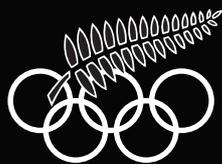


Guidance Notes on Selection



GUIDANCE NOTES ON SELECTION

Website wording/Overview

Selecting athletes to represent the country is an important and challenging task for National Sports Organisations (NSOs).

Selection is important because:

- the athletes are entitled to receive a fair, robust and transparent selection process;
- the performance of an NSO's athletes on the world stage is critical to the NSO achieving its performance goals;
- the investment made in NSOs by the Government demands a best practice approach; and
- getting it wrong impacts on the reputation of the athlete, the sport and the high performance sports system.

These Guidance Notes have been produced to assist NSOs to have a fair, robust and transparent selection process, which can withstand the scrutiny of any appeal.

They are intended for Chief Executives, High Performance Director/Managers, Selectors and others involved in the selection process.

While these Guidance Notes specifically apply to selection by NSOs of athletes for national teams, the principles also apply to the selection of athletes at all levels of sport.

There are five Guidance Notes:

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Guidance Note

#1

The Selectors

Includes their role, appointment, briefings and conflicts of interest

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Guidance Note

#2

Selection Policies

Includes their status, other documents, timing, drafting them and communication

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Guidance Note

#3

The Selection Process

Includes gathering information, communication, eligibility, selection meetings, role of the CEO, Board and High Performance Director/Manager, the selection decision, and withdrawing athletes after selection

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Guidance Note

#4

Selection Appeals

Includes options for resolution, receiving an appeal, preparing for a hearing, the hearing process and media

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Guidance Note

#5

Selection for Commonwealth, Olympic and Paralympic Games

Includes the difference between nomination v selection, the selection process and appeals

In each Guidance Note there are practical tips, case studies and helpful links for further information.

Additional references:

Alan Sullivan QC

The Duties of Selectors – the Sydney 2000 Experience (2001)

Alan Sullivan QC

"I didn't make the team. What can I do? An Overview of Selection Jurisprudence" [2015] Australian and New Zealand Sports Law Journal 2015 10(1)

Australian Sports Commission

Getting it right: Guidelines for Selection (2007)

Australian Sports Commission

www.ausport.gov.au/sportscoachingmag/role/howzat!_the_process_of_athlete_selection

Australian Sports Commission

Getting it right: Guidelines for Selection (2002) and ANZSLA

Sports Dispute Resolution Centre of Canada

Selection Criteria for Major Events in Sport: Guidelines and Tips

Thorpe, Buti, Davies, Fridman, Jonson

Sports Law, Chapter 14, pages 371-392 (2009)

GUIDANCE NOTE ON SELECTION¹ #1

The Selectors

This Guidance Note covers the role of Selectors in selecting athletes for national teams including their appointment, briefing them and dealing with conflicts of interest.

Role of Selectors

- The role and authority of the Selectors should be in writing. Sometimes it is specified in the National Sports Organisation's (NSO's) constitution but it is good practice to develop terms of reference or a position description which sets this out.
- Generally Selectors have the authority to decide on the selection of athletes. This is usually delegated in the NSO's constitution or the Selection Policy. For some NSOs, the Chief Executive or the Board also has a role in approving or ratifying the Selectors' decisions. Care is needed with such a two or three-step approach given the Selectors are appointed as the experts. This approach may result in perceived or actual interference in the selection process and also increases the risk of procedural errors or allegations of bias. If this approach is adopted, it must be strictly followed to avoid being challenged.

TIP: Check the NSO constitution to see who has the power to appoint the Selectors and make selection decisions.

Appointing Selectors

- Selectors are deemed by the courts as experts in their field. It is therefore important to ensure they do have the necessary expertise, skills and experience for this role, in line with the obligations and requirements set out in the relevant document (i.e. Selection Policy or Selectors' terms of reference).
- In most NSOs, Selectors are appointed by the Board. However, sometimes the Chief Executive or the High Performance Director/Manager has delegated power to appoint the Selectors. The appointment process is sometimes specified in the NSO's constitution but if not, it is good practice to include the appointment process in the Selectors' terms of reference or the Selection Policy.
- The particular attributes to look for in appointing Selectors are:
 - Experience in the sport as an athlete, coach or other role;
 - Prior experience in the selection of athletes;
 - Independence from the athletes being considered for selection;
 - Avoiding potential conflicts of interest;
 - Time and availability to observe performances, attend events and trials, attend meetings; and do the other tasks set out in the Selection Policy;
 - Attention to detail, be organised and process oriented;
 - Ability to work in a team - often selectors are part of a panel of selectors who need to work together as well as with the High Performance staff.
- Where there is a panel of Selectors look for a spread of these attributes amongst them. It is also recommended that a Convenor of Selectors be appointed with clear functions, so there are clear lines of responsibility and communication to the other Selectors via the convenor.

TIP: Make sure the person appointed to be the Convenor of Selectors has good attention to detail and is process oriented.

- Some NSOs have their national coach or High Performance Director/Manager equivalent on the selection panel. As a general rule, this is not recommended due to the close association they tend to have with the athletes in the sport and the coaches, which can lead to perceptions of bias or conflicts of interest. National coaches and High Performance Director/Managers also need to continue to work with the athlete. This does not prevent them from providing input into the selection process through the Selectors, if and only if it is specified in the Selection Policy. However, in some cases the courts have held the presence of a national coach does not result in bias.

CASE STUDY:

In *Bias v Cycling NZ (2015)* the Sports Tribunal did not accept there was any bias as a result of the Head Coach being on the selection panel. The Tribunal accepted that "it was usual practice to have a coach involved in selection decisions. Clause 3.1 of the selection regulations requires the Head BMX Coach to be on the Selection Panel. Mr Elliott confirmed that having the coach involved in selection decisions is applied in other cycling disciplines managed by CNZ". There were other factors also cited by the Tribunal which did not support any claim for actual bias.

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams.

Briefing Selectors

- Selectors are required to strictly follow and apply the Selection Policy decided by the NSO. If they do not, it may result in unfairness to the athletes and leave the NSO open to an appeal against the selectors' decision.
- When developing the Selection Policy the NSO should invite the Selectors to have input into and review the proposed Policy before it is finalised. This is to ensure it can be implemented in practice and is clear.
- The final Selection Policy, and any related procedures (such as any terms of reference), should be sent to the Selectors once they are approved by the NSO. If these are altered at any time, Selectors must be informed of this so they have the correct and updated Selection Policy to apply.
- Selectors should also be briefed in detail on the Selection Policy before they start the selection process so they are clear on the criteria for selecting athletes decided by the NSO and the events and other matters to be taken into account.

TIP: Hold a briefing meeting with all the Selectors prior to the selection process starting to ensure clarity of their role and function and that the correct criteria and process are followed.

- Selectors need to understand their boundaries and should not engage with athletes or coaches about their selection chances or matters outside of their authority. In no circumstances should selectors email or make contact with an athlete seeking selection, unless it is to make enquiries for the strict purposes of making an assessment under the Selection Policy.
- Ongoing education of Selectors is recommended to keep them up to date with the strategy and goals of the NSO and developments in selection affecting the NSO and others in sport.
- If a decision of the selectors is appealed, selectors should also be supported by the NSO and briefed on the process including the NSO's expectations of them in this process.
- Selectors are usually volunteers so don't forget to thank them!

Conflicts of Interest

- Selectors must avoid conflicts of interest in the selection process. These can arise from:
 - having a family or personal relationship with an athlete seeking selection;
 - being the current or former personal coach of the athlete;
 - being connected, directly or indirectly, through a family connection or friend, to the same Club of an athlete;
 - being the national coach or High Performance Staff for the athlete seeking selection (subject to the comment below);
 - being a Board Member of the NSO, if the Board has a role in deciding or confirming selections.

CASE STUDY:

In *Miller v Olympic Weightlifting NZ (2016)*, one of the Selectors, Mr Moss, was an OWNZ Board member and the President of the North Sport City Weightlifting Club of which the selected athlete was a member. He was also the father of the selected athlete's training partner. The athlete argued this showed apparent bias. The Sports Tribunal dismissed the appeal but noted "it might have been the better course of action for Mr Moss not to vote as a board member and potentially act as a selector" but acknowledged "this is a sport where it will be difficult to find selectors without any association to athletes in contention."

- The best time to identify potential conflicts is in the Selector's application process. Questions should be asked at that stage about the selector's connections in the sport.

TIP: Introduce an application process for potential Selectors to ensure they have the relevant skills and expertise. This process should require disclosure of any prior or existing relationships with athletes, coaches or others in the sport which may give rise to a conflict of interest.

- If the conflict of interest or any possibility of bias (perceived or otherwise) becomes apparent after a Selector's appointment, the NSO should have a documented process for dealing with this. This should include the requirement for:
 - the Selector concerned (or the other selectors) to bring it to the attention of the convenor, the High Performance Director/Manager or the Chief Executive;
 - once disclosed, the Selector stepping aside from the specific decision in which the conflict arises;
 - whether a placement needs to be appointed if there is not a quorum; or
 - standing down from being a Selector for the whole team being selected, depending on the nature of the conflict.
- Selectors undertake a vital function for NSOs and often have to make difficult decisions which will be seen as, and in fact are, decisions of the NSO. It is therefore important they undertake their function with independence and rigor and for NSO's to brief them well to ensure they are equipped and supported to carry out this function.

GUIDANCE NOTE ON SELECTION¹ #2

Selection Policies

This Guidance Note covers the status, content and process for developing a National Sports Organisation's (NSO's) Selection Policy for selecting athletes to national teams.

Why have a Selection Policy?

- The key reason for having a written Selection Policy is to ensure the NSO selects the right athletes to meet its performance goals. By setting a criteria and policy for selection, the NSO can ensure its high performance strategies and goals can be achieved.
- Another reason is to ensure athletes, coaches and selectors understand the basis on which athletes will be selected to represent New Zealand for the relevant events. If it is clearly understood, it reduces uncertainty and therefore challenges to the selection process.
- A Selection Policy which clearly sets out the criteria and process for selection also ensures fairness to all athletes as there is a clear framework for selectors to apply and ensure consistency and transparency in the selection decision making process.

Status of the Selection Policy

- The Selection Policy is a legally binding agreement between the NSO² and the athletes seeking selection. This agreement arises from either:
 - The athlete being a member of the NSO (either directly or via their club) and in that capacity they are bound by the rules, regulations and policies of the NSO (if specified in the constitution); or
 - The athlete's agreement to be bound by the Selection Policy. This agreement can be achieved by the athlete signing an application form to be considered for selection, in which they agree to the Selection Policy. This process is recommended as it ensures athletes expressly agree, and sign up to, the Selection Policy and there can be no doubt about their agreement to the Policy.
- As it is a legally binding agreement, it is important that the Selection Policy is well drafted, clear and unambiguous. It is recommended that NSO's have their draft Selection Policy reviewed by a specialist sports lawyer. Reliance on a Board member with a legal background or a lawyer with non-sports specific legal background is not recommended.
- The Selection Policy may be called a "policy" or a "regulation" or some other title as specified in the NSO's constitution. For example, if the NSO has regulations, then the document might need to be called a Selection Regulation to ensure it is applicable and enforceable (depending on the wording of the constitution).

TIP: Check the NSO Constitution to see what status the Selection Policy should be to ensure it applies to the athletes and is enforceable.

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams.

² For Selection Policies of the New Zealand Olympic Committee and Paralympics NZ see the Guidance Note #5 on "Selection for Commonwealth, Olympic and Paralympic Games"

Other Relevant Documents

- There are a number of other documents of the NSO that may legally link to, and form part of, the Selection Policy and therefore will be part of the legally binding agreement. These documents should be reviewed when developing the Selection Policy to ensure the Selection Policy complies and is aligned with them to avoid inconsistencies. These documents may include the following:
 - Constitution – check who has the power to appoint the Selectors; who can make the final selection decision (e.g. the Selectors or the Board) and who can issue the Selection Policy;
 - Other selection documents – general selection guidelines; other selection policies (e.g. for Olympic Games or other key events like World Championships); terms of reference for Selectors and the selection process;
 - High Performance Strategy – the objectives and performance criteria for selection should align to this strategy;
 - Eligibility Rules – most international sports organisations and NSOs have rules on the eligibility of athletes to compete in the sport's events. These should be checked to ensure the Selection Policy aligns with these, especially in terms of eligibility for selection;
 - Athlete Agreements – these usually deal with post-selection requirements but sometimes they also contain selection matters. For example, if selection of a team is done from a high performance squad and the squad athletes have signed an agreement to be in the squad.

CASE STUDY:

In *Raguz v Judo Federation of Australia (2000)* the Court of Arbitration for Sport allowed an appeal where the basis for nomination to the Australian Olympic Committee was set out in two contradicting documents – the Nomination Criteria (prepared by the AOC) and the Participation Criteria (prepared by the NSO). The inconsistency was in the different points awarded towards the athlete who placed 9th in the 1999 World Championships, and who would have the Oceania qualifying place in the Olympics. In the Participation Criteria it awarded 8 points and in the Nomination Criteria only 6 points. The inconsistency arose because the Participation Criteria had been amended after the Nomination Criteria has been agreed with the AOC. The Court found that all Athletes had a legitimate expectation that the nomination to the AOC would be governed by the Nomination Criteria and original Participation Criteria which gave Raguz more points.

Timing of the Policy

- In fairness to athletes and to minimise uncertainty and appeals, the Selection Policy should be developed and communicated to athletes as early as possible, and prior to the events from which results will be used in any selection decisions. The retrospective application of a Selection Policy, which permits selectors to rely on results from events which have already taken place, may give rise to appeals against the Selectors' decisions.
- Many NSOs have an annual Selection Policy or one applicable season by season. A timetable should be prepared and followed to ensure the Policy's development, input and approval is complete in advance of the next year or season's Policy commencing.

TIP: Sets dates annually for the development, input (by coaches, athletes, selectors) and finalisation of the Selection Policy so it is published well in advance of the relevant events for which the Policy will apply.

- For Selection Policies applying to World Championships or other events which occur less frequently (e.g. every four years), it is important to signal to athletes early the performance results, events and others matters to be taken into account for that selection over the relevant qualification period. Issuing a Selection Policy for an event too close to the event may result in challenges against the Selector's decisions if the events and results relied upon have already occurred. Even if the Selection Policy for that event is not finalised within the qualification period, the athletes should be informed of the events they need to attend, or steps to be undertaken, in advance of them occurring.

Drafting the Selection Policy

- The process for developing the Selection Policy should involve the relevant NSO coaches, high performance staff, Selectors and Chief Executive. Consultation with athletes is also highly recommended. The Board will usually be required under the NSO's constitution to approve the Selection Policy so early engagement with it is also important.
- There is "no one size fits all" approach to the form and content of a Selection Policy. It should reflect the specific criteria decided by the NSO which it thinks is necessary to achieve its performance goals, and the processes of the NSO.
- It is important that the wording of the Policy reflects the agreed criteria and process, and is not simply an edit of a previous versions. The Selection Policy is not just a document. It is the means by which the NSO states how the selection process will help to achieve its performance goals.

TIP: Decide on the NSO's selection criteria and relevant factors before simply editing last year's policy, using templates or "cut and pasting" policies from other sports.

- There are a number of key matters which should be covered in the Selection Policy, as listed below:
 - Scope – this section should set out the scope of the Policy including the event/s and /or age groups it covers, the date it commences, the date/s of the relevant events, camps and trials from which results will be considered, and the dates of selection.
 - Eligibility – this section should list the various matters which need to be satisfied before an athlete can even be considered for selection, such as a New Zealand passport, applicable age limits, membership of the NSO, signing an application form to be considered for selection; no prior convictions, no investigations pending or breaches of the NSO's rules such as anti-doping; any requirements to attend specific events (e.g. national champs) or camps/trials.
 - Performance Criteria – this section should set out the level which the Selectors must be satisfied of, before selecting an athlete. This level should reflect the performance goals for the NSO as stated in its HP strategy. It can either be an objective criteria (which is factually based and no judgment is required), a subjective one (where an assessment is required applying discretion) or a combination of objective and subjective criteria. The Selectors have a narrower role if an objective criteria is used, as the decision is simply based on results. The following are examples of objective/ subjective criteria:
 - An objective criteria would be that the athlete "is ranked in the top 8 on the IF world ranking as at 1 January 2017" or "placed in the top 8 at the 2016 World Championships" or "achieved a time of 10 seconds or less in the 100m final at the 2016 national championships";
 - A subjective criteria would be that the athlete's performances and results at certain key events demonstrate that the athlete "is capable of achieving top 8 placing" at the relevant event or "has the potential to develop towards a top 8 placing at the next Olympic Games".
 - A majority of sports have both objective and subjective criteria to provide on the one hand some clear outcomes required of athletes but on the other, to give the Selectors some discretion to take into account the myriad of factors which may be applicable.
 - Factors to be considered – this section should list the results/performance and factors the selectors must (mandatory) or may (optional) take into account, if there are some subjective criteria, in deciding if the athletes will meet the performance criteria. These will usually include:
 - The results/performances at specified events, in specific races/disciplines. It is usually mandatory for selectors to consider one or more of these results, and weighting or priority may also be specified for more recent results or international level results;
 - Testing/assessment results such as biomechanical, fitness, technical aspects;
 - For teams (e.g. crews, pairs, teams), physical and technical attributes for certain positions;
 - Personal attributes such as training ethic, ability to be a team player, behaviour etc.

TIP: Consider whether the results from certain events should be prioritised in terms of weighting specified in the Selection Policy, to give the athletes an indicator of the events which matter most.

- Exceptional Circumstances – it is recommended that provisions enabling exceptional circumstances affecting an athlete should also be included, so the Selectors can take these into account. This is more difficult to do if the criteria is solely objective, but for subjective criteria it may include reasons such as injury, bereavement, or other exceptional circumstances that happen to an athlete before or at an event or in relation to any other requirement of the Selection Policy (such as attending a camp or a selection trial). The definition of exceptional circumstances and the process for applying it must be clearly specified.
- Appeals – if there is a right of appeal or any process prior to an appeal (such as mediation) this should be specified in the Selection Policy with clear timelines and procedures.³
- Other Provisions – other provisions may be included on matters such as the right to amend the Policy, withdrawal from selection, late selection and reserves.

³ For further guidance see Guidance Note #4 Selection Appeals

- It is recommended that matters relating to the Selectors' appointment and the selection process are not included, or referred to, in the Selection Policy. These can be stated in terms of reference or a similar document and should not be referred to in the Selection Policy itself. This is to minimise the ability for an appeal against the Selectors' decision to be made on technical or minor procedural grounds, rather than on the merits of the Selection decision.

CASE STUDY:

In *Roy v Canoe Racing NZ (2015)* the Sports Tribunal allowed the appeal, concluding that "we think there are good policy reasons for requiring formality around selection processes. The formality of meetings and minutes and the compilation of reports for the purposes of review higher up in the selection decision chain provides a degree of discipline around the whole process that reduces the possibility of a subjective assessment being made by an individual selector or selectors and of that assessment not being adequately tested collectively by the selectors as a group."

- Amendments to the Selection Policy may need to be made, for example due to a change to a qualifying event, or the need for an additional selection trial. Before doing so the NSO should consider the possible implications of the change on all the athletes including the nature and timing of their training preparation and the decisions already made for events they have chosen to compete, or not compete, in. If the amendment results in the athletes not being reasonably able to fulfil the criteria, this can result in the selection decision being overturned on appeal.

Communication of the Policy

- The communication of the Policy to the athletes seeking selection is critical to ensure they know the exact requirements, and cannot then rely on their understanding or what they may have been told.
- Failures in communication of the Selection Policy and its implementation are one of the main reasons that NSO's face selection appeals.

CASE STUDY:

In *Sara Winther & Natalia Kosinska v Yachting NZ (2016)* the Sports Tribunal dismissed the appeal but stated "selectors and national sports organisations must be constantly vigilant to ensure that processes are inclusive and transparent. Sailors (and athletes) must be fully aware of what is being considered and have proper opportunity to challenge and respond. ... While there must be consistency of approach and realism about limited resources the need for sensitive and sensible communication at all times cannot be minimised".

- Direct communication of the Selection Policy is recommended to all of the athletes who may be considered for selection rather than via general publication on the NSO's website. Unless there are strong reasons on grounds of confidentiality, it should also be notified to members, clubs and regional bodies and placed on the NSO's website for transparency and broader accessibility.

TIP: Hold a meeting with the athletes when the Selection Policy is finalised to explain it and how it will work. Matters such as timing of selection dates and rights of appeal should be brought to their attention. Keep a record of who attended the meeting.

- If amendments are made to the Policy, this should also be communicated in the same way as the original Policy to all athletes available for selection as soon as possible.
- Selectors, coaches and other NSO personnel should take care when referring to selection in separate communications whether those are verbally or in emails, letters, HP plans and other documents. If these are inconsistent with the Policy, they can cause confusion and misunderstandings which can give rise to appeals.

TIP: Inform HP personnel that any discussions they have with athletes about selection are based on the criteria and requirements of the Selection Policy and that they always refer the athlete back to the Selection Policy.

- A summary document of the Selection Policy may be prepared as it is not inconsistent with the Policy and clearly states that the Selection Policy and not the summary apply.

GUIDANCE NOTE ON SELECTION¹ #3

The Selection Process

This Guidance Note covers important matters to be considered when undertaking the selection process of athletes for national teams under a National Sports Organisation's (NSO's) Selection Policy.

Understanding the Selection Policy

- As obvious as it may be, the first step in the selection process is to ensure that all those involved in the selection process, especially the Selectors and the athletes, have a copy of, and understand, the Selection Policy. In addition, they should have access to any other associated selection documents, such as the NSO's High Performance Strategy and any Selector's terms of reference². This includes providing them with any updates to those documents made by the NSO at any time.

Eligibility Requirements

- The Selection Policy should list the various matters which need to be satisfied before an athlete can even be considered for selection³. It is often the role of the High Performance Director/Manager to gather the necessary information from the athletes and undertake enquiries to be satisfied these have been met. The process for this should be set out in terms of reference of the NSO but the Selectors must be satisfied that eligibility of each athlete has been met in compliance with the Selection Policy before considering them for selection.

TIP: Develop an Eligibility Spreadsheet which has the names of all the athletes who may potentially seek selection against each of the eligibility requirements set out in the Policy. This should be checked off for each athlete and given to the Selectors prior to selection.

Gathering Information

- The Selection Policy should set out the events (such as trials and competitions), results/performances and others factors (such as assessments, personal attributes) to be considered by the Selectors⁴. Some of these may be mandatory for the selectors to consider (denoted by the words "shall" or "must" in the Selection Policy) and some may be optional (denoted by the word "may").
- It is recommended that the results from these events should be gathered and collated by a person for or by the Selectors. This may be the Convenor of Selectors or the High Performance Director/Manager. All the information that is mandatory for the Selectors to consider under the Selection Policy must be sourced for all the athletes seeking selection consideration. These results should then be shared with all the Selectors to ensure they all review the same information.
- In many sports, observing the performances (as well as assessing the results) is necessary to consider the capability of athletes to achieve the stated criteria. Factors such as conditions, weather, and intervening factors can often only be assessed in that way. If personal attendance of the Selectors is not practicable then video footage should be considered alongside consultation with the national coaches and/or High Performance Director/Manager that may have attended such events. Notes should be taken by the selectors at or following such observations, and shared with the other selectors.
- In addition, information on any other factors which may be taken into account under the Selection Policy should be sourced. This may include assessment results (e.g. biomechanical, strength and conditioning), test results, medical reports etc.
- If the assessments raise matters such as personal fit or athlete commitment, then the Selectors must give the athlete a chance to comment on this before a selection decision is made. Notes of all such assessments should be kept and shared with the others selectors.
- Care is also required to ensure factors such as personal behaviour are not given too much weight.

CASE STUDY:

In *Roy v Canoe Racing NZ (2015)* the Sports Tribunal said it "did not dispute that, in some exceptional circumstances, conduct of an athlete off the field or the water may be a relevant factor but we think that in the present case the views of the selectors formed of the appellant's conduct and character drove the final non-selection decision to an inappropriate extent and precluded the appellant from receiving objective consideration of whether he should be selected on the basis of his performance and potential"

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams.

² See Guidance Note #1 "The Selectors" for further information on briefing the Selectors.

³ See Guidance Note #2 "Selection Policies" on drafting the Selection Policy, for a sample list of these matters.

⁴ See Guideline Note # 2 "Selection Policies" on drafting the Selection Policy, for a list of possible factors.

- If Selectors wish to take into account personal matters affecting an athlete such as an athlete's commitment, or their behaviour, then it is essential that the athlete is given the chance to comment on this before the Selectors rely on information from coaches or others in the sport.
- In assessing the information before it, Selectors should consult with the athletes about the individual circumstances of the athlete in accordance with natural justice.

CASE STUDY:

In *Winther & Kosinska v Yachting NZ (2016)* the Sports Tribunal dismissed the appeal but stated "while the selection policy is drafted to provide huge discretion to YNZ, this does not obviate its obligations to abide by the rules of natural justice and to ensure basic fairness in its implementation. In particular, athletes in contention for nomination should be aware of what information they are being judged by and be given a reasonable opportunity to provide feedback on this.

- It is important that the same information is gathered and considered for each athlete seeking to be selected so that fair comparisons between them can be undertaken.

TIP: Develop a matrix which lists all the athletes seeking selection, and against each of them, list the specific events, results, and comments on each of the other factors which may be considered by the Selectors, as listed in the Selection Policy. This list can be updated as events, results and assessments are completed during the selection period, and can be checked off for each athlete by the Selectors prior to selection.

Selection Decision Making Process

- The Selectors must undertake their decision making process in accordance with the Selection Policy and any terms of reference or procedures set by the NSO. This may include requirements such as having a certain quorum to make a decision, the meeting procedure and the manner and timing of reports to the NSO.
- In making their decision the Selection Policy must be strictly adhered to by the Selectors, both in terms of the being satisfied that the athletes selected meet the specified criteria, and also the applicable procedures.
- Usually the decision making process is iterative throughout the selection period, and as such Selectors may meet in person, by telephone, or communicate via email or other means during this process. Notes should be taken and kept by each of the Selectors for all meetings and communications. It is important that during this process the Selectors do not predetermine any selection decision before all the necessary events, results and other factors are considered.
- It is strongly recommended that the final selection decision is made at a meeting held in person of the Selectors or a teleconference meeting. This should be a structured meeting at which each of the requirements of the Selection Policy are considered step by step (including eligibility and the performance criteria) and the relevant results and assessments for each athlete are assessed against that criteria. Although there may be a cost to bring the Selectors together to meet in person, it is an investment worth making to minimise the risks of omitting important information or challenges to the process.
- The decisions reached by the Selectors should be clear with the reasoning agreed. This meeting and the decisions reached should be minuted.
- It is recommended that a report of the Selectors' decision is prepared, agreed to by all the Selectors and sent to the appropriate person in the NSO. This may be the Chief Executive or the Board depending on the agreed process.

CASE STUDY:

In *Christie v Cycling NZ (2018)* the Sports Tribunal dismissed the appeal but noted the need for "a clear summary of what has occurred at each step and a bullet point coverage of critical issues both positive and negatives which have been of importance in the decision making"

- All the meetings and communications between the Selectors should be confidential. If a coach or High Performance Director/Manager is requested to contribute information to the meeting, they should leave the meeting before any decision is made. This is important to avoid any actual or perceived conflict of interest, undue influence or bias.

Role of the Chief Executive, Board and High Performance Director/Manager

- As the Selectors are usually volunteers it is important they are supported and assisted in their work. This is often done by High Performance staff or other NSO staff. However, it is essential that their role is simply one of assistance to obtain and/or provide information, if requested, or to assist with logistics. NSO staff (CEOs, HPDs etc) should take care to avoid perceptions of inappropriate influence on the selection process.
- NSOs should issue rules or terms of reference which set out the role and authority of the Selectors and the role if any, of NSO staff, the Chief Executive and the Board in the selection process. They should be clear and unambiguous.

- As a general rule, it is not recommended that Board members or NSO staff, such as High Performance Director/Managers and national coaches be appointed as Selectors. If the Board sets the Selection Policy, it should be as independent as possible to the Policy's application and implementation. Similarly the High Performance Director/Manager and/or Chief Executive is usually involved in the development of the Selection Policy and often works closely with the coaches and athletes to whom the Selection Policy applies. As such it is preferable for the Selectors to be independent of those associations to avoid influence on the selection decisions and perceptions of bias.
- In some NSOs, the Chief Executive and /or the Board has a role in approving or ratifying the selectors' decisions. Sometimes this is enshrined in the constitution of the NSO. However care is needed with such a two or three-step approach as the Selectors are deemed to be appointed as experts⁵. This approach can result in interference in the selection decisions (sometimes based on personal observations or experience with athletes) or unnecessary interruptions to the process. It can also increase the risk of procedural errors and challenges to the process.
- If neither the Chief Executive nor the Board are involved in the selection decision, then the documented process should specify the process for communication of the Selectors' decision to the NSO and also to the athletes (see below) and the wider public.

Communicating the Selection Decision

- The task of telling athletes whether or not they have been selected can be an emotional one. It is important to consider who is the best person/s is to do this within the context of the NSO, which may be the national coach, the High Performance Director/Manager, the Chief Executive or a Selector.
- Athletes who are not selected should be directly told of that fact before any public announcement.
- Non-selected athletes should be offered the chance to meet with the Selectors (if available) or if not, given an explanation of why they were not selected as communicated by the Selectors (which discussion should reflect the Selection Policy). They should also be told of their right to appeal. Understanding why they have not been selected can help minimise an athlete's grievance and therefore, the motivation to appeal.

CASE STUDY:

Where appeal rights do exist however, an athlete should be informed of these rights. This was made clear in *Christie v Cycling NZ (2016)*, where the Sports Tribunal noted that "the advice of non-selection should have averted to the appeal rights which existed"

- For all athletes (whether selected or not), after the decision is communicated orally, it should be followed up in writing. Care should be taken with the wording of any explanation for a non-selection decision, to ensure it is consistent with the Selectors' decision and reasoning.
- If a decision to select an athlete is conditional on them meeting a certain requirement, such as proving fitness or signing an athlete agreement, this should be specified in the communication advising of their selection with specific dates or timeframes for the conditions to be met. The consequences of not meeting them should also be made clear such as withdrawal from selection.

Withdrawing Athletes After Selection

- There may be a number of reasons why an athlete may be withdrawn from selection including:
 - injury or illness
 - poor behaviour
 - breach of rules
 - a fall in performance levels
 - withdrawal by the athlete
 - personal circumstances of the athlete
 - a successful appeal by another athlete which forces the selected athlete out of selection.
- In order to withdraw an athlete, the grounds and process for doing so must be specified. This will usually be in the Selection Policy or in an athlete agreement signed upon selection by the athlete.

TIP: Check that the grounds and process to withdraw an athlete from selection in the Selection Policy align with those in the athlete agreement.

- The Selection Policy should specify the process, if any, for any late selection, as a result of an athlete withdrawing from selection.

⁵ See Guidance Note #1 "The Selectors"

GUIDANCE NOTE ON SELECTION¹ #4

Selection Appeals

This Guidance Note covers appeals by athletes against decisions not to select them to national teams by the Selectors.

The best way to avoid appeals altogether are:

1. Ensure Selectors are appointed that have appropriate expertise, sound judgement and are free from bias or real or perceived conflicts of interest;
2. Ensure the preparation of your selection documents are consistent with your Constitution, High Performance strategy/policies and are clear and unambiguous;
3. Ensure your selection documents are prepared and reviewed with an appropriately skills specialist sports lawyer;
4. Provide a sound legal briefing for your selection panel by the legal advisor that prepared your selection documentation to ensure the Selectors are clear on what they can and cannot consider and the process they are legally bound to follow;
5. Run the final decisions and logic for those decisions past your legal advisor (best done via a discussion between the Convenor of Selectors and your legal advisor);
6. Choose an appropriate person from your NSO to sensitively discuss non-selection with relevant athletes. Provide each non-selected athlete with an opportunity to discuss their non-selection with the Convenor of Selectors prior to the public announcement being made;
7. Ensure your communication around the selection decisions is consistent with the Selection Policy and the process (manage the message with a consistent voice).

Options for Resolution of Appeals

- In recent years an increasing number of athletes are formally appealing against selection decisions. This can result in significant costs and burden on both athletes and National Sports Organisations (NSOs). It is therefore important to have a fair, robust and transparent process for both the athletes and the NSO, and for the NSO to be prepared for appeals, including training of Selectors as well as NSO personnel and budgeting for legal advice and other appeal costs.

TIP: Make provision in the NSO's budget for legal advice to support an appeal², especially in years where selection appeals are more likely such as for World Championship, Olympic or Paralympic Games or other pinnacle events.

- NSOs which are funded by Sport NZ or High Performance Sport NZ are required to "accept the jurisdiction of the Sports Tribunal or implement an alternative dispute resolution process on terms acceptable to Sport NZ (acting reasonably)"³. This means the process for selection appeals may or may not utilise the Sports Tribunal.
- The cost of appeals in the ordinary courts can be prohibitive so it is strongly recommended that a process for selection appeals is set out in the NSO's rules or the Selection Policy which either exclusively refers any appeals to the Sports Tribunal⁴ or provides for another process, which limits referral to the courts.
- There are a number of steps which can be used for resolving selection appeals, or a combination of steps. In each case, the procedure for doing so needs to be in accordance with the NSO's constitution and detailed in the NSO's rules or Selection Policy. It is recommended that NSOs have an internal process to try and resolve the appeal before proceeding to a hearing so the athlete is clear on the facts and process used by the Selectors and the NSO is clear on the athlete's perspective.

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams.

² The cost of an appeal can vary considerably depending on the scope and complexity however, assuming lawyers are engaged, the costs are likely to be between \$5,000 to \$10,000 (or more) per appeal.

³ Sports NZ Group NSO Relationship Agreement

⁴ This does not prevent an athlete seeking judicial review or taking other legal action in the ordinary courts, but a court will usually require the NSO's process to be exhausted before permitting it from proceeding.

- Any one or more of the following options may be considered:
 - Meeting with the athlete to explain and discuss the decision. This is recommended in every case to help the athlete understand the decision and minimise the impact of an adversarial process on the athlete - NSO relationship. It may also help recognise if there have been any failings by the NSO (in particular around the selection process or the information provided to selectors) which the NSO may look to rectify;
 - A meeting facilitated by an independent person with the athlete and the relevant NSO personnel to explain and discuss the decision;
 - Holding a mediation at which an independent qualified mediator⁵ between the athlete and the NSO to see if a resolution can be agreed in order to withdraw the appeal. It can often be difficult to mediate a selection appeal without impacting on another athlete's position as a selected athlete but in some instances it can be a very helpful process;
 - Referral to an ombudsman or other person independent of the NSO to review the selection decision and process and decide if it was a fair decision. If it is deemed not to be, it can be referred back to the NSO to reconsider or to make a decision (depending on the rules of the NSO);
 - A tribunal appointed by the NSO to hear and decide the appeal;
 - The Sports Tribunal to hear and decide the appeal. The Sports Tribunal may also refer the appeal to mediation;
 - A further right of appeal to the Court of Arbitration for Sport (CAS).

TIP: Review the NSO constitution to ensure the process for resolving a selection appeal in the Selection Policy is not inconsistent with an appeal process in the constitution.

⁵ To find a qualified mediator go to Arbitrators and Mediators Institute of New Zealand at https://www.aminz.org.nz/Category?Action=View&Category_id=663. Also HPSNZ may be able to assist in providing some names of mediators who have previously mediated sports related disputes.

Notification of an Appeal

- An NSO may be notified of an appeal against the Selectors' decision not to select them in several ways. The NSO may be told by the athlete directly or indirectly by third person (eg a parent), by email, or by formal letter from the athlete or their lawyer.
- The first step the NSO should take is to review the relevant rules on selection appeals to be sure of the process. These rules should be set out in the Selection Policy⁶, but the constitution should also be checked as it may also apply.
- The appeal can only proceed if it is made in accordance with the rules. Matters to check are:
 - Has the appeal been made in the correct format? – usually verbal indication is insufficient, and it must come from the athlete or a person authorised on their behalf;
 - Does the notification clearly state that the athlete is "appealing" or simply that they disagree with the decision?
 - Was it made within the specific timeframe stated in the Selection Policy or rules?
 - Are there any steps to be undertaken before the appeal can proceed such as a meeting or mediation?
- If any of these requirements have not been properly met, you may not need to proceed with the appeal but to be sure, legal advice should be sought.

CASE STUDY:

In *Quickenden v Canoe Racing NZ (2015)* the Sports Tribunal dismissed the athlete's appeal due to it being filed out of the time. The Selection Policy required the appeal to be filed "within 48 hours", which period ran over a weekend. The athlete's lawyer assumed the time period excluded weekends, and filed the appeal the following Monday which was out of time. The Tribunal concluded "regrettably" that the appeal was out of time, and dismissed the appeal as it had no power or discretion to extend the time period. It also noted its concern for the athlete who was "left without an opportunity to air his grievance."

- In most cases athletes appeal because they do not understand why they have not been selected. For this reason it is recommended that the NSO offer to meet with the athlete and provide an explanation.
- Having read the relevant rules, the NSO should follow the process specified. NSO's should consider seeking initial legal advice from a lawyer specialising in sports law early in the process. It is important to seek advice to ensure the NSO doesn't do anything which may comprise the defence of its appeal.

TIP: To find a lawyer with expertise in sport and selection appeals go to the Sports Tribunal's Legal Assistance Panel at <http://www.sportstribunal.org.nz/rules-and-procedures/legal/> or the Australia and New Zealand Sports Law Association Legal Contact List at <https://anzsla.com/content/legal-contact-list>.

- A senior NSO person (such as the High Performance Director/Manager or Chief Executive) should be allocated the responsibility to manage the appeal. It is likely to be time consuming and require urgent action, so a person dedicated to this task should be identified. It is also preferable that only one person be authorised to liaise with the athlete (and any advisors) to ensure consistency and coordination of the appeal.

TIP: Designate one person within the NSO to coordinate and manage an appeal for the NSO.

- This person should collect and collate all the material complied by the NSO and the Selectors in relation to the selection decision. This will include the documents required to confirm the athlete's eligibility (e.g. athlete application form) as well as the Selectors' notes, minutes, results and other information on matters that were relied upon by the Selectors (eg test results, assessments, medical reports etc). These should not be given to the athlete (or their representative) without the NSO first seeking legal advice.
- The Selectors and Board should be briefed on the appeal and kept up to date with the steps taken. Any communication with the athlete (and any representative) should be limited to the person authorised to manage the appeal.

⁶ See Guidance Note #3 "Selection Policies" on drafting the Selection Policy.

Preparing for a Hearing

- For an appeal to proceed in the Sports Tribunal, a Notice of Appeal (in the form prescribed by the Tribunal⁷) must be filed with the Tribunal by the athlete, and copied to the NSO, within the timeframe specified in the Selection Policy or NSO rules.
- The Athlete will need to file an Appeal Brief which sets out the grounds on which they are appealing and the information they are relying on. The grounds of appeal can only be those set out in the NSO rules/Selection Policy or if there are none, then under the Tribunal's rules as follows:
 - The Selection Policy was not properly followed or implemented (for example, the Selectors did not look at all the results as specified in the Policy);
 - There was no reasonable opportunity for the athlete to satisfy the requirements of the Selection Policy (for example, the Policy applied retrospectively to events which had already taken place);
 - The decision not to select the athlete was affected by actual bias (for example, a selector has a personal connection to another athlete);
 - There was no material on which the selection decision could reasonably be based (for example, the Selectors chose another athlete based on results, such as past Olympics, which are not listed in the Selection Policy as results which can have been considered).
- There will be a pre-hearing teleconference chaired by a Tribunal member, with the NSO (and its lawyer, if any), and the athlete (and their lawyer, if any). Also any other athletes who may be affected by the appeal (e.g. an athlete who was selected ahead of the appealing athlete) may be part of the teleconference. They are known as an "Interested Party". At this teleconference, a timetable will be established which sets out when documents are to be filed by the athlete, the NSO and, any Interested Parties, and also the hearing date and venue. The specific Tribunal members who will hear the appeal⁸ will usually be advised at this time, or soon thereafter as well.
- For the NSO, a Statement of Defence will need to be filed which respond to the athlete's grounds of appeal, and copied to the athlete.
- In addition, statements will usually need to be prepared by each of the Selectors and possibly others (such as the Chief Executive or High Performance Director/Manager, coaches and experts) setting out the process they undertook in the selection process and, for the selectors, the basis for their decision.

TIP: As soon as an appeal is filed, ask the Selectors to prepare their draft statement and send in their notes, minutes and the information relied upon, so it is ready and available for the appeal.

Hearing Process

- The hearing is usually structured but is not as formal as in a court room. Sometimes hearings are held by telephone (especially if the relevant people cannot practically come together easily) or otherwise in person.
- The format of a hearing is decided by the Tribunal, however generally it follows a typical hearing format as follows:
 - The athlete (or their lawyer) presents their case – including a statement and evidence from the athlete, and any from other people in support of the athlete. The athlete and any other people giving evidence may be questioned by the NSO (or its lawyer) and the Tribunal.
 - The NSO (or its lawyer) presents their case – including statements and evidence from the Selectors and any from other people in support of the NSO. The people giving evidence for the NSO may be questioned by the athlete (or their lawyer) and the Tribunal.
 - The athlete (or their lawyer) then summarises their case and makes submissions.
 - The NSO (or its lawyer) also summarises its case and makes submissions.
 - The Tribunal then indicates the timeframe within which it will make and issue its decision. If a decision is required urgently, (for example due to entry deadlines or teams departing for competition), the Tribunal may issue an oral decision shortly after the hearing. Otherwise it issues its decision in writing as soon as practicable after the hearing. Usually the athlete and NSO are told of this before it is published on the Sports Tribunal's website.
- The duration of the hearing will depend on the number of people giving evidence and the complexity of the case, but it is rarely more than one day.
- It is important that the Selectors are available for a hearing if possible, and the NSO should take all reasonable steps it can to support them attending, whether in person or calling into the hearing by telephone (which is permissible).

Media

- A hearing before the Sports Tribunal is confidential, so neither the NSO nor the athlete are permitted to tell anyone that an appeal has been made or on what it is about, unless authorised by the Tribunal. However, sometimes the fact an athlete has appealed becomes known to the public so the NSO should be prepared for media comment, and may wish to see PR advice.

⁷ The Rules of the Tribunal including the prescribed forms can be found at www.sportstribunal.org.nz

⁸ The Tribunal usually sits as a panel of 3 members, chaired by one of the Tribunal members who is a lawyer and two other members, including non-lawyers who have past experience in sport.

GUIDANCE NOTE ON SELECTION¹ #5

Selection for Commonwealth, Olympic and Paralympic Games

This Guidance Note covers the process for selection of athletes to Commonwealth Games, Olympic Games² and Paralympic Games teams. It highlights the differences in the selection process for these Games from those undertaken by National Sports Organisations (NSOs) for other international events such as World Championships.

Selection vs Nomination

- The key difference between selection of athletes for Commonwealth, Olympic or Paralympic Games (“Games”) and those for other international events (such as World Cups or World Championships), is that the NSO only nominates athletes and does not make the final selection decisions.
- The selection decisions are made by the New Zealand Olympic Committee (for Commonwealth and Olympic Games) and by Paralympics New Zealand (for Paralympic Games). This is because the teams attending these Games can only be entered by the New Zealand Olympic Committee or Paralympics New Zealand (respectively), and the selected athletes are under their management at the Games.
- For these Games, the selection process involves two steps:
 - Nomination of the athletes by the NSO (usually done by the NSO’s Selectors) to the New Zealand Olympic Committee or Paralympics New Zealand; and
 - Selection by the New Zealand Olympic Committee (for Olympic and Commonwealth Games) and Paralympics New Zealand (for Paralympic Games).
- NSOs are required to develop Nomination Policies that:
 - Meet the threshold for selection “selection standard” decided by the New Zealand Olympic Committee or Paralympics New Zealand³. For example, the current selection standard for Olympic Games is that the athlete or team is, or are, capable of achieving a top 16 placing at the Games;
 - Comply with the qualification criteria decided by the sport’s international sports federation in conjunction with the International Olympic Committee, Commonwealth Games Federation or the International Paralympics Committee (whichever is relevant). The qualification criteria sets out the process by which New Zealand can qualify places at the Games. This is usually related to the results at the World Championships or other international events in the sport immediately preceding the Games. The qualification criteria also sets out any minimum standards to be met in order to be entered to compete at the Games as well as the number of athletes and entries permitted from New Zealand for each discipline or event at the Games;
 - Set out the factors the NSO will consider in order to show the capability of the athletes and teams to achieve the selection standard. These factors will include a list of the results/performance and other factors the NSO Selectors must (i.e. mandatory) or may (i.e. optional) take into account in deciding if the athletes will be nominated to the New Zealand Olympic Committee or Paralympics New Zealand, as applicable. These factors will be similar to those required for a Selection Policy⁴ and must be consistent with the New Zealand Olympic Committee or Paralympics New Zealand Selection Policy for the relevant games;
 - In all other respects comply with the requirements of, and are approved by, the New Zealand Olympic Committee or Paralympics NZ, as applicable. Both organisations provide a template Nomination Policy for this purpose.

¹ This Guidance Note is one of five Guidance Notes covering the process of selection of athletes by National Sports Organisations (NSOs) to national teams

² This includes Summer and Winter Olympic Games, and pre-elite games such as Youth Olympic Games (Summer and Winter), Commonwealth Youth Games and any other games the NZOC agrees to selected athletes to a Games Team.

³ For the NZOC this is set out in its Selection Policy which it issues for each Games. For example, see the Selection Policy for the Gold Coast 2018 Commonwealth Games at <http://www.olympic.org.nz/assets/Uploads/Gold-Coast-Selection-Policy-Amended-2.pdf>

⁴ See Guidance Note #2 – Selection Policies on drafting a Selection Policy

Process for Selection

- For athletes and teams selected by the New Zealand Olympic Committee, the selection process for Commonwealth and Olympic Games is set out in the “New Zealand Olympic Committee Nomination and Selection Regulation”⁵. These set out the whole process, from start to finish, of the steps to be undertaken by the athlete, the NSO and the NZOC in selecting athletes.
- For the Paralympic Games, there is a similar Selection Regulation issued by Paralympics New Zealand but it is specific to each Games⁶.
- The selection process can be summarised as follows:
 - Athletes seeking to be considered for nomination and selection to a Games must complete the relevant application form and supply other required information;
 - Athletes who are selected by the New Zealand Olympic Committee or Paralympics New Zealand (as applicable) are required to sign an Athlete Agreement and fulfil other requirements before they are nominated to the New Zealand Olympic Committee or Paralympics New Zealand, whichever is applicable. This Athlete Agreement will only come into effect when an athlete is successfully nominated and selected.
 - The sport must qualify places at the Games through the qualification system or athlete allocation system decided by their International Sports Federation in conjunction with the International Olympic Committee, Commonwealth Games Federation or the International Paralympics Committee (whichever is relevant);
 - The NSO Selectors apply the specific Nomination Policy of the NSO and decide on the athletes and teams to be nominated;
 - The NSO nominates athletes and teams to the New Zealand Olympic Committee or Paralympics New Zealand (as applicable). This requires the NSO Selectors to provide all the necessary evidence that the athletes and teams have met the Nomination Policy and are capable of meeting the selection standard set by the New Zealand Olympic Committee or Paralympics New Zealand (as applicable);
 - The New Zealand Olympic Committee or Paralympics New Zealand (as applicable) then decides whether or not to select the nominated athletes. They cannot select athletes who have not been nominated;
 - Athletes may be selected subject to certain conditions such as satisfying fitness requirements. Travelling and non-travelling reserve athletes may also be selected;
 - The New Zealand Olympic Committee or Paralympics New Zealand (as applicable) and NSO then usually jointly announce the selected athletes.

Other Paralympic Events

- In addition to Paralympic Games, Paralympics New Zealand also selects teams to sport specific international events such as IPC World Championships for sports where Paralympics New Zealand manages a sport’s high performance programme, for example cycling, shooting and swimming.
- The process for selection of athletes to these events is set out in the General Selection Regulation for PNZ Managed Sports⁷. Unlike the other Games this is not a two-step selection process as Paralympics New Zealand selects the athletes directly in a similar manner as if it were an NSO.

⁵ See <http://www.olympic.org.nz/assets/Uploads/Gold-Coast-Selection-Policy-Amended-3-final-.pdf>

⁶ For example, the Rio 2016 Selection Regulation at http://www.paralympics.org.nz/Portals/17/Documents/Competitions/2016_Summer_Paralympic_Games/PNZ%20Rio%202016%20Paralympic%20Games%20Selection%20Regulation%20Feb%202015.pdf.

⁷ See <http://www.paralympics.org.nz/Portals/17/Documents/Pathway/Selections/General%20Selection%20Criteria%20for%20PNZ%20Managed%20Sports.pdf>

Nomination and Selection Appeals

- Due to the two-step process of (1) nomination followed by (2) selection, an athlete may appeal at either decision making point in the process. An athlete may:
 - Appeal the decision of the NSO not to nominate them (“Non-Nomination Appeal”) to the New Zealand Olympic Committee or Paralympics New Zealand (as applicable);
 - Appeal the decision of the New Zealand Olympic Committee or Paralympics New Zealand (as applicable) not to select them to the New Zealand team (“Non-Selection Appeal”).
- A Non-Nomination Appeal is made by an athlete against the NSO in the same way as a selection appeal occurs for non-selection by an NSO to its sport’s international events⁸. The New Zealand Olympic Committee or Paralympics New Zealand (as applicable) may or may not participate in a Non-Nomination Appeal as an Interested Party.
- Even if a Non-Nomination Appeal is successful, this does not guarantee selection to the team. Depending on the outcome of the appeal, the NSO may be required by the Tribunal to reconsider the nomination decisions, or if the Tribunal orders the NSO to nominate the athlete (which is rarely done), the New Zealand Olympic Committee or Paralympics New Zealand, whichever is relevant, must still decide whether the athlete can be selected and meets its selection standard.
- A Non-Selection Appeal is not made against the NSO but is made against the New Zealand Olympic Committee or Paralympics New Zealand (as applicable). It can only be made by an athlete who was nominated by the NSO but was then not selected by the New Zealand Olympic Committee or Paralympics New Zealand (as applicable).
- If a nomination is conditional on the fulfilment of some condition (such as fitness), and the athlete is then selected on the same basis, but that condition is not fulfilled, this could give rise to a Non-Selection Appeal. Being clear on the status of whether an athlete is under consideration for nomination or selection is therefore important.

CASE NOTE:

In *Dell v NZ Olympic Committee (2014)* the Sports Tribunal dismissed the appeal by Dell who had been nominated to the NZOC subject to “proving form and fitness”. She was then conditionally selected by the NZ Olympic Committee on the same basis. She did not meet the fitness requirements and appealed against her “de-nomination”. The Tribunal took the view that although Ms Dell had not received notification from the NZOC directly, she had conditionally been selected and therefore it was an appeal against her non-selection.

⁸ See Guidance Note #4 – Selection Appeals

