



Case number: NST-E23-246805

Case Title: Kaye Scott v Boxing Australia

## Determination

### National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Mr Salvatore Perna AM

in the arbitration between

**Kaye Scott**

*(Applicant)*

Represented by Simone Bailey, Barrister, Victoria

And

**Boxing Australia Limited**

*(Respondent)*

Represented by Wayne Tolton, Barrister, Queensland; Phillip Goodes, Boxing Australia President and Nic Tsioulos, Boxing Australia Team Selection Panel Chair.



## PARTIES

1. The applicant is Kaye Scott, boxer, who is represented by Simone Bailey, Barrister of the Owen Dixon Chambers, Melbourne, Victoria.
2. The respondent is Boxing Australia Limited, represented by Wayne Tolton, Barrister of Southport, Queensland; Phillip Goodes, Boxing Australia President; and Nic Tsioulos, Chair of Boxing Australia's Team Selection Panel.

## INTRODUCTION

3. This matter has been brought to the National Sports Tribunal (NST) to arbitrate in a dispute between Kaye Scott (the applicant), a boxer, and the boxing governing body, Boxing Australia Limited (the respondent).
4. The applicant is disputing the decision of Boxing Australia Limited (Boxing Australia or BA), not to select her in the Australian Squad for the 2023 Pacific Games (the Pacific Games), to be held in the Solomon Islands in November/December 2023, and considered a pathway to the 2024 Paris Olympics.
5. Selection for the Pacific Games is undertaken by a Team Selection Panel (TSP) of Boxing Australia in accordance with the Boxing Australia 'Criteria for the Nomination & Selection to the 2023 Australian Pacific Games Team' (the Criteria) guidelines. This document contains the criteria for nomination and selection of boxers to the Australian Pacific Games Team for the 2023 Pacific Games and gives the TSP the role of assessing and evaluating athletes on behalf of the National Federation (Boxing Australia) and to select the team following 'the Selection Event'.
6. The 'Selection Event' refers to a qualification event conducted in Perth between 8 August and 12 August 2023, during which the applicant took part in two boxing matches.
7. The applicant contends that the Criteria was not properly applied by the TSP and has lodged her appeal in accordance with the 'Boxing Australia Selection Appeals Policy' (the Appeals Policy).

## NST JURISDICTION

8. The jurisdiction of the NST is engaged by Section 23(1)(b)(i) of the *National Sports Tribunal Act 2019* (NST Act) and Clause 5.2 of the Appeals Policy.
9. Section 23(1)(b)(i) of the NST Act provides for a dispute to be heard in the General Division of the NST when the constituent document of a sporting body so provides.
10. The Appeals Policy of Boxing Australia is the constituent document in this case and Clause 5.2 provides for a selection appeal to be so heard when a non-selected athlete has one or more grounds to bring an appeal. In this case, the applicant has nominated two of those grounds for appeal:
  - *'that the Selection Policy was not properly applied by Boxing Australia with respect to the Non-Selected Athlete'*, and



- *‘there was no material on which Boxing Australia’s decision could be reasonably based’.*
11. On 18 August 2023, Boxing Australia applied to the NST for dispute resolution by arbitration and resolution through binding decision, requesting that the matter be resolved by 30 August 2023, the date the boxing national squad camp was to take place in Canberra for selected athletes.
  12. At a preliminary conference on 21 August 2023, both parties requested a hearing and signed the NST Arbitration Agreement on 22 August 2023. A hearing date (via video conferencing) of Saturday 26 August 2023 was subsequently agreed to.

### **FACTUAL BACKGROUND AND PROCEEDINGS BEFORE THE NST**

13. The applicant submitted a number of documents for the consideration of the Tribunal. These included:
  - Submissions of the appellant (6 pages, dated 23 August 2023)
  - Witness statement of the appellant (2 pages, dated 23 August 2023)
  - Witness statement of Sean Patrick, President of Boxing NSW and state coach (2 pages, dated 23 August 2023)
  - Athlete Categorisation Guidelines – Boxing (2021-2024); Combat Australia/Boxing Australia
  - Athlete Categorisation Framework; Australian Institute of Sport
  - Letter of support for the applicant’s request for financial support under the NSWIS Accommodation and Relocation Program; undated; signed by Andrew Prately, High Performance Director, Combat Australia
  - Reply submission of the applicant (4 pages, dated 25 August 2023)
  - ‘Getting it Right: Guidelines for Selection’; (70 pages, Australian Sports Commission, 2007)
14. The respondent also submitted a number of documents for the consideration of the Tribunal. These included:-
  - Submission of the Respondent (5 pages, undated).
  - Team Selection Panel Members CV list (undated)
  - Register of interests – Team Selection Panel 2023 Australian Pacific Games Team (2 pages, undated)
  - Witness statement of Wayne Rose, Technical Delegate at the 2023 Pacific Games Qualification Event, Perth (1 page, dated 24 August 2023)
  - Athlete Evaluation – Kaye Scott, 66kg category (one page, undated)
  - Witness Statement of Bronwen Knox, National Integrity Manager, Boxing Australia and Member of the Boxing Australia National Selection Panel and independent legal representative for selection/nomination of the 2023 Pacific Games, (2 pages, dated 24 August 2023)
  - 2022-2024 High Performance Calendar (one page, undated)
  - Boxing Australia Team Selection Panel Minutes; reason for non-selection (5 pages, undated, referring to TSP meeting following the Perth Selection Event)
  - Criteria document (see para.5 above)
  - Selection Appeals policy (see para.7 above)
  - Applicant’s Reasons for Appeal (4 pages, dated 17 August 2023)
  - Selection Event Scorecard – all finals, including Marissa Williamson Pohlman vs Kaye Scott; (Sat 12 August 2023)
  - Video link to Williamson Pohlman v Scott bout (Sat 12 August 2023).



15. The NST hearing was conducted by video conferencing at 10am Saturday 26th August 2023 and concluded at 12.40pm for deliberation. The Tribunal reconvened at 3pm for the Arbitrator to deliver his findings and determinations.
16. The information provided above was supplemented by submissions and evidence given by both parties as identified previously. Each party was given the opportunity to make an opening submission, call any witnesses, ask questions of the other party, respond to any matters raised during the submissions and evidence given and make a concluding statement or final submission.
17. No party requested any evidence be given on oath and the Tribunal did not consider sworn testimony to be necessary for the proper disposition of this arbitration.
18. As per Section 28 of the NST (Practice and Procedure) Determination 2021, the Tribunal informed itself in a variety of ways, including both the material provided by both parties in their original submissions, reply submissions and during the hearing.
19. At the conclusion of the hearing, the Tribunal dismissed the appeal. This determination contains the reasons for that decision.

#### APPLICABLE RULES

20. There are two main documents relevant to the crux of this case.
  - I. Boxing Australia *Selections Appeals Policy* (in effect as of 22 March 2023). Referred to as the 'Appeals Policy' (see para.7 above). This policy sets out the appeals process for athletes not selected to a team or event and provides four grounds of appeal (Clause 5.2(b). The appellant has identified two of these grounds as the basis of their appeal:-
    - a. *'that the Selection Policy was not properly applied by Boxing Australia with respect to the Non-Selected athlete'*; and
    - b. *'there was no material on which Boxing Australia's decision could be reasonably based.'*
  - II. Boxing Australia '*Criteria for Nomination & Selection to the 2023 Australian Pacific Games Team*'. Referred to as 'the Criteria'. (see para.5 above), This policy contains the criteria for nomination and selection of athletes to the 2023 Australian Pacific Games, to be held in the Solomon Islands at the end of 2023. There are two clauses in the Criteria that are at heart of this matter.
    - a. Clause 5.4 which relates to the selection for the Australian Squad.

This section provides for the TSP, on behalf of BA, to evaluate athletes and select a team according to two criteria.

The first criterion (5.4(a)(i) automatically selects athletes that finish first at the 'Selection event' (see para.6 above) in any weight category. That criterion is not relevant to this case. The second criterion (5.4(a)(ii), however is relevant in this matter as it provides for the TSP to select athletes that haven't been selected by (a)(i) i.e., finished first, if the TSP makes an assessment based on two factors a) '*an Athlete's skill and performance*



*demonstrated at the Selection Event; and b) an Athlete's potential to qualify for the Paris 2024 Olympic Games.*

Section 5.4 goes on to state that the TSP 'may' select such an athlete (under 5.4(a)(ii) and that the TSP's assessment '*will be made in the sole and absolute discretion of the TSP.*'

- b. Apart from Clause 5.4, an additional key part of this policy applies in this matter, Clause 5.5.

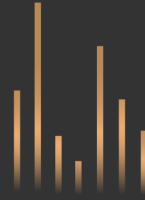
Clause 5.5 provides for the TSP, in '*its absolute discretion*' to have regard to 'Extenuating Circumstances' (ss.(a). This section refers to athletes being unable to attend the 'Selection Event' (ss (b); and non-attendance at the 'Selection Event' (ss(c).

5.5(d) then defines 'Extenuating Circumstances' to mean a number of aspects e.g., injury, illness, equipment failure, travel delays, bereavement, disability or death or serious illness of family members and includes in ss (v) '*any other factors considered by the National Federation to constitute extenuating circumstances*'.

## MAIN SUBMISSIONS OF THE PARTIES

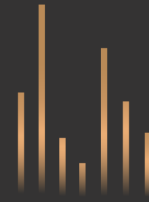
### A. The Applicant's Case

21. The main points of the applicant's grounds for appeal against non-selection and arguments in support can be summarised as follows:-
  - (a) That the Selection Policy was not properly applied:-
    - I. The TSP failed to properly apply the criteria in considering the applicant's skill and performance at the entirety of the Selection Event
      - a. The TSP considered only the final and not the entire event. (The applicant competed in two fights and won the first fight.)
    - II. The TSP failed to properly apply the Criteria by failing to consider, or properly consider the applicant's potential to qualify for the 2024 Paris Olympics
      - a. The TSP considered the performance history of the applicant at a higher weight division (70kg), but the Criteria requires the TSP to consider potential for the 2024 Paris Games, which is different.
      - b. The TSP made comparisons between the applicant and other athletes in the same weight division at the Selection Event (66kg), which confines the Criteria beyond what the wording requires (to consider potential).
    - III. The TSP failed to consider whether Extenuating Circumstances applied.
      - a. A relevant extenuating circumstance is that an Olympic weight division for female boxers (70kg) was reclassified during 2022 and replaced with the 66kg division. The applicant had been competing at 70kg division since approx. 2018. At the time of announcement of reclassification, the applicant had qualified to compete in the 70kg division for the



Commonwealth Games (mid 2022), thereafter going through significant testing to determine whether she could compete safely in the lower weight category. Those tests (End 2022) confirmed she could and subsequently received a scholarship through the NSW Institute of Sport (NSWIS) to transition to the lower event. In March 2023 the appellant won a Silver medal in the World Championships in the 70kg event and competed for the first time in the 66kg weight division in the Selection Event (August 2023). The TSP should have considered the timing of the weight category change as extenuating circumstances. Further, that the applicant was under the belief that the Selection Event was not going to be ‘the be all and end all’ tournament for qualification to the Australian Squad but a long process to be done slowly so as to be ready for the Pacific Games.

- b. The weight category change occurred in the third year of a four-year Olympic cycle and the applicant had no time to prove herself in the 66kg division. The Criteria was released to athletes approximately May 2023, the Selection Event was in August 2023, there were no significant tournaments where the applicant could display her skill and performance.
  - c. Extenuating circumstances do not just apply to illness, injury etc but to ‘any other factor’. The weight change was not considered by the TSP.
- IV. The TSP came to their decision by considering the applicant’s performance during the ‘Performance Period’ only (defined in the Criteria as 4 August to 24 September 2023). In confining their determination to this period, they have failed to properly apply the Selection Policy as the Performance Period is not a relevant consideration for the Australian Squad and only relevant for the next phase for nomination to the Australian Olympic Committee.
  - V. The TSP confined their considerations by reference to the Performance Period and the athlete’s performance in the specific weight division. The criteria required neither of those considerations.
- (b) That there was no material on which the decision could be reasonably based.
- I. The TSP have far reaching discretion but their decision cannot be unreasonably made. Administrative law requires application of the principles of natural justice. The TSP decision cannot be so unreasonable that no reasonable person could have exercised their power to decide in that way. The TSP decision must take into account relevant considerations and ignore irrelevant considerations.
  - II. The purpose of the Selection Policy is not developmental but to select athletes with a prospect of getting a specific result i.e., qualifying for the 2024 Olympics.
  - III. The applicant has been categorised by a National Categorisation Panel (NCP) as ‘Podium Ready’ i.e., capable of winning a medal at the next Olympic Games. The ‘Podium Ready’ categorisation allowed her to qualify for the NSWIS scholarship. This classification was made after the announcement of the change of Olympic weight divisions. The TSP failed to explain their reasoning as to why the applicant



did not have the potential to qualify for the 2024 Paris Olympics when only months earlier she had been categorised as 'Podium Ready'.

- IV. The TSP should also have taken into account other achievements e.g., silver medal in the 2023 Women's World Championships in India e.g., silver medal at the 2022 Birmingham Commonwealth Games e.g., medallist at the 2022 Strandja International Tournament in Bulgaria e.g., 2022 National Champion (70kg division) e.g., highest ranked international female boxer of any wight category going into the Selection Event. Any decision maker assessing potential to qualify at the Olympics would have found the applicant had the relevant credentials.
- V. The TSP should have applied the decision-making process consistently as required by natural justice. A statement from Sean Fitzpatrick, President of Boxing NSW and state coach was submitted indicating that boxer Danielle Scanlon, who had been selected to the Australian Squad even though she had come second at the 60kg Selection Event and would take place in a 'box off' with the winner of the event with the potential of moving through to the next phase of the selection process. This athlete was not categorised as 'Podium Ready' or have the performance history of the applicant. As such, no reasonable decision maker could conclude that the second placed athlete would have more potential to qualify for the Olympics than the applicant.
- VI. The TSP considered Marissa Williamson-Pohlman a 'clear winner' over the applicant in the final of the Selection Event. There is no reasonable material on which this could have been made as she won in a split decision (4-1) and two of the judges marking the fight 'very close'.

## **B. The Respondent's Case**

22. The respondent's main points in response to the applicant's submission can be summarised as follows:-
  - (a) That the Selection Policy was not properly applied:
    - I. The applicant bears the onus of establishing the grounds of appeal.
    - II. The respondent denies that the Selection Policy was not properly applied and carried out in private by the TSP.
    - III. The Criteria was confirmed and published on the Boxing Australia website.
    - IV. A meeting was held on May 22<sup>nd</sup>, 2023, to discuss the Criteria and ensure relevant individuals understood requirements.
    - V. The TSP held a meeting on 31 July 2023 to review the Criteria and discuss its approach to selection of the Australian Squad following the 2023 Pacific Games Selection Event.
    - VI. The TSP were in possession of the event entry list and declared and collated all individual conflicts of interest and ensured athletes met the eligibility requirements.





- VII. The TSP sat together ringside throughout the Selection Event and observed all athlete performances to prepare for later discussions.
- VIII. The TSP met at the conclusion of each competition session to discuss 'points of interest'.
- IX. The TSP met for extended discussions at the conclusion of the final session on 12 August 2023 to work through each weight category to consider selection to the Australian Squad.
- X. The TSP met on 14 August 2023 to reflect on previous discussions and make final determinations. A witness statement from Bronwen Knox, National Integrity Manager for Boxing Australia and independent legal representative of the National Selection Panel for squad selection and team nomination for the 2023 Pacific Games confirms this meeting and that Clauses 5.4(a)(i), and (ii) were discussed and that no Extenuating Circumstances as defined in Clause 5.5 were considered for any of the eligible athletes.
- XI. The TSP were aware of the provisions of Section 5.4(a)(ii) regarding athletes not automatically selected.
- XII. The Nomination Criteria (Clause 5.4 (h)) states that athletes are not eligible for nomination unless they have nominated for the Selection Event by no later than the 19 July 2023, which is the earliest time to be eligible, but the Performance Period is from the 4<sup>th</sup> of August to the 24<sup>th</sup> of September 2023, during which the Selection Event is held (8 -12 August 2023). This results in the widest period for TSP consideration to be 19 July to 24 September 2023.
- XIII. The TSP considered the applicant's performance in the entirety of the selection event and consider the applicant a "*well-known and highly respected athlete of long standing*".
- XIV. The TSP properly considered the applicant's potential to qualify for the 2024 Olympic Games at the nominated weight category and took into consideration that the applicant had won a silver medal at world class level at a higher weight category of 80kg but too into consideration that the performance period was 4 August to 24 September 2023.
- XV. In providing written reasons for non-selection, the TSP did not intend to include '*every single item discussed or considered*' as it was not practical or possible.
- XVI. The TSP assessment was made of the applicant's skill and performance at the Selection Event and potential to qualify for the Paris Olympics at the weight category of 66kg.
- XVII. There was no evidence before the TSP that the applicant had the potential to qualify for that weight category at the Paris Olympics.
- XVIII. The TSP did not consider that the adjustment of the weight category to be an Extenuating Circumstance as per Clause 5.5 of the Criteria and held the view that in assessing the High-Performance calendar, the applicant had '*ample time and*





*opportunity to prepare for, and to show evidence of skill and performance in the 66kg category’.*

- (b) That there was no material on which the decision could be reasonably based.
- I. The Criteria provides the TSP with ‘sole and absolute discretion’ to select athletes to the Australian Squad based on the athlete’s skill and performance at the Selection Event and potential to qualify for the Paris Olympics.
  - II. The TSP has exercised its discretion and stands by the decision.
  - III. Olympic team selection is a matter for the Australian Olympic Committee (AOC) and irrelevant to this matter. Boxing Australia is responsible for developing nomination criteria to determine which athletes are to be nominated to the AOC for selection.
  - IV. The NCP considerations (‘Podium Ready’ categorisation) are irrelevant. Whilst the applicant *‘has outstanding credentials’*, the Performance Period is clearly defined, and the applicant’s achievements were in a different weight category.
  - V. The TSP is comprised of members including a national boxing team head coach; Olympian, national coach and national Selection Panel Member; WA State Boxing President, Olympic coach, 3 Star international judge/referee; Combat Australia High Performance Director; and national head coach, Boxing Victoria Youth Coach and Elite Team Coaching Staff.
  - VI. Witness Statement of Wayne Rose, Technical Delegate at the Selection Event states that he observed and analysed the bout between Marissa Williamson Pohlman and the applicant. He agreed with the decision to award the bout to Williamson Pohlman who *‘won the bout convincingly’* in criteria 1 (number of quality blows in the target area) and 2 (domination of the bout through technical and tactical superiority). In category 3 (competitiveness), he states that *‘both boxers were competitive’*.

## MERITS

### A. CRITERIA FOR NOMINATION & SELECTION TO THE 2023 AUSTRALIAN PACIFIC GAMES TEAM (the CRITERIA)

23. The applicant’s right of appeal is based on Clause 5.8 of the Criteria, of which there is no dispute.
24. Clause 5.4 (a) of the Criteria requires athletes to be evaluated by the TSP on behalf of the National Federation (the Respondent) for selection to the Australian Squad...“following the Selection Event”, which was held in Perth between the 8th and 12th of August 2023.
25. Clause 5.4 (a)(i) provides for ‘automatic’ selection of athletes that finish first at the Selection Event in any weight category. Both parties agree this part of the Criteria is irrelevant in this matter.
26. Clause 5.4 (a) (ii) gives the TSP ‘sole and absolute discretion’ to consider athletes who do not achieve ‘automatic selection’ and states that such athletes ‘may’ still be selected to the



Australian squad based on two factors – the athlete’s skill and performance demonstrated at the Selection Event; and the athlete’s potential to qualify for the Paris 2024 Games.

27. In regard to Clause 5.4 (a) (ii), there is compelling evidence that the applicant’s performance was observed and analysed. This evidence includes the witness statement of Wayne Rose, an international accredited ‘technical delegate’, referee and judge observer and evaluator, who observed the second of the applicant’s two bouts i.e., the final against Marissa Williamson Pohlman.
28. It also includes the Athlete Evaluation Document which assesses the athlete’s skill and performance based on three criteria – number of blows on target area; domination of the bout by technical and tactical superiority; and competitiveness. In addition, this document assesses the applicant for potential for success at international level and potential to qualify for the Paris 2024 Olympics ‘at the Olympic in weight category nominated’, which is listed on the document as 66kg.
29. The third major source of evidence are the TSP Minutes recording a meeting following the Selection Event. These Minutes indicate that the TSP:
  - Met on 31 July to review and discuss the Criteria.
  - Examined the entry list for the Selection Event, recorded conflicts of interest, and ensured all athletes met the eligibility requirements.
  - Attended the Selection Event and sat together at ringside to observe all athlete performances, met at the conclusion of each session to discuss points of interest, met for extended discussions at the conclusion of the final (12 August 2023) to work through each weight category and consider selection to the Australian Squad; and met again on 14 August 2023 to review previous discussions and make final determinations.
  - Discussed 5.4(a) (i) and (ii) of the Criteria.
  - Noted that all winners were unanimously selected.
  - Discussed a number of points regarding the applicant’s relevance to 5.4(a)(ii), which included losing in a split decision in the final bout (4-1); the applicant’s opponent being the pre-existing National team member in the 66kg division; the applicant’s performance at higher weight divisions; assessing performance standards of athletes against other athletes competing in the same weight divisions; and noting that the applicant’s opponent was at a higher current performance standard than the applicant.
  - Unanimously agreed that given the performance shown at the Selection Event, the applicant would not be selected to the Australian Squad.
30. On the basis of the evidence aforementioned, I am satisfied that the TSP met the requirements of the Criteria and considered the applicant’s skill and performance at the Selection Event and her potential to qualify for the Paris 2024 Olympic Games.
31. Clause 5.5 of the Criteria is the second contentious issue in this matter. This Clause gives the TSP... ‘in its absolute discretion’ the ability to have regard to Extenuating Circumstances regarding non-attendance at the Selection Event.
32. 5.5 (d) is defines the term ‘Extenuating Circumstances’ to mean:
  - (i) injury or illness
  - (ii) equipment failure



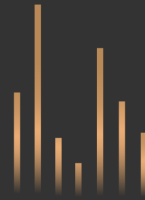
- (iii) travel delays
  - (iv) bereavement or disability arising from death or serious illness of an immediate family member, which means a spouse, de facto partner, child, parent, grandparent, grandchild or sibling; or
  - (v) any other factors considered by the National Federation to constitute extenuating circumstances.
33. The applicant's position was that the TSP failed to consider whether extenuating circumstances applied. They contended that the applicant had been competing in the 70kg weight division, but this division was removed and replaced with a 66kg division. The applicant's case was that they had qualified to compete in the 70kg division for the Commonwealth Games (July/August 2022) but then had to undergo significant testing in December 2022 to determine whether she could compete in the lower weight category. The testing confirmed it was possible and the applicant received a scholarship from the NSW Institute of Sport to transition to the lower weight, whilst taking into account her commitments in the 70kg division, which included competing in the World Championships in March 2023, at which she won a Silver Medal.
34. The applicant's submission was that the replacement of the weight category ought to be considered extenuating circumstances and the efforts the applicant had gone to, under the supervision of Boxing Australia ought to have been relevant considerations.
35. The applicant accepted that whilst the TSP had discretion, it must be reasonable.
36. The respondent submits that the TSP did not consider the adjustment of the weight category to be an extenuating factor and that it was their view that the appellant had 'ample time and opportunity to prepare for, and to show evidence of skill and performance in the 66kg weight category'.
37. The TSP Minutes for the meeting following the Selection Event do not record any discussions re extenuating circumstances. In the witness statement of Bronwen Knox, (see para. 22 (X) above), the witness states that no extenuating circumstances were considered for any of the eligible athletes who nominated for the Selection Event.
38. There were no discussions as to whether the rule of 'ejusdem generis' should be applied to Clause 5.5 (d)(v) i.e. the definition of Extenuating Circumstances in sub sections (i) to (v) provide for specific instances which may lead to an athlete not attending the Selection Event (e.g. injury, travel delay, etc) and that sub section (v) 'any other factors....' should also be circumstances which would cause an athlete not to attend. As such, the opposing views were not based on legal argument, but on different interpretations of that phrase.
39. I accept the evidence that the applicant went through a significant process, under the auspices of Boxing Australia, to move to a lower weight level and that this change occurred in the third year of a four-year Olympic Cycle, causing both disruption and reduced opportunities to prove her ability in the lower weight category.
40. I'm of the view however that the TSP's view of what constitutes Extenuating Circumstances is the relevant consideration. The TSP were well aware of the applicant's performance history at the 70kg division and the requirements for moving to the 66kg division, They were aware of their discretion under Clause 5.5 but did not exercise that discretion. I accept that not exercising their discretion was reasonable in the circumstances.



41. Accordingly, I am satisfied that the TSP met the requirements of the Criteria regarding Extenuating Circumstances.

**B. BOXING AUSTRALIA SELECTIONS APPEALS POLICY (the SELECTION POLICY)**

42. The applicant's first instance appeal to the General Division of the NST is based on two grounds identified by the applicant in the Selection Policy, viz 5.2. (b) which provides for a non-selected athlete to bring an appeal (i) where the Selection Policy was not properly applied and (iv) where there is no material on which the TSP decision could be reasonably based. (see para 20. above).
43. In regard to the first ground of appeal i.e., that the Selection Policy was not properly applied, I am satisfied that there is sufficient evidence to show that the TSP knew and understood the Criteria and followed a structured process which included meetings, discussions, evaluations and analysis of the applicant and her performance history, as well as observations of the appellant's performances at the Selection Event.
44. I am satisfied that there was no evidence or information available to the TSP to enable them to be satisfied of the applicant's potential to qualify for the 66kg weight division at the 2024 Paris Olympics.
45. I am of the view that the TSP were reasonable in not exercising their discretion regarding a change of weight division falling under the definition of Extenuating Circumstances.
46. Accordingly, I am satisfied that the TSP's assessment of the appellant was correctly based on the applicant's nominated weight category.
47. In regard to the second ground of appeal i.e., that there was no material on which the TSP's decision could be reasonable based, my view is that there was substantial material on which to make a reasonable decision. (see paras 14.,22 and 29)
48. I accept the applicant's contention that the NCP assessment of her being 'Podium Ready' may have been considered relevant to the TSP's considerations, but I don't accept that not taking it into account was unreasonable.
49. I'm satisfied that the collective knowledge and expertise of the TSP, together with their knowledge and understanding of the Criteria, resulted in the TSP being able to make a reasonable decision as to the appellant's potential to qualify for the Paris 2024 Olympics.
50. Accordingly, I am satisfied that there was sufficient material on which the TSP decision could be reasonably based.



**THE TRIBUNAL THEREFORE DETERMINES:**

1. That on the first ground of appeal, that the Selection Policy was not properly applied – that ground is dismissed.
2. That on the second ground of appeal, that there is no material on which Boxing Australia's decision for non-selection could be reasonably based – that ground is dismissed.
3. The appellant has not established one or more of the grounds of appeal, and accordingly, the appeal is dismissed and the decision not to select the applicant for the Australian Squad in the Pacific Games, stands.

Date: 28 August 2023

*(Oral decision given at Hearing on 26 August 2023)*



**Salvatore Perna AM**