

# Getting it Right - Guidelines for Selection

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## Introduction

The purpose of this document is to help sporting organisations and selectors 'get it right' when they choose sporting teams.

For most serious athletes, selection in a representative team is the pinnacle of years of hard work and training. Selection can be euphoric. Rejection can be devastating.

Responsibility for a team's selection process falls on officials who, in most cases, devote a great deal of their time (often unpaid) to their sport of choice.

Ultimately, if the selection process is seen to be fair and unbiased, then disputes will be minimised.

Selectors can be subjected to pressure from a number of stakeholders including:

- athletes
- family and friends of athletes
- other officials of the sport
- coaches
- media.

Team selection is a difficult process - few would argue otherwise. In many respects, it is a thankless task. Nevertheless, it also has its rewards, namely in seeing decisions vindicated at the track, ground, arena or pool.

It would be fair to say that many selectors do not have a great deal of opportunity to train for the task. They must rely on their own common sense and experience. As there is a lack of literature on the subject it is hoped that this publication will be of some assistance to selectors and their sporting organisations in their important task of team selection.

There is an over-riding philosophy behind the treatment of this topic:

Athletes want and expect certainty and consistency in their sport. Consequently, they want and expect certainty and consistency in the selection process.

An athlete's need for certainty and consistency extends to every aspect of the sport. On the playing field, the players want umpires to make decisions quickly and authoritatively. Nothing is more likely to inflame a match than an umpire/referee who is indecisive and makes inconsistent calls.

Likewise, when it comes to selection, athletes want the process to be unambiguous and administered fairly and consistently.

If sporting organisations and their selectors are able to achieve the twin aims of certainty and consistency then they will have done their job. They can do this by:

- developing concise and clear policies, procedures and criteria
  - communicating these policies, procedures and criteria effectively to all concerned well in advance of timelines
  - ensuring consideration and counselling for those who are not selected
  - seeking the input of experts before problems arise.
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## **Developing the selection policy**

### ***What is a selection policy?***

A selection policy establishes both the basis for selection decisions and athletes' rights in relation to such decisions.

The policy should be written. It is essential that everyone involved in the sport is fully aware of the policy and criteria against which selections are made. Once that policy and criteria have been determined, they must be put in writing and distributed to all concerned.

### ***Natural justice***

Throughout this publication, reference is made to the notion of 'fairness'. In law, this notion is called 'natural justice'.

Whenever selectors consider a selection decision, or an appeals or review tribunal hears a selection dispute, the most important consideration is the requirement that natural justice has been applied.

Historically, courts are most reluctant to become involved in the decision-making process of sporting tribunals. Indeed, the courts have said that, as a general rule, they will not get involved in this process.

However, an exception to this rule is where a process fails to follow the principles of natural justice. In circumstances where natural justice is not followed, the court takes the view that no decision has been made and will itself rule on the decision to be made.

### ***What are the rules of natural justice?***

Essentially, natural justice in selection requires the following three elements:

- The athlete must know exactly the nature of the selection process. This means ensuring that the athlete is aware of the standards or criteria that have to be met. If these are objective, they should be plainly spelled out. If they are subjective, it must be made abundantly clear that the ultimate decision is entirely a matter for selectors. If they contain a mix of both objective and subjective elements, then that must also be clear.
- The athlete must be given an opportunity to put their case to an appeals or review tribunal. This particularly applies to appeals.
- The selectors (or an appeals tribunal hearing an appeal against a selection decision) must make their selection (or hear the case) without bias. They must not allow extraneous or irrelevant considerations to influence their judgment. This last requirement is otherwise known as 'acting in good faith'.

Provided selectors:

- follow the agreed selection process
- apply the selection criteria to decision-making
- comply with natural justice requirements

then it is highly unlikely that a court would set aside a decision made by the sporting organisation's selectors or appeals tribunal.

### ***Transparency***

Fundamental to the notion of fairness in selections is that the entire process be transparent and accountable. That is, there should be full and frank disclosure of all of the elements of the selection process to those involved. The elements are examined in more detail in ['What to include'](#).

It is crucial that the selection criteria are easy to understand. Athletes should be in no doubt as to what is required of them to achieve selection or how the selection decision will be made.

Transparency may be defined as the means by which athletes understand the selection process, and are satisfied that the process will be followed in every instance. If the process attempts to:

- hide matters from the athlete
- change the rules midstream
- apply inappropriate criteria
- do anything beyond the scope of the printed selection policy
- do anything else outside the reasonable expectations of the athlete

then the notion of transparency has been betrayed. Any changes to the process or criteria must be fully communicated and must reflect the issues of timing discussed below.

## ***Timing***

Another aspect of the notion of fairness is the requirement that athletes be given sufficient time to comply with the selection criteria. As a general guide, at least 12 months notice of selection criteria should be given to athletes prior to an event. Naturally, this period may vary according to the particular event. Nevertheless, an athlete who has not been given sufficient time to comply with the selection criteria (for example, time to attend an overseas or domestic competition) could argue that he or she has been denied natural justice.

Again, this highlights the importance of sports administrators and selectors properly coordinating the entire selection process. Hastily prepared or poorly communicated selection guidelines will inevitably lead to complaints that athletes were given insufficient time to meet the appropriate standards.

Another reason to 'get it right' in the first place is that doing so will leave plenty of time to clarify or amend the criteria if necessary prior to the commencement of the period in which the selections are to be made. It may become clear quite quickly if an aspect of the selection criteria is inappropriate or outdated. By getting it right early, administrators give themselves enough time to correct any problem areas or inconsistencies.

## ***What to include***

Consistent with the theme of fairness is the requirement that athletes fully understand exactly what is expected of them.

Selectors should remember 'brevity is golden', and make sure the guidelines are written in plain English and that they are as clear and concise as possible.

Athletes' rights (including any rights of appeal) and obligations should be set out in the selection policy. It would be wise to obtain written confirmation from the athletes concerned that they received a copy of the policy, and that they understand it and are committed to complying with it. In the case of minors, written confirmation should be obtained from their parents.

Space does not permit an exhaustive list of all the matters a selection policy should address, however as a minimum, the following information will need to be included:

- how the process will work
- who is responsible for selection
- who to contact about issues
- the events and dates to which the selection criteria applies
- the criteria and how they will be applied
- appeal rights and processes.

## ***Creating selection criteria***

A sporting organisation should own and develop its selection criteria so that it reflects all the qualities an athlete who ultimately represents the sport will need. In order to identify those criteria, a broad range of people associated with the sport (including athlete representatives) should be consulted.

When the draft policy has been drawn up, it should be reviewed by a sports lawyer. If the sport does not have its own lawyer, call ANZSLA on 1800 804 031 for a referral to a sports lawyer. Experience has shown that by involving lawyers early in the selection process, the likelihood of needing them at the final stage will be greatly reduced.

## ***The law***

More and more these days, sports administrators are saying 'we're afraid of the lawyers' or 'we're afraid of this thing ending up in court'.

What is often overlooked, but which must be recognised by the administrators, is that lawyers will only need to be involved if there is a sustainable course of action. In fact, courts are usually reluctant to enter into sporting disputes and will only become involved in an organisation's decision-making process when:

- the rules of that organisation have been breached
- a law of the country has somehow been broken
- the rules of natural justice have been breached.

Provided the selectors:

- follow whatever objective criteria are laid down
- communicate criteria and make sure they are understood
- act honestly, fairly and without bias
- ensure athletes are kept informed throughout the selection process
- follow the sport's internal rules or guidelines
- ignore extraneous or irrelevant considerations or erroneous information

then there will be no case for selectors or administrators to answer.

### ***Subjective versus objective selection criteria***

Should the criteria for selection be based on a set of objective standards, be entirely left to the selectors' discretion and judgment, or reflect a mix of standards and judgment? Unfortunately, there is no definitive answer to this question and ultimately each individual sport must determine how to resolve the question in its own best interest.

Nevertheless, it is worth noting that generally, subjectivity is more relevant for team sports and objectivity for individual sports.

For example, while it is easy to say to an individual athlete 'you must attain a certain specified standard before you can qualify for the team', the qualities that apply to a team are more difficult to quantify objectively given that a direct comparison between athletes' claims is not easily measured.

However, the expression 'team sports' contains some grey areas. For instance, is a relay a 'team sport' or a combination of individual performances? Is a three-day equestrian team a 'team' as such, or a collection of individual riders whose combined scores produce a collective result?

Is a rowing or a sailing crew a 'team' in the same way a group of basketballers is called a 'team'?

Is an Australian rules football team merely a collection of forwards, backs, rucks and rovers?

The result is that each sport must determine its selection criteria according to the factors it believes are most appropriate.

Personality traits can also affect a team's composition. Obviously, a chronically unsettled and unhappy team will not perform as well as one that works harmoniously as a unit. Further, experience shows that while some athletes perform better than others on an individual basis, they do not reach the same level in a team situation.

In addition, subjective criteria are probably less relevant for relay teams, which are basically a collection of individual performances.

In cases where objective benchmarks are appropriate, they should be clearly stated and strictly followed. Similarly, when subjective criteria are applied, athletes must know that no other standards will be considered. If a hybrid of the two is set, then the potential for disagreement needs to be carefully considered and weighted against the final selection decision.

For example, a four-man pursuit cycling team has to be chosen for the national championships. The list is reduced to five candidates and of the five,

one ('A') is the state individual pursuit champion and is considered the best individual pursuit cyclist in the state. However, history shows that the cyclist performs badly in a team situation, and the fact that his cycling style has proven difficult for others to match further compounds the problem.

On an objective basis (that is, the best four pursuit cyclists in the state based on times), 'A' should clearly be included in the team due to superior skills and performances. However, if selection is subjective (for example, the four cyclists who the panel consider will have the best collective chance of winning the title), the panel will be justified in overlooking 'A' in favour of the

others. Provided the selectors act in accordance with a transparent policy and implement that policy fairly, the chances of problems are minimised.

## ***Selection processes for junior sport***

The procedures outlined in this book may not be applicable to the selection of junior participants. Activities undertaken during the selection process must be appropriate to the age and development of the individuals. If selection processes are required, then the philosophy should be one of nurturing the individual's development within the sport. Implementing a nurturing philosophy will reduce the chances of terminating the individual's pathway within the sport.

Sporting organisations have the responsibility of implementing appropriate and equitable selection processes, and need to be aware of the impact being selected, or not being selected, may have on the individual's overall development. Sporting organisations should provide an adequate supportive environment for this process to be implemented.

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## **Selectors**

It is difficult to define the qualities that make a good selector. Indeed, the process of 'selecting the selectors' is as important as selecting the athletes, and a number of points need to be made:

- When appointing selectors, administrators should consider the number needed. For instance, it is often best to have an odd number so that the possibility of a 'hung jury' is reduced.
  - Ideally, the selectors will have participated in the sport themselves (preferably at an elite level), but will no longer be competing at that level.
  - Selectors must understand and appreciate the culture of the sport.
  - Selectors must be willing to be accountable for their actions, that is, be prepared to make and justify tough decisions.
  - Selectors should be respected (as distinct from be liked) by athletes. Athletes will respect a selector who they see as being competent to make hard, yet fair, decisions and who is prepared to convey those decisions to the people affected.
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## **Implementing the selection policy**

### ***Education and communication***

Good lines of communication between the selectors and the athletes are vital to the selection process. When the selection policy and process are clearly understood, problems are much less likely to arise.

Athletes work best towards achieving a goal when they know exactly what is required of them, and the best way of ensuring this is to write it down. Verbal instructions are easily misunderstood, misinterpreted or missed completely.

Expectations should also be conveyed to an athlete's coach and manager and, in some cases, to family members. This can be face to face, either individually or as a group.

### ***The selection decision***

Imagine that the selection process has been completed. The successful athletes have been selected. Obviously, everyone will be notified of the results. There is no reason to tell the successful ones why they were selected. In all probability they really will not care.

But should selectors explain to the unsuccessful ones why they missed out? Do selectors think, 'Better not explain, as this may simply lead to a challenge? Better not give them some ammunition for an appeal'?

Superficially, there might be some attraction in not explaining the reasons for their rejection to an athlete, but in the long run, such feedback will benefit both the athlete and the sport. Constructive feedback will:

- ensure that selectors adhere to the objective criteria laid down by the selection process
- give unsuccessful athletes (who may be feeling angry and upset) the satisfaction of knowing that their application and efforts were seriously considered by the selection panel
- force selectors to give proper consideration to the process itself, thus ensuring constant improvement through continual analysis

- lessen the strong feelings of loss, disappointment, anger and even grief that some unsuccessful athletes could experience. The explanation process might be seen by some athletes as a form of counselling and could go a long way towards lessening those feelings
- reinforce athletes' knowledge of the selection criteria and also their understanding of how that criteria is applied. Unsuccessful athletes can better make decisions about their future when they know how the selection criteria are applied.

It is up to the selectors to decide the best way to communicate their decisions. Normally, this would be in writing (although it would depend on the sport itself and its profile in the community). Sometimes the media have been used to pass on these decisions, but as a general rule, the media should be informed only after the athletes themselves have been told. This respects the feelings of those who have been omitted from the team. Nothing is worse for these athletes than finding out about their non-selection through the media. Some selectors prefer to advise the successful and unsuccessful candidates personally as to why they were selected or missed out.

Decisions should be made early enough to enable those who missed out to lodge an appeal, should they wish, and for it to be heard well ahead of the event. Failure to do so would, in all probability, constitute a lack of natural justice and have the potential to provoke a disgruntled athlete to appeal to the courts seeking urgent injunctions.

## ***Media involvement***

It is important for national sporting organisations to build relationships with the media, and this takes time. National sporting organisations need to spend time ensuring that they have the best possible relationship with reliable media contacts.

The announcement of national sporting teams is of interest to the media, especially in the lead-up to the Olympic Games, Commonwealth Games, world championships, Test matches and the like. Following are guidelines on how these announcements can be handled for best effect. When handled well, selection announcements can result in extensive positive media coverage and an enhanced public image. If executed poorly, those responsible - and the sport - can look amateurish. The result will often be a negative portrayal in the media.

## ***Media releases***

Media releases are one of the most effective means of widely distributing information. They should be brief (usually not more than one page), to the point and have an eye-catching headline.

There are several media groups that distribute media releases on behalf of organisations. These include MediaNet and NewsNet. Their targeted lists extend from metropolitan television and national press, to community newspapers and regional radio.

The names of spokespeople (with contact details, including mobile phone numbers) should appear at the bottom of the release. The sport or organisation must let any spokespeople know that they have been nominated - and their mobile phones must be left on.

## ***Press conferences***

For major team announcements, a press conference can be an effective way of conveying information to the media, while also allowing the journalists and reporters an opportunity to gather additional material. If there is the potential for controversy surrounding the announcement of a team (for example, where a captain is dropped from a team or squad), a formal press conference may be appropriate.

One to two days prior to the press conference, a media alert should be released informing media of the upcoming announcement/press conference. A formal media release should then be distributed to media and a hard copy also handed out to journalists and reporters present on the day.

## ***Selective media briefings***

Organisations may choose to brief selected journalists prior to an announcement. Only experienced media and public relations managers should employ this tactic, and usually only when it involves high-profile national media programs or organisations. The upside is extensive media coverage reaching a large population base. Depending on ongoing news value, the downside is that good media contacts can become alienated and further interest in the story can quickly dissipate.

## ***Spokespeople***

Whether using a press conference or a media release, the sport or organisation should appoint - and brief - key spokespeople. These might include an executive director, head coach or key athlete.

## ***Leaks***

It is critically important (especially in the case of controversial selections) that information is not leaked outside of those involved in selections. One leak can hijack your press conference/announcement and make the sport, and those involved, look unprofessional.

### ***Junior sport***

Media conferences are less common for junior sports, especially lower-profile ones. However, the process of announcements should be formalised and transparent, as outlined above. Angry parents have vented their frustrations to the media in the past. This can make sports and organisations appear at the very least uncaring.

### ***Counselling***

Almost invariably, unsuccessful candidates feel a great sense of loss, and even grief, when they learn they did not make a team. This is not surprising given the level of commitment, dedication and training that athletes give to their sport.

Every sport should be conscious of such feelings and take steps in advance to soften the blow. Sports should consider using counsellors and sports psychologists to debrief unsuccessful candidates and, where appropriate, their families. With access to counsellors, athletes are more likely to readily accept the feedback given. This is another way in which a sport can maintain a good relationship with its participants.

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## **Review or appeals process**

### ***Review or appeals tribunals***

Appeals against selection decisions are less likely to be taken, and less likely to succeed, if natural justice is applied throughout the decision-making process.

Quite apart from doing justice, good sports administrators should be seen to be doing justice.

One way in which both aims can be achieved is for the sporting body to establish a review panel or appeals tribunal (hereinafter referred to as a 'tribunal').

A few words of warning about tribunals:

- The selectors should not think, 'We don't have to worry about this job too much because there is always the appeals process.'
- Athletes should not view the appeals process as an automatic 'second bite of the cherry'.
- If a tribunal is to be established, it should be set up well before the selection process is completed. There is nothing more likely to create confusion and uncertainty than a hastily convened tribunal set up as a knee-jerk response to a very annoyed and aggrieved unsuccessful athlete.

However, provided the tribunal is:

- set up well in advance of the event
- properly notified to athletes
- neither set up nor viewed as a 'second bite of the cherry'
- genuinely acting as a review of the correctness of the original decision-making process in ensuring it 'does justice' to athletes it can be a useful addition to a sport's administrative procedures.

What is 'doing justice'? Without being exhaustive, this means ensuring:

- the selectors do not act in a biased fashion
- established criteria and processes have been followed as required by the sport.

### ***Procedures***

Tribunal members should be appointed well in advance and told in detail (preferably in writing) what is expected of them. Tribunal members should be appropriately qualified people bringing a mix of legal and sport-specific understanding, and who were not involved in the original decision. They will preferably be independent of the sport generally, in that they do not hold any other official position. See '[Further information and help](#)' for more guidance.

The tribunal members must recognise that their job is not to act as a substitute for the original selection panel. Their role is to decide whether the selection criteria and process have been applied and followed. If not, the matter should be referred back to the selectors so that they can do the job properly. In urgent cases, it is open to the sport and the athlete to agree on the tribunal making the selection decision.

The tribunal should be ready to operate as soon as selection decisions have been announced. Athletes should be made well aware of the timing restrictions that apply to appeals, for example, 'appeals must be lodged within 48 hours of notification of decisions'.

### ***Should an appeal be a re-hearing?***

There is a real temptation for a tribunal to consider that its job is to effectively re-hear the original selection process. In other words, it sees itself

as having to replicate the selection process. It is important that the tribunal does not do this. The tribunal should confine its inquiry to whether the decision reached by the original selection panel was properly made, in that the selectors acted according to the points in ['The law'](#).

### ***Affected persons***

When a decision of the selectors is appealed

and referred to a tribunal, it must be recognised that other athletes may be affected if the appeal is upheld.

Take the example of a sporting team consisting of four members (such as a rowing crew). The crew of four is selected. An omitted athlete appeals on the basis that crew member 'A' should not have been included.

Clearly, by an appeal being lodged against the inclusion of crew member 'A' and the omitted athlete's exclusion, crew member 'A' has an interest in the outcome of the appeal. If the appellant's arguments are upheld, crew member 'A' is at risk of being excluded from the finally selected crew.

Accordingly, it would be in the interest of crew member 'A', and demanded by the laws of natural justice, that crew member 'A' be given an opportunity to be heard at the appeal. By doing so, natural justice is applied to all affected parties.

### ***Costs of appeals***

As a general rule, costs should not play a part in appeals. It is generally recognised that athletes do not appeal for unmeritorious reasons. In most cases, the motivation behind an appeal is genuine.

Nevertheless, situations may arise where an appeal is frivolous, or pursued for improper reasons. Accordingly, it is appropriate for the rules of the sport to make provision for costs to be awarded if an appeal is found to be frivolous or vexatious.

One way of allowing this to occur is for appellants to lodge a fee and/or bond at the time of filing their appeal. If the tribunal finds that the appeal was unmeritorious or frivolous it may order the forfeiture, or partial forfeiture, of the bond.

A non-refundable fee would help offset some associated costs in hearing the appeal.

The law says a financial penalty cannot be imposed on a party except in certain limited circumstances. Two such circumstances are where the penalty:

- has been advised to the athlete before he or she issues the appeal
- is reasonable in all of the circumstances.

Therefore, it would be unlawful for a tribunal, when discussing an appeal, to simply decide (without prior warning) it will punish the unsuccessful athlete by imposing a fine.

### ***Using lawyers at appeal***

Appeals rules may or may not permit legal representation at hearings, notwithstanding the fact that very often the tribunal itself has lawyers on the panel.

There are two distinct schools of thought in relation to this issue. One relates to a perception that lawyers may prolong hearings, either by making fine points of law, or by lengthy cross-examination of witnesses and by making lengthy submissions. The other argues that lawyers can actually shorten the process by ensuring that only evidence that is relevant and properly admissible is submitted at the hearing.

It is suggested that, as a general rule, a tribunal may refuse to allow legal representation. However, the following is also noted:

- Athletes should be entitled to make written submissions that are prepared partly or wholly by lawyers.
- On occasions, the tribunal itself may believe that the involvement of lawyers is warranted. This is particularly so in cases where legal issues are involved and it is felt that the athlete's best chance of articulating the appeal is with the assistance of legal representation.

### ***Do further appeals have to go to court?***

Despite the best intentions of all parties, an athlete may still be dissatisfied with the outcome and may wish to pursue their case in court. In the Olympic context, it is almost impossible for an athlete to do so. As a result of the way the Olympic movement has framed its constituent documents, all appeals from the sport's tribunal must currently go to the Court of Arbitration for Sport (CAS). Any attempt by an athlete to go from CAS to a formal court (such as the state supreme court) will almost certainly be sent back to CAS by that supreme court.

For sports that are not required to use CAS (non-Olympic sports), they may refer further appeals to be heard by the National Sports Dispute Centre.

The National Sports Dispute Centre is an initiative of ANZSLA, the ASC and Sport Industry Australia. It is able to set up its own tribunal to arbitrate on selection disputes. In order to access the National Sports Dispute Centre, one of two things must occur:

- the athlete and the sporting body concerned must agree to refer the matter to the National Sports Dispute Centre
- it must be a fundamental term of the contractual relationship between the athlete and their organisation that any sporting disputes will go to the National Sports Dispute Centre.

Sports administrators should carefully consider whether they include the National Sports Dispute Centre as part of their dispute-resolution process reflected in their rules and selection policies.

Sporting organisations should note that arbitration usually means the arbitrator's decision is final. It is not a mediated outcome.

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## **Further information and help**

This section reinforces that considerable assistance is available. Organisations and associations should never feel that they are alone, and should know that they can always seek advice in this area.

Further information can be gained by:

- liaising with other sporting organisations about the policy and procedures that they use and learning how successful or unsuccessful these are (for help, contact the Manager, High Performance, Australian Sports Commission on [02] 6214 1765)
- contacting services such as the ANZSLA Sports Law Referral Service, which provides free initial sports law advice (contact ANZSLA on 1800 804 031)
- keeping up to date with the latest developments affecting sports law through ANZSLA's quarterly newsletter, ANZSLA Commentator, or web site at <[www.anzsla.com.au](http://www.anzsla.com.au)>.