



Case Number: NST-E26-690

Case Title: Athlete v AusCycling

Determination

National Sports Tribunal

General Division

sitting in the following composition:

Member Dr Jessica Henderson

in the arbitration between

Athlete

Applicant

Represented by Tom Green, Legal Representative

And

AusCycling Ltd

Respondent

Represented by Marne Fechner, Chief Executive Officer, Scott Traeger, Legal Representative and Charlotte Hughes, Legal Representative



PARTIES

1. The Applicant (the **Applicant**), is an athlete who seeks to represent Australia as part of the U23 Men's team for the 2026 UCI Road World Championships to be held in Montréal, Canada, from 20-27 September 2026 (the **Competition**).
2. The Respondent, AusCycling (the **Respondent**), is the National Sporting Organisation for the sport of Cycling in Australia.
3. No Interested or Affected Parties were identified.

INTRODUCTION

4. The Applicant appeals a decision by an AusCycling Selection Panel (the **Panel**) not to select him in an available quota spot for the Competition.
5. The Applicant appeals pursuant to clause 5.2 of the AusCycling Selection Appeals Policy for UCI World Championships dated February 2025 (the **Selection Appeals Policy**). The Applicant's primary contention is that there was no material on which AusCycling's decision could reasonably be based within the meaning of clause 5.2.2(d). In the alternative, if that ground is not accepted, the Applicant relies upon clauses 5.2.2(a) and (b), namely that:
 - (a) the Selection Policy was not properly applied by AusCycling in respect of the non-selected athlete; and
 - (b) the non-selected athlete was not afforded a reasonable opportunity by AusCycling to satisfy the Selection Policy.
6. The Applicant bears the onus of establishing one or more of these grounds.

NST JURISDICTION

7. The jurisdiction of the National Sports Tribunal (**NST**) is engaged by section 23(1) of the *National Sports Tribunal Act 2019* (**NST Act**) and clause 5.2 of the Selection Appeals Policy.
8. The Parties confirmed to the NST that they agreed to waive the relevant time requirements under clause 5.1 of the Selection Appeals Policy.

PROCEEDINGS BEFORE THE NST

9. The Applicant's application to the NST was dated 23 August 2026. On 26 August 2026, the NST Member was allocated to this matter and on verification of the Member's declaration of no conflict of interest in this matter, the NST Registry supplied the Member with the Applicant's application form and the relevant AusCycling policies.
10. On 26 August 2026, the following procedural directions were issued by the NST Member in accordance with section 29 of the *National Sports Tribunal (Practice and Procedure) Determination 2024* (the **Procedural Directions**):



- a) *By 11.59pm AEST on Thursday, 27 August 2026, the Applicant is to file with the NST Registry and serve on AusCycling their written submissions, together with any witness statements, evidence and other documents on which they intend to rely.*
 - b) *By 11.59pm AEST on Monday, 31 August 2026, AusCycling is to file with the NST Registry and serve on the Applicant its written submissions, together with any witness statements, evidence and other documents on which it intends to rely.*
 - c) *By 11.59pm AEST on Tuesday, 1 September 2026, the Applicant is to file with the NST Registry and serve on AusCycling any reply submissions, together with any witness statements, evidence and other documents on which they intend to rely in reply.*
 - d) *A hearing, if required, will be convened from 3.30pm to 5.30pm AEST on Thursday, 3 September 2026.*
11. The Parties complied with the Procedural Directions to the extent possible, given the tight timeframe and limited availability of witnesses, and appropriate concessions were made as necessary by each Party.
12. On 3 September 2026 the following procedural directions were issued by the NST Member in accordance with section 29 of the Procedural Directions:
- a) *By 11.59pm (AEST) on Thursday, 3 September 2026, the Parties shall file with the NST Registry and serve on all other Parties any submissions they wish to make regarding:*
 - i. *the practicality of referring the selection decision back to the Respondent for redetermination, given the hard deadline of 11 September 2026 for registration in the relevant event;*
 - ii. *whether clause 5.2.12(a) of the AusCycling Selection Appeals Policy is engaged such that the NST Member may herself determine the issue of the Appellant's selection; and*
 - iii. *whether, if so, the appropriate wording to determine the issue in favour of the Appellant would be:*

"The Appellant is a member of Australia's 2026 UCI World Championship Team and will be registered to compete in the UCI World Championship on or before 9 September 2026 (i.e. 1 clear day ahead of the deadline for registration) in accordance with his eligibility as Reigning Continental Champion."
13. Each of the Parties complied with that Direction, notwithstanding the very short timeframe that they were given to do so.

ISSUES

Registration of the Reigning Continental Champion

14. The Applicant was the winner of the 2026 Oceania Championship in the U23 Men's division. As such it is agreed between the Parties that he meets the definition of the "Reigning Continental Champion" for the purposes of the Qualification System for the Competition. The Parties further



agree that there is a special entitlement granted in relation to the Reigning Continental Champion's entry into the Competition, which is in addition to Australia's allocated quota of riders under the general rules of the Competition.

15. The Applicant cannot register himself in the Competition and therefore as a matter of practicality he cannot compete unless he is registered by the Respondent. The principal issue raised by the Parties is whether the Reigning Continental Champion's national federation as defined in the UCI rules (the **National Federation**) has a discretion to decline to register him in the Competition, and if so, on what grounds.
16. The Applicant's contention in relation to this issue is that the Respondent must enter him in the competition because of his status as the Reigning Continental Champion. He says that, on proper construction, the legal instruments confer on him the right to compete in the competition at his discretion and do not provide a discretion for the Respondent to decline to register him after considering him against its usual selection criteria.
17. The Respondent argues the primacy of its right to select the individual riders that will represent Australia in the Competition and says that on proper construction the legal instruments create an additional allocated quota that if used can only be filled by the Applicant, but which the Respondent may elect not to use at its absolute discretion.

UCI Qualification System, Regulations and Quotas

18. The international governing body for cycling is the *Union Cycliste Internationale* (the **UCI**).
19. The UCI Constitution governs its activities and its organisation and provides the international legal framework for the sport of cycling by contracts with its member organisations and licence holders. It defines the rights and obligations of the Respondent as the member federation in Australia, including the requirement that its constitutions and regulations not run counter to those of the UCI.¹
20. Chapter III of the UCI Constitution provides that there shall be five continental confederations – Africa, America, Asia, Europe and Oceania. Each National Federation is required to be a member of the confederation of the continent in which its national capital lies.² Australia is a member of the Oceania confederation.

UCI Cycling Regulations

21. The UCI is the organiser and owner of the annual UCI Road World Championships, including the Competition.
22. The UCI Cycling Regulations create and regulate the World Championships in Part 9.³

¹ UCI Constitution Article 9(2) p9.

² UCI Constitution Article 25(3) p16.

³ UCI Cycling Regulations.

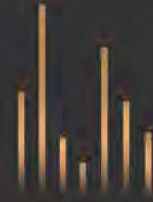


23. The Respondent is bound by the UCI Governing Documents, defined as “*the constitution, regulations, code of ethics and other governing documents of UCI in force from time to time*” as a precondition to recognition as a UCI National Federation.⁴
24. Registration in the Competition is by the National Federations of each rider. Article 9.1.019 of the UCI Regulations (the **UCI WC Regulations**) states:
- “Each National Federation participating in the World Championships shall register with the UCI, within the deadlines specified by the latter, all riders and other persons that will be on or will accompany its delegation (officials, attendants, guests, etc.).”*
25. The language of that clause extends to “*all riders*” and to every person “*on or accompanying*” the National Federation’s “*delegation*”. No ordinary provision is made for a rider to register in any other way, however selected. Where a nation is not permitted to race in a competition, special rules address the entry of their national athletes. The participation of riders of Russian sporting nationality and their support personnel in events on the UCI International Calendar, for example, was separately addressed in Ad Hoc Rules adopted by the UCI Management Committee in response to the Russian invasion of Ukraine and is only authorised in the circumstances provided for in articles 4 to 9 of those Rules.⁵
26. Chapter II of the UCI WC Regulations is titled “Participation in World Championships”. Under the first level subheading “1. *General Comments*” reg 9.2.001 states that “[i]t is National Federations who select riders to participate in World Championships”. The NST has considered whether this constitutes an exclusive selection right for the National Federations to select riders for entry, but notes the following:
- a) The clause does not expressly provide an exclusive right to select. It does not say, for example, that “National Federations have the exclusive right to select riders to participate”. In fact it says the opposite – it expressly provides that “[t]he UCI may authorise riders classified as “*refugee*” in addition to the quotas provided for in the UCI Regulations and qualifications regulations...”⁶
 - b) It is construed in the context of the Regulations as a whole. Clause 1.2.048 provides the general principle that “[u]nless otherwise specified, the organiser is free to select the teams and riders taking part in the event, and shall not be required to consider any potential national protection.” The general comment that National Federations select riders in the Competition operates to create a general rule in respect of the Competition that amends the default assumption.
 - c) As a general rule (specifically appearing under the heading of “General Comments”), it cannot confer an indefeasible right on the National Federations to select riders to participate in the Competition, without express language to that effect. The Preliminary Provisions of the UCI Cycling Regulations provide that “[a] specific provision of the

⁴ AusCycling Constitution, definitions p 6.

⁵ UCI Ad Hoc Rules (Measures Against Russia) made under the UCI Cycling Regulations, version as of 01.07.2026 (the “**Ad Hoc Rules**”).

⁶ Regulation 9.2.001.



Regulations shall constitute an exception to any general provision with which it would be incompatible”.⁷

- d) In relation to riders of Russian nationality the general rule of national selection is subverted by the specific Ad Hoc Rules, providing for direct selection by the UCI pursuant to selection as an *“Individual Neutral Athlete”*.⁸ The grant of that status by the UCI constitutes entry into the Competition.⁹ It cannot be the case, then, that reg 9.2.001 prevents an athlete being directly chosen by the UCI to enter the competition.
27. Under the first level subheading “2. *Selection of participants by speciality*” reg 9.2.009 provides:
- “In all individual specialties, the outgoing World Champion may take part in addition to the number of starters that the National Federation of such Champions may enter under the qualification regulations. The same principle is applicable for the Olympic/Paralympic Champion on the occasion of the first World Championship following Olympic/Paralympic Games or, for the mountain bike, the next two mountain bike World Championships.*
- For the Continental Champion, this facility is limited to the first World Championships following the awarding of the title of Continental Champion...”*
28. The heading indicates that this is a specific rule capable of taking precedence over any general rule with which it would be incompatible.
29. The Applicant says that on proper construction this clause confers each incumbent Continental Champion a participation right which he may elect to exercise.¹⁰ The Respondent says that on proper construction it operates to *“grant a quota place to those individuals by name, which the National Federation for which those athletes compete can then decide to use - or not - by selecting and registering such athletes with the UCI...”*.¹¹
30. The Respondent submits that *“if the drafters of the UCI framework had intended the quota place allocated to reigning Continental Champions to be an inalienable right of entry, they would have said as much, using words such as “will be automatically selected and entered”*.¹²
31. The NST agrees with the Respondent that the use of the words *“may take part in”* confer a discretion. The UCI did not intend that the Continental Champion could not avoid participating in the Competition in any circumstances, nor that they must be entered by their National Federation in all circumstances.
32. Equally, however, the drafters of the UCI framework could have said so clearly if they intended by the clause to give an additional quota to National Federations if they selected a Continental Champion to compete. It might have done so very simply by the words *“where the Continental Champion is selected to compete by his National Federation, he may be entered in addition to the number of riders that the National Federation may otherwise enter”*.

⁷ UCI Regulations Preliminary Provisions at [4].

⁸ Annex 1 to the Ad Hoc Rules (“Conditions of Participation for individual neutral riders of Russian sporting nationality and their support personnel”) (the **Ad Hoc INA Conditions**);

⁹ Ad Hoc INA Conditions pp2-3.

¹⁰ Applicant’s Submissions at 5.2.

¹¹ Respondent’s Submissions at 20.

¹² Respondent submissions [42].



33. The language used in respect of refugees in clause 9.2.001 is instructive. It provides that the UCI “may authorise riders...in addition to the quotas provided for in the UCI Regulations and qualification regulations, without prejudice to specific eligibility requirements that may be determined”.¹³ It is clear that the selection of refugees “in addition to the quotas” of their nations is not intended to confer on their nations a right to not select them – such a right would defeat the very purpose for which the direct selection is available. The point is to ensure that they can race in circumstances where they will not be selected for their country of nationality and cannot be selected by their country of residence. Their selection therefore must be directly by UCI.
34. It is clear, however, that such a selection is *without prejudice to specific eligibility requirements that may be determined*. That language does not appear in relation to athletes selected by their Continental Championship status, who must be registered by their nations. It cannot reasonably be the case that the Continental Champion is given an unfettered right to compete irrespective of eligibility. It is reasonable to read into the Regulation an intention that the National Federations retain the right to set national eligibility criteria, to which the Continental Champions may still be held.

Conclusion on reg 9.2.009

35. On its proper construction, reg 9.2.009 does not give an unfettered right for the Continental Champion to take part in the World Championship. It does, however, directly “select” him by virtue of his specialty. On its proper construction it provides that the Continental Champion is selected to compete by UCI by virtue of his title, without derogating from the right of the National Federation to still select its designated quotient of riders.
36. Regulation 9.2.009 does not create an express obligation on a National Federation to register the Continental Champion, however, the pre-selection is contingent on national eligibility requirements, and (pursuant to reg. 9.2.012) to potential modification with respect to each specific annual event. The Regulations provide for the Management Committee to decide the qualification system for the World Championship on an annual basis.¹⁴
37. As both Parties observe, the 2026 qualification system made pursuant to reg 9.2.012 is relevant to determining the scope of the 2026 reigning Champions’ pre-selection by UCI.

2026 Qualification System

38. The Qualification System for the 2026 UCI Road World Championships (the **2026 Quota Allocation Provisions**) provides modifications for the Competition in a set of specific provisions¹⁵ which are “to be used and applied in the order” in which they are numbered.
39. Provision 1 is titled “Qualification through the UCI Continental Men Under 23 nations ranking on 19 October 2025”. It provides for the top ranked nations in each Continental Confederation to

¹³ Regulation 9.2.001.

¹⁴ Regulation 9.2.012.

¹⁵ Qualification System for the 2026 UCI Road World Championships accessed by the Tribunal on 4 September 2026 at



- enter a fixed number of riders to start by reference to their ranking. As the top ranked nation in Oceania, Australia is permitted to enter 5 riders.
40. Provision 2 provides that nations not yet qualified after provision 1 may be qualified to enter 1 rider to start if they have at least one Men's Under 23 rider ranked amongst top placed riders in each Continental Tour. Relevantly, it does not require that rider to be the person or any one of multiple persons whose ranking is relied upon for the qualification. It is a provision entitling the nation to enter 1 rider, not entitling the qualifying rider to be entered.
 41. Provision 3 provides that nations not yet qualified after provisions 1 and 2 but *"that is included in the UCI Nations' Cup U23 ranking on 19 October 2025"* may enter 1 rider to start.
 42. Provision 4 provides that the first 5 nations of the UCI Nations' Cup U23 ranking on 19 October 2025 may enter 1 additional rider. Those nations were Italy, France, Spain, Belgium, and Denmark.
 43. Provision 5 is titled *"Reigning Continental Champions"* and is in the following terms:

"Unless the nation concerned has qualified 6 riders to start through provisions 1 and 4, the reigning Men Under 23 Road Race Continental Champions may take part in the first UCI Road World Championships following the award of their title, in addition to the quota allocated to their respective nation. The additional quota obtained by the reigning champions may not be used by another rider."
 44. Provision 6 provides that the reigning UCI World Champion may take part in the first UCI Road World Championships following the award of their title, in addition to the quota allocated to their respective nation. The additional quota obtained by the reigning champions may not be used by another rider.
 45. Provision 7 gives the host country the right to enter 4 riders, provided that they do not already have 4 riders through provisions 1 to 6. Provision 8 provides for an invitation that the UCI may extend to up to 3 non-qualified nations.

The structure of the Provisions

46. Provisions 1 through 4 are national performance-based entitlements. Even where the entitlement is engaged by the specific performance of an individual athlete, the entitlement attaches to the nation, and they may select their preferred rider. Provision 2 gives access for nations with an individually strong U23 rider, without requiring the selection of that rider. Provision 3 allows a Nation's Cup participation and performance to get an otherwise-unqualified nation onto the starting line. Provision 4 provides an additional place for exceptional Nation's Cup national performance.
47. Provision 5 and 6 are personal entitlements. Provision 5 does not apply where *"the nation concerned has qualified 6 riders to start through provisions 1 and 4"* (emphasis added). If there is a sixth rider for that nation by virtue of a national World Champion, it does not affect the right of the Continental Champion.
48. Provisions 5 and 6 are followed by two final provisions in which quotas are allocated for reasons that are not performance-based at all.



Construction of the 2026 Qualification System

49. The Respondent says that the limitation on the Continental Champion competing where *“the nation concerned has qualified 6 riders to start through provisions 1 and 4”* makes it clear that the Continental Champion’s *“right to compete is not automatic”*.
50. It is not the fact of having six starting riders that modifies what is otherwise the right of the reigning Continental Champion to compete, but the fact that his nation has earned five quota positions by their Continental placement and an additional quota by their Nations Cup placement. This modification made for the 2026 Qualification System has historically been made in all recent World Championships. In the U23 Men division it has never affected a country outside Europe. It effectively operates to prevent the top 5 European nations in any year from dominating the competition with up to 8 riders.
51. Practically speaking, the modification operates to preclude a European Continental Champion from one of the top five European nations from competing with the benefit of up to seven teammates, a position of peloton dominance that would, barring accident or an act of God, give him or his team an unacceptable advantage over all other competitors. It is an entirely appropriate limitation on the Continental Champion’s otherwise automatic right of entry and lends no authority to the Respondent’s argument that the Continental Champion’s right to compete is subject to selection by his National Federation.
52. The Respondent has also drawn the NST’s attention to a qualification in the Road Race Men Elite category, which it says also makes clear (by analogy, given the comparable wording in the Elite category) that a Continental Champions’ right to compete is not automatic. The clause reads:

“Reigning Olympic and Continental Champions

Unless the nation concerned has qualified 8 riders to start through provision 1, the reigning Men Elite Road Race Olympic Champion and reigning Men Elite Road Race Continental Champions may take part in the first UCI Road World Championships after they won their respective title, in addition to the quota allocated to their nation. The additional quotas obtained by the reigning champions may not be used by another rider.

However, through this disposition a nation can only obtain one additional quota. If a nation has several champions, it will be up to the nation to choose the one quota.”

53. With respect, the clause appears to have the opposite effect to that which is pressed by the Respondent. It is framed contingently: if the precondition is met, then the consequence follows. The consequence of national selection is contingent on a precondition of having two champions. In the absence of two champions, it does not give a right of selection to the nation. That the nation is given the right to determine which of the two athletes *“may take part...in addition to the quota allocated to their nation”* rather than the right to determine *“which, if any, quota is used”* strongly supports the Applicant’s proposition that the nation does not have the right to select whether or not a quota is used.
54. The clause only comes into effect in a year in which an Olympic Games is held. Winning a Continental Championship in circumstances where the field has been impacted by the occasion of an Olympic Games warrants modifying what would otherwise be the right of a Continental



Champion. In such a year the competition can be thinned, or competitors over-stretched. There might also be tactical decision making by teams and nations which ensure that two leading athletes for the same nation do not compete against each other in both competitions. It is therefore an appropriate limitation on the Continental Champion's otherwise automatic right of entry and does not (absent the precondition) lend authority to the proposition that the Continental Champion is subject to any form of national selection process, other than registration (with its associated eligibility criteria).

UCI Road World Championships Quota Allocation

55. On 7 July 2026 the UCI Management Committee released an updated Quota Allocation detailing the allocated national quotas. Each of Italy, France, Spain, Belgium, and Denmark are allocated 6 quotas. Australia is allocated 5 quotas. New Zealand is allocated 3.
56. On page 6 the following statement appears:

“On top of the above numbers of riders to start per nation, the following riders are allowed to take part in the event and may not be substituted:

ITA		UCI World Champion
INA		Asian Champion
MEX		American Champion
AUS		Oceanian Champion

57. The Applicant is by that clause personally granted permission to take part in the event and may not be substituted. He has been unequivocally selected to fill a quota that was created for his Continental Championship title, and, given Australia's allocated quotas, it is no longer contingent on anything other than national registration.
58. He does still require national registration, however, and there is no provision for compulsory registration or any guidance as to circumstances in which his National Federation can reasonably decline to enter him. In the absence of any express provision in the legal documents, it is for the National Federations, acting reasonably and in accordance with their contractual obligations, to create eligibility criteria for registration. As a matter of contract, they are entitled to do so.

Other common law approaches

59. Having formed the view that the Continental Champion has been selected to compete but must be registered by his National Federation pursuant to national eligibility criteria, the NST has considered how comparable common law jurisdictions have interpreted the same contractual provision.
60. For the avoidance of doubt, the NST does not consider any of the following views to be authoritative or binding; they are useful only insofar as they offer a mechanism for testing, as a



matter of comparative common law construction, the NST's interpretation of the relevant provisions.

61. The USA Cycling Athlete Selection Criteria for the 2026 Road World Championships¹⁶ provides:

"USAC POLICY FOR FUNDING CONTINENTAL CHAMPIONS FOR THE WORLD CHAMPIONSHIP TEAM

As per the current UCI rule 9.2.009, the Continental Champion may earn an additional quota position by name in the first World Championships following the awarding of the title of Continental Champion.

Because the Continental Championships are held months prior to the actual World Championships, and the level of competition at the Continental Championships is not the international standard found in most automatic qualification criteria for USA Cycling's Team nominations for World Championship Teams, USA Cycling has established the following policy:

Funding of Continental Champions by USA Cycling for World Championship Teams is contingent upon the rider meeting the funding levels as outlined in the World Championship Team selection document. If a rider does not meet these requirements, but chooses to ride in the World Championships, they will do so at their own expense."

62. The USA's published criteria for selection indicates that the Continental Champion has the right to compete at their discretion. The USA does not accept financial responsibility for a Continental Champion, however, unless the rider meets minimum criteria.
63. Canada's current policy doesn't address the Continental Champion, but its interpretation of the comparable personal quota allocation to the reigning World Champion is reflected in its 2026 Road Selection Policy:

*"Per the UCI regulations, the outgoing world champion is awarded an additional quota spot. They are qualified by name and automatically selected, and cannot be replaced with another athlete."*¹⁷ (Emphasis added)

64. The Tribunal was not able to identify any other relevant published common law selection policies. New Zealand's policy does not appear to be readily available online. Great Britain's selection policy makes no mention of reigning champions.

AusCycling Selection Agreement

65. The Applicant cannot be registered in the Competition except by the agency of the Respondent. It is still for the Respondent to determine whether or not he is eligible for

¹⁶ USA Cycling Athlete Selection Criteria for the 2026 Road World Championships accessed by the Tribunal on 4 September 2026

¹⁷ Cycling Cyclisme Canada 2026 Road Selection Policy, Published 13 February 2026, updated as at 7 July 2026, p 16.



registration as a national of Australia.

66. No provision is made for any rider to be registered for Australia outside the selection and governance of the Australian 2026 UCI Road World Championships Team (the **WCT**). It does not appear to be in dispute between the Parties that if the Applicant is registered to race then he must be a member of the WCT and subject to the initial and ongoing eligibility requirements contained therein.
67. The relevant legal documents for eligibility to join the WCT are:
- a) the AusCycling Selection Policy for UCI World Championships – Olympic and Paralympic Cycling Sports (Version 1, Dec 2025) (the **Selection Policy**); and
 - b) the Discipline Specific Selection Criterion – 2026 UCI Road World Championships, U23 Men and Women (Version 1, March 2026) (the **Discipline Specific Criteria**).
68. It is agreed that together the Policy and the Discipline Specific Criteria exhaustively set out the parameters, process, and criteria applied to determine the composition of the WCT. Given their titles and their contractual significance in the relationship between the Applicant and Respondent, it is convenient to refer to them collectively as the **Selection Agreement** notwithstanding that their role in respect of the Applicant is to determine his eligibility for registration.
69. The first task is to determine, as a matter of construction of the Selection Agreement, what are the selectors' obligations and powers in relation to a Continental Champion, and what discretion, if any, is conferred upon them in respect of his personally allocated quota.
70. The ordinary principles of construction are relied upon in this exercise.¹⁸

Language of the text

71. The chapeau to the Policy specifies that it "*applies to all athletes who are potentially eligible to be considered for selection in the WCT for Olympic and Paralympic Cycling Sports*". It is not in dispute that this includes the Applicant.

Jurisdiction of the Selection Panel and Panel Chair

72. The Respondent is a company. Its Constitution provides that the Directors have the company's powers, subject to the *Corporations Act 2001* and the Constitution. Its first object is to "*adopt and exercise the Sporting Power as the national federation for Cycling in Australia and to act as the sole Australian affiliated member of UCI in accordance with the UCI Governing Documents*".¹⁹ In construing the Selection Agreement, if any clause supports more than one meaning, the NST prefers an interpretation that is consistent with the Respondent's obligations to the UCI over any interpretation that results in a breach of the Respondent's obligations to the UCI.
73. By Article 14.6 of the Constitution the Directors may, by resolution, power of attorney, or writing under seal delegate their powers to the CEO, an employee or another person. The delegation

¹⁸ Sullivan, "*I Didn't Make the Team. What Can I Do?*" *An Overview of Selection Jurisprudence*", Australian and New Zealand Sports Law Journal 2015 10(1), 20.

¹⁹ AusCycling Constitution Clause 2, page 7.



must specify the powers delegated, can contain restrictions and conditions, can be general or limited, “*need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position*”, and can include a power of further delegation. In clause 17.2 the Constitution provides that the CEO has the powers, duties and authorities delegated by the Directors, and 17.4 permits the Directors to delegate day-to-day management including sub-delegation.

74. The power to make policies is provided in clause 21 of the Constitution, which provides that the Directors (or by delegated authority the CEO) may from time to time make policies that are necessary or desirable for the control, administration and management of the Company’s affairs. They are subject to the Constitution, must be consistent with the Constitution, and (when in force) are binding on Members and have the same effect as a provision in the Constitution.

■ [REDACTED]

76. The rights of the Panel Chair and Panel are conferred by the Selection Policy in the following terms:

“4.3.1 The maximum WCT size is subject to UCI allocated quotas and AC budget capability. Maximum spots from a budget perspective will be communicated a minimum of 6 months in advance. AC reserves the right to not fill any WCT quota. Unless otherwise determined by the AC Board, the Panel Chair may exercise the right of AC under this clause to not fill all UCI quotas. Where athletes exceed qualified quotas, the Panel in its sole discretion will determine which athletes are to be selected in accordance with this Selection Policy.”

77. The power of the Panel is to select athletes, and it arises where “*athletes exceed qualified quotas*”. Only in that circumstance is the Panel empowered to determine which athletes are to be selected. It is to be expected that in a country the size and sophistication (in racing) of Australia there will inevitably be more athletes than qualified quotas.
78. The exception is a personal quota of a named athlete – there is only one athlete that can fill a named quota.
79. There is no power for the Panel to select the Applicant for his named quota.

Discretion not to use the quota

80. The Respondent says that the Applicant’s quota is one that the Respondent can elect not to fill. This is said to be the firm finding in *Talbot*,²¹ which held in similar circumstances that:

■ [REDACTED]

²¹ *Talbot v AusCycling Selection Review Panel Decision* 22 August 2022 (A Nolan QC, L Jacobs and N Saunders) 1535394033v2.



“AusCycling Board or the Executive General Manager – Performance are the sole decision makers as to whether the seventh quota is used. If a decision is made to use the seventh quota, Ms Talbot must be selected.”

81. Unfortunately, no meaningful reasons were given in *Talbot* for the determination that the decision not to use the quota was “*not illogical*”. Nor was the reasoning by which the Selection Panel elected not to use the seventh quota set out in detail. There was no need to traverse those matters in any depth because *Talbot* was remitted on the basis that the Selection Panel did not have the power to determine whether or not to use the additional quota granted to her. There was no meaningful engagement in the decision about the status of the Champion or the proper construction of the legal instruments in relation to a Champion’s right to compete.
82. The power of the Panel Chair is “*to not fill any WCT quota*” (emphasis added). The Applicant’s quota is not one which can be filled or not filled. It is a pre-selected right to compete in addition to allocated quotas. To the extent that it may be characterised as a quota, it has already been filled.
83. Further, the Panel Chair’s discretion not to fill all quotas is not a power to select athletes. His power is limited to determining the number of places, and the size of the team. He cannot alone determine its composition. The plain English of the clause makes this clear. Say there are five athletes that the Panel votes into the WCT, and the Panel Chair disagrees with one of those choices. He has no power to select which athlete’s quota he decides not to fill in order to control the outcome of selection. The moment he removes a quota it is for the Panel as a whole to determine which four riders will remain.
84. A discretion, even when said to be “*absolute*” must be informed by the objectives and aims of the selection policies, as well as the factors to which regard may be had as articulated in those policies.²² It must be exercised in good faith, in accordance with the terms of the selection policy, and in a manner that is not unreasonable.
85. [The Panel Chair’s] position with respect to the Oceania Champion was conveyed to the Selection Meeting in the following terms:

“The decision around selection or non-selection of an Oceania Champion is at the discretion of the Chair”.

86. In his witness statement [the Panel Chair] clarified that in the exercise of this discretion he “*not only considered whether [the Applicant]’s performances and potential put him in the top 5 or 6 athletes for selection to the U23 Road Race team, but also whether, if he was selected as an additional member of the team by making use of the quota place that was not available to be filled by any other athlete aside from [the Applicant], his selection would assist the team*”.²³
87. The Chief Executive Officer of the Respondent was also clear in her correspondence to the Applicant that his exclusion from the WCT was a selection decision that had been unilaterally made by the Panel Chair:

“I wish to be unambiguous on one point...the Panel and its Chair were at all times fully aware that your Oceania title conferred a personal additional quota position for Montreal,

²² *Appellant v Water Polo Australia*, 21 May 2024, p12 (NST-E24-18969121).

²³ Witness statement of [the Panel Chair] at [23].



available to you and to no other rider. The decision not to exercise that entitlement was made by the Panel Chair, in whom clause 4.3.1 of the Policy vests that decision, and it was deliberate, informed, and made after specific interrogation of your candidacy against the governing criteria.

...

The conclusion reached by the Panel Chair, after that interrogation, was that your international results within the performance time period did not meet the evidence threshold required to satisfy any of the three objectives: they did not evidence the level of demonstrated competitiveness against fields of World Championship depth that clause 1.1 or clause 1.2 requires, nor, at this point in time, the trajectory evidence that clause 1.3 requires. On that basis, and in exercise of the right expressly reserved to the Panel Chair by clause 4.3.1 of the Policy, the continental champion quota position was not filled.

...

The existence of a permissive quota entitlement is the occasion for a selection decision; it is not a substitute for one, and it is not itself material compelling a particular outcome.”²⁴

[Emphasis added]

88. On the face of that evidence, the process engaged in by the Panel Chair was a selection decision, not a decision about the size of the WCT. As no other athlete could fill the quota position, the quota position was discarded for the primary or sole purpose of avoiding including the Applicant in the team.
89. There is no evidence that the Panel Chair considered or meaningfully considered any relevant criteria for making a quota decision, which was required to be done by reference to “*UCI allocated quotas and AC budget capability*”.
90. The NST has not been made aware of any relevant budgetary restriction that was communicated the requisite 6 months in advance, and the evidence is that “*[c]ost was not the basis of the Panel Chair’s decision not to fill the quota position; the basis was the performance assessment...*”²⁵ The Panel Chair’s evidence about the financial imperative is limited to a statement that “*budgetary considerations...are always relevant but were not determinative in this particular instance.*”²⁶
91. The Tribunal notes in particular the absence of any evidence that [the Panel Chair] had access to or considered:
 - a) a changed costs position inside the last six months,
 - b) detailed analysis of the resources required to use all six quotas, or

■ [REDACTED]

²⁴ Applicant’s Documents Bundle, p21, Letter from Marne Fechner, CEO AusCycling, to the Applicant dated 15 August 2026.

²⁵ Applicant’s Documents Bundle, p21, Letter from Marne Fechner, CEO AusCycling, to the Applicant dated 15 August 2026.

²⁶ Witness Statement of Panel Chair [31].



92. The Panel Chair's evidence is that "*participation at the UCI Road World Championships requires the allocation of coaching, mechanical, operational and athlete support resources to each selected athlete*" and further that as "*resources are finite*" providing them to the Applicant "*reduces the resources available to those athletes who the selection Panel considers are likely to contribute to Australia's performance objectives.*"²⁷ That assertion was unsupported by detail or evidence, aside from a number of very generic examples. It does not persuade the NST that the Panel Chair engaged in any detailed analysis of the likely needs of each quota position, nor the team as a whole, before deciding on the number of quotas that Australia would field.
93. The Panel Chair's further evidence that the team morale would be affected by the Continental Champion's inclusion in the WCT was not reasonably open on the evidence before the NST, depending, as it did, on a false assumption of national selection. The Applicant's position was allocated to him by UCI in accordance with UCI Regulations that bind the Respondent. There is no loss of national pride whatsoever in fielding an athlete that has won entry through a personal victory, even if his quality as a cyclist falls short of what would otherwise be required for national selection.
94. A person entrusted with a discretion must direct himself properly in law, must call his own attention to the matters which he is bound to consider, and must exclude from his consideration matters which are irrelevant to what he has to consider.²⁸ [The Panel Chair] misinformed himself about the criteria to be applied, failed to have regard to relevant considerations, made factual findings that were not reasonably open on the evidence, and had regard to irrelevant considerations, including his view that the Applicant did not meet the Objectives (as defined below).
95. As a result of [the Panel Chair's] errors, the Selection Policy was not properly applied in respect of his decision to fill five instead of six quota positions, even assuming that his discretion extended to the Applicant's quota given that it was pre-filled.

Selection criteria

96. The Policy provides in Clause 1 that the Panel "*will select athletes who they consider in their absolute discretion will have the best chance of meeting one or more of the following objectives with the Panel having absolute discretion as to the weighting given to the three objectives*" (the **Objectives**) which are set out in the following terms:
- "1.1. *athletes capable of achieving medal winning results at UCI World Championships in Olympic or Paralympic events; and/or*
 - 1.2. *combinations of athletes capable of achieving medal winning results at UCI World Championships; and/or*
 - 1.3. *athletes considered to be on an elite medal trajectory at World Championship, Commonwealth Games, Olympic or Paralympic events in the next 4-6 years.*"
97. The term "*select*" requires, as a matter of plain English, that there be more than one available option to choose from. The expression "*the best chance*" (as distinct from say "*a good chance*") also denotes a choice between available options rather than a qualitative assessment in isolation. It is not necessary for any given rider to be an athlete capable of achieving medal

²⁷ Witness Statement of Panel Chair [31].

²⁸ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, esp at 229-230) - Lord Greene MR.



results – in the field of competition it might be relatively rare for the Panel to be satisfied that any of the available athletes have this capacity. What is required for selection is that the Panel will choose from available athletes those who have the best chance of meeting one or more of the Objectives.

98. The Objectives are selection criteria for choosing between available athletes. They do not apply to the inclusion of the Applicant in the WCT because he has already been selected to fill the available quota.
99. Clause 3.3 provides “*General Performance Selection Criteria [All Disciplines]*” for the following purpose:
- “to assist the Panel in reaching a view about which athletes have the best chance of meeting one or more of the Objectives in clause 1 or 2 of this Policy (as applicable). The Panel is not obliged to consider all or any of the General Performance Selection Criteria and may choose to do so in relation to their consideration of some athletes, no athletes or all athletes.”*
100. Clause 3.3.1 – 3.3.9 sets out the specific performance criteria that “*may*” be considered by the Panel in athlete selection, including tangible performance outcomes at “*relevant international benchmark competitions*”, and intangible behavioural criteria, including “*conduct consistently reflects professionalism and brings credit to themselves, teammates, and AusCycling*”.
101. These general selection criteria are evidently also for the purpose of choosing between athletes, and do not impose or suggest any minimum criteria in isolation of the selection process.
102. None of the selection criteria are applicable to determining the Applicant’s eligibility to compete in the WCT.

Eligibility Criteria

103. Clause 3.1 sets out general eligibility criteria (the “**Eligibility Criteria**”):

“3.1 General Eligibility Criteria

To be eligible for consideration for selection in the WCT, athletes in Junior, U23 and Elite disciplines, must:

3.1.1 Be an Australian citizen.

3.1.2 Have a current racing licence issued by AC or another federation affiliated with the UCI with Sporting Country of ‘AUS’.

3.1.3 Have read, signed and returned the execution page of the current AC Team Agreement.

3.1.4 Be compliant and remain compliant, with all of AusCycling’s policies including the settlement of, or a payment plan in place, for all past levies.

3.1.5 Agree to participate in and meet all competition, camps, training and participation requirements...



3.1.6 Be available for sample collection and have provided accurate and up-to-date whereabouts information...

3.1.7 Have not breached AC's Anti-Doping Policy as amended by AC from time to time (unless the Athlete has already been sanctioned for the breach and completed the sanction imposed).

3.1.8 Have not, to AC's knowledge, used or administered any substance which, if it had been detected as being present in the Athlete's body tissue or fluids, would have constituted doping...

3.1.9 Have completed SIA Anti-Doping Education...

3.1.10 Not currently be suspended from the sport for any reason.

3.1.11 Not currently be under investigation as a result of any indictable criminal charge..." [emphasis added]

104. The Eligibility Criteria are not selection criteria. They are fundamental eligibility requirements for inclusion in the WCT. They are ongoing obligations prior to, during and after the selection process. If an athlete does not meet these criteria, they are not considered for selection.
105. It is not in dispute that the Applicant meets these criteria, nor that they are ongoing obligations imposed on all competitors in the WCT irrespective of their champion status or confirmed selection.
106. For the avoidance of doubt, the eligibility criteria are fundamental terms of the agreement by which the Applicant is registered as part of the WCT, and any breach of them can result in his removal from the WCT.

Discipline Specific Criteria

107. The Discipline Specific Criteria provide what is described as an absolute discretion to determine "*which Athlete(s), and the number of Athletes, will be selected as a protected Athlete(s) or support Athlete(s) for the U23 WCT*". For this to be an absolute discretion it must refer to the total number of athletes within the selected athletes who comprise each of "*protected*" and "*supported*". There cannot be an absolute discretion to determine total numbers of athletes comprising the WCT because of the relevant fetters discussed above.
108. There is no reason why the Respondent's authority to determine which athletes are protected riders and which are support riders should not apply to the Applicant. He has been preselected, but his role within Australia's team is at the discretion of the Respondent. The Respondent may, at its absolute discretion, designate him a protected rider, a support rider, or an individual competitor who is not part of the team planning.

FINDINGS

109. The NST is satisfied of the following matters.



110. On proper construction, the UCI Framework (as defined in the Respondent's submissions) provides that the Applicant has been selected by UCI to race in the Competition, subject only to the Respondent registering him. The Respondent must first confirm that the Applicant meets the eligibility criteria by reference to its Selection Policy.
111. The Panel does not have jurisdiction to select or not select the Applicant – the Applicant has already been selected directly by UCI.
112. The Panel Chair's discretion over the number of available quotas is for the purpose of determining the overall size of the WCT. It is not a selection power and may not be used for the purpose of subverting the selection process, including the separate UCI selection process of the Continental Champion.
113. The Panel did not exercise its discretion reasonably. The Respondent misinformed itself about the criteria to be applied, failed to have regard to relevant considerations, made factual findings that were not reasonably open on the evidence, and had regard to irrelevant considerations.
114. The Selection Policy was not properly applied.
115. The Applicant meets the eligibility criteria. He has been selected by virtue of his Continental Championship. The Respondent must, in accordance with its obligations and own Policy, register him in the Competition.

REMEDY

116. Having determined the above facts in the Applicant's favour, the NST has considered the appropriate remedy.

Is clause 5.2.12(a) engaged?

117. The NST could remit the matter back to the Respondent with directions giving effect to the findings in this determination. The sole ground on which the Panel would then be able to determine the Applicant's inclusion in the WCT would be his ongoing eligibility to compete in the Competition.
118. It is not in dispute that the Applicant met those criteria at the time of the reviewable decision, and there is no reason to suppose that he has subsequently become ineligible. However, it is not open to the NST to substitute a different decision unless clause 5.2.12(a) or (b) is engaged.
119. Clause 5.2.12(b) is clearly not engaged. The Panel and Panel Chair acted in accordance with what they understood to be the effect of the legal instruments. They did so in accordance with what they understood to be the effect of a prior determination made by a panel of qualified Members. There is no reason to suppose that they would not act in good faith in a timely manner in accordance with the NST directions if the matter were remitted to them.
120. The NST has considered whether the proximity of the 11 September registration date engages clause 5.2.12(a).



121. The Respondent relevantly says that if it were necessary for the Panel to reconvene (either in its previous composition or with a different Panel Chair) it could be accommodated in time to register the Applicant if that were the appropriate outcome.
122. The Applicant relevantly says that it is not reasonably possible for a Panel to convene which is compliant with clause 4.1.1 of the Selection Policy, given the criticisms made by the Applicant and the evidence in response. Any finding that the Panel made that was adverse to the Applicant's interests would therefore be amenable to a further appeal as a result of that failed compliance, a right that might not be possible to exercise in the available timeframe.
123. The Applicant's criticisms of the Panel relate to its composition. Policies created pursuant to clause 21 of the Constitution are capable of delegating authority according to specific terms.
124. Clause 4 of the Selection Policy is titled "National Selection Panel" (Panel). It provides that the appointment of the Panel is by the AC CEO and that it will consist of:
- a) The Panel Chair (determined by the AC CEO);
 - b) The Director of Operations;
 - c) The Team Operations Manager;
 - d) The National Head Coach and/or National Technical Director (or their representatives); and
 - e) An independent person who must:
 - i. Be endorsed by the AC Board or its authorised nominee; and
 - ii. Have experience and understanding of cycling or high performance sport and with suitable skills for membership of the Panel.
125. AusCycling does not currently have a Team Operations Manager, nor anyone operating in the role of Team Operations Manager. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
126. The Applicant challenges the legitimacy of a Panel that is required to include a Team Operations Manager but omits to do so, even if the reason for the omission was legitimate. The Selection Agreement ought properly to have been amended to reflect that there was no Team Operations Manager, and to consider which person or combination of people could provide the knowledge and experience that the Team Operations Manager had been expected to contribute.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



- [REDACTED]
- [REDACTED]
129. For the purpose of the present proceedings, it is not necessary for the NST to determine questions about the composition of the Panel. However, the NST has considerable doubt as to whether a Panel with actual authority to determine the Applicant's inclusion in the WCT could be convened in a reasonable timeframe for the Applicant to be registered in the Competition.
130. In the circumstances, the NST determines that clause 5.2.12(a) is engaged, and it is appropriate to substitute a determination giving effect to the Tribunal's findings.

Wording of the relief

131. The NST has had the benefit of submissions from the Parties about the proposed wording of the order, granting the relief sought by the Applicant.
132. The Respondent rightly notes the difficulties in commenting on the appropriateness or otherwise of any proposed form of order given the multiple grounds of appeal and the uncertainty of the basis for the NST finding at the time that comments were sought. That is a valid concern, which the NST has regard to.
133. The Respondent has nonetheless provided the following submission, which is precisely apt to the basis on which the Determination is in fact made, submitting that:
- "if the Tribunal was to uphold the appeal and determine that the Applicant should by order of the Tribunal be automatically selected to the WCT (as opposed to the matter being referred back to the Selection Panel in accordance with clause 5.2.10 of the Selection Appeals Policy) then any form of order should refer to the Applicant being "selected as a member of Australia's 2026 UCI World Championships Men's Under 23 Road Race Team" rather than stating that the Applicant "is a member of" the WCT. The reason for this distinction is that for all members of the WCT, their ongoing membership of the WCT remains subject to the terms and conditions of the Selection Policy, which allows for, amongst other things, the ability to remove or replace athletes as members of the WCT if they become unavailable or ineligible to due to illness, injury or other specified circumstances."*
134. For the reasons set out above, there is no power for the NST to make a determination that the Applicant is "selected" in the sense meant in the Selection Agreement. His selection was not made pursuant to the Selection Agreement and is not amenable to ongoing review based on the selection criteria in the Selection Agreement. Use of the words "selected as a member"
- [REDACTED]



would be apt to mislead on that point. Given that the Applicant meets the eligibility criteria he is a member of the WCT by virtue of his championship title and the terms of entry in the WCT.

135. However, the Respondent's concern is valid with respect to the Applicant's ongoing obligation to meet the eligibility criteria. The Applicant is and at all times remains subject to the Respondent's eligibility criteria, the eligibility criteria of the UCI generally, and compliance with Competition-specific rules and regulations.
136. Nothing in this Determination should be taken to raise the Applicant above the level of the Respondent's authority as his National Federation. His selection in the Competition was secured by the UCI, and as such he is not subject to the Selection Criteria to secure or retain his position in Australia's team. In all other respects he remains subject to the authority of the Respondent to determine the proper conduct for participants representing Australia.
137. It warrants saying that he is subject also to Australian law, Canadian law (including Canadian immigration law), his obligations as a member of the UCI, and the rules of the Competition. This is not proper subject matter for the NST's determination however.

THE TRIBUNAL DETERMINES:

1. The Respondent's decision not to select the Applicant for the 2026 U23 UCI Road World Championships Team is set aside.
2. Pursuant to clause 5.2.12(a) of the Selection Appeals Policy, the Tribunal determines in substitution that:

The Applicant is a member of Australia's 2026 UCI World Championship Team and will be registered to compete in the UCI World Championship on or before 9 September 2026 (i.e. 1 clear day ahead of the deadline for registration) in accordance with his eligibility as Reigning Continental Champion.
3. For the avoidance of doubt, the Applicant's continued membership of the 2026 UCI World Championship Team at all times remains subject to his meeting the WCT eligibility criteria set out in clause 3.1 of the Selection Policy for UCI World Championships Olympic and Paralympic Cycling Sports.

Date: 7 September 2026



Dr Jessica Henderson