

Australian Outrigger Canoe Racing Association Inc.

By Law 9 - Selection Procedures

1. SELECTION PROCEDURES BYLAW

The Management Committee of the Australian Outrigger Canoe Racing Association Inc. (AOCRA) adopted this Bylaw on 23rd March 2010 under Section 9 of the AOCRA Constitution.

This Bylaw governs the selection of Athletes to AOCRA teams in each of the Disciplines and must be read in conjunction with the relevant Selection Criteria Supplement applicable to each AOCRA team/squad.

2. DEFINITIONS

“**AOC**” means the Australian Olympic Committee

“**Athlete**” means a person who has notified AOCRA in Accordance with this Bylaw that he/she wishes to be considered for selection in a squad and/or team under this Bylaw or has been selected in an AOCRA squad or team

“**Crew**” means where a Discipline involves a crew of more than one person, the Athletes who compete together in that crew from time to time and who seek selection for a squad and/or team as part of that crew, as that crew may be comprised from time to time

“**Discipline**” means the canoeing disciplines such as Sprint Racing, Marathon Racing, Marathon Changeover Racing, or any other discipline the Management Committee deems appropriate.

“**NPD**” means the National Performance Director of AOCRA

“**IVF**” means the International Va'a Federation

“**President**” means the President of AOCRA

“**Selection Criteria Approval Committee**” means the approval committee that approve the selection criteria supplement for the relevant Discipline

“**Selection Criteria Supplement**” means the document that contains the specific selection criteria for the relevant Team selection process

“**Selection Panel(s)**” means the four person panel determined under clause 4 and who on behalf of AOCRA selects Athletes in the relevant teams in Accordance with this Bylaw

3. CHANGES TO THIS BY LAW

- 3.1. The Management Committee of AOCRA may change this Bylaw or the Selection Criteria Supplement for any team from time to time, provided that it shall provide as much notice of such change as is possible to all affected Athletes, State Centres or Zones and others as determined by the Management Committee.
- 3.2. The President will take reasonable steps to give written notice to Athletes affected by any amendments and/or supplements to this Bylaw. It is the responsibility of AOCRA Members to keep his/her contact

details up to date on the AOCRA website (member sign in section), and to keep AOCRA notified of any change to that information (including where the Athlete is away from home for any purpose such as competition or training).

- 3.3. Apart from any other steps the President may take, he/she will be deemed to have complied with this clause if he/she emails notice to the email address last notified to AOCRA by the Athlete and posts written notice on the AOCRA website.

4. SELECTION PANELS

- 4.1. Subject to clauses 4.2, 4.3 and 4.4, there shall be a Selection Panel for AOCRA teams to be selected. The AOCRA Selection Panel shall be appointed by the Management Committee of AOCRA after considering recommendations from the NPD responsible for the relevant Discipline. The AOCRA Selection Panel will be responsible to the President and will comprise four persons which may (but need not) include the NPD and/or the National Coach/es of the relevant Discipline. The Management Committee shall appoint one of the four members in the AOCRA Selection Panel to be the Chair of that Panel. In appointing the Selection Panel the Management Committee will:
- a) Where possible select a panel where a majority have participated in the Discipline themselves at An elite level but are no longer be competing at that level;
 - b) Appoint members of the Selection Panel who understand and appreciate the culture of the sport;
 - c) Appoint members of the Selection Panel who are suitable and qualified to fill the required positions; and
 - d) Appoint members of the Selection Panel who will work efficiently, cooperatively and harmoniously with AOCRA officials, in particular the President and the NPD;
 - e) Appoint members of the Selection Panel who have indicated they have sufficient personal time to meet all necessary commitments of the position. If a member of the Selection Panel is deemed by the Management Committee to be failing in their duty to fulfil the requirements of the role, the member will be asked to show cause as to why their appointment to the Selection Panel should not be terminated.
- 4.2. The Management Committee may terminate the appointment of any Selection Panel member or appoint additional member(s) if it considers it appropriate to do so.
- 4.3. The Management Committee may direct any member of any Selection Panel to vacate the relevant Selection Panel for such period as the Management Committee considers appropriate where the Management Committee considers, in their discretion, the Selection panel member has an association with an Athlete which may give rise to a question of bias or conflict of interest in the selection process.
- 4.4. Where any member of the Selection Panel advises the Management Committee that s/he considers s/he is unable to meet his/her responsibilities under this Bylaw, or the Management Committee makes a direction under clause 4.2 or 4.3, the Management Committee may appoint a replacement to assume that member's role on any Selection Panel.
- 4.5. The President and/or NPD will work closely with Selection Panels to provide advice and to ensure compliance with this Bylaw and other relevant AOCRA Rules, Policies and Bylaws.

5. PROCESS FOR SELECTION

- 5.1. The Selection Panel has the absolute discretion to determine whether an Athlete is selected in a team or squad.
- 5.2. To be eligible for selection under the Bylaw, all Athletes must first:
- a) Satisfy AOCRA's Management Committee that s/he meets or will meet the IVF's eligibility requirements (if any); and
 - b) Satisfy AOCRA's Management Committee that s/he is a financial individual member of AOCRA; and
 - c) Not have any outstanding accounts with AOCRA that are more than 30-days in arrears; and

- d) Complete and sign the applicable application form, including the acknowledgement that s/he will abide by the AOCRA Team Member Bylaw; and
- e) Pay the non-refundable selection application fee as imposed from time to time; and

return all of the items above to the President no later than the applicable closing date as specified in the relevant Selection Criteria Supplement. The Management Committee may at its sole discretion accept the above after this time depending upon the circumstances as considered on a case-by-case basis.

- 5.3. If an Athlete is selected to a squad and/or team under this Bylaw, the Athlete acknowledges and agrees that:
- a) The AOCRA Team Member Bylaw immediately comes into full force and effect in respect of that Athlete;
 - b) S/he must comply with AOCRA's Constitution, bylaws and policies;
 - c) S/he is subject to drug testing by the Australian Sports Anti Doping Agency (ASADA), IVF, or other applicable body and must comply with AOCRA's, AOC's and IVF's Anti-Doping bylaw or policy;
 - d) S/he must maintain a designated level of fitness determined by AOCRA, and standard of competitiveness prior to the relevant event for which s/he has been selected; and
 - e) S/he will comply with all requests from AOCRA and with his/her obligations set out in the AOCRA Anti-Doping Policy to provide accurate whereabouts information to ASADA and IVF, using an Athlete Contact Information Form.
- 5.4. Failure to comply with any part of clauses 5.2 or 5.3 may result in the Athlete not being eligible for selection.
- 5.5. Subject to the right of appeal in this Bylaw, the decisions of the Selection Panels shall be final. The Selection Panels will ensure that the AOCRA policy for assisting and counselling athletes seeking selection is complied with and must regularly advise Athletes seeking selection as to their individual performances and progress against selection criteria and counsel unsuccessful aspirants for selection.
- 5.6. The Selection Panels will determine selections by such date as is set out in the Selection Criteria Supplement for the AOCRA team to be selected.

6. SELECTION CRITERIA

- 6.1. The selection criteria are developed by the Selection Panel. The Selection Criteria is then forwarded to the Management Committee.
- 6.2. The Management Committee of AOCRA will appoint a Selection Criteria Approval Committee consisting of as a minimum the President, a Management Committee person, and the National Performance Director, to approve the Selection Criteria Supplement for AOCRA teams or squads to be selected in the each of the Disciplines.
- 6.3. In all selections to which this Bylaw applies the criteria to be applied by the Selection Panel for the relevant team is that set out in the relevant Selection Criteria Supplement.

7. SELECTION WITHDRAWAL

- 7.1. An Athlete who is selected under this Bylaw may be withdrawn from the squad/team if s/he:
- a) breaches or fails to comply with this or any of AOCRA's Bylaws;
 - b) breaches or fails to fulfil a requirement of the AOCRA Anti-Doping Policy;
 - c) breaches or fails to comply with the AOCRA Regatta & Training Rules or AOCRA Constitution;
 - d) brings or is likely to bring AOCRA or the sport of outrigger canoeing or his/herself into disrepute;
 - e) has an illness or injury which in the relevant Selection Panel's opinion prevents the Athlete from meeting the overall requirements for selection as set out in the applicable Selection Criteria

- f) Supplement; or
subject to clause 7.4, is a member of a Crew where one member withdraws.
- 7.2. Any selected Athlete may be withdrawn from the team or squad by AOCRA if any of the grounds in clause 7.1 occur. AOCRA shall notify the Athlete in writing of the alleged breach or grounds upon which it is proposed that s/he be withdrawn from the team or squad. The Athlete shall be given a reasonable opportunity (not being less than seven days) to provide reasons why s/he should not be withdrawn ("Reasons"). AOCRA may suspend an Athlete's entitlement to be a member of a team/squad while considering his/her Reasons.
- 7.3. A selected Athlete may withdraw his/her selection by giving notice in writing to the President.
- 7.4. If a selected Athlete or Crew is withdrawn from selection, the Selection Panel may consider selecting another Athlete or Crew to replace the withdrawn Athlete or Crew.
- 7.5. Penalties may be imposed on any Athlete who is withdrawn by AOCRA from the squad, or any Athlete who withdraws themselves from the squad. Penalties will be dealt with on a case by case basis. The penalties may include loss of deposit and suspension from future AOCRA events. However if valid reasons are given for withdrawing or not meeting any other criteria, then the AOCRA committee will evaluate and possibly waive any penalties. Valid reasons may include a medical condition (doctor's certificate required), family issues or financial difficulties.

8. NOTIFICATION

- 8.1. All Athletes and Crews seeking selection under this Bylaw shall be notified by the PRESIDENT or his/her nominee that they have or have not been selected for a squad and/or team (as the case may be) by email to the email address in the Athlete's Individual details of the AOCRA website as soon as practicable after the Selection Panel has made its decision. The President or his/her nominee may also advise the selected Athletes of their selection in person.
- 8.2. Any public announcement of any selections will be made by the President of AOCRA, or their nominee.

9. APPEALING DECISIONS

- 9.1. Appeals against non-selection will be determined in Accordance with the following process:
- a) Consultation and mediation whereby the parties meet to discuss the decision;
 - b) Only where the parties do not reach agreement via consultation and mediation will a non-selected Athlete be allowed to appeal to the Appeals Tribunal convened by the AOCRA; and
 - c) Appeals against the decision of the Appeals Tribunal will be determined by the Appeals Arbitration Division of the Court of Arbitration for Sport ('CAS').
- 9.2. An appeal may only be made on procedural grounds set out in this clause, not on the merits of a particular selection decision. The sole grounds for appeal to the Appeals Tribunal are that:
- a) the applicable selection criteria have not been properly followed and/or implemented; or
 - b) the Athlete was not afforded a reasonable opportunity to satisfy the applicable selection criteria; or
 - c) the selection decision was affected by actual bias; or
 - d) there was no material on which the selection decision could reasonably be based.
- 9.3. Any appeal must accord with the following procedure:
- a) the Athlete must give written notice of his/her appeal to AOCRA's President within 48 hours of receiving written notice of the decision against which the appeal is made;
 - b) within 5 working days of submitting his or her written notice of appeal, the Athlete must submit to AOCRA's President the grounds of appeal accompanied by a non-refundable deposit of \$250 payable to AOCRA;

- c) before the Appeals Tribunal will conduct a hearing, the Athlete and a representative of AOCRA shall meet for mediation and consultation as set out in clause 9.1;
- d) the Appeals Tribunal will consist of the following persons appointed by AOCRA's Management Committee:
 - (i) a barrister or solicitor who will act as Chairman;
 - (ii) a person with a thorough knowledge of outrigger canoeing and who preferably has had recent international competition experience in outrigger canoeing; and
 - (iii) one other person of experience and skills suitable to the function of the Appeals Tribunal, all of whom will constitute a quorum for the purpose of hearing and determining any appeal.
- e) No person is eligible to be appointed to the Appeals Tribunal if he or she is a member of AOCRA's Management Committee or of a Selection Panel or by reason of his or her (perceived or actual) conflict of interest (as determined by AOCRA's Management Committee) with:
 - (i) the appealing Athlete;
 - (ii) any member of the Management Committee;
 - (iii) the Selection Panel;
 - (iv) any persons whose interest may be affected by the outcome of the appeal; or
 - (v) would be reasonably considered to be other than impartial.
- f) Should an Athlete or other party to the appeal challenge the impartiality of any member of the Appeals Tribunal, the challenge will be determined by the Chairman sitting alone.
- g) The Appeals Tribunal will convene a hearing as soon as possible after the submission of the grounds of appeal and after the mediation/consultation (referred to in clause 9.1 and 9.3(c)) is held. The hearing may occur in such manner as the Chairman decides, including telephone or video conferencing.
- h) In any hearing before the Appeals Tribunal:
 - (i) the Appeals Tribunal must observe the principles of natural justice;
 - (ii) the Appeals Tribunal is not bound by the rules of evidence and may inform itself as to any matter in such manner as it thinks fit;
 - (iii) the Athlete must establish one or more ground of appeal to the reasonable satisfaction of the Appeals Tribunal with full regard to the importance and gravity of the issue;
 - (iv) the parties will not be entitled to be represented by a barrister or solicitor save with the leave of the Appeals Tribunal, which leave will only be given in exceptional circumstances;
 - (v) if a question of law arises during the course of a hearing, the parties may seek an adjournment in order to obtain legal advice; and
 - (vi) the hearing will be conducted in a manner which allows proper consideration of the matter at hand.
- i) A reasonable period prior to the hearing, the Selection Panel will provide the Appeals Tribunal and the Athlete with a written statement as to the reasons for the decision against which the appeal is made.
- j) If the Appeals Tribunal is of the view that the outcome of the appeal may affect the interests of any person not a party to the dispute, it must, so far as is practicable, require that notice be given to such other person and will permit that person to appear at the hearing of the appeal and to make submissions.
- k) The Appeals Tribunal will give its decision as soon as practicable after the hearing and will provide AOCRA's President and the Athlete with a statement of the reasons for its decision.
- l) Only in extreme circumstances such as a pressing deadline may the Appeals Tribunal itself make a selection where the selectors' decision is set aside.
- m) The decision of the Appeals Tribunal will be binding on the parties and, subject only to any appeal to the Appeals Arbitration Division of CAS, it is agreed that neither party will institute or maintain proceedings in any court or tribunal other than CAS.

9.4. Where an Athlete wishing to appeal a decision concerning his or her non-selection and AOCRA agrees in writing, an appeal may be directly referred to CAS and in which instance the grounds of appeal must be one or more of the grounds described in clause 9.2. Clauses 9.5 to 9.8 will apply to any such appeal in so far as they are relevant.

9.5. The sole grounds for any appeal against a decision of the Appeals Tribunal are:

- a) a breach of the rules of natural justice by the Appeals Tribunal; or
- b) that there has otherwise been an error on a question of law.

- 9.6. 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. 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 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.
- 9.7. An Athlete wishing to appeal to CAS must give written notice of that fact to AOCRA's President within 48 hours of the announcement of the reasons of the decision of the Appeals Tribunal (whether oral or in writing whichever occurs first) against which the appeal is made (or within such time as the President may allow) and must then file his or her statement of appeal with CAS within 5 working days.
- 9.8. Failure to observe the above time limits will render any appeal a nullity provided that an Athlete may apply to CAS 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.
- 9.9. All appeals to CAS will be heard by a panel comprising three arbitrators subject to the parties agreeing that a sole arbitrator can hear and determine the matter.
- 9.10. If the Appeals Tribunal or CAS determines to uphold any appeal in respect of the non-selection of an Athlete, they will as a matter of usual practice refer the question of re-selection back to the selectors for determination in Accordance with the Selection Criteria. CAS may itself only conclusively determine the issue of selection of Athletes in the case of an appeal against non-selection where CAS had determined that it would be impractical to refer the question of selection back to the selectors in the time available.

10. INTERPRETATION

Unless the context otherwise requires, the terms used in this Bylaw shall have the same meaning as in AOCRA's Constitution.

No particular part of the selection criteria set out in a Selection Criteria Supplement shall be weighed more or less significantly by reason only of the order in which that part appears in that supplement.

Adopted by the Management Committee of AOCRA on the 23rd March 2010
Amended by the Management Committee of AOCRA on 26th October 2010