

Procedures: Appeals



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OVERVIEW OF THE TAEKWONDO AUSTRALIA APPEALS PROCESS

Introduction

Taekwondo Australia has established an Appeals Tribunal to enable team selection disputes to be dealt with fairly, expeditiously and affordably, within Taekwondo Australia without recourse to external legal procedures.

Appeals Tribunal

The Board will appoint a panel of at least six persons from which the Appeals Tribunal will be constituted. The panel will consist of:

- at least two persons who are each a barrister or solicitor of not less than 5 years standing, one of whom will be appointed by the Board as the President of the Appeals Tribunal;
- at least two athletes who have retired (preferably recently) from international competition; and
- at least two persons with experience in the administration of sport.

Each appointee will hold office at the discretion of the Board.

On the receipt by the Chief Executive Officer of a Notice of Appeal, a copy of it will be promptly provided to the President of the Appeals Tribunal who will then appoint from the panel three members to hear and determine the matter. Subject to any panel member being ineligible or unable to hear the matter in question, the President will endeavour to appoint:

- a barrister or solicitor (including the President) to act as chairperson; and
- one retired athlete and one person with experience in sports administration

to hear and determine each matter.

In the event that there are insufficient members of the panel available to hear any matter, the President may appoint an independent person or persons not on the panel to the Tribunal for the sole purpose of hearing and determining the matter in question as part of the three member Selection Appeals Tribunal.

Selection Disputes Procedure

An athlete who is aggrieved of a decision by the Selection Panel concerning their selection or non-selection to a representative team or to participate in an athletic competition or event may request the Selection Panel to reconsider its decision by giving Notice in Writing to the Chairperson of the Selection Panel within 24 hours of the announcement of the selection decision. In this request, the athlete must provide all information which they consider is relevant to the Selection Panel's reconsideration of its decision.

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Upon receiving a request the following procedures will apply:

- the Selection Panel will immediately provide a copy of the request to any athlete who may be directly and adversely affected by the reconsideration of its decision (“affected athlete”)
- an affected athlete provided with the request may, within 24 hours of their receipt of the request, provide written submissions relevant to the reconsideration by the Selection Panel of its decision. The Selection Panel will still reconsider its decision as required under the following if an affected athlete does not provide written submissions within the prescribed time, and
- as soon as practicable but no later than 72 hours after receiving a request, the Selection Panel will:
 - reconsider its decision giving due consideration to the written information provided by the athlete making a request and any written submissions provided by any affected athlete
 - advise the athlete(s) concerned of its decision in writing and
 - in the notice advising the athlete(s) of its decision the Selection Panel will also advise the athlete of their right to appeal the decision made by the Selection athlete to the Appeals Tribunal.

The Selection Panel is not obliged to give reasons for its decision concerning the selection or non-selection of an athlete or athletes.

Where it is appropriate, the Selection Panel may extend the above time limits.

Appeal To Appeals Tribunal

An athlete may only appeal to the Appeals Tribunal if they continue to be aggrieved of a decision by a Selection Panel concerning their selection or non-selection to a representative team or to participate in an athletic competition or event after a reconsideration of its decision under the Selection Dispute Procedure.

The sole grounds for any appeal to the Appeals Tribunal are that:

- the selection criteria have not been properly followed and/or implemented
- the athlete was not afforded a reasonable opportunity by Taekwondo Australia to satisfy the applicable selection criteria
- the selection decision was affected by actual bias
- there was no material on which the selection decision could reasonably be based.

An appeal must be made by lodging with the Chief Executive Officer a Notice of Appeal which must be in writing within 48 hours of the notification of the decision by the selection Panel accompanied by a payment of \$500 to Taekwondo Australia for the costs of the appeal, which sum will be dealt with in accordance with the Appeal Fee.

The Chief Executive Officer may at their absolute discretion extend the time within which an athlete may appeal to the Appeals Tribunal provided any request for an extension is made before the relevant time is due to expire and the Chief Executive Officer is satisfied that there are compelling circumstances to grant the extension.

Upon receipt of a Notice of Appeal, the Chief Executive Officer will provide a copy to the members of the Selection Panel and to any athlete whom the Chief Executive Officer believes may be directly and adversely affected by the outcome of the determination of the Appeals Tribunal.

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The Appeals Tribunal will convene a preliminary hearing with the appellant, Selection Panel and any affected parties as soon as is practicable after receipt of the Notice of Appeal by the Chief Executive Officer. At the preliminary hearing the Appeals Tribunal will give directions as to the conduct of the matter including, but not limited to, the provision of written submissions by the parties, the joinder of any person who may be adversely affected by the determination of the Appeals Tribunal, the provision of documents and the manner of taking evidence.

All communications (other than during the course of a preliminary hearing or the hearing) between the parties and the Appeals Tribunal must be transmitted through the Chief Executive Officer.

An appellant must attend and appear before the Selection Appeals Tribunal at the date, time and place fixed for the hearing of the appeal. Unless there are extraordinary circumstances acceptable to the Appeals Tribunal, where an appellant fails to attend before the Appeals Tribunal their appeal will be deemed to have been abandoned. The determination in this regard by the Appeals Tribunal will be final and binding.

Should an affected athlete who receives notification elect not to participate in the hearing as an affected party then, unless that person has already appealed against their selection or non-selection as the case may be, that athlete will forfeit his or her right of appeal against consequent selection or non-selection as the case may be.

The Appeals Tribunal may of its own motion or upon application of any party to the appeal adjourn the hearing of an appeal provided that the appeal must be concluded before the date and time which may be imposed by the Board for the selection of the athlete(s) the subject of the appeal.

Appeal Fee

Where the Appeals Tribunal upholds an appeal, the \$500 Appeal Fee will be refunded.

Where the Appeals Tribunal dismisses an appeal, it may determine in its absolute discretion that none, all or part of the \$500 Appeal Fee be refunded to the appellant.

Successful Appeals

If the Appeals Tribunal determines to uphold any appeal in respect of the selection or non selection of an athlete, it will as a matter of usual practice refer the question of selection back to the Selection Panel for determination in accordance with the applicable selection criteria. The Appeals Tribunal may itself conclusively determine the issue of selection of athletes where:

- it has determined that:
 - it would be impractical to refer the question of nomination or non- nomination back to the Selection Panel in the time available
 - that there has been such a disregard of the Selection Criteria by the Selection Panel that a reasonable person could reasonably conclude that it is unlikely the Selection Criteria will be properly followed and/or implemented
- prior to making the determination above, has advised the parties and all persons whose interests may be affected by the outcome of the appeal of:
 - the possibility of it making such a determination
 - that it may itself conclusively determine the issue of selection of athletes
 - permitting the parties and all such persons the opportunity to make submissions and give evidence in respect thereof.

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Selection Appeals Tribunal Procedure

The procedures of the Appeals Tribunal are as follows:

The Appeals Tribunal:

- will provide any person whose interest will be directly and adversely affected by its decision a reasonable opportunity to be heard
- will conduct a fair hearing
- will hear and determine the matter before it in an unbiased manner
- will hear the appeal giving due consideration to the Constitution and all relevant Clauses of Taekwondo Australia
- will make a decision that a reasonable body could honestly arrive at
- will provide a reasoned decision in writing, and
- is governed by the laws applicable in the State of Victoria.

Subject to the Constitution and By-Laws:

Any procedure or requirement regulating the function of the Appeals Tribunal is directory in nature and any decision of the Appeals Tribunal is not invalid by reason of that procedure or requirement not being fulfilled. In addition, the Appeals Tribunal may regulate any proceedings brought before it in such manner as it thinks fit.

Each matter before the Appeals Tribunal will be dealt with as a new hearing and the Appeals Tribunal will reach its own decision regarding the matter irrespective of any prior decision in respect of which appeal may be made.

A hearing before the Appeals Tribunal will be inquisitorial in nature, be conducted with as little formality and technicality and with as much expedition as the proper consideration of the matter before it permits, decided according to the laws applicable in Victoria and shall remain confidential.

The Appeals Tribunal is not bound by the rules of evidence or by practices and procedures applicable to courts of record, but may inform itself as to any matter in such manner as it thinks fit.

The appellant in any matter before the Appeals Tribunal has the right to present evidence, including the right to call and cross examine witnesses and bears the onus of showing that his or her appeal should be decided in his or her favour.

The standard of proof in all appeals heard by the Appeals Tribunal is the balance of probabilities.

All persons appearing before the Appeals Tribunal have the right, at their or its expense, to legal representation and to the services of an interpreter (if appropriate).

The Appeals Tribunal may proceed to hear and determine a matter notwithstanding the failure of any party to attend a hearing.

All parties to a hearing before the Appeals Tribunal will bear their own costs of and incidental to the hearing.

The Appeals Tribunal will give its decision as soon as practicable after the hearing of the matter in question provided that any decision will be given before the date and time which may be imposed by the Board in respect of the nature of the matter in question.

Appeals from the Selection Appeals Tribunal

An aggrieved athlete may only appeal a decision of the Appeals Tribunal only in respect of nomination of an athlete for selection in a non-Taekwondo Australia managed Australian

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Team to the Court of Arbitration for Sport. In all other selection disputes and appeals, the decision of the Appeals Tribunal will be final and binding on the parties.

In respect of an appeal to the Court of Arbitration of Sport, the athlete must give Notice in Writing to the Chief Executive Officer of their intention to appeal within 48 hours of the decision of the Appeals Tribunal.

The athlete must lodge their appeal with the Court of Arbitration for Sport within five working days of the decision of the Appeals Tribunal, and otherwise follow the relevant provisions contained in the Code of Sports-related Arbitration which regulates matters coming before the Court of Arbitration for Sport.

Any such appeal to the Court of Arbitration for Sport will be governed by the laws of the State of Victoria.