

Rowing Australia Limited
Australian National Rowing Team

Appeals Policy



2010 - 2012

(incorporating amendments to 22 December 2009)

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Rowing Australia Appeals Policy

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NATIONAL APPEALS POLICY

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PART 1 RA Appeals Tribunal

Important Note: Certain words and expressions, where used in this Appeals Policy have a defined meaning, particular to this document. Please refer to Part 3 – Interpretation for the meaning of the defined words.

References in this Appeals Policy to provisions are reference to provisions in this Appeals Policy unless specified otherwise.

- 1.1 RA will appoint a Permanent Tribunal Chairperson from time to time and one or more Alternate Tribunal Chairpersons to act from time to time as Tribunal Chairperson of an Appeals Tribunal. RA reserves the right at any time and from time to time to replace or remove any Tribunal Chairperson or fill any casual vacancy, provided that each Tribunal Chairperson will be a Judge or have been admitted to practice as a Barrister or Solicitor in any State or Territory of Australia, or be a retired Judge, barrister or solicitor.
- 1.2 As and when required, RA or the Permanent Tribunal Chairperson at the request of RA will establish an Appeals Tribunal that will consist of the Permanent Tribunal Chairperson or an Alternate Tribunal Chairperson who will act as Tribunal Chairperson.
- 1.3 In the case of any appeal in relation to selection to or removal from a National Team selected for competing at an Olympic Event, or in any other case nominated at the discretion of the RA Board, the Appeal Tribunal will consist of:
 - (a) the Permanent Tribunal Chairperson or an Alternate Tribunal Chairperson who will act as Tribunal Chairperson;
 - (b) a person with a thorough knowledge of rowing who has preferably had recent international competition experience in rowing; and
 - (c) one other person of experience and skills suitable to the function of the Appeals Tribunal,

who will constitute a quorum for the purpose of hearing and determining any appeal under Part 2, provided that with the consent of the Appellant and RA, the

Appeals Tribunal may be constituted by two persons, one of whom must be the Permanent Tribunal Chairperson or an Alternate Tribunal Chairperson.

1.4 No person appointed to an Appeals Tribunal may hear and consider any appeal if he or she is an RA Board member, an Officer of a Member Association or a Selector or if by reason of his or her relationship with:

- (a) the Appellant;
- (b) any member of the Board of RA;
- (c) any of the Selectors; or
- (d) any persons whose interests may be affected by the outcome of the appeal;

he or she would be reasonably considered to be other than impartial.

1.5 Should an Appellant or any other party to an appeal challenge the impartiality of any member of the Appeals Tribunal, the challenge will be determined by the Tribunal Chairperson sitting alone. In the case of a challenge to the Tribunal Chairperson, the challenge will be determined by the Alternate Tribunal Chairperson sitting alone.

1.6 Each Appeals Tribunal will be bound by the following requirements:

- 1.6.1 it must observe the principles of natural justice;
- 1.6.2 it is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
- 1.6.3 it will conduct its hearings with as little formality and technicality and with as much expedition as the proper consideration of the matter permits;
- 1.6.4 hearings may occur in such manner as the Tribunal Chairperson decides, including telephone or video conferencing;
- 1.6.5 each Appellant must establish one or more grounds of appeal to the reasonable satisfaction of the Appeal Tribunal with full regard to the full importance and gravity of the issue;
- 1.6.6 the parties to an appeal will not be entitled to be represented by a barrister or solicitor save with the leave of the Tribunal Chairperson, which will only be given in exceptional circumstances and, if given, may be given unconditionally or on such conditions as the Tribunal Chairperson thinks fit;
- 1.6.7 if a question of law arises during the course of a hearing, the Tribunal may, at the request of the parties or at the discretion of the Tribunal Chairperson, adjourn the hearing of the appeal in order to obtain legal advice;
- 1.6.8 the Tribunal Chairperson may require the parties to attend a directions hearing or hearings (whether in person or by any other means of communication determined upon by the Tribunal Chairperson) and the

Tribunal Chairperson may give directions from time to time to assist in the efficient and expeditious conduct of the hearing;

1.6.9 if the Tribunal Chairperson is of the view that the outcome of the appeal may affect the interests of any person in addition to the Appellant, the Tribunal Chairperson may, so far as practicable, require that notice be given to such other person or persons and that person or those persons may appear at the hearing of the appeal and/or make written submissions to the Appeals Tribunal;

1.6.10 the Appeals Tribunal will give its decision on any appeal as soon as practicable after the hearing and will provide the CEO, the Appellant and other parties to the appeal with a written statement of the reasons for its decision; and

1.6.11 as a matter of usual practice, the Appeals Tribunal will in the case of any successful appeal refer the question or matter the subject of the appeal back to the Selectors for determination in accordance with the Selection Policy, save that the Appeals Tribunal may itself conclusively determine the issue which is the subject of the appeal where:

(a) it has determined that:

(i) it would, in the view of the Appeals Tribunal, be impractical to refer the question back to the Selectors in the time available in which entries to the Event must be submitted by RA or an Event Governing Body; or

(ii) there has been such a disregard of the Selection Criteria or other provisions of the Selection Policy by or on behalf of the Selectors that a reasonable person could reasonably conclude that it is unlikely that the Selection Criteria or Selection Policy will be properly followed and/or implemented; and

(b) prior to making the determination in paragraph 1.6.11, the Appeals Tribunal has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:

(i) the possibility of it making such a determination; and

(ii) that it may itself conclusively determine the issue of selection; and

permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.

Where the Appeals Tribunal refers the question or matter the subject of the appeal back to the Selectors for determination in accordance with the Selection Policy, the Selectors must also make the subsequent determination in accordance with any further directions or guidance from the Appeals Tribunal and provide reasons for their subsequent determination to the RA Board.

- 1.7 The Appeals Tribunal will also hear any reference to it by RA of any breach of any RA Policy by a Participant or member of a National Team. In so doing the Appeals Tribunal will set its own procedure but follow as closely as possible and apply the procedure set out in this Appeals Policy for appeals.
- 1.8 Notwithstanding paragraph 1.6.11, the Appeals Tribunal will in the case of any successful appeal on the ground that the decision was affected by actual bias (paragraph 2.4.3) refer the question or matter the subject of the appeal back to the Selectors for determination in accordance with the Selection Policy, save that RA must first replace the Selector or Selectors whose decision was in the opinion of the Appeals Tribunal affected by actual bias, with another Selector or Selectors of RA's sole discretion for the purpose of determining the question or matter the subject of the successful appeal.

PART 2 RA Appeals Process

- 2.1 Subject to paragraphs 2.8 and 2.9, any decision of the Selectors or RA made pursuant to the powers in the following sub-paragraphs of the Selection Policy is made subject to the appeals process set out in this Appeals Policy:
 - 2.1.1 paragraph 5.6.2 of the Selection Policy (selection to National Team);
 - 2.1.2 paragraph 5.6.4 of the Selection Policy (removal from National Team);
 - 2.1.3 paragraph 5.6.8 of the Selection Policy (progressive selection to the National Team pursuant to the Event Requirements);
 - 2.1.4 paragraph 5.6.13 of the Selection Policy (progression through trials in the Event Requirements);
 - 2.1.5 paragraph 5.6.16 of the Selection Policy (suspension); and
 - 2.1.6 paragraph 1.4 of the Selection Policy (failure to meet participation undertakings and requirements).

For the avoidance of doubt, an Athlete has no right of appeal against the size or rowing discipline of boat or crew in which the Athlete has been allocated to compete at the Event for which the Athlete sought selection.
- 2.2 Any appeal against an Appellable Decision will be addressed according to the following procedure:
 - 2.2.1 The appeal will proceed and be heard within the timeframes prescribed in the Appeals Policy by an Appeals Tribunal established by RA in accordance with the Appeals Policy;
 - 2.2.2 Any subsequent appeal will be heard by the appeals division of CAS.
- 2.3 If there is more than one appeal to an Appeals Tribunal or to CAS that impacts upon the selection of a team or crew to compete in an Event or in respect of the same position for an individual Athlete, then at the direction of the Tribunal

Chairperson such appeals may be consolidated and heard together on such terms or subject to such procedures as the Tribunal Chairperson determines in his or her discretion.

- 2.4 The sole grounds for any appeal to the Appeals Tribunal are that:
 - 2.4.1 the express requirements of the Selection Policy or (where applicable) the Selection Criteria have not been properly followed and/or implemented; or
 - 2.4.2 the Participant was not afforded a reasonable opportunity by RA to satisfy the Selection Criteria; or
 - 2.4.3 the decision was affected by actual bias; or
 - 2.4.4 there was no material on which the decision of the Selectors could reasonably be based.
- 2.5 Any appeal by an Athlete against an Appellable Decision must be made in accordance with the following procedure:
 - 2.5.1 the Appellant must give written notice of his or her appeal to the CEO within 48 hours (in the case of Under 23 and Junior teams, 24 hours) of the announcement of the decision against which the appeal is made; and
 - 2.5.2 within 5 working days (in the case of Under 23 and Junior teams; 3 working days) of submitting his or her written notice of appeal, the Appellant must submit in writing to the CEO the grounds of that appeal accompanied by a non-refundable deposit of \$100. In the case of the Under 23 and Junior teams, the Appellant must submit in writing to the CEO the grounds of that appeal accompanied by a non refundable deposit of \$100 and a further deposit of \$400 which may be refunded to the appellant at the discretion of the Appeals Tribunal.
 - 2.5.3 Within 48 hours of receiving the Appellant's notice of appeal the Selectors will provide the CEO and the Appellant with a written statement of the reasons for the decision against which the appeal is made.
 - 2.5.4 In the case of an appeal by an Athlete against any failure to be selected in a National Team or selection or invitation for progression pursuant to the Event Requirements, then:
 - (a) the announcement of the decision can arise from an omission to name the Athlete in a National Team or National Squad or list of invitees for progression;
 - (b) the time for appealing the decision under paragraph 2.4 shall commence on the first announcement of a decision under which the Athlete is omitted from selection or further consideration for selection; and
 - (c) the Athlete shall have only one right of appeal in respect of the circumstances leading to omission under the first announcement.

- 2.6 The decision of the Appeals Tribunal will be binding on the parties and, subject only to any appeal to CAS under paragraphs 2.8 and 2.9, neither party may institute or maintain proceedings in any Court or Tribunal other than the said Appeals Tribunal.
- 2.7 Where a Participant wishes to appeal an Appellable Decision and RA so agrees in writing, the appeal to the Appeals Tribunal, subject to the Participant being given permission to appeal, may be directly referred to the appeals division of CAS and in which instance the grounds of appeal must be one or more of the grounds described in paragraph 2.4 and the CAS panel will be vested with the powers of the Appeals Tribunal.
- 2.8 The sole grounds for any appeal against a decision of the Appeals Tribunal are:
- 2.8.1 a breach of the rules of natural justice by the Appeals Tribunal; or
- 2.8.2 that the decision of the Appeals Tribunal is otherwise wrong in law.
- 2.9 Any appeal from a decision of the Appeals Tribunal must be solely and exclusively resolved by CAS according to the Code of Sports-Related Arbitration and applying the law of New South Wales.
- 2.10 The decision of CAS will be final and binding on the parties and it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than CAS. In particular, and without restricting the generality of the foregoing and for further and better assurance notwithstanding that such provisions have no applicability, there will be no right of appeal under section 38 of the Commercial Arbitration Act 1984 (NSW) or equivalent in any of the Australian States or Territories or to apply for the determination of a question of law under section 39(1)(a) of such Act or equivalent in any of the Australian States or Territories.
- 2.11 An Athlete wishing to appeal to CAS against a decision of an Appeals Tribunal must give written notice of the fact to the CEO within 48 hours of the announcement of the decision against which the appeal is made (or within such time as the CEO may allow) and must then file his or her statement of appeal with CAS within five (5) working days. Failure to observe these time limits will render any appeal a nullity provided that an Athlete may apply to the body to hear the appeal in question for an extension of time in which to commence an appeal. The body to hear the appeal in question may grant such an extension of time only in extenuating circumstances outside the control of the Athlete concerned.
- 2.12 If CAS determines to uphold any appeal in respect of an appellable decision, it will refer the question or matter the subject of the appeal back to RA for determination in accordance with the Selection Policy.

PART 3 Interpretation

3.1 Meaning of Expressions and Words

In this Appeals Policy the following expressions, abbreviations and words shall have the following respective meanings:

Alternate Tribunal Chairperson means an alternate Tribunal Chairperson as appointed from time to time by RA.

AOC means the Australian Olympic Committee.

Appeals Policy means the RA Appeals Policy as issued and amended by RA from time to time.

Appellable Decision means the decisions listed in paragraph 2.1 of the Appeals Policy and **Appellable Decisions** means any two or more of them.

Athletes include oarsmen, oarswomen and coxes.

CAS means the Court of Arbitration for Sport.

Chairman of Selectors means the person (if any) appointed by the RA Board from time to time as the Chairman of Selectors.

CEO means the Chief Executive Officer for the time being of RA, and in the absence of any such person, then the person nominated by RA as the delegate of the CEO for the purposes of the Selection Policy.

Event means World Championship, Olympic Games, Paralympic Games, World Under 23 Regatta, Junior World Championships, World University Championships, international regatta or event for which the Participant nominated for selection.

Event Governing Body means the governing body or bodies having responsibility or jurisdiction in relation to the conduct of or participation at the Event, and includes without limitation FISA, the IOC, the AOC and WADA.

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

Extenuating Circumstances means an inability to compete and/or attend at an Event, trial, training camp or satisfy any other attendance required under the Selection Policy, RA Olympic Nomination Criteria or the Event Requirements arising from:

- (a) injury or illness;
- (b) equipment failure;
- (c) travel delays;
- (d) bereavement; and/or
- (e) any other factors reasonably considered by the Selectors to constitute extenuating circumstances.

FISA means the Federation Internationale des Societies d’Aviron.

IOC means the International Olympic Committee.

Lightweight means the average weight of a men’s crew shall not exceed 70kg. No individual oarsmen shall weigh more than 72.5kg. A Single sculler (male) shall not weigh more than 72.5kg. For women the average weight of a crew shall not exceed 57kg. No individual oarswomen shall weigh more than 59kg. A single scull (female) shall not weigh more than 59kg.

Member Association means a State or Territory rowing association that is a member of RA.

National High Performance Director means the person nominated by RA from time to time as the National High Performance Director.

National Squad means the National Squad (if any) specified or provided for in the Event Requirements, for formation prior to selection of Participants in a National Team, and includes Shadow Team.

National Team means the National Team selected to compete at the Event.

National Technical Model means the model, guidelines and/or policy issued by RA from time to time in relation to rowing technique and methods.

Nomination Form means the Nomination Form specified by RA for the relevant Event or Events and without limitation may include two or more documents such as a notification of nomination and terms and conditions of nomination.

Officer of a Member Association means any of the following:

- (a) a councillor of the Member Association;
- (b) a secretary or a voting member of the executive board or committee of management or equivalent of the Member Association;
- (c) an employee of a Member Association; or
- (d) an employee of any State or National institute of sport.

Officials includes support staff.

Participants means Athletes and Coaches who nominate for selection in a National Team in relation to an Event and includes Athletes and Coaches who are members of a National Team.

Permanent Tribunal Chairperson means the Permanent Tribunal Chairperson appointed from time to time by RA.

Principal Medical Officer means the principal medical officer of RA appointed from time to time.

RA means Rowing Australia Limited.

RA Board means the board of RA elected or appointed in accordance with the constitution of RA and responsible for the day-to-day management of RA.

RA Olympic Nomination Criteria means the criteria adopted by RA and approved by the AOC for the nomination of Athletes to the AOC for the Shadow Team and an Australian Olympic team.

RA Policies means the policies, by-laws and rules of RA as in force from time to time including without limitation, the Anti-Doping Policy and Codes of Conduct for Athletes, Coaches and Officials.

RA Website means www.rowingaustralia.com.au, and/or any other official website of RA.

Selection Criteria means the criteria specified in Part 3 of the Selection Policy.

Selection Policy means the Selection Policy and includes without limitation any annexures and the Event Requirements and the Appeals Policy.

Selectors means the panel of selectors appointed by RA in accordance with the Selection Policy.

Shadow Team means those Athletes selected from time to time by RA as competitors suitable and eligible for nomination to the AOC and who are recognised by the AOC as potential members of a particular Australian Olympic team.

squad means a squad of athletes and Coaches nominated or selected by RA and at RA's discretion categorised by any one or more of gender, weight class, rowing discipline, event or location.

team includes where the context permits crew or sculler.

Tribunal Chairperson means the Chairman or Chairwoman of an Appeals Tribunal, being the Permanent Tribunal Chairperson or an Alternate Tribunal Chairperson.

WADA means the World Anti-Doping Agency.