

***In the appeal of Ashfield Bowling Club Limited***

**Decision – Bowls New South Wales Appeals Tribunal**

**Hearing Date**

1 June 2018

**Appeals Tribunal Members**

1. Darren Kane (Chairman)
  2. Vince Beard
  3. Ron King
  4. Matthew Goodwin
  5. James Berriman
- (together the “**Appeals Tribunal**”)

**Appearances**

***Ashfield Bowling Club Limited (Appellant)***

1. Michael Wilson
2. Glen Ashcroft
3. Don Latham

***Bowls NSW State Match Committee (Respondent)***

1. David Ferguson
2. Michael Harvey

**Background**

The Respondent is a committee properly formed under the constitution and rules of Royal NSW Bowling Association Limited (“**Bowls NSW**”).

The Appellant is a member club of Bowls NSW. Inter alia, the Appellant enters teams in the various grades of “Pennants” representative bowls competitions conducted under the rules, regulations and control of Bowls NSW.

On 22 May 2018 the Appellant served on Bowls NSW a letter (the “**Appeals Notice**”).

The Appeals Notice gave notice to Bowls NSW of the Appellant’s appeal against specific determinations, adjudications and decisions made by the Respondent. That Appeals Notice also contains written submissions in support of the Appellant’s appeal.

On 25 May 2018 Bowls NSW served a letter on the Appellant, notifying the Appellant that its appeal would be heard by the Appeals Tribunal (referred to in that letter as the “Subcommittee”).

On 29 May 2018 the Appellant served on Bowls NSW a letter which constitutes supplementary written submissions made in support of the Appellant's appeal (the "**Supplementary Submissions**").

On 31 May 2018 the Respondent served on Bowls NSW its submissions (the "**Respondent Submissions**") made in response to the matters set out in the Appeals Notice and the Supplementary Submissions, and the Appellant's appeal generally.

## **Jurisdiction**

The Appeals Tribunal, comprised of the members referred to above, convened to hear the matter on 1 June 2018.

The proceedings of the Hearings Tribunal were audio recorded by the Appeals Tribunal.

On specific questioning by the Chairman, and after confirmation by the Chairman (in response to questioning by the Appellant) that he had not at any time provided legal advice or counsel to Bowls NSW or the Respondent or the members of the Respondent committee, the Appellant consented to the jurisdiction and composition of the Appeals Tribunal.

The Respondent consented to the jurisdiction of the Appeals Tribunal.

## **Procedure**

The Appeals Tribunal treated the conduct of this appeal as a hearing de novo as to the question of whether the Appellant did breach the requirements of the Bowls NSW *2017 – 2018 Conditions of Play – for all 2017 – 18 Association Events* (the "**Conditions of Play**") as previously determined by the Respondent.

Before the commencement of the hearing, each of the Appeals Tribunal members read and did duly consider the Appeals Notice, the Supplementary Submissions and the Respondent Submissions. The contents of those documents need not be set out in substance in this written decision, which is being prepared with some degree of urgency given that it will have an effect on how the Appellant constitutes its Grade 1 Pennants team that is participating in the series of matches due to be played on the weekend of 2 and 3 June 2018.

During the hearing, each person representing the Appellant and the Respondent was given due and proper opportunity to present oral submissions, and ask questions of the representatives of the other party to the proceedings.

Each Appeals Tribunal member was, in the course of the hearing, given the opportunity to ask the representatives of the Appellant and Respondent questions regarding the matters raised in the Appeals Notice, the Supplementary Submissions and the Respondent Submissions.

## **Facts**

The Appeals Tribunal considers that the core facts and relevant matters are:

1. On or about 24 January 2018 and in accordance with rule 4.3.1 of the Conditions of Play, the Appellant submitted to Bowls NSW a list of players, headed "*2018 NSW State Pennants Grade 1 Intended Player Submission*" (the "**Player List**").
2. Rule 4.3.1 of the Conditions of Play states:

*Clubs shall be allocated grades in accordance with Condition of Play 4.15.*

*Clubs shall submit (by the due date) a list of all players indicated as playing with their club in that season. Only players nominated on that list shall be eligible to play for that club in the season. Players may be added with permission from the State Match Committee ...*

3. On 28 April 2018, in a Grade 1 Pennants match versus the Penrith club, the Appellant fielded a team which included one player (player Wilson), who was not listed on the Player List. The precise reason *why* the Appellant included player Wilson in the team for that match is unclear.
4. The Respondent imposed a sanction on the Appellant as a consequence of the breach of rule 4.3.1 in the match played on 28 April 2018.
5. On 6 May 2018 the Appellant made a written request to the Respondent to add four players to the Player List, in accordance with the procedure set out at Condition of Play, rule 4.3.1.
6. On 7 May 2018 the Respondent (through its chairman, Michael Harvey) wrote to the Appellant in response to the request made by the Appellant on 6 May 2018. The Respondent stated inter alia:

*The State Match Committee has resolved that the application to add players to the player list be denied.*

7. Rule 4.3.1 of the Conditions of Play does not establish any criteria by which the Respondent should consider and determine either way the requests made by clubs to supplement the Player Lists, submitted well in advance of the commencement of the bowls season.
8. It is unclear to the Appeals Tribunal the basis on which the Respondent made its decision, recorded in the letter of 7 May 2018. However, on a strict application of the Conditions of Play, it is not necessary for the Respondent to provide reasons. That does not, of course, mean that the Respondent is prevented from providing reasons for any decisions made by it under rule 4.3.1 when considering that the Respondent should not exercise its decisions made under that rule capriciously, unreasonably, unfairly or for an improper purpose.
9. On 19 May 2018, in a Grade 1 Pennants match versus the Harbord club, the Appellant fielded a team which included four players (players Wilson, Sims, Schraner and Bye-Norris), none of whom were listed on the Player List.
10. While not a matter that does actually form part of the case before the Appeals Tribunal (because the Appeal Notice predates the match) on 26 May 2018 (four days *after* the date of the Appeals Notice), in a Grade 1 Pennants match versus The Hills club, the Appellant fielded a team which included four players (players Wilson, Sims, Schraner and Bye-Norris), none of whom were listed on the Player List.

## **Analysis**

Rule 4.3.1 of the Conditions of Play states as follows:

*Clubs shall submit (by the due date) a list of all players indicated as playing with their club in that season. Only players nominated on that list shall be eligible to play for that club in the season. Players may be added with permission from the State Match Committee ...*

Regardless as to the purpose of the rule, the operation of the rule is clear in that a club (such as the Appellant) can only field a player to play for it in that season in (in this case) a Grade 1 Pennants, match if:

1. The player was included on the list of players submitted on (in this case) 24 January 2018; or
2. If the player was added to that list with the permission of the Respondent (that is, the State Match Committee) after 24 January 2018.

On the basis of the facts set out above and the documents tendered before the Appeals Tribunal, none of players Wilson, Sims, Schraner and Bye-Norris were included on the list that was submitted by the Appellant on 24 January 2018.

Further, at no time since 24 January 2018 has the Respondent given permission to the Appellant, for the Appellant to add those four players (or any of them) to the same list.

The Appellant, by playing player Wilson on 28 April 2018 and players Wilson, Sims, Schraner and Bye-Norris on 19 May 2018 breached the requirement of rule 4.3.1 where it states that "*Only players nominated on that list shall be eligible to play for that club in the season*".

The Appellant has thus played an ineligible player (or players, depending on the match concerned) in the Grade 1 Pennants matches played on 28 April 2018 and 19 May 2018.

The Appellant cannot point to any valid or proper basis under the Conditions of Play, by operation of which it was permitted to play an ineligible player in the match played on 28 April 2018, and four ineligible players in the match played on 19 May 2018.

The Appellants appeal must therefore fail.

To the extent that the appeal also concerns an appeal by the Appellant against the sanction imposed on it in relation to it fielding ineligible players in its team on 26 May 2018, that appeal must fail for the same reasons.

### **Penalty**

1. The Appellant's appeals set out in the Appeal Notice and the Supplementary Submissions are dismissed.
2. The original decisions made by the Respondent, in relation to the Grade 1 Pennants matches played on 28 April 2018 and 19 May 2018 and involving the Appellant's team, are confirmed.
3. To the extent that the appeal also concerns an appeal by the Appellant against the sanction imposed on it in relation to it fielding ineligible players in its team on 26 May 2018 that appeal is dismissed, with the original decision of the Respondent in relation to that match to stand.

**1 June 2018**



**Darren Kane**  
**For and on behalf of the Appeals Tribunal**