

Schedule 1: Selection Appeals - POWERLIFTING

1.1 Definitions

Appeal means an appeal, however described, against non-selection to a Team for WPPC2023.

Appeal Tribunal means a Tribunal convened in the NST Appeals Division for the purpose of hearing a 'Final Appeal' in accordance with cl. 1.14 of this Schedule 1.

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

Athlete means a person who has made a nomination to PA in accordance with this Policy that they wish to be considered for selection in the Team for WPPC2023 under this Policy or that has been selected in the Team for WPPC2023.

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

Competition means a program of one or more Events contested at a venue. A competition runs from the start of the first Event to the completion of the last Event.

Championships means the World Para Powerlifting Championships.

Event means the Division, gender and/or age category.

Interested Party has the meaning given in clause 1.4.

Non-Selected Athlete means any Athlete who is not selected to the Team for WPPC2023.

NST means the National Sports Tribunal established by the *National Sports Tribunal Act 2019 (Cth)*.

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

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

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

Selection Appeal has the meaning given to that term in cl. 1.1.

Selected Athlete means any Athlete selected by to the Team for WPPC2023.

Selection Panel means the panels of persons determined under clause 3 and who act on behalf of PA to select Athletes in relevant Teams in accordance with this Policy.

Service Charges means the charges that may be payable to the NST to cover the cost of the arbitration under section 46 of the NST Act.

Team means the Athletes selected to attend WPPC2023.

Written Notice means notice in writing by letter, email or other written means of communication.

General Rules

- 1.1 A Non-Selected Athlete may appeal against their non-selection to WPPC2023 (**Selection Appeal**) to the NST in accordance with the procedures set out in this Schedule.
- 1.2 If two or more Selection Appeals are brought under this clause and it appears to the NST that:
 - (a) the Selection Appeals involve a common question; or
 - (b) the relief claimed in them are in respect of, or arise out of, the same instance of selection; or
 - (c) there is some other reason for it being desirable to have the Selection Appeals consolidated,

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

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

1.3 The Parties to a Selection Appeal will be:

- (a) The Appellant
- (b) PA and
- (c) Any Interested Party

1.4 An Interested Party to a Selection Appeal must be either:

- (a) A Selected Athlete for the Team which is the subject of the Selection Appeal; or
- (b) A Non-Selected Athlete otherwise eligible for selection to the Team which is the subject of the Selection Appeal.

1.5 PA and the Appellant must identify and propose to the NST Athletes who may be Interested Parties. Athletes may also identify themselves to the NST as potential Interested Parties.

1.6 If any arises as to the eligibility of a person as an Interested Party, PA shall determine the matter in its absolute discretion.

1.7 An Athlete identified as a potential Interested Party must, in order to participate in the Selection Appeal, indicate to the NST that they wish to be a Party to the Selection Appeal.

1.8 In accordance with the NST Procedure an Interested Party:

- (a) must receive notice of the Selection Appeal from the NST;
- (b) must be given the opportunity to make submissions in the Selection Appeal and give evidence;
- (c) must receive a copy of the determination handed down by the NST; and
- (d) will be bound by any such determination.

- 1.9 An Interested Party may lodge a Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal in which it has participated as an Interested Party.
- 1.10 For the avoidance of doubt, an Athlete identified as a potential Interested Party in a First Instance Appeal, but who does not participate in that First Instance Appeal will not be permitted to lodge a Final Appeal in respect of a decision or determination that is made by an NST in a First Instance Appeal.
- 1.11 A person who receives notice from the NST of their identification as an Interested Party may decline to participate as an Interested Party at any time, in which case that person will automatically waive any rights afforded an Interested Party, including the right to lodge a Final Appeal.

Appeal Process

1.12 Steps prior to Selection Appeal

- (a) A Non-Selected Athlete must not commence a Selection Appeal in the NST unless the provisions of this clause have been complied with.
- (b) Within 48 hours of the time that a Non-Selected Athlete receives notice of their non-selection, the Non-Selected Athlete must provide Written Notice to PA's Para Sport Manager that the Non-Selected Athlete disputes their non-selection.
- (c) The Non-Selected Athlete must provide written reasons to support their notice of dispute. The notice of dispute must be accompanied by a no-refundable AUD\$200 application fee.
- (d) Within 48 hours of the Non-Selected Athlete providing Written Notice to the PA's Para Sport Manager in accordance with cl. 1.12(b), PA must provide the Non-Selected Athlete with a written statement of the reasons supporting the non-selection of the Non-Selected Athlete.
- (e) Within 48 hours of a Non-Selected Athlete receiving the written statement in accordance with cl. 1.12(d), the Non-Selected Athlete must provide a written response to PA which indicates whether the Non-Selected Athlete intends to proceed to a hearing of their Selection Appeal in accordance with cl. 1.13.

- (f) The Parties must use their best endeavours, acting in good faith, to resolve the dispute through communication in accordance with this clause, made on a without prejudice basis and kept confidential between the Parties.
- (g) For the avoidance of doubt, any formal written notice (and reasons) or statement made in accordance with cl 1.12 (b)-(e) may be submitted to the NST for the purposes of the First instance Appeal and or Final Appeal.
- (h) For clarity, time periods referred to in cl. 1.12 may be extended by agreement of all Parties in advance.

1.13 **First Instance Appeal to the General Division of the NST**

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

Making an Application for a Selection Appeal

- (c) A Non-Selected Athlete wishing to make an application for a Selection Appeal to the General Division of the NST must, within 24 hours of indicating to PA their intention to proceed to a hearing of their Selection Appeal under clause 1.12:
 - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Non-Selected Athlete; and
 - (ii) pay any filing fee required by the NST.

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

- (d) Service Charges may also be payable to the NST, which will be negotiated as between the Parties and the NST at the NST Preliminary Conference and Determined by the NST CEO. Generally, Service Charges will be apportioned evenly between the Parties.
- (e) Where the outcome of the dispute or appeal process results in the Appellant's selection for WPPC2023, any Application Fee and Service Charge will be reimbursed to the Appellant by PA.

Selection Appeal Procedure

- (f) A First-Instance Selection Appeal heard in the General Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below:
 - (i) A Para Powerlifting Expert may be appointed by the NST CEO to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the *National Sports Tribunal Practice and Procedure Determination 2021*.
 - (ii) A single NST member of the General Division of the NST will arbitrate a First-Instance Selection Appeal.
 - (iii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
 - (iv) The NST must provide Written Notice to the Parties of its determination as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a statement of the reasons for its determination within 3 Business Days of notifying the Parties of its determination.
 - (v) The determination of the NST is final and binding on the Parties and, subject only to an appeal to the Appeals Division of the NST under cl. 1.14, no party may institute proceedings in any other court or tribunal.
- (g) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 1.15).

Selection Appeal Outcomes – Reconsideration and Redetermination

- (h) The NST may uphold or dismiss a First Instance Selection Appeal.
- (i) Subject to cl. 1.13(k), where the NST upholds a First-Instance Selection Appeal overturning the original selection decision, the NST must refer any subsequent decision regarding the Appellant's non-selection or if required, any broader decision regarding selection of the Team for WPPC2023 back to PA for reconsideration and redetermination.
- (j) In reconsidering and determining the Appellant's non-selection or if required, any broader decision regarding selection of the Team for WPPC2023, PA must observe the principles of natural justice. Any decision made by PA regarding the Appellant's nomination after such referral, is final and binding on the Appellant, subject only to the Appellant commencing an appeal to the Appeals Division of the NST in accordance with cl 1.14.
- (k) Notwithstanding cl. 1.14(i) the NST may itself determine the issue of the Appellant's selection, or broader decision regarding selection of the Team for WPPC2023 where the NST determines that:
 - (i) it would be impractical to refer the selection decision for redetermination to PA given the time available; or
 - (ii) in making its original decision, PA had such disregard for proper application of the Selection Policy that a reasonable person would apprehend that it is unlikely that the Selection Policy would be applied properly by PA if the decision regarding the Appellant's non-selection was referred back to PA.
- (l) Prior to making a determination under cl. 1.13(k) the NST must advise the Parties that the NST intends to make such a determination and provide the Parties with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 1.13(l).

1.14. Final Appeal to the Appeals Division of the NST

- (a) Any second and final instance appeal (Final Appeal) must be heard by the Appeals Division of the NST.

- (b) A Final Appeal may be lodged either:
 - (i) after the determination of a First Instance Selection Appeal by the NST but before reconsideration and redetermination; or
 - (ii) after reconsideration and redetermination (whether re-determined by PA or the NST).
- (c) A Final Appeal in respect of a decision or determination that is made by the NST in a First Instance Appeal may only be lodged by a party to the First Instance Selection Appeal.

Making an Application for a Final Appeal

- (d) A Party to the First Instance Appeal eligible to appeal a determination or decision of the General Division of the NST must, within 72 hours after the Final Appellant is notified of the relevant decision under cl 1.14(b):
 - (i) complete and lodge the required NST Application Form with the NST Registry in accordance with the NST Procedure, setting out the grounds of appeal relied on by the Final Appellant; and
 - (ii) provide a copy of the NST Application Form to the other Parties; and
 - (iii) pay any filing fee required by the NST.

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

- (e) Service Charges may also be payable to the NST, which will be negotiated as between the Parties and the NST at the Preliminary Conference and Determined by the NST CEO. Generally, Service Charges will be apportioned evenly between the Parties.
- (f) Where the outcome of the dispute or appeal process results in the Final Appellant's selection for the Team for the Event, any Application Fee and Service Charges will be reimbursed to the Final Appellant by PA.

Final Selection Appeal Procedure

- (g) A Final Selection Appeal heard in the Appeals Division of the NST will proceed in accordance with the NST Procedure including with respect to the specific procedural matters set out below:
 - (i) A Para Powerlifting Expert may be appointed by the NST CEO to assist the NST in the arbitration of the Selection Appeal in accordance with section 34 of the National Sports Tribunal Practice and Procedure Determination 2021.
 - (ii) A panel of 3 NST members will be appointed to hear the Final Appeal (Appeal Tribunal)
 - (iii) Where the NST considers it appropriate to do so and all the involved Parties to the appeal agree, the NST may determine the appeal without a hearing.
 - (iv) The NST must provide Written Notice to the Parties of its determination as soon as reasonably practicable after the conclusion of the hearing (in most cases, within 24 hours of the conclusion of the hearing). The NST will provide the Parties with a statement of the reasons for its determination within 2 Business Days of notifying the Parties of its determination.
- (h) The length of the Selection Appeal Procedure will vary depending on time available in accordance with the NST Procedure regarding expedited resolution of disputes (see also cl. 1.15).

Final Appeal Outcomes – Reconsideration and Redetermination

- (i) The NST may uphold or dismiss a Final Selection Appeal.
- (j) Subject to cl. 1.14(l) where the NST upholds a Final Selection Appeal overturning the determination of the NST in the first instance Selection Appeal, or the substituted decision of the Selection Panel, the NST must refer any subsequent decision regarding selection of the Team for WPPC2023 back to PA for reconsideration and redetermination.

- (k) In reconsidering and determining any subsequent decision regarding selection of the Team for WPPC2023, PA must observe the principles of natural justice. Any subsequent decision made by PA regarding the selection of the Team for WPPC2023 after such referral, is final and binding.
- (l) Notwithstanding cl. 1.14(j), the NST may itself determine the issue of the Final Appellant's selection where the NST determines that:
 - (i) it would be impractical to refer the redetermination back to PA given the time available; or
 - (ii) in making its substituted decision, PA had such disregard for proper application of the Selection Policy that a reasonable person would apprehend that it is unlikely that the Selection Policy would be applied properly by PA if the decision regarding the Appellant's non-selection was referred back to PA.
- (m) Prior to making a determination under cl. 1.14(l) the NST must advise the Parties that the NST intends to make such a determination and provide the Parties with a reasonable opportunity to make submissions in relation to the NST's proposed determination. The NST must give proper consideration to any submissions it receives pursuant to this cl. 1.14(m).
- (n) The determination handed down by the Appeal Tribunal with respect to an Appeal is final and binding on the Parties.

1.15 Where an application to deal with a dispute requires expedition

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