three member Selection Appeals Tribunal.

2 **Selection Disputes Procedure**

- 2.1. A fencer who is aggrieved of a decision by the Selection Panel concerning his or her selection or non-selection to a representative team or to participate in an athletic competition or event may request the Selection Panel to reconsider its decision by giving Notice in Writing to the Chairperson of the Selection Panel within 72 hours of the announcement of the selection decision. In this request, the fencer must provide all information which he or she considers is relevant to the Selection Panel's reconsideration of its decision.
- 2.2. Upon receiving a request under the preceding Clause 2.1, the following procedure will apply:
- (1) the Selection Panel will immediately provide a copy of the request to any fencer who may be directly and adversely affected by the reconsideration of its decision ("affected fencer");
 - (2) an affected fencer provided with the request may, within 24 hours of his or her receipt of the request, provide written submissions relevant to the reconsideration by the Selection Panel of its decision. The Selection Panel

will still reconsider its decision as required under the following By-Law 2.2(3) if an affected fencer does not provide written submissions within the prescribed time; and

- (3) as soon as practicable but no later than 72 hours after receiving a request, the Selection Panel will:
 - (a) reconsider its decision giving due consideration to the written information provided by the athlete making a request and any written submissions provided by any affected fencer;
 - (b) advise the fencer(s) concerned of its decision in writing; and
 - (c) in the notice advising the fencer(s) of its decision the Selection Panel will also advise the fencer of his or her right to appeal the decision made by the Selection Panel to the Selection Appeals Tribunal.

The Selection Panel is not obliged to give reasons for its decision concerning the selection or non-selection of a fencer or fencers.

2.3. Where it is appropriate, the Selection Panel may extend the time limits in this Clause.

3 **Appeal To Selection Appeals Tribunal**

3.1. A fencer may only appeal to the Selection Appeals Tribunal if he or she continues to be aggrieved of a decision by a Selection Panel concerning his or her selection or non-selection to a representative team or to participate in an athletic competition or event after a reconsideration of its decision under Clause 2.

A fencer may only appeal a decision reconsidered under Clause 2, and may not appeal any previous selection or non-selection decisions that are the, or a part of the, selection criteria for the selection under appeal. This includes, but is not limited to for example, where prior selection to the Australian Fencing Team or Australian Fencing Squad is the, or part of the, selection criteria for the selection under appeal.

3.2. The sole grounds for any appeal to the Selection Appeals Tribunal are that:

- (1) the selection criteria have not been properly followed and/or implemented; or
- (2) the fencer was not afforded a reasonable opportunity by the AFF to satisfy the applicable selection criteria; or
- (3) the selection decision was affected by actual bias; or
- (4) there was no material on which the selection decision could reasonably be based.

3.3. An appeal under this Clause 3 must be made by lodging with the AFF Secretary-General a Notice of Appeal which must be in writing within 48 hours of the notification of the decision by the Selection Panel accompanied by a payment of \$500 to the AFF for the costs of the appeal, which sum will be dealt with in accordance with Clause 3.11.

- 3.4. The AFF Secretary-General may in his or her absolute discretion extend the time within which a fencer may appeal to the Selection Appeals Tribunal provided any request for an extension is made before the relevant time is due to expire and the AFF Secretary-General is satisfied that there are compelling circumstances to grant the extension.
- 3.5. Upon receipt of a Notice of Appeal, the AFF Secretary-General will give a copy thereof to the members of the Selection Panel and to any fencer whom he or she believes may be directly and adversely affected by the outcome of the determination of the Selection Appeals Tribunal.
- 3.6. The Selection Appeals Tribunal will convene a preliminary hearing with the appellant, Selection Panel and any affected parties as soon as is practicable after receipt of the Notice of Appeal by the AFF Secretary-General. At the preliminary hearing the Selection Appeals Tribunal will give directions as to the conduct of the matter including, but not limited to, the provision of written submissions by the parties, the joinder of any person who may be adversely affected by the determination of the Selection Appeals Tribunal, the provision of documents and the manner of taking evidence.
- 3.7. All communications (other than during the course of a preliminary hearing or the hearing) between the parties and the Selection Appeals Tribunal must be transmitted through the AFF Secretary-General.
- 3.8. An appellant must attend and appear before the Selection Appeals Tribunal at the date, time and place fixed for the hearing of the appeal. Unless there are extraordinary circumstances acceptable to the Selection Appeals Tribunal, where an appellant fails to attend before the Selection Appeals Tribunal his or her appeal will be deemed to have been abandoned. The determination in this regard by the Selection Appeals Tribunal will be final and binding.
- 3.9. Should a fencer who receives notification pursuant to Clause 3.5 elect not to participate in the hearing as an affected party then, unless that person has already appealed against his or her selection or non-selection as the case may be, that fencer will forfeit his or her right of appeal against consequent selection or non-selection as the case may be.
- 3.10. The Selection Appeals Tribunal may of its own motion or upon application of any party to the appeal adjourn the hearing of an appeal provided that the appeal must be concluded before the date and time which may be imposed by the FIE, the Board, the Australian Olympic Committee or the Australian Commonwealth Games Association for the selection of the fencer(s) the subject of the appeal.
- 3.11. Appeal Fee
 - (1) Where the Selection Appeals Tribunal upholds an appeal, the \$500.00 payment made under Clause 3.3 of this will be refunded.
 - (2) Where the Selection Appeals Tribunal dismisses an appeal, it may determine in its absolute discretion that none, all or part of the \$500.00 payment made under Clause 3.3 be refunded to the appellant.

4 **Successful Appeals**

If the Selection Appeals Tribunal determines to uphold any appeal in respect of the selection or non selection of a fencer, it will as a matter of usual practice refer the question of selection back to the Selection Panel for determination in accordance with the applicable selection criteria. The Selection Appeals Tribunal may itself conclusively determine the issue of selection of fencers where it:

- (1) has determined that:
 - (a) it would be impractical to refer the question of nomination or non-nomination back to the Selection Panel in the time available; or
 - (b) that there has been such a disregard of the Selection Criteria by the Selection Panel that a reasonable person could reasonably conclude that it is unlikely the Selection Criteria will be properly followed and/or implemented; and
- (2) prior to making the determination in Clause 4(1), has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:
 - (a) the possibility of it making such a determination; and
 - (b) that it may itself conclusively determine the issue of selection of fencers; and
permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.

5 **Selection Appeals Tribunal Procedure**

The procedures of the Selection Appeals Tribunal are as follows:

5.1. The Selection Appeals Tribunal:

- (1) will provide any person whose interest will be directly and adversely affected by its decision a reasonable opportunity to be heard;
- (2) will conduct a fair hearing;
- (3) will hear and determine the matter before it in an unbiased manner;
- (4) will hear the appeal giving due consideration to the Constitution and all relevant Clauses of the AFF;
- (5) will make a decision that a reasonable body could honestly arrive at;
- (6) will provide a reasoned decision in writing; and
- (7) is governed by the laws applicable in the State of Victoria.

5.2. Subject to the Constitution and By-Laws:

- (1) any procedure or requirement regulating the function of the Selection Appeals Tribunal is directory in nature and any decision of the Selection Appeals

Tribunal is not invalid by reason of that procedure or requirement not being fulfilled; and

- (2) the Selection Appeals Tribunal may regulate any proceedings brought before it in such manner as it thinks fit.
- 5.3. Each matter before the Selection Appeals Tribunal will be dealt with as a new hearing and the Selection Appeals Tribunal will reach its own decision regarding the matter irrespective of any prior decision in respect of which appeal may be made.
 - 5.4. A hearing before the Selection Appeals Tribunal will be:
 - (1) inquisitorial in nature;
 - (2) conducted with as little formality and technicality and with as much expedition as the proper consideration of the matter before it permits;
 - (3) decided according to the laws applicable in Victoria; and
 - (4) confidential.
 - 5.5. The Selection Appeals Tribunal is not bound by the rules of evidence or by practices and procedures applicable to courts of record, but may inform itself as to any matter in such manner as it thinks fit.
 - 5.6. The appellant in any matter before the Selection Appeals Tribunal has the right to present evidence, including the right to call and cross examine witnesses and bears the onus of showing that his or her appeal should be decided in his or her favour.
 - 5.7. The standard of proof in all appeals heard by the Selection Appeals Tribunal is the balance of probabilities.
 - 5.8. All persons appearing before the Selection Appeals Tribunal have the right, at his, her or its expense, to legal representation and to the services of an interpreter (if appropriate).
 - 5.9. The Selection Appeals Tribunal may proceed to hear and determine a matter notwithstanding the failure of any party to attend a hearing.
 - 5.10. All parties to a hearing before the Selection Appeals Tribunal will bear their own costs of and incidental to the hearing.
 - 5.11. The Selection Appeals Tribunal will give its decision as soon as practicable after the hearing of the matter in question provided that any decision will be given before the date and time which may be imposed by the FIE, the Board, the Australia Olympic Committee or the Australian Commonwealth Games Association in respect of the nature of the matter in question.

6 **Appeals from the Selection Appeals Tribunal**

- 6.1. An aggrieved athlete may only appeal a decision of the Selection Appeals Tribunal only in respect of nomination of a fencer for selection in an Australian Olympic Team to the Court of Arbitration for Sport. In all other selection disputes and appeals, the decision of the Selection Appeals Tribunal will be final and binding on the parties.
- 6.2. In respect of an appeal to the Court of Arbitration of Sport, the athlete must give Notice in Writing to the AFF Secretary-General of his or her intention to appeal within 48 hours of the decision of the Selection Appeals Tribunal;
 - (1) lodges his or her appeal with the Court of Arbitration for Sport within five working days of the decision of the Selection Appeals Tribunal; and
 - (2) otherwise follows the relevant provisions contained in the Code of Sports-related Arbitration which regulates matters coming before the Court of Arbitration for Sport.

Any such appeal to the Court of Arbitration for Sport will be governed by the laws of the State of Victoria.

7 **Olympic Games**

In respect of nomination(s) by the AFF of fencer(s) for selection in an Australian Olympic Team, references in this Policy to “selection” will be read and construed as being references to such nomination and this Policy will apply mutatis mutandis to such nominations or non-nominations as if they were selections or non-selections as the case may be.

8 **Substitution of Authorised Person**

Where the AFF Executive considers in its absolute discretion that it is inappropriate or not possible for the Secretary-General of the AFF to act, it will appoint an alternative Director to undertake all tasks and roles identified in this Policy as if they had been undertaken by the Secretary-General.