

Tokyo 2020 Australian Paralympic Team

Non-Nomination Appeals Policy for PA Managed Sports

Date Jan 2020

Background

- A. PA is the entity responsible for the representation of Australia at the Paralympic Games and has the right to enter athletes in the Paralympic Games.
- B. PA recognises organisations (National Federations) responsible for the delivery of the high-performance Paralympic program for each sport.
- C. Each National Federation nominates athletes to the PA for consideration for selection to the Team in line with their sport specific Nomination Criteria.
- D. In PA Managed Sports and Associate Sports, PA plays the role of the National Federation by developing a Nomination Criteria for each sport.
- E. An Athlete who is not nominated, has the right to appeal their non-nomination under certain conditions.
- F. This policy outlines the process for Nomination Appeals

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this policy, unless the context indicates otherwise:

Associate Sport means a sport on the Paralympic program without a recognised high performance program

Athlete means a person who wishes to be considered for nomination and selection to the Team under the PA General Selection Criteria.

CAS means the Court of Arbitration for Sport, Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland.

Chief Executive means the Chief Executive Officer of PA and includes his/her nominee.

Games mean the Paralympic Games to be held in Tokyo from 25 August to 06 September 2020.

National Federation means the organisation recognised by PA as being responsible for the delivery of the high performance Paralympic program for Your particular sport.

Nomination means a nomination by a National Federation in accordance with the Nomination Criteria.

Nomination Criteria means the nomination criteria as distributed by Your National Federation from time to time.

Nomination Date means the date, as specified by PA (and includes any alternative date as agreed between PA and the National Federation), by which the National Federation must submit any Nominations to the PA.

PA means the Paralympics Australia Limited ACN 061 547 957.

PA Board means the board of directors of the PA.

PA Managed Sport means those high performance programs administered by PA including Wheelchair Rugby.

PA General Selection Criteria means PA selection criteria for the Tokyo 2020 Paralympic Games released by PA from time to time.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Selection means selection of You to be a member of the Team in accordance with the PA General Selection Criteria.

Team means the Australian Paralympic Team or the group of athletes and officials selected or appointed to participate in the Games on behalf of Australia.

Tribunal means CAS, or if PA so elects (and it is operational at the time) the National Sports Tribunal run by Sport Integrity Australia

1.2 Interpretation

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(c) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(d) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;

(e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(f) if a word or phrase is defined, any word or phrase derived from that word or phrase shall be construed accordingly; and

(g) **includes** in any form is not a word of limitation.

2. Appeals

2.1 Nomination Appeal

- (a) If You are not Nominated under the Nomination Criteria for your sport You may appeal to PA (**Nomination Appeal**) in accordance with clause 2.2.
- (b) Any decision of PA made in accordance with clause 2.2 will be final.

2.2 Procedure for appeal

- (a) You must submit a notice of Nomination Appeal, in writing, which may be sent by email or facsimile (**Notice of Appeal**) and must be received within 24 hours of Your receipt of notice of non-nomination.
- (b) The Notice of Appeal must set out:
 - (i) the decision to which the appeal relates;
 - (ii) the ground on which the appeal is made;
 - (iii) the reasons or circumstances supporting the grounds of appeal; and
 - (iv) any other information which You deem pertinent to the appeal.
- (c) Within 48 hours of receipt of the Notice of Appeal, PA shall appoint an appeals committee which shall comprise no less than three people (**Committee**) and shall notify You of the composition of the Committee and the timing of the hearing of the appeal.
- (d) The Committee shall include:
 - (i) the Chief Executive;
 - (ii) a person independent of PA (who shall be the appointed as chairperson of the Committee); and
 - (iii) a person independent of PA who has relevant high-performance experience.
- (e) The appeal shall be heard as soon as reasonably practicable, following the formation of the Committee.
- (f) The Committee may determine its own procedure as to how the appeal process will be run, provided it complies with the principles of natural justice and advises You of that procedure.
- (g) The Committee shall consider the evidence and make a determination as soon as reasonably practicable after the hearing.
- (h) Within 24 hours of making a decision, the Committee must notify You and PA in writing of the decision, which will be binding on You.

3. Dispute resolution

If any dispute arises between You and PA in relation to the meaning and application of this policy the parties agree that they will:

- (a) use their best endeavours to resolve the difference or dispute by agreement between them and if necessary appoint, for that purpose, a mutually agreeable mediator;
- (b) if agreement cannot be reached within a reasonable time by the process in clause 3(a), to submit the dispute to the Tribunal within five (5) days of the date of the meeting in clause 3(a) and determined in accordance with the relevant rules of the Tribunal; and
- (c) the decision of the Tribunal shall be final and binding on the parties and it is agreed that neither party may commence proceedings in any court or tribunal other than the National Sports Tribunal or CAS.

4. Indemnity

- (a) You agree that PA will not be liable to You for any loss, damage, expense or injury of any kind to You or Your property arising from or in connection with, directly or indirectly, any act, omission or fault of PA unless it arises as a direct result of a deliberate and wrongful act or omission by PA.
- (b) For the purposes of this clause 4, PA includes its members, officers, staff, support personnel, coaches and officials.
- (c) You agree not to sue, or take any legal, administrative or other action (or assist any other person to take any such action) and hereby release, indemnify and keep indemnified PA from and against all actions, suits, causes of action, proceedings, claims, demands, costs, expenses and damages (whether in respect of damage to property, personal injury or otherwise, and including all legal costs and other expenses suffered or incurred by You) which may be incurred by PA or taken or made against PA arising out of any act or omission by You.