

Case number: NST-E26-645

Case Title: Benjamin Buckingham v Australian Athletics

## Determination

### National Sports Tribunal General Division

sitting in the following composition:

Panel Members:

Mr Anthony Nolan KC

Professor Jack Anderson

Mr Jonathan Erbacher

in the arbitration between

**Benjamin Buckingham**

*Appellant*

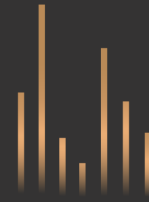
Self-represented

And

**Australian Athletics**

*Respondent*

Represented by Peter Hamilton, Selection Committee Chair and Briar Sefo, General Manager - Integrity

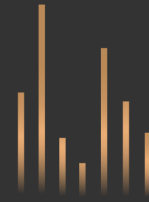


## PARTIES

1. The Appellant, Mr Buckingham (the **Appellant**), is an athlete who seeks to represent Australia at the 2026 Commonwealth Games in Glasgow (the **Games**) in the Men's 3000 metre steeplechase event.
2. The Respondent, Australian Athletics (the **Respondent** or **AA**), is the National Sporting Organisation for the sport of Athletics in Australia.
3. No Interested or Affected Parties were identified.

## INTRODUCTION

4. The nomination of athletes for the Games is governed by the Team Nomination, Selection and Appeals By-Law (the **By-Law**) and the Australian Athletics Nomination Policy - 2026 Commonwealth Games, Glasgow, Scotland (the **Policy**).
5. Commonwealth Games Australia has allocated a quota of 63 able-bodied athletes for the sport of athletics at the Games.
6. It is accepted that the Appellant is eligible to be considered for nomination for the Games and had complied with the nomination requirements set out in the Nomination Criteria identified in the Policy.
7. The nomination process for the Australian Athletics team at the Games consists of a number of steps, which relevantly include:
  - a. nominated athletes must meet the eligibility requirements under the Policy – it is not in dispute that the Appellant met the eligibility criteria of the Policy and clause 5.5 of the By-Law;
  - b. pursuant to the rules of the Commonwealth Games Federation and the Games, AA may nominate three athletes per individual event and one team in each relay comprising up to five eligible athletes;
  - c. the nominated athletes must be nominated by AA pursuant to either:
    - i. clause 5.14 (Automatic Nomination); or
    - ii. clause 5.19 (Discretionary Nomination) of the Policy; and
  - d. the AA Selection Committee would consider the nomination of athletes pursuant to the By-Law and Policy and determine the athletes who will be nominated to the team.
8. This matter centres on the step described at para 7.c.ii above. That step involves an exercise of discretion by the AA Selection Committee to nominate athletes to the team, after the allocation of places to athletes who meet the requirements for Automatic Nomination or relay nomination. 11 individual athletes met the requirements for Automatic Nomination, and a further 15 relay athletes met the requirements for Automatic Nomination (though this 15 was reduced to 13 as one relay athlete was part of the initial 11 and it was determined that many athletes could take the place of the fifth athlete in the 4 x 400 metre mixed relay from the athletes who would be nominated for the team). As a result, 24 places were pre-determined by way of Automatic Nomination, leaving 39 places to be filled for any event plus the 13 places for relay runners



(who may also be added to other events). Those places are to be filled by way of Discretionary Nomination under clause 5.19 of the Policy.

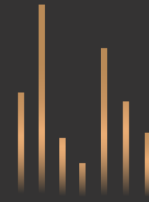
9. On 1 June 2026, the AA Selection Committee made a decision not to nominate the Appellant for the Men's 3000 metre steeplechase event. On 3 June 2026 AA advised the Appellant of its decision not to nominate the Appellant for this event.
10. The appeal is advanced pursuant to the Appellant's rights under the By-Law, principally on the ground in clause 8.1(a) on the basis that the Policy was not properly applied to the Appellant. In the alternative, the Appellant relies on clause 8.1(d), on the basis that there was no material basis on which the decision could reasonably be based.
11. The Appellant asks the Tribunal:
  - a. under clause 11.1(b) of the Nomination Appeals Policy (Schedule 1 of the By-Law) to overturn the decision; and
  - b. under clause 11.3 of the Nomination Appeals Policy (Schedule 1 of the By-Law), to direct AA to reconsider and determine its nomination in accordance with the Policy and the principles of natural justice.

## NST JURISDICTION

12. The jurisdiction of the NST is engaged pursuant to section 23(1)(b)(i) of the *National Sports Tribunal Act 2019 (NST Act)* and clause 7 of Schedule 1 of the By-Law, as adopted within the Policy.
13. The Appellant is a Non-Nominated Athlete within the meaning of clause 2 of the By-Law and therefore has a right of appeal against his non-nomination under clause 7 of Schedule 1 of the By-Law and under clause 10.1 of the Policy.
14. The Appellant gave a Dispute Notice to AA under clause 6.2 of the By-Law and AA provided its Statement of Reasons under clause 6.3 by email from Mr Hamilton (the **Reasons**). The dispute was not resolved and therefore the Appellant advised AA of his intention to proceed to a hearing under Schedule 1 of the By-Law. This application is made under clause 9.1, the required NST Application Form having been lodged and the application fee paid.

## PROCEEDINGS BEFORE THE NST

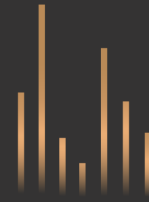
15. On 10 June 2026, the NST invoked its powers under clause 4.2 of the By-Law, to have the five non-nomination Appeals received - namely, those of Alanah Yukich, Benjamin Buckingham, Dalton Di Medio, Joshua Azzopardi and Timothy Heyes (collectively, the **Appellants**) - heard together, by the Panel of three NST Members. No objections were made by any Party to the composition of the Panel.
16. The parties have complied with directions by the NST to deliver written submissions and any evidence upon which they intend to rely. The Appellant has delivered submissions in reply to the submissions filed by AA.
17. On 15 June 2026 an oral hearing (via Teams) of all of the non-nomination Appeals was held at which each party attended and/or was represented.



18. The Panel Chair directed that in each matter AA give its evidence in all of the appeals and its witnesses be cross-examined by all of the Appellants. AA called one witness, Mr Peter Hamilton, the Chair of Selection Committee and all Appellants and Interested Parties were given the opportunity to cross-examine him.
19. When AA had finished its evidence, the hearing of this particular appeal continued between AA and the Appellant.
20. The Appellant did not file an affidavit or witness statement. In the circumstances, the NST admitted the facts set out in the Appellant's submissions into evidence for the purposes of the hearing. No party raised any objection to that course.
21. On 16 June 2026 the Panel published its Notice of Determination to the NST Registry, for dissemination to the parties, with a Determination to follow.
22. This Determination comprises the full award.

#### APPLICABLE RULES

23. Clause 3 of the Policy sets out the aims of the Policy as follows:
  - 3.1 Send the most competitive possible athletics team to represent Australia at the Competition.*
  - 3.2 For able-bodied athletes, nominate athletes with the realistic potential to win a medal or finish in the top eight or relay teams which can finish in the top four at the Competition.*
  - 3.3 For Para Athletes, nominate athletes who have qualified for a quota invite for the Competition.*
  - 3.4 Nominate athletes or relay teams with the realistic potential to win a medal or finish in the top eight at future World Athletics Championships and Olympic Games.*
  - 3.5 Reward participation in the Australian Championships and participation in the Australian Athletic Summer Series (as defined below).*
  - 3.6 In all cases, the Selection Committee will consider each athlete's competitive record and demonstrated ability to plan the peak of their season at a major championship. Those athletes who, when given international opportunities, repeatedly fail to meet or exceed the levels they achieved to gain nomination cannot assume to be selected."*
24. The provisions relating to Discretionary Nominations for individual Able-Bodied Athletes (Phase 2) relevantly include, *inter alia*, the following:
  - 5.19 Subject to the rules of the governing body of the Competition relating to the number of athletes who may be entered for each event and for the Team overall, the Selection Committee may exercise discretion to Nominate further athletes to the Team. This discretion will be exercised in line with the aims of this Nomination Policy. This discretion is absolute and need not be exercised.*
  - ...
  - 5.21 CGA has allocated a quota of 63 athletes for athletics. Clauses 5.19 to 5.31 of the Nomination Policy provides guidance for the Discretionary Nominations in line with this*



*quota. The Discretionary Nominations are identified after the Automatic Nominations (Phase 1).*

*5.22 The Discretionary Nominations (Phase 2) are to be considered and prioritised to Nominate the strongest possible team to produce the highest overall results at the Commonwealth Games.*

*5.23 To provide guidance for this prioritisation, the Selection Committee should give consideration to the following factors (in no defined order):*

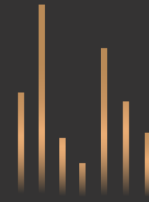
- achievement of the Automatic Nomination Standard within the Qualification Period;*
- Commonwealth Rankings (using the World Athletics Top Lists Commonwealth Athletes only within the full qualification period) – prioritising a higher-ranking position and closer performance level to medals (noting that World Athletics Top Lists do not separate the nations from Great Britain);*
- previous championship performances which may include any World Athletics Championships, Olympic Games and Commonwealth Games;*
- repeat performances at or near the Automatic Nomination Standard;*
- result(s) at the 2026 Australian Championships;*
- performances throughout, and commitment to, the Summer Series Meets and the Australian Domestic Season;*
- times and distances/heights are a consideration in selection but not the only consideration – ability to perform in championship type competition and likelihood of medal success will also be considered;*
- likelihood of significant future improvement to the 2028 and 2032 Olympic Games;*
- current form and fitness;*
- potential for improvement; and*
- any additional factors deemed relevant by the Selection Committee in consultation with the General Manger – High Performance.*

...

*5.25 Without limiting its discretion, the Nomination Committee, in consultation with the General Manager - High Performance, may consider any factor, or combination of factors that in its opinion is relevant for consideration when Nominating athletes for the team, including without limitation those factors listed in the Athletics Australia Nomination Policy Aims to identify priority athletes.”*

## **FACTUAL BACKGROUND**

25. 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.
26. AA gave evidence as to the process that it undertook in nominating athletes for the Games by way of either Automatic or Discretionary Nomination, as set out in an affidavit of Mr Hamilton, (in broad summary) as follows:
  - a. there were two meetings between the Selection Committee members (together with representatives of the High-Performance team of AA) on 26 May 2026 and 1 June 2026;

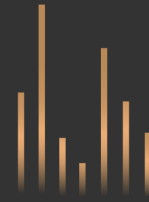


- b. in the lead up to the first meeting, Mr Hamilton obtained each Committee member's preferred 63 athletes for nomination at that time, which was inputted into a spreadsheet that was used for discussion purposes and updated during the meeting. After the first meeting, he shared the spreadsheet with the other Committee members. That document set out a list of events and any places which had been allocated during Phase 1 (Automatic Nomination) together with the names of athletes for potential nomination for the remaining places;
- c. the first meeting was to consider the bulk of the team and the range of possible athletes to consider for any final places;
- d. the second meeting was to reach a final consensus on the team to be nominated for the Games;
- e. during the meetings, the Selection Committee discussed each event, each athlete and their results, standings and all other discretionary factors under the Policy. The Committee focussed on the Policy Aims for comparative purposes, in particular *"with the realistic potential to win a medal or finish in the top eight or relay teams which can finish in the top four at the Competition"* and *"athletes or relay teams with the realistic potential to win a medal or finish in the top eight at future World Athletics Competition and Olympic Games"*;
- f. in forming their decision in relation to potential nomination of the Appellant the Selection Committee formed the view that:

*"The Panel was of the view that Mr Buckingham does not have the realistic potential to win a medal at the Commonwealth Games in Glasgow. Mr Buckingham appears in the Top Lists (second point in 5.23) at position 8. This does suggest that he is a real possibility to be placed in the top 8. The Panel also noted that the best performance by Mr Buckingham in the qualification period has ranked about 12-14 in a full year considering the past two years. Relying on Top Lists does not paint the complete picture but given the recent trend of small fields in the men's 3000m Steeplechase at the Commonwealth Games he is a possible top 8 athlete while at the same time not threatening to win a medal given the gap to the top athletes."*

- g. AA's notice of decision not to nominate the Appellant stated the following reasons:

*"In your particular case we have not selected three athletes in your preferred event and therefore you were compared to athletes in other events (remembering the maximum size of 63). In coming to this decision we considered your results in the current season which are below last season giving you an estimated (full season) Commonwealth Top List position of about 12 or 13 (taking current season time to a full season to allow for athletes who have participated yet). The panel noted that you provided a medical certificate in relation to the 2026 Australian Track and Field Championships and that, notwithstanding that illness, you competed at the Championships. The panel respected your decision to compete and took into account that your performance there was below your usual standard and may have been affected by the effects of illness. The panel also considered that neither*



*you nor Ed Trippas, who won the Australian Championships but was also not selected, had recently demonstrated form consistent with the best performances each of you achieved last year throughout the Qualification Period.*

*While the panel regarded your previous international record as solid, noting the team size quota, it was not considered sufficiently outstanding to outweigh the relative ability of athletes in other events to peak for major events (see policy 3.6). This was one of the elements considered when all relevant section 6.4 considerations were weighed together”.*

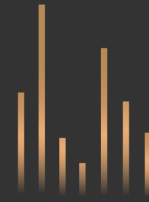
## MAIN SUBMISSIONS OF THE PARTIES

27. The parties made oral and written submissions. It is unnecessary to summarise these submissions. The issues arising from those submissions are discussed in the Merits.

## MERITS

28. The Appellant has two grounds of appeal. The first is as per clause 8.1(a) of the By-Law that the Policy was not properly applied by Australian Athletics. The second is as per clause 8.1(d) of the By-Law that there was no material basis on which the Respondent’s non-nomination of the Appellant could be reasonably based. Both grounds of appeal – improper application and unreasonableness – have been the subject of deliberation in previous, relevant NST decisions (see, for example, *Kaye Scott v Boxing Australia* (NST-E23-246805, 26 August 2023); *The Appellants v Gymnastics Australia* (NST-E23-364588, 22 December 2023); *Ambrosia Malone v Hockey Australia* (NST-E24-270449, 28 June 2024); and *Jackson Love v Athletics Australia* (NST-E24-287345, 15 July 2024)).
29. The previous NST decisions were also determined in the context of nomination policies which (as here) contained provisions relating to an expressly stated aim (see clause 3 of the Policy) to send the most competitive possible team to represent Australia internationally.
30. The previous NST decisions also dealt with nomination policies which contained provisions granting absolute discretion to a Selection Committee (see clause 5.19 of the Policy) and, in order to assist the Selection Committee both in achieving the aim of sending the strongest possible Australian team and in the exercise of its absolute discretion, gave the Selection Committee guidance in the form of criteria which, if so minded, they should take into consideration, albeit in no defined order (see clauses 5.22 and 5.23 of the Policy).
31. This means that the principles established in previous, relevant NST decisions can be usefully applied here. What follows is a summary of the principles.
32. NST decisions pertaining to selection include a number that deal with the exercise of “absolute discretion” e.g., *Hogan v Triathlon* (NST-E23-47455, 24 February 2023). At paragraphs 36 and 37 of *Hogan*, the NST Member stated the following about the exercise of absolute discretion.

*“36. Whilst the discretion reserved to TA is expressed to be absolute, it is informed to a considerable extent by the objective of the Selection Policy expressed in clause 1.2, the factors to which regard may be had as articulated in clause 4.3.1, and the results from events undertaken in the previous 12 months set out in clause 5.1.*



*37. Whilst most selection policies are expressed to reserve to the selection body, a discretion in absolute terms, it is also usually the case, such as with TA in this case, that the relevant policy prescribes a principal objective to be achieved by the selection process and factors to which regard may be had in considering the exercise of discretion. Discretions must always be exercised reasonably and not capriciously. Prescribed criteria are important to regulate the proper exercise of a discretion. The less the discretion exercised has regard to the prescribed criteria, the more difficult it will be to justify such a selection and the more open to challenge it will be.”*

33. This principled approach was then applied in the selection-related matter of *Georgina Collin v Paddle Australia* (NST-E23-97851, 4 May 2023). A similar approach to the exercise of absolute discretion was taken in *Appellant v Water Polo Australia* (NST-E24-189691, 21 May 2024) at paragraph [57] where the NST Member said that “*absolute*” discretion is to be informed by the objectives and aims of the nomination/selection policies, as well as the factors to which the Selection Panel may have regard as articulated in such policies, and that its discretion must be exercised in good faith, in accordance with the terms of the selection policy, and in a manner that is not unreasonable, arbitrary or capricious.

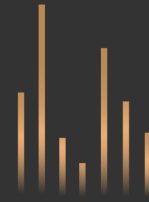
34. A number of the NST decisions relating to selection also deal with the associated concept of “reasonableness” i.e., an absolute discretion is not an unfettered one and must, by law, be exercised reasonably. In *Sarah Cardwell v Squash Australia Ltd* (NST-E22-122770, 13 May 2022) at paragraph [50], the NST Member said the following in discussing reasonableness and the exercise of discretion in a situation where a Selection Committee has considered the athlete against a number of guiding considerations or criteria:

*“...it is more usually in the manner in which particular weight has been ascribed to each relevant consideration, and more generally in the exercise of discretion, where the real difficulty of demonstrating that a decision was unreasonable, to the point where it ought be set aside, is found.”*

35. At paragraph 51 of *Cardwell* and citing *Minister for Immigration v SZMDS* (2010) 240 CLR 611 (per Crennan and Bell JJ (at [131])), the NST Member went on to note that in *SZMDS* the High Court said that in this context a “*decision cannot be said by a reviewing court to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion.*”

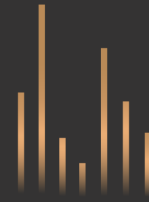
36. A similar approach to reasonableness was taken in *Juliet Lahood v Australian Taekwondo* (NST-E24-96019, 24 March 2024) at paragraph [39] where the NST Member stated that “reasonableness”

*“...must be interpreted in its administrative law context i.e., *Wednesbury unreasonableness* (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] EWCA Civ 1; [1948] 1 AC 223; [1948] 1 KB 223, esp. at 229-230). *Wednesbury* is an established feature of Australian administrative law, and it imposes a high threshold of review, see generally *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* [2003] HCA 30. Divergence of opinion in the decision-making body does not mean that their decision is unreasonable...It must be shown that the decision-*



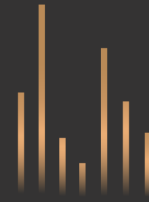
*maker acted in a manner that was irrational, illogical, and not based upon findings or inferences of fact supported by logical grounds.”*

37. All of the above leaves an athlete with a high bar to jump to successfully challenge a selection decision in the context of a matter where the Selection Committee has a broad discretion. That is not to say that such a height can never be cleared by an athlete and as stated in *Applicant v Gymnastics Australia* (NST-E25-191272, 15 May 2025) at paragraph [47]:
- “...it does not mean that the Selection Panel can apply that discretion in an arbitrary or capricious way, for example by deciding not to consider any of the factors identified in the selection process. Instead, the Selection Panel must act reasonably and objectively fairly in exercising the discretion and certainly must take into account all relevant matter. To adopt the language of the High Court in the celebrated case of House v The King (1936) 55 CLR 499, at 505, what is required in exercising a discretion is to not act upon a wrong principle, not allow extraneous or irrelevant matters to guide or affect the decision maker, not to mistake the facts, and to take into account material considerations.”*
38. The above paragraphs provide the legal framework in which the merits of this matter have been considered.
39. The regulatory framework in which the merits of this matter have been considered begins with the observation that this Selection Committee’s discretion to nominate athletes under the Policy was absolute, to be exercised in line with the aims of the Policy and included the objective to nominate the strongest possible team to produce the highest overall results at the Commonwealth Games (clauses 3 and 5.19, 5.22). In guiding the pursuit of the above aims and objectives, and without limiting its discretion in any way, the Policy went on to set out various factors/criteria which the Selection Committee should consider (clauses 5.23 and 5.25) albeit in no defined order of priority. This means that when this Selection Committee decided to use its discretion (as here), although it “should” per clause 5.23 give consideration to the eleven (11) factors therein and “may” further consult the General Manager High Performance (clause 5.25), it was not bound to do so and the weight given to one criterion in clause 5.23 over another and any decision to further consult the GM High Performance (clause 5.25) was entirely a matter of discretion for the Selection Committee.
40. With the above legal and regulatory framework in mind, the Appellant submitted that a reason given to him for his non-nomination (by way of correspondence on 3 June 2026) was that his results *“in the current season which are below last season giving you an estimated (full season) Commonwealth Top List position of about 12 or 13 (taking current season time to a full season to allow for athletes who have participated yet).”* The Appellant stated, and provided evidence in the form of performance data and in subsequent correspondence, admissions and submissions from the Respondent, that the asserted ranking of *“about 12 or 13”* was factually incorrect or at least a wholly unreasonable analysis of his Commonwealth ranking, thus there was no material basis for his non-nomination by Australian Athletics, contrary to clause 8.1(d) of the By-Law. Further, the Appellant submitted that by predicating its decision-making on this incorrect or unreasonably-interpreted factual matrix, and one that if properly assessed would have ranked him as #8 (thus in line with the aims of clauses 3.2 and 3.4 of the Policy), the

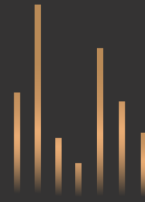


Selection Committee in its overall deliberations on the Appellant's potential nomination, had improperly applied the Policy contrary to clause 8.1(a) of the By-Law.

41. Adopting the language of *House v King* noted above, the question this Panel asks is whether the Selection Committee in using its discretion acted upon a wrong principle, allowed extraneous or irrelevant matters to guide or affect its decision making, or mistook the facts as relating singularly to the Appellant's "true" Commonwealth ranking at the material time. The Appellant's view was that the Selection Committee's mistake on ranking infected and materially prejudiced all further deliberations relating to his nomination.
42. There is some debate as to the divergence in what was said in the correspondence to the Appellant on 3 June 2026 (stating that his ranking was about 12 or 13 in the Commonwealth) and what was said in the Chair of the Selection Committee's affidavit of 11 June 2026 where at paragraph [23] it recognises the Appellant as having a ranking of #8. If the sole factor in the assessment of the Appellant's nomination was his Commonwealth ranking then the alleged error identified above would reasonably have to be considered as one justifying the upholding of this appeal, but it was not the sole factor. As the affidavit of 11 June 2026 illustrates at paragraphs [23]-[27], and in some detail, a range of other discretionary factors were considered and weighed in the deliberations on the Appellant's nomination. The Selection Committee did clearly consider, for instance, the Appellant's performances in past domestic and international championships, and the Appellant's current form – improving as it did throughout the first half of 2026; nevertheless, took the view that the Appellant would not threaten "to win a medal given the gap to the top [Commonwealth] athletes [in the 3,000m steeplechase]."
43. The evidence and submissions from the Respondent illustrated to this Panel that they had in this instance acted in a principled way, aligned to the aims and objectives of the Policy, and that in a structured way they had considered all relevant matters and not mistaken material facts. The Selection Committee in this instance had taken into account the Appellant's extenuating circumstances relating to the 2026 Australian Championships and did address cogently the arguments made by the Appellant in relation to clause 3.6, relating to whether the Appellant was peaking for the Games in the second half of 2026. On the latter, the Respondent simply pointed out that the Appellant would have known since October 2025 that the qualifying period for Games' selection was such that running fast times in the first quarter or so of 2026 (the Australian summer) was crucial and necessary.
44. The Appellant has failed to establish to the relevant standard that there was not a material basis for the Appellant's non-nomination. The Panel is comfortably satisfied that there was a material basis for the Appellant's non-nomination.
45. It follows that both grounds of the appeal are dismissed. To paraphrase *Appellant v Water Polo Australia* (NST-E24-189691, 21 May 2024) at paragraph [57], the Respondent's Selection Committee exercised its discretion in good faith, in accordance with the aims and terms of the applicable policy, and in a manner that was not unreasonable, arbitrary or capricious. As has been stated on a number of occasions by this Tribunal, a decision by a Selection Committee cannot be said by a reviewing Panel to be illogical or irrational or unreasonable, simply because one conclusion has been preferred to another possible conclusion or one factor has been given greater weight than another. Such an exercise of discretion is not unreasonable and was within the purview of this Selection Committee.



46. It must be stated that the nomination and selection process for the Games was a difficult one for AA. There were a limited number of places available (63) and factoring in those athletes who qualified automatically and relay teams, the number of discretionary places was relatively low. Difficult, marginal calls had to be made by the Selection Committee. Equally, it is understandable that athletes such as the Appellant have, as is their right, sought to appeal their non-nomination. In such appeals (as here) it is often the case that in making their case athletes will compare themselves to others, including those who may compete in the same event or be on the same relay team. As here with the Appellant, such athletes are at pains to state that their arguments are made objectively and, as best they can, on performance data and the interpretation of selection criteria and not on any subjective, personalised basis. The mutual respect that athletes, as shown by the Appellant in this appeal, have for each other is palpable and legal disputes of this nature should not be taken to undermine that mutual, sporting respect. Nor should it undermine the sincere efforts by AA officials and volunteers to ensure that, as per Policy, the most competitive possible athletics team to represent Australia is sent to Glasgow.
47. While the Appeal is dismissed, the Panel does bring two points to the Respondent's attention, and one for Appellants. First, when an athlete is not nominated, communicating that decision to them whether by word or in person or both, is a vitally important part of the overall process. Such communication needs to be carefully crafted and considered, a point made by the NST in the selection matter in *Oscar Dart v Triathlon Australia* (NST-E23-156958, 15 June 2023). And a point that is of importance to this matter, given the varying communications to the Appellant on his exact Commonwealth ranking.
48. Second, in assessing whether a Selection Committee has acted reasonably, it will be necessary for a Panel to lift the veil on that Committee's decision-making process or methodology – raw performance data, general Excel sheets and, as here, affidavits from the Chair of the Selection Committee are most helpful in this regard. But as stated in *Lauren Ryan v Australian Athletics* (NST-E25-342730, 6 September 2025) at paragraph [37] so is minute taking of Selection Committee meetings “to ensure complete transparency in the decision-making process not only for the purposes of that decision, but for the purposes of any appeal process.”
49. Third, where an Appellant relies on the statement of a current, personal coach or a coach of well renown in the event in question, the weight that a Panel such as this can give to such a statement or a submission at a hearing is limited and preferably such a statement or submission of support should be given by the athlete to the Selection Committee in advance of the nomination process in order for it to be properly considered by the decision-makers.



**THE TRIBUNAL THEREFORE DETERMINES:**

1. The decision of Australian Athletics not to nominate the Appellant for nomination for the Team is upheld.
2. The Appeal is Dismissed.

Date: 18 June 2026



Mr Anthony Nolan KC



Professor Jack Anderson



Mr Jonathan Erbacher