



**APPEALS TRIBUNAL OF FOOTBALL NEW SOUTH WALES
DETERMINATION IN THE FOLLOWING MATTER:**

Participant and Club	Liam Lawler, Kellyville Kolts Soccer Club
Decision appealed	Appeal from the Appeals Tribunal of Hills Football Incorporated
Date of Decision	27 July 2017
The basis upon which the matter is before the Appeals Tribunal	Sections 10.1(d) & 10.6 of the Football NSW Grievance and Disciplinary Regulations, 2017
Grounds of Appeal	Sections 10.3(d) of the Football NSW Grievance and Disciplinary Regulations 2017
Date of Hearing	1 November 2017
Date of Determination	2 November 2017
Appeals Tribunal Members	Anthony Lo Surdo SC, Chair Iain Rennie, Member David Stanton, Member

INTRODUCTION AND JURISDICTION

1. The Appeals Tribunal (**AT**) has been established in accordance with sections 4 and 10.1 of the Football NSW Grievance and Disciplinary Regulations, 2017 (**FNSW Regulations**) to determine appeals from the Disciplinary Committee (**DC**), the General Purposes Tribunal (**GPT**) and Member Appeals Committees (**MAC**).
2. The sole grounds of appeal prescribed by section 10.3 of the FNSW Regulations are as follows:
 - a. a party was not afforded a reasonable opportunity to present its case;
 - b. lack or excess of jurisdiction of a Body or a Member Appeals Committee;
 - c. the decision of a Body or Member Appeals Committee was affected by actual bias;

- d. the decision was one that was not reasonably open to a Body or Member Appeals Committee having regard to the evidence before the decision-maker;
 - e. severity, only where the decision imposed a sanction of at least:
 - i. a Fixture/Match Suspension of 6 or more Fixtures/Matches (excluding Trial Matches, Tournaments, the NPL Pre-Season Competition, the FFA National titles or any Football NSW Representative Matches); or
 - ii. a Time Suspension of three (3) or more months; or
 - iii. a fine of three thousand dollars (\$3,000) or more; or
 - iv. a bond to be of good behaviour of three thousand dollars (\$3,000) or more;
 - v. a deduction, loss or ban on accruing six (6) or more competition points; or
 - vi. exclusion, suspension or expulsion of a Club or Team from a competition; or
 - vii. relegation to a lower division;
 - f. leniency, but only in the case of an appeal brought by Football NSW or an appeal allowed by the Executive pursuant to section 10.2(h) (Appeal from a MAC).
3. Upon the hearing of an appeal, the AT may:
- a. dismiss, allow in whole or part, or vary (whether by way of reduction or increase) a Determination, including any sanction or penalty made by a Body or a MAC, as the case may be;
 - b. subject to any applicable Minimum Suspension, impose any sanction, measure or make any order it thinks fit or that a Body or MAC, as the case may be, could have imposed under the Regulations or its regulations, as the case may be;
 - c. conduct a fresh hearing of the matter (hearing de novo); or
 - d. refer the matter to the Body or the MAC from which the appeal originated, or to the Tribunal (or similar) that dealt with the matter at first instance for rehearing and issue any directions or orders in relation to the rehearing of the matter that the AT deems appropriate.
- (s 10.4(b) of the FNSW Regulations).

4. By Notice of Appeal submitted on 16 August 2017, Liam Lawler, the Coach of the Premier League 1 Reserves of the Kellyville Kolts Soccer Club (**Club**), appeals a determination of the Hills Football Incorporated Appeals Tribunal (**HFAT**) pronounced on 27 July 2017. Mr Lawler relies upon the grounds of appeal prescribed by section 10.3(d) and 10.3(e).
5. The appeal was not brought initially in accordance with the requirements of section 10.6 of the FNSW Regulations because the Notice of Appeal was not accompanied by the documents required by section 10.6(b) of the FNSW Regulations. However, on or about 18 August 2017, the Football NSW Executive made a determination under section 10.6(c) of the FNSW Regulations to extend the time within which Mr Lawler was to comply with his obligations under section 10.6(b) of the FNSW Regulations to 21 August 2017. Mr Lawler complied with his obligations within the extended time-frame.
6. We are satisfied that as the HFAT is a MAC for the purposes of the FNSW Regulations and that as the Hills Football Grievance and Disciplinary Regulations (**HF Regulations**) provide that there is no other or additional avenue of appeal under the HF Regulations beyond the HFAT, Mr Lawler has exhausted all options of review available to him under those regulations.
7. The AT is accordingly satisfied that it has jurisdiction to hear the appeal. Further, no party raised any objection to the AT's jurisdiction.

PROCEDURAL MATTERS

8. This appeal was commenced by the submission of a "Notice of Appeal of a decision of a Member Appeals Committee" on 16 August 2017 and the appeal was, as referred to in paragraph 5 above regularised by the submission of supporting documentation by 21 August 2017.
9. On 24 August 2017, the Chair of the AT provided by email to the parties and FNSW the following observations and directions:

"Guilt or innocence is not in issue. Further, in so far as the Club continues to press the ground of appeal based upon section 10.3(d), it should bear in mind that that ground is limited to the evidence or material that was before the GPT and the MAC. No new evidence or

submissions based on evidence not before either the GPT or MAC should be adduced or will be permitted to be relied upon in the hearing before the FNSW AT. The Club should bear each of these matters in mind when preparing its submissions.

I also note that FNSW wishes to make submissions and appear as an affected party.

I accordingly direct that:

1. The Club provide the AT with written submissions upon which it intends to rely and, in particular, addressing the issue of severity of sanction by 6 September 2017.
 2. The Hills Football Inc provide the AT with written submissions upon which it intends to rely by 20 September 2017.
 3. FNSW provide the AT and each of the Club and Hills Football Inc written submissions upon which it intends to rely by 27 September 2017.
 4. The Club provide the AT with any written submissions in reply to both the submissions of Hills Football and the submissions by FNSW by 3 October 2017.
 5. Hills Football Inc to provide the AT with any written submissions on which it intends to rely in reply to the submissions of FNSW also by 3 October 2017."
10. Each of the parties and FNSW has prepared written submissions in chief in conformity with the directions made. Both the Club (Mr Lawler) and Hills Football indicated that neither would be preparing any written submissions in reply.
11. On 10 October 2017, the Chair directed FNSW to provide each of the parties with a copy of this Tribunal's determinations in *Prentice v FNSW* (12 October 2016) and *Karim and NSFA* (1 December 2016). Each of these determinations concerned cases of misconduct against Match Officials which the AT considered could be of assistance to the parties. We understand that copies of each of these determinations was, in fact, provided to each of the parties before the hearing of this appeal.

BACKGROUND FACTS

12. The events which gave rise to the relevant charges against Mr Lawler are not in dispute.
13. It involves an unfortunate, unnecessary and unwarranted incident of verbal abuse towards a match official, in this instance, a 15-year-old female Assistant Referee by Mr Lawler who was coaching the Kellyville Kolts Premier League 1 Reserves in a fixture against Winston Hills FC on 27 May 2017.

14. The Assistant Referee the subject of the incident completed a match incident report in the following terms: -

*"In the 82nd minute, the ball left the field of play and in my position of AR 1, I indicated a Winston Hills throw in. The Kellyville Kolts coach picked up the ball and said 'how can it be their throw' and then whilst looking at me, said 'f**k off' and 'f**k you' amongst other things. He then proceeded to throw the ball to the Winston Hills player and whilst doing so, said the words 'go kill yourself' to me. I started walking towards the technical area where he was standing and said to him 'I beg your pardon.'... I was extremely hurt and upset from the abuse that the coach had just yelled to me. I began crying on the sideline. At the end of the game, I ran from the field of play immediately after the final whistle blew to the safety of my mother who was in the crowd. The abuse from this coach has made me extremely upset and physically ill and has made me question whether [sic] or not I continue in my role as a referee in the future."*

15. The Referee also completed an incident report relevantly in the following terms:

"It was nearing the end of the game and the ball went out for a throw in. I looked at my A.R... for confirmation as to which team to award the throw in to. Certain spectators were obviously not happy with the call... I then heard someone say 'Fuck off...' I was not sure who said it and I then ran over to the technical area of the Kellyville Colts [sic] and aimed my comments at them and the immediate surrounding spectators whilst looking at the coach. I said in a firm and fairly loud voice 'I do not know who exactly said that, but it is not acceptable and it is to stop immediately...' At that point I had no idea that my A.R. was clearly upset and offended to the extreme to which I was made aware of after the game. I saw her run off to her mum in the crowd immediately after I blew the final whistle... While I was filling in the team sheet I looked down at her to confirm certain details and realised that she was hunched over and in tears... She was clearly distraught and it took her a while to gather up the courage to be the A.R. to the following 6 PM game and asked that she be put on the opposite side of the technical area."

16. On 1 June 2017, Mr Lawler was charged with the following offences pursuant to Table C of the HF Regulations:

- (a) Misconduct (b), "Brings, or may bring the game into disrepute";
- (b) Misconduct (c), "Engages in violent behaviour or actions";
- (c) Misconduct (f), "Is disrespectful or abusive of Match Officials or of their decisions";
- (d) Misconduct (g), "Takes or makes action (physical or by word) against a player or team official";
- (e) Misconduct (j), "Breaches HFI's or FFA's Code of Conduct."

17. The minimum sanction for each of the offences the subject of the charges is 1 month and the maximum is 30 years.
18. The charges were heard by the Hills Football GPT on 7 June 2017 and it delivered its determination in writing on 3 July 2017. Mr Lawler pleaded guilty to each of the charges with the exception of Misconduct (c) to which he pleaded not guilty. Further, Mr Lawler disputed that he had said the words "go kill yourself" to the AR.
19. The GPT found Mr Lawler guilty of all charges with the exception of the Misconduct (c) in respect of which he was found not guilty. In that regard, the GPT found that Mr Lawler did not say "go kill yourself" to the AR but that he had said, "you have got to be F**king kidding yourself" which had been misinterpreted or heard as the other more aggressive phrase which formed the basis for the Misconduct (c) charge.
20. In determining sanction, the GPT noted that the following circumstances which it described as "aggravating":
 - (a) the Match Official's age (she was a minor);
 - (b) the highly intimidating and aggressive nature of Mr Lawler's actions;
 - (c) previous misconduct charges handed down by the GPT for referee abuse; and
 - (d) the possibility of Police intervention on behalf of the young match official.
21. The GPT viewed Mr Lawler's early guilty plea and his relatively good previous disciplinary history as mitigating circumstances.
22. The GPT considered the range of sanctions applicable to the offences set out in Table C of the HF Regulations and determined that a suspension of two years from all football related activities was appropriate. The sanction was expressed *en globo*, that is, no attempt is evident on the face of the GPT determination that it considered what sanction, from the applicable range of sanctions for each of the charges, would be appropriate in the circumstances.
23. Mr Lawler appealed the GPT determination on the basis of severity alone to the HFAT. On 27 July 2017, the HFAT dismissed Mr Lawler's appeal.

THE APPEAL

24. It is from the decision of the HFAT that Mr Lawler appeals to the FNSW Appeals Tribunal.

THE GROUNDS OF APPEAL

25. The Notice of Appeal articulates the following grounds of appeal.

(a) The decision was one that was not reasonably open to, relevantly, a MAC having regard to evidence before the MAC (section 10.3(d) of the FNSW Regulations); and

(b) Severity (section 10.3(e) of the FNSW Regulations).

26. For the reasons canvassed below, the appeal was ultimately pursued on the severity ground alone.

THE HEARING

27. The hearing proceeded on 1 November 2017.

28. Mr Lawler was present in person. He was supported by Club President, Mr Bob Holland who also spoke on his behalf. Hills Football was represented by Ms Sue Torville, the Chair of the HFAT (who, we note, was not a member of the Tribunal which heard the appeal the subject of these proceedings) and Mr Kurt Johnson, General Manager, Hills Football. Football NSW was represented by Mr Michael Napoli, Legal Officer.

29. At the commencement of the hearing, the Chair raised with Mr Lawler and his representative, the competency of that part of the appeal which sought to rely upon the ground of appeal prescribed by section 10.3(d) of the FNSW Regulations, a matter which the Chair had raised in the AT's communications with the parties by email on 24 August 2017.

30. The Chair reiterated that as guilt or innocence was not in issue in the proceedings before the HFAT and, in fact, the only matter in dispute before that tribunal was severity, that the appeal should be so limited to the question of severity alone. In any event, Mr Lawler's written submissions were only directed to and concerned severity. Upon further consideration, Mr Lawler withdrew that part of his appeal which sought to rely upon section 10.3(d) of the FNSW Regulations and the appeal proceeded on the severity ground alone (section 10.3(e) of the FNSW Regulations).

EVIDENCE AND OTHER MATERIALS

31. The AT had before it the following materials:

- (a) Match Official Incident Report completed by the Assistant Referee, undated;
- (b) Match Official Incident Report completed by the Referee, undated;
- (c) a statement from Nathan Jones, undated;
- (d) a statement from Tony Herrera, dated 6 May 2017;
- (e) Hills Football Statement of Charges against Mr Lawler, dated 1 June 2017;
- (f) a statement from Liam Lawler, dated 6 June 2017;
- (g) a statement from Glenn Kelly, dated 13 June 2017;
- (h) Mr Lawler's disciplinary record as a player, undated;
- (i) Hills Football GPT determination, dated 3 July 2017;
- (j) HFAT determination, 27 July 2017;
- (k) a letter dated 21 August 2017 from Bob Harrold, President, Kellyville Kolts Soccer Club;
- (l) Kellyville Kolts written submissions in support of the appeal to the FNSW AT, dated 6 September 2017;
- (m) Hills Football written submissions in relation to the appeal to the FNSW AT, dated 20 September 2017;
- (n) FNSW written submissions in the appeal before the FNSW AT, dated 27 September 2017.

SUBMISSIONS

32. It was submitted on Mr Lawler's behalf that the sanction was manifestly excessive and should be reduced to 10 weeks because, in summary:

- (a) the Assistant Referee's age (the match official was a minor) should not have been taken into account as an aggravating factor. Mr Lawler submits that whilst he has at no time attempted to excuse his behaviour, a minor should not have been assigned as AR to the Premier League Reserves and, in any event, whether his behaviour was aggressive or not it should not be viewed any differently to if it was said to someone

who was not a minor and therefore the consideration of the AR's age in making the sentencing decision should not be given any extra weight;

- (b) The GPT characterised Mr Lawler's conduct as "highly confrontational and aggressive". It is submitted that whilst Mr Lawler acknowledged that he responded in a heated and inappropriate manner, for which he apologised, the GPT should not, in considering sanction, have characterised the conduct in the manner it did. Further, it is submitted that the GPT did not properly take into account the early guilty plea when determining sanction;
- (c) The GPT did not provide any clear sentence breakdown or reasoning as to how the sanction was determined. Further, it was submitted that there was no clear indication or explanation that the sanction took into account questions of concurrency. In particular, it was submitted that that the charges of "Misconduct (b)" and "Misconduct (j)" are both matters involving disrepute. It was also submitted that that the GPT failed to apply section 13.13 of the FNSW Regulations in its sanctioning considerations;
- (d) The GPT should not have taken into consideration on the question of sanction, the possibility of Police intervention on behalf of the Match Official, as Mr Lawler was not found guilty of any violent conduct and as such, there would be no legal basis for police intervention; and
- (e) The GPT should have given more weight to Mr Lawler's early guilty plea and previous disciplinary history.

33. Hills Football submitted that:

- (a) the Assistant Referee was of a sufficient age and quality to officiate at the Premier League level. When dealing with an incident, the match official's age must be taken into account;

- (b) the Match Officials' reports provide sufficient foundation for the GPT's finding that Mr Lawler acted in an extremely aggressive and intimidating manner towards the Assistant Referee;
- (c) the GPT was entitled to take into account the possibility of Police intervention; and
- (d) the protection of Match Officials and, in particular, those who are minors, from abuse by those deemed to be role models, such as coaches, justifies a heavy sanction.

34. Football NSW submitted that:

- (a) a tribunal should, in appropriate circumstances, when determining an appropriate sanction, take into account the age of the victim, including whether the victim is a minor. It further submitted that the age of the victim can be regarded as an aggravating feature such that the penalty imposed is greater than it otherwise would be. This is particularly the case in circumstances where the victim is significantly younger than the alleged offender;
- (b) the GPT did take into consideration Mr Lawler's early guilty plea and his remorse. It had the discretion to impose sanctions of up to 30 years for each offence. It decided to only impose a time suspension of two years for the breach of four offences;
- (c) the GPT should ensure that Mr Lawler was not punished four times for what amounts to the same conduct. In such circumstances, the GPT should have made it clear that although Mr Lawler was found guilty of all four offences, the suspension related to the one course of conduct and Mr Lawler was not sanctioned four times for the one course of conduct. If, instead, each charge related to separate and discrete acts committed by Mr Lawler, the GPT should have imposed separate sanctions for each charge while taking into account the principle of totality;
- (d) having regard to the maximum applicable sanction, the objective seriousness of Mr Lawler's conduct and the aggravating and mitigating factors, it was open to the GPT to impose a two-year sanction and such sanction is not, in the circumstances, excessive; and

(e) section 13.13 of the FNSW Regulations only applies to offenders who have committed a second or subsequent offence. The section is therefore not applicable to this matter nor does it assist Mr Lawler's argument with respect to severity.

35. Each of the parties and Football NSW was afforded an opportunity to supplement their respective written submissions orally.
36. Hills Football and Mr Lawler submitted orally that in the event that Mr Lawler was required to serve a lengthy suspension, it should not extend, as the GPT and HFAT found, to all football related activities. Such a suspension, it was submitted, would prevent Mr Lawler from attending games as a spectator and from volunteering his services to the Club in any capacity.
37. In response, Hills Football, submitted that it was conscious of providing opportunities for Mr Lawler to continue to be involved in football in some volunteer roles but not those that involved on field participation.
38. Following a sensible and productive discussion between the parties and the Tribunal, a consensus was reached to the effect that if the Tribunal either upheld the sanction or varied it with the effect that Mr Lawler would still be required to serve a lengthy suspension, that it should extend only to preventing Mr Lawler from:
 - (a) taking to the field of play as a player or match official;
 - (b) taking a position as a coach, team official or club official in any match or competition; and
 - (c) entering the field of play, its surrounds, the technical area, players race, dressing rooms or other place within a venue on a match day where players, coaches, team officials, club officials or match official are likely to assemble to prepare for a match.

Confined in this manner, the sanction would not prevent Mr Lawler from making a valuable contribution to his club and to the Hills Football community generally in a myriad of ways.

CONSIDERATION AND DETERMINATION

Relevant legal principles

39. An appeal involves the consideration of whether the decision under consideration is affected by legal, factual or discretionary error (see, for example, *Allesch v Maunz* (2000) 203 CLR 172). The error must be material to or likely to affect the outcome of the decision appealed from; that is, the decision must be one which is vitiated by error (see, for example, *Hamod v Suncorp Metway Insurance Ltd* [2006] NSWCA 243 at [11], *Yates Property Corp Pty Ltd (in liq) v Darling Harbour Authority* (1991) 24 NSWLR 156 at 177).
40. Where a decision involves the exercise of a discretion, as is usually the case with the imposition of a sanction above a minimum and within a specified range, a tribunal can fall into error and its decision reviewed on appeal if it can be shown that the tribunal has acted upon a wrong principle, if extraneous or irrelevant matters have affected the decision, if a mistake has been made in relation to the facts or if the tribunal does not take into account some material consideration.
41. It is not enough that a tribunal reviewing a decision, considers that, if it had been the position of the decision-maker, it would have taken a different course. It must appear that some error has been made in exercising the discretion. Sometimes, it may not be apparent how the decision-maker has reached the determination the subject of an appeal. If, upon the facts, it is unreasonable or plainly unjust, a reviewing body may, infer that in some way there has been a failure properly to exercise the discretion. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred (see *House v The King* (1936) 55 CLR 499 at 504-5).
42. Where an offence, or charge, contains common elements arising out of the same or substantially the same facts, the offender should not be punished twice for the commission of elements of the respective offences that are common. The relevant tribunal should fix an appropriate sentence for each offence and then consider questions of cumulation or concurrence, as well as questions of totality (*Pearce v The Queen* (1998) 194 CLR 610 at 623-4).

43. The principle of totality requires a tribunal sentencing for multiple offences concurrently to review the aggregate of the sentences and consider whether their total effect is just and appropriate. The tribunal must look at the totality of the impugned behaviour and ask itself what is the appropriate sanction for all of the offences. An appropriate result, consistent with principle, may be achieved by making the sanctions wholly or partially concurrent or lowering the individual sanctions below that which would otherwise be appropriate to reflect the fact that a number of sanctions are being imposed. Where practicable, the former approach, that is, of making sanctions wholly or partially concurrent, is to be preferred (*Mill v The Queen* (1988) 166 CLR 59 at 62-63).
44. It is also important for a tribunal to consider and if thought appropriate to state in its reasons that a plea of guilty has been taken into account in setting an appropriate sanction. A plea of guilty should generally be assessed in the range of a 10%-25% discount on sentence. The primary consideration determining where in the range a particular case should fall is the utilitarian value of the plea and that, in turn, should be considered against the timing of the plea and the complexity of the issues. The earlier the plea and the greater the complexity of the issues, the more significant is the utilitarian value of a plea (see, eg, *R v Thomson* [2000] NSWCCA 294 and *R v Houlton* [2000] NSWCCA 183).
45. When considering an appropriate sanction, a tribunal is entitled to consider all the conduct of the offender, including that which would aggravate the offence, but cannot take into account circumstances of aggravation which would have warranted a conviction for a more serious offence (see, eg, *R v De Simoni* (1981) 147 CLR 383).

Was the GPT entitled to take into account the age of the Match Official as an aggravating circumstance?

46. Hills Football formed the view that the Match Official was appropriately qualified to discharge the duties of an AR at this level of men's football. It is for all participants including coaches to act professionally, courteously and at all times respectfully towards any appointed Match Official.
47. That said, in our opinion, the age of the Match Official is an aggravating circumstance, that the GPT was entitled to take into account in determining sanction.

48. There is no question that the conduct by Mr Lawler towards the Match Official, a minor and many years Mr Lawler's junior, was both highly confrontational and aggressive especially to a person of her tender years. It reduced the young Match Official to tears.
49. There is simply no place in football for the kind of behaviour exhibited by Mr Lawler who, in his capacity as the Coach of a senior men's football team, should be held out as a role model.
50. We agree with and endorse the submission made by Hills Football that the protection of Match Officials and, in particular, those who are minors, from abuse by coaches and others in the football family justifies a heavy sanction. It is of vital importance that all participants in football, including in particular, those who are most vulnerable, be afforded an appropriate level of protection with a view, in part, to ensuring that they are encouraged to continue to participate and thus contribute to the growth of football in this country. This is especially so with Match Officials whose demand, unfortunately, is rivalled by poor retention rates due largely in part to disrespectful manner in which Match Officials are often treated by players and coaches alike. There is no place in football for this type of behaviour and it will not be tolerated by this Tribunal.

The significance of the GPT failing to provide a breakdown of the sanctions in issue?

51. The charges in question arose from the same or substantially the same facts. It would have been preferable for transparency purposes for the GPT to have fixed an appropriate sentence for each offence and then to have considered questions of cumulation or concurrence, as well as questions of totality and mitigation, and for that reasoning process to have been made explicit in its determination. It may very well have engaged in that process. Whether the GPT did or did not engage in that process is not directly the subject of this appeal. The ultimate question which we address below under the heading "Appropriate Sanctions" is whether the sanction imposed was, in all the circumstances of the case, appropriate. This question turns upon a consideration as to whether the GPT erred in the exercise of its discretion.
52. For completeness, we are of the view that section 13.13 of the FNSW Regulations is of no current relevance because it deals with issues of recidivism or repeat offending and

not, as is presently the case, where a person has been charged with one or more offences arising from the same incident.

Should the GPT have taken into account potential Police intervention as an aggravating circumstance?

53. It appears that the GPT took into account the fact that a Police incident had been lodged in relation to the incident as an aggravating factor.
54. In our view, the mere fact of the lodgement of an incident report with the Police is not a matter which the GPT should have taken into account as an aggravating factor. It is not a matter intimately related with Mr Lawler's on-field conduct which was the subject of the charges. Rather, the complaint to Police arose from that conduct and it is a matter solely in the domain of the Police to pursue any complaint made to it as it considers appropriate.

APPROPRIATE SANCTIONS

55. That now leaves for determination the appropriate sanction to be imposed in relation to each of the four charges in respect of which Mr Lawler pleaded guilty.
56. Under the HF Regulations, each of those charges carry a minimum sanction of 1 month and a maximum sanction of 30 years.
57. In our view, the sanctions imposed by the GPT and upheld by the Hills AT of 2 years is excessive in all the circumstances of the case. Accordingly, in our view, the decision was affected by discretionary error.
58. In our opinion, an appropriate sanction in respect of the offences is as follows:
 - (a) Misconduct (f) (is disrespectful or abusive of match officials or of their decisions) and Misconduct (g) (takes or makes action (physical or by word) against a player or match official), 1 year for each offence to be reduced by 25% for the early guilty plea: 9 months for each offence; and
 - (b) Misconduct (b) (bringing the game into disrepute) and Misconduct (j) (Breaches HFI's or FFA's Code of Conduct), 2 years for each offence to be reduced by 25% for an early guilty plea: 18 months for each offence.

59. In coming to this determination, we have had regard to the following matters:
- (a) the confrontational and aggressive nature of Mr Lawler's conduct towards the Assistant Referee who was a minor;
 - (b) the age of the Assistant Referee;
 - (c) the fact that Mr Lawler had a relatively unblemished 20 year playing career (we note in this regard that his disciplinary record indicates that he has been cautioned in Association fixtures on 3 occasions for unsporting behaviour in the 2015 and 2016 seasons, that he was stood down in 2015 as he received two final series cautions in State League fixtures, and that he received a "Cup Caution" after receiving a yellow card during the Waratah Cup in 2015);
 - (d) the written apology provided by Mr Lawler to the Hills Association, to his Club and to the Assistant Referee.
60. We have also had regard to the AT's decisions in *Prentice* and in *Karim* each of which involved instances of misconduct towards Match Officials.
61. *Prentice* was a case of a coach remonstrating with the referee following a foul on one of his players which he considered was worthy of a caution. The matter escalated after the referee had asked the coach to desist resulting in his expulsion from the technical area. As the coach left the technical area he told the referee to "fuck off" and made a dismissive gesture with his hands. The relevant points of distinction between *Prentice* and Mr Lawler can be summarised as follows:
- (a) the referee was a senior referee and not a minor;
 - (b) the coach in that case was not charged with bringing the game into disrepute;
 - (c) the FNSW Regulations provided a minimum sanction of 3 fixtures and 24 months for each offence in issue;
 - (d) the coach had played in over 530 games in FNSW and FFA sanctioned competitions between 1982 and 2001, serving a total of two games suspension in that time and had participated as a coach in over 250 games in FNSW sanctioned competitions since 2002 without serving a suspension.

62. *Karim* involved a most unfortunate case of not only the use of offensive, insulting or abusive language and/or gestures towards a referee, but also threatening or intimidating conduct and an attempt at striking the referee. Mr Karim was also charged with bringing the game into disrepute. The referee in that case was not a minor.
63. We do not consider either of the *Prentice* or *Karim* matters to be comparable to that of Mr Lawler. We assess Mr Lawler's circumstances to be more serious than *Prentice* but not as serious overall as *Karim*. However, we consider that when account is taken of the age of the Assistant Referee and Mr Lawler's conduct towards her that there are parallels with the sanction imposed by the AT in *Karim* at least in relation to Misconduct (f) and Misconduct (g).
64. The remaining issue is whether the sanctions should be served concurrently or consecutively. In our opinion, the sanctions in respect of Misconduct (f) and Misconduct (g) arise out of the same or substantially the same facts. Accordingly, and having regard to the principles enunciated earlier, the sanctions for each of those offences should be served concurrently. Further, the sanctions in respect of Misconduct (b) and Misconduct (j) also arise out of the same or substantially the same facts and so should be served concurrently.
65. However, although Misconduct (b) and Misconduct (j) arise from the same or substantially the same facts as the other offences, it warrants a sanction over and above the other offences. The conduct was carried out in public and clearly had the potential to diminish public opinion of the sport of football.
66. However, as all the charges arise out of the same or substantially the same facts, the sanctions should be served concurrently.
67. As a result, Mr Lawler should serve a suspension of 18 months. That suspension should extend only to:
- (a) taking to the field of play as a player or match official;
 - (b) taking a position as a coach, team official or club official in any match or competition; and

- (c) entering the field of play, its surrounds, the technical area, players race, dressing rooms or other place within a venue on a match day where players, coaches, team officials, club officials or match official are likely to assemble to prepare for a match.

RELIEF

- 68. The AT upholds the Appeal by Mr Lawler.
- 69. The AT sets aside the determination of the GPT of 3 July 2017 and instead imposes an 18-month suspension from:
 - (a) taking to the field of play as a player or match official;
 - (b) taking a position as a coach, team official or club official in any match or competition; and
 - (c) entering the field of play, its surrounds, the technical area, players race, dressing rooms or other place within a venue on a match day where players, coaches, team officials, club officials or match official are likely to assemble to prepare for a match.
- 70. The suspension shall have effect from 28 May 2017 with the consequence that Mr Lawler will be eligible to resume all football related activities from 27 November 2018.



Anthony Lo Surdo SC
Chair
Appeals Tribunal
Football NSW