



Case numbers: NST-E22-73624 & NST-E22-76358

Case Titles: Angus Thompson v Paddle Australia & Lachlan Bassett v Paddle Australia

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member/s
Adam Casselden, SC
Eugénie Buckley
Dr Peter Fricker OAM

in the arbitrations between

Angus Thompson *(Applicant)*

Represented by Chris Thompson (Solicitor) of Gwynne Thompson Solicitors

And

Paddle Australia ("PA") *(Respondent)*

Represented by Ian Fullagar (Solicitor) of Lex Sportiva

Lachlan Bassett *(Applicant)*

Represented by Chris Thompson (Solicitor) of Gwynne Thompson Solicitors

And

Paddle Australia ("PA") *(Respondent)*

Represented by Ian Fullagar (Solicitor) of Lex Sportiva



PARTIES

1. These two appeals were heard together because of the commonality between the grounds of appeal and their supporting submissions. Angus Thompson is 25 years of age and Lachlan Bassett is 22 years of age.
2. The Respondent sporting body is the governing body in Australia for the sport of Paddle/Canoeing, which includes the discipline of canoe slalom, and is responsible for setting the relevant PA Selection Procedure Policy (“**the Policy**”) and PA Selection Criteria Supplement – 2022 Canoe Slalom World Cup/Championship Team (“**the Supplement**”), and for implementing that Policy and Supplement.

INTRODUCTION

3. The Applicant athletes nominated for selection in the 2022 World Cup and World Championships and took part in various selection competitions as required by the Policy and the Supplement.
4. The Thompson appeal relates to the non-selection by PA of Thompson to the position of the 3rd MK1 boat to compete in the Australian Senior Canoe Slalom Team at World Cup 3 in Tacen, Slovenia in June 2022 and as Reserve Boat for World Cups 1, 2, 4 and 5 and the ICF 2022 World Championships.
5. The Bassett appeal relates to the non-selection by PA of Bassett to the position of the 3rd MC1 boat to compete in the Australian Senior Canoe Slalom Team at World Cup 3 in Tacen, Slovenia in June 2022 and as Reserve Boat for World Cups 1, 2, 4 and 5 and the ICF 2022 World Championships.

NST JURISDICTION

6. It was agreed by the parties that the jurisdiction of the National Sports Tribunal was as provided by section 23 (1) (a), (b) (i) and (c) (i) of the National Sports Tribunal Act 2019 (“**the NST Act**”) and clause 9 of the Policy.

PROCEEDINGS BEFORE THE NST

7. The Applicants filed their Application Forms on 17 March 2022. They sought expedition of their Applications.
8. The NST Registry held a Preliminary Conference for both matters on 21 March 2022. Directions were made for the filing of submissions and evidence as well as the provision of documents by the Respondent as requested by the Applicants. Those documents were provided by the Respondent.
9. The Applicants filed their submissions and evidence on 27 March 2022, the Respondent on 31 March 2022 and the Applicants filed submissions in reply and further evidence on 02 April 2022.



10. The Parties identified Mr Sebastian Montalto, Mr Tristan Carter and Mr Mark Crosbee as persons permitted to participate in the hearing under section 23 (c) (i) of the NST Act, but Mr Montalto, Mr Carter and Mr Crosbee did not indicate that they wished to be a party to the arbitration under section 23 (c) (ii) of the NST Act. The Tribunal notes that Montalto and Carter were notified of the Thompson appeal as affected parties but did not provide to the Tribunal any written or oral submissions. Similarly, the Tribunal notes that Crosbee was notified of the Bassett appeal as an affected party but did not provide to the Tribunal any written or oral submissions.
11. The parties signed an Arbitration Agreement on 31 March 2022 whereby a number of procedural and jurisdictional matters were agreed. Under that Agreement it was agreed that the determination by the NST would represent full, final, and binding settlement of all issues raised in the arbitration by the Applicant, and that there would be no right of appeal from the determination of the NST in the General Division.
12. The hearing was conducted by videoconference on 04 April 2022, and the Panel reserved its decision.
13. No objection was made at the outset of the hearing to the composition of the Panel and at its conclusion the parties confirmed that their procedural rights had been fully respected.

APPLICABLE RULES

14. The relevant provisions of the Policy are as follows:

1. *Introduction*

PA's Objective when selecting Teams include but are not necessarily limited to:

- a) *identifying and including the best performing Athletes to represent Australia, maximising the likelihood of success at the international competitions attended and/or*
- b) *providing appropriate international competition opportunities for high performing, developing Athletes*

2. *Definitions*

"CEO" means the Chief Executive Officer of PA

"NPD" means the National Performance Director of PA

"Team" means the Athletes Selected to attend an ICF or other International Competition

4.8 Subject to this Policy, including the Selection Criteria Supplement, the Selection Panel has absolute discretion to determine whether an Athlete is selected in a Team.



6. Eligibility

6.1 *To be eligible for consideration for selection under this Policy, the CEO must be satisfied that, at the time of selection to a Team(s), the athlete:*

.....

6.1.6 *completes any specific eligibility requirements outlined within the relevant Selection Criteria Supplement*

.....

The CEO or NPD may at their sole discretion confirm an Athlete's eligibility, depending on the circumstances as considered on a case-by-case basis

7. Nomination and Selection

7.1 *Athletes wishing to nominate for selection to a Team must comply with the procedure set out in the Selection Criteria Supplement, including meeting all relevant dates and requirements.*

7.2 *The Selection Panel shall apply the Selection Criteria Supplement when determining the Athletes for selection to any Team.*

7.3 *All other matters concerning selection are governed by this Policy, including the composition of the Selection Panel, eligibility of Athletes, notification of selected Athletes, appeals and withdrawal and replacement of selected Athletes.*

9. Appealing Decisions

9.3.5 *The decision of the NST will be final and binding on the parties.*

15. The relevant provisions of the Supplement are as follows:

1. Definitions

"Minimum Performance Standards (MPS)" means the minimum performance standard required by PA for selection to a national team in addition to any other criteria as set out in clause 5 of this (sic) Criteria

"Team" means the 2022 Paddle Australia Canoe Slalom Team to compete at the 2022 ICF Canoe Slalom World Cups and World Championship Events.

2. Selection Aims



To give context to the following policy and processes, the aims of the PA High Performance Program for the 2022 season are as follows:

- a) identify the top 3 senior athletes within each Event to contest the ICF Canoe Slalom World Cup and World Championship Events in 2022.
- b) provide potential Paris 2024 athletes, who reach the necessary age-related minimum performance standards, an opportunity to compete in ICF International competitions (if maximum number of ICF quota positions are not filled).

3.2 Eligibility

- 3.2.1 To be eligible for consideration for selection to the Team, athletes must comply with the Policy
- 3.2.5 Athletes must have nominated for the Team under clause 3.3 of this (sic) Criteria

3.3 Team Nomination

- 3.3.1 The competitions for which the Team will be selected for in 2022 are:
 - a) 2022 ICF Canoe Slalom World Cups;
 - b) 2022 ICF Canoe Slalom World Championships;
 - c) other ICF competitions as may be determined by PA.
- 3.3.2 Athletes will be required to nominate for selection to the Team. The process of nomination will form part of the entry process for the selection competitions listed in clause 3.4 of this (sic) Criteria.
- 3.3.4 By nominating for selection to the Team, athletes agree to comply with:
 - (i) this (sic) Criteria; and
 - (ii) the Policy.

4. Selection Criteria and Process

Athletes may be selected to the Team in each respective Event, up to the maximum number of quota places (3) awarded to Australia by the ICF for each individual Event, as follows:

4.1 Selection Process – International Early Pre-Selection and Domestic Ranking System

4.2 Selection Criteria

Selection to world cup and world championship competitions up to the maximum ICF quota positions for Australia (3) will be allocated by:



INTERNATIONAL (EARLY) PRE-SELECTION

- 4.2.1 *To be selected to the Team under this clause, an athlete must have achieved a podium (top 3) result at the Tokyo 2020 Olympic Games*

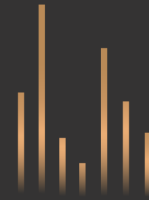
AUTOMATIC SELECTION

The following criteria (4.2.2 and 4.2.3) applies (sic) for World Cups 1,2,4,5, and World Championships

.....

The following criteria (4.2.4) applies (sic) for World Cup 3:

- 4.2.4 *After the application of 4.2.1, automatic selection up to a maximum of two (2) positions will be made in the order of the highest ranked eligible Male and highest ranked eligible Female athletes, based on the ranking system outlined in clause 4.1, AND, having achieved at least 1 x Senior MPS (or U25 MPS for eligible Athletes aged 25 years or younger), in any of the selection events outlined in clause 4.1.2, will be automatically selected in the Event or Events they achieve the ranking results.*
- 4.2.5 *To be clear:*
- a) *to be AUTOMATICALLY selected, a maximum of two (2) positions will be selected after the application of clauses 4.2.1 and 4.2.4.*
 - b) *an athletes must be ranked in either the Top 1 or in the Top 1 or 2 places as outlined in clause 4.1, after application of clause 4.2.1, AND*
 - c) *to be AUTOMATICALLY selected, an athlete must have achieved at least 1 x Senior MPS (or U25 MPS for eligible Athletes aged 25 years or younger).*
 - d) *an athlete who is ranked in the Top 1 or 2, who has not achieved 1 x Senior MPS (or U25 MPS), will not be AUTOMATICALLY selected, but may be selected by discretion according to Clause 4.2.7 (ie. The position does not automatically roll down to the next ranked athlete who has achieved MPS).*
- 4.2.6 *The remaining allocations up to the maximum quota positions available for Australia will be subject to fulfilling the following criteria in order:*
- 4.2.6.1 *The highest ranked U21 athlete who has not already been selected for World Cups 1, 2, 4, 5, or World Championships and has achieved at least 1 x U25 MPS*
 - 4.2.6.2 *The highest ranked U18 athlete who has not already been selected for World Cups 1, 2, 4, 5, or World Championships and has achieved at least 1 x U23 MPS*



4.2.6.3 *The highest ranked U23 athlete who has not already been selected for World Cups 1, 2, 4, 5, or World Championships and has achieved at least 1 x SNR MPS*

4.2.6.4 *The highest ranked athlete who has not already been selected for World Cups 1, 2, 4, 5, or world Championships and has achieved at least 1 x SNR MPS*

DISCRETIONARY SELECTION

The Canoe Slalom community has experienced challenges due to the impact of Covid 19, in light of this the selection panel will consider where teams are not filled to the maximum allocated spots, applying their absolute discretion to select athletes who performances are suitable for international representation.

4.2.7 *The Selection Panel, at their absolute discretion, may select additional athletes in Events up to the maximum number of quota places awarded to Australia by the ICF. In doing so, they will consider the following:*

4.2.7.1 *ranking of each athlete according to clause 4.1.5 of this (sic) Criteria*

4.2.7.2 *application of Senior MPS according to clause 5 of this (sic) Criteria*

4.2.7.3 *performances in relation to the Senior MPS, or in relation to the U25 and U23 MPS for those eligible U25 and U23 aged athletes, respectively.*

.....

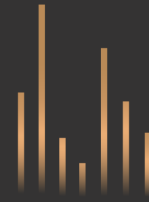
4.2.8 *In the application of Discretionary Selection, the Selection Panel, at their absolute discretion, may select athlete(s) for one, or more than one, ICF World Cup competitions (including World Championships). In doing so, it may select additional athletes under the Reserve Criteria (Clause 4.3), to fill any available quota places awarded to Australia by the ICF*

4.3 Reserves

The Selection Panel may, but is not obliged to, name Reserves for each Event according to Clause 4.2.6. If a selected Athlete chooses not to, or, is unable to compete in any of the selected competitions, then the Reserve athlete will replace the selected Athlete in that competition.

ALLEGED ERRORS MADE BY PA

16. Essentially, Thompson alleges the following errors were made by PA:



- a) PA incorrectly deemed Sebastian Montalto was eligible to be selected for the Senior MKI team because Montalto did not nominate for the senior team. The consequence of this error was that Montalto was selected to the 3rd Quota position instead of Thompson; and
- b) PA incorrectly applied the selection criteria under the relevant Supplement.

17. Essentially, Bassett alleges the following errors were made by PA:

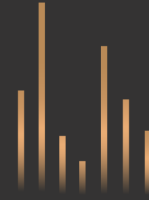
- a) PA incorrectly deemed Mark Crosbee was eligible to be selected for the Senior MCI team because Crosbee did not nominate for the senior team. The consequence of this error was that Crosbee was selected to the 3rd Quota position instead of Bassett; and
- b) PA incorrectly applied the selection criteria under the relevant Supplement.

REMEDY SOUGHT BY THE APPLICANTS

18. Thompson and Bassett submitted that the Tribunal should stand in the shoes of PA and select Thompson as the 3rd Quota position and Reserve in the senior MK1; and Bassett as the 3rd Quota position and Reserve in the senior MC1.

MAIN SUBMISSIONS OF THE PARTIES

19. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties, it refers in its Determination only to the submissions and evidence it considers necessary to explain its reasoning.
20. The purpose of the Policy is to provide certainty and clarity to athletes seeking to be selected to PA Teams and to establish transparent and consistent procedures and criteria (Section 1 Introduction). The Policy must be read in conjunction with the Selection Criteria Supplement applicable to each PA Team.
21. Clause 6 of the Policy covers eligibility for selection with seven sub-paragraphs, including “completes any specific eligibility requirements outlined within the relevant Selection Criteria Supplement” (clause 6.1.6).
22. Under the Supplement, to be eligible for consideration for selection to the Team, “Athletes must have nominated for the Team under clause 3.3 of this Criteria” (clause 3.2.5). Clause 3.3.2 states that “Athletes will be required to nominate for the Team.”
23. It is not in dispute by the parties that each of Thompson (MK1) and Bassett (MC1) nominated for the senior team and that Montalto (MK1) and Crosbee (MC1) did not nominate for the senior team.
24. Both Thompson and Bassett contend that by not nominating for the senior team, each of Montalto and Crosbee were not eligible for selection by PA to the 3rd Quota position.
25. PA contends that under clause 6.1 of the Policy (last sentence) the CEO has a discretion to deem an athlete eligible and that this was validly exercised by PA CEO, Phil Jones. In an email dated 2 March 2022 from Sara Latham, PA Performance Operations Manager to Phil Jones, PA



CEO and Kim Crane, PA National Performance Director (“NPD”), Ms Latham states that the Selection Panel came across an issue regarding the 3rd Quota position. That email requested the PA CEO apply a discretion under clause 6.1 (last sentence) of the Policy to allow Montalto and Crosbee to be eligible for senior team selection.

26. Thompson and Bassett argue that the PA CEO incorrectly deemed Montalto and Crosbee were eligible to be selected for the Senior MKI and MC1 teams respectively because they did not nominate for the senior team. Clause 6.1 of the Policy sets out the seven criteria that the CEO must be satisfied of in order to make an athlete eligible for selection. At the end of clause 6.1, the following sentence states:

“The CEO or NPD may at their sole discretion confirm an Athlete’s eligibility, depending on the circumstances as considered on a case-by-case basis.”

27. The resolution of these appeals turns on the proper construction of the Policy and the Supplement.
28. Thompson and Bassett submit that the use of the word “confirm” in the last sentence of clause 6.1 of the Policy does not permit the CEO (or NPD) to deem an athlete eligible when that athlete did not meet the eligibility requirements. The discretion to confirm, they submit, is merely to confirm the matters set out in the whole of clause 6.1 relevant to eligibility. They argue that this is supported by the wording in the first sentence of clause 6.1 that “the CEO must be satisfied that at the time of selection to a Team(s).” Accordingly, they submit that the discretion in the last sentence of clause 6.1 must be restricted by that qualification. Therefore, they contend, that the PA CEO could never be satisfied as to those matters set out in clause 6.1 because neither Montalto nor Crosbee nominated for the senior teams under the Supplement.
29. On the other hand, PA contends that the CEO has an absolute discretion and he was satisfied that Montalto and Crosbee had nominated for the senior team because if an athlete nominates for a team, they are eligible for any team. It was submitted that the different age groups under the Policy and Supplement reflect this and are “inter-changeable”.
30. PA submits the definitions of Teams under the Policy and Supplement are unambiguous. It was submitted that the definition of “Team” in the Policy overrides the definition of “Team” in the Supplement. PA argued that under clause 6.1 of the Policy, it relates to “a Team(s)” as it needs to be sufficiently broad to cover all teams selected by PA for different age groups and for different disciplines. PA submitted that the definition of Team under clause 3.3.2 of the Supplement is specific and relates only to the senior team that is covered by the Supplement.

MERITS

31. The Tribunal prefers the construction advanced by Thompson and Bassett and finds that the CEO did not have a discretion to deem Montalto (MK1) and Crosbee (MC1) eligible for selection to the senior team when they did not meet the eligibility requirements of the Supplement. In our opinion clause 6.1.6 of the Policy was not satisfied by either Montalto or Crosbee as they did not nominate for selection in the senior team as required under clauses 3.2.5 and 3.3.2 of the Supplement. Both Montalto and Crosbee were, therefore, in breach of the Policy (see cl. 3.2.1



- of the Supplement) and also the Supplement by reason of the operation of clauses 3.2.5 and 3.3.2 of the Supplement. The purported exercise of the discretion by the CEO in clause 6.1 (last sentence) of the Policy could not, in our opinion, permissibly operate to overcome these breaches by “confirming” the Athlete’s eligibility.
32. Further, the purpose of the discretion in clause 6.1 (last sentence) of the Policy was to make it clear that the CEO or NPD had a sole discretion to determine any factual question or doubt as to whether the relevant requirements in sub-clauses 6.1.1 to 6.1.7 have been met. It is for confirmation or verification purposes only. Any alternative construction would, in our opinion, make a nonsense of the provision. It would mean the clause requires the CEO to be satisfied and then provide the CEO with a discretion to deem eligible if not so satisfied. In these appeals there was no factual question or doubt as neither Montalto nor Crosbee nominated for the senior team.
33. The selection aims of the senior team are prescribed in clause 2 of the Supplement as:
- a) *Identify the top three senior athletes within each Event.*
 - b) *Provide potential Paris 2024 athletes, who reach the necessary age-related minimum performance standards (MPS), an opportunity to compete in ICF competitions (if the maximum number of ICF quota positions are not filled).*
34. Further, under clause 1.1 of the Policy, PA’s objectives when selecting Teams include, relevantly:
- a) *Identifying and including the best performing Athletes to represent Australia, maximising the likelihood of success at the international competition attended.*
 - b) *Providing appropriate international competition opportunities for high performing, developing Athletes.*
35. The parties agree that automatic selection criteria are not relevant to these matters (clauses 4.2.4 to 4.2.6 of the Supplement).
36. The discretionary selection criteria in clause 4.2.7 of the Supplement allows the Selection Panel, at their absolute discretion, to select additional athletes in Events up to the maximum number of quota places awarded to Australia. In doing so, the Selection Panel will consider the following five elements:
- i. Ranking of each athlete (from the selection events of Olympics, Oceania Championships and Australian Open) – see cl. 4.2.7.1
 - ii. Application of Senior MPS – see cl. 4.2.7.2
 - iii. Performances in relation to the Senior MPS, or in relation to the U25 and U23 MPS for those U25 and U23 aged athletes – see cl. 4.2.7.3
 - iv. Circumstances under clause 7.5 relating to cancellation of events that are not relevant to this matter – see cl. 4.2.7.4
 - v. Approved extenuating circumstances – see cl. 4.2.7.5



37. Thompson and Bassett advanced the proposition that the Selection Panel did not take into account relevant criteria and did take into account irrelevant criteria. This proposition is based on the record of the Selection Panel's reasoning as found in the documentation, being the 2 March 2022 email and Annotated Version Based on Selection Panel Discussions of the Supplement.
38. Based on the discretionary criteria above and PA's stated selection aims and objectives Thompson submitted:
- i. He is categorised as a Developing athlete.
 - ii. He competed at the Australian Open and ended up overall ranking 5th highest senior. He achieved a 1 x U25 MPS at the Event in MK1.
 - iii. His U25 MPS achieved at Event 1 was 96.30% [Senior MPS was 94.26%]. His U25 MPS achieved at Event 2 was 96.47% [Senior MPS was 94.26%].
 - iv. The 4th ranking boat (Tristan Carter) did not achieve any MPS in MK1 at either Event. Carter has indicated he is not interested in the World Cup 3 or Reserve MK1 events the subject of this appeal.
 - v. In a table provided by PA ranking all paddlers who nominated as competitors in all teams he was ranked 4th over and above Carter, a nominated Athlete, who did not achieve any MPS and Montalto, who did not nominate for the senior team and achieved a U23 MPS.
 - vi. His MPS was 1.6% off Senior MPS. Montalto was 5.15% off Senior MPS.
 - vii. He has raced at prior World Cup events qualifying for Semi Finals at Tacen, Slovenia 2018 and Markelberg Germany 2017.
 - viii. He is presently ranked 119th, Carter is ranked 315th and Montalto is ranked 467th in ICF World Rankings.
 - ix. In 2021 he competed at NSW Championships on 21 December 2021 and ranked 3rd behind Lucien Delfour (86.21) and Tim Anderson (87.41) with 89.41. In terms of MPS if applied he would have achieved U25 MPS at this event (but 0.44% off Senior MPS).
 - x. His last selection was for 2020 U23 Australian Team scheduled to compete at Tacen, Slovenia in late 2020. This event was cancelled due to Covid. No opportunities have arisen for international competition since January 2020 when he completed in Auckland at the Oceania Championships.
39. Based on the discretionary criteria above and PA's stated selection aims and objectives Bassett submitted:
- i. He is categorised as a Developing athlete and selected to the National Performance Academy Squad, the same level as Crosbee.
 - ii. He was selected in the U23 team in 2020, 2021 and 2022 but due to Covid, PA would not approve any U23 athletes to attend the World Championships or any other ICF events. No



- opportunities have arisen for international competition since January 2020 when he completed in Auckland at the Oceania Championships.
- iii. He is currently ranked 102 in the world (senior/U23/junior included) and Crosbee is ranked 249.
 - iv. After the first two selection trials (best two results from three considered) he was ranked overall 3rd position in the senior category. Brodie Crawford was ranked 4th but had achieved 1 senior MPS which would allow him to be automatically selected over him. In the belief that he was guaranteed at least a 4th ranking (as Crosbee had not nominated) he decided to execute a risky 3rd selection run to make senior MPS. He made this decision on the basis that there was no information or documentation that indicated Crosbee had nominated for senior selection or would be considered by PA for senior selection. The run did not go to plan and he made mistakes including a 50 second penalty. This was his lowest ranked race, and these points were eliminated from his ranking score. If he was made aware that PA may have included Crosbee into the ranking system he would have executed a similar run to his first two selection races where he placed above Crosbee on both occasions.
 - v. His overall ranking of nominated athletes is 4th.
 - vi. He has been competitive and beaten the selected top 3 MC1 athletes in major events (3rd at Oceania Championships in January 2022 and 3rd at NSW Championships in December 2021).
 - vii. He has achieved his age relevant MPS to be selected to the U23 Australian Team (103.47%) and was ranked 1st U23 athlete on 160 points. Crosbee nominated for junior and U23 team and was ranked 2nd U23 athlete on 152 points.
40. It was submitted that arguments advanced by Thompson and Bassett under clause 4.2.7 apply equally to the Reserve under clause 4.3.
 41. PA argued that the Selection Panel did take into account all the circumstances and this is made clear in the statement of Sue Natoli, a member of the Selection Panel. The obligation on PA is only to consider the Criteria and it has an absolute discretion. In fact, it was submitted that the Selection Panel does not need to select anyone. Clause 4.2.7 is not an exhaustive list and the Selection Panel has the right to consider other matters.
 42. In our opinion the reference in clause 4.3 of the Supplement to clause 4.2.6 is likely to mean 4.2.7 given the former is about automatic selection rather than discretionary selection.
 43. The Tribunal notes that the Selection Panel does have an absolute discretion under 4.2.7 and clause 4.3 of the Supplement, but it needs to take into account the purpose of the Supplement around 3rd Quota position, especially providing potential Paris 2024 athletes that meet age-related MPS with an opportunity. By Paris 2024, Thompson will be 27 years old and he has competed at the Australian Open achieving a 1 x U25 MPS at the Event in MK1. His U25 MPS achieved at Event 1 was 96.30% [Senior MPS was 94.26%]. His U25 MPS achieved at Event 2



was 96.47% [Senior MPS was 94.26%]. By Paris 2024 Bassett will be 24 years old and he has achieved his age relevant MPS to be selected to the U23 Australian Team (103.47%).

44. Finally, PA submits that Thompson and Bassett do not have any grounds of appeal that strictly fall within clause 9 of the Policy. The sole grounds of appeal to the NST include that “the applicable Selection Criteria Supplement has not been properly followed and/or implemented” (clause 9.2.1). It was argued by PA that the alleged error of PA around athlete eligibility under clause 6.1 related to the Policy and not the Supplement and therefore their appeals were incompetent.
45. The Tribunal rejects this submission. The non-selection dispute before the Tribunal related to the Supplement not being followed or implemented because PA misconstrued “eligibility” under clause 6.1 of the Policy by reason of it misconstruing clause 3.2 “Eligibility” and clause 3.3 “Team Nomination” of the Supplement. Accordingly, Thompson and Bassett do have grounds to appeal to the Tribunal.

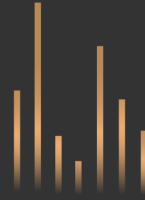
THE POWER OF THE NST TO MAKE THE SELECTION DECISION

46. Thompson and Bassett each submitted that the Tribunal should stand in the shoes of the Selection Panel and re-exercise the discretion in clause 4.2.7 and 4.3 of the Supplement in favour of both Thompson and Bassett.
47. The Tribunal declines to accede to this submission for the reasons articulated by PA, namely, that the Selection Panel is an expert panel better placed to make selection decisions and tribunals, such as this Tribunal, should be reluctant to make their own selection decisions but should, however, be prepared to comment on whether selection requirements and processes have been followed.

THE TRIBUNAL THEREFORE DETERMINES:

Thompson Orders

48. The Tribunal finds:
 - a) Montalto was not eligible for selection to the 3rd Quota position.
 - b) The Tribunal remits the 3rd Quota position back to the PA Selection Panel to select in accordance with clause 4.2.7, noting the purpose of the 3rd Quota position, that Thompson is 5th ranked senior athlete behind Carter but ranked above Montalto and has achieved two of his age MPS (U25), that one of Thompson’s U25 MPS was 1.6% off Senior MPS whilst Montalto was 5.15% off Senior MPS and Carter achieved no MPS, and that Thompson had a better “best” result than Carter.
 - c) The Tribunal remits the matter of the Reserve back to the PA Selection Panel to reconsider in accordance with clauses 4.3 and 4.2.7 of the Supplement.



- d) The PA Selection Panel needs to reconvene and determine this matter urgently and within seven days from the date of this Determination.

Bassett Orders

49. The Tribunal finds:

- a) Crosbee was not eligible for selection to the 3rd Quota position.
- b) The Tribunal remits the 3rd Quota position back to the PA Selection Panel to select in accordance with clause 4.2.7, noting the purpose of the 3rd Quota position, that Bassett is the 4th ranked senior athlete and achieved an U23 MPS which is 0.7% off U25 MPS.
- c) The Tribunal remits the matter of the Reserve back to the PA Selection Panel to reconsider in accordance with clauses 4.3 and 4.2.7 of the Supplement.
- d) The PA Selection Panel needs to reconvene and determine this matter urgently and within seven days from the date of this Determination.

Date: 03 May 2022



Mr Adam Casselden SC



Ms Eugenie Buckley



Dr Peter Fricker