



**FOOTBALL
NSW**

**GENERAL PURPOSES TRIBUNAL
OF FOOTBALL NEW SOUTH WALES
FINAL DETERMINATION
IN THE FOLLOWING MATTER:**

GPT 20/03

Date of Hearing	20th August 2020
Date of Final Determination	2nd September 2020
Respondent	Mr David D'Apuzzo, (the Respondent).
Attendees, Witnesses & Documents	As attached in Schedules 1 & 2
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations 2019 Sections 9.2, 16.4, FFA Code of Conduct and Football NSW Competition Regulations.
Key Words/Phrases	Violent Conduct, Schedule 3, Table A, R2, Offence Code 04-01 - " <i>Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)</i> ", video evidence, meaning of Violent Conduct, meaning of "playing distance" of the ball.
Finding & Sanction	Guilty Suspended for fifteen (15) Fixtures
General Purposes Tribunal Members	Mr David P. Lewis (Chair) Mr Robert Iaconis Mr Mendo Cklamovski

A. INTRODUCTION AND JURISDICTION

1. The General Purposes Tribunal (GPT) has been established by Football NSW (FNSW) pursuant to Section 4 of the Football NSW Grievance and Disciplinary Regulations (“Regulations”). This matter was determined pursuant to the 2020 Regulations: The GPT may impose sanctions in accordance with Schedule 3 of the Regulations.

B. NOTICE OF CHARGE

2. On 7 August 2020, Football NSW (FNSW) issued a Notice of Charge on the Respondent, **Mr David D’Apuzzo**, a Participant as defined in Schedule 1 of the Regulations (“the Respondent”) relating to his conduct during an NPL 1st Grade trial match between Manly United FC and APIA Leichhardt FC on 25 July 2020 at Cromer Park.

3. The Notice to the Participant specified the following charge:

Charge

“During an NPL 1 1st Grade Trial match between Manly United FC and APIA Leichhardt FC (the **Club**) on 25 July 2020 at Cromer Park, David D’Apuzzo (the **Respondent**) elbowed an opposition Player, Brendan Cholakian in the face.”

4. The Respondent was charged under section 9.2 of Football NSW Regulations (“the Regulations”) for alleged breaches by the Respondent of section 16.4(d) of the Football NSW Grievance and Disciplinary Regulations 2020, namely Schedule 3, Table A, (R2 – Violent Conduct) Offence Code 04-01 – “*Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)*”.

Football NSW Power to Investigate

5. Football NSW has a general power to investigate any incident that may constitute a breach of the Regulations. Under Section 1(e):

“Football NSW may in its absolute discretion determine the appropriate governing document under which to investigate, process, and penalise (if necessary) any matter.”

Further under Section 9.1:

(a) The General Purposes Tribunal has jurisdiction to hear and determine:

- i *charges of Misconduct and Disrepute and Offences disclosed in Match Official Reports (section 9.2);*
- ii *Grievances between Members (section 9.3); and*
- iii *any other matter which the Executive determines, in its absolute discretion, is important to the interests of football in the State (section 9.4).*

6. In this GPT 20-03 the Respondent was not issued with a Red Card by the Match Official. He noted in his report:

“It has been brought to my attention that a video of an incident has been provided to Football NSW from an NPL1 Trial match that I refereed on Saturday evening.”

“Because I took no action, I am unsure of the time of the incident however, around the 20-25th minute of the match, Brendan Cholakian (Manly #10) was tackled by an APIA player, around twenty metres in front of the APIA technical area. I recall that the player fell on to the ball, and eventually David D’Appuzzo (APIA #13) joined this challenge and recovered the ball which left the immediate area. At this time, Manly #10 fell to the ground clutching his face.”

“A small confrontation ensued and it was alleged that APIA #13 had used his arm illegally. Manly #10 had blood exiting his nostrils. At the time, I was positioned around fifteen metres away from the incident. Manly #10 was facing away from me, I could not see the arms of APIA #13 at prior to Manly #10 falling to the ground. However, at no time had I seen misconduct from either the APIA player initially involved in the tackle with Manly #10, nor by APIA #13. It was not clear to me how Manly #10 had come to have suffered injury to his nose.”

“As a result of not seeing misconduct, I did not take any action against any player in the form of disciplinary sanction. Play restarted with a free kick to Manly, given how the first APIA player had fallen on the ball in a dangerous manner. The free kick was not awarded for an offense (sic.) by APIA #13.”

7. Football NSW obtained video evidence of this incident and this evidence was presented to the Tribunal.
8. After reviewing the reports and evidence provided, and based on reference to other similar matters dealt with by Football NSW, Football NSW issued the above-mentioned Notice of Charge and the Respondent was directed to issue a Notice of Response.
9. The Respondent pleaded NOT GUILTY in his Notice of Response and the matter proceeded to a hearing before the General Purposes Tribunal (GPT).

C. NOTICE OF RESPONSE AND EVIDENCE

10. The Respondent was represented by Mr Alex Bourne, Solicitor.
11. The Respondent, by way of Mr Bourne, tendered an undated statement to Football NSW (“the Statement”).
12. **Mr Alex Bourne**, Solicitor and counsel for the Respondent, tendered the following written submissions on behalf of the Respondent:

“1. The incident in question should properly be categorised in accordance with the Football NSW Grievance and Disciplinary Regulations 2020 as "R1 Serious Foul Play" rather than "R2 Violent Conduct".”

1.1 "R1 Serious Foul Play" is elaborated as "Typically, but not limited to, tackles or challenges on an opponent with the ball".

1.2 "R2 Violent conduct" is elaborated as "Typically, but not limited to, the use or attempted use of excessive force against an opponent when not challenging for the ball, or against a team mate, Club Official, Team Official, Match Official or Spectator".

“2. There is a clear delineation in the Regulations between 'challenges on an opponent with the ball' and 'the use or attempted use of excessive force against an opponent when not challenging for the ball'.”

“3. Importantly, Mr D'Apuzzo's actions occur in circumstances where he is challenging for the ball. Mr Cholakian likewise is tussling for the ball, and climbing on the back of Mr D'Apuzzo.”

“4. It appears to be said against Mr D'Apuzzo that the ball had escaped and this was accordingly off the ball. That would be an inaccurate assessment. Mr Cholakian toe-poking the ball away occurs simultaneously with Mr Cholakian climbing on Mr D'Apuzzo and Mr D'Apuzzo swinging his arm back. Thus the action is all within the one action of an 'on the ball' incident.”

Mr Bourne also made submissions relating to the Respondent’s good character and lengthy playing career.

13. Further, in relation to the incident itself, Mr Bourne made the following submissions in paragraphs 21 to 25:

21. *Mr D'Apuzzo concedes his swinging arm can properly be categorised as reckless.*

22. *The height of Mr Cholakian is also relevant. Coupled with Mr Cholakian leaning down and towards Mr D'Apuzzo, it should be accepted by the Tribunal that as Mr D'Apuzzo swung his arm back to get Mr Cholakian off his back, that in different circumstances Mr D'Apuzzo would have made contact with the chest of his opposition player.*

23. *The incident occurred in a fleeting moment, and was not pre-meditated.*

24. *Mr Cholakian continued to play the game and played the subsequent game.*

25. *With regard to Mr D'Apuzzo's subsequent conversation with Mr Cholakian, Mr D'Apuzzo called to apologise. Mr D'Apuzzo's statements were miscategorised in what Mr D'Apuzzo was saying about the season. In the context of the apology, Mr D'Apuzzo merely remarked all the players are semi-professional, that the season was a short season, and he accordingly had no malintent.*

14. **Mr Adam D'Apuzzo**, a former A-League player and member of the FFA Match Review Panel (MRP), and brother to the Respondent noted in his witness statement:

"I've reviewed David's incidents as if I was reviewing them from the FFA MRP perspective. For the Manly incident, I believe it is Serious Foul Play and not Violent Conduct. The incident occurred during a passage of play that David was involved in, and David's actions were as if to get the player off his back to continue with the run of play. The ball may even have still been even closer if not poked away. Typically with Violent conduct, it would happen in back play or if the ball had moved onto further passages of play, and/or if the ball was off the field altogether. This is not the case in this scenario."

15. **Mr Franco Parisi**, a teammate of the Respondent made unhelpful and highly subjective statements in his witness statement. It was withdrawn by counsel for the Respondent and the Tribunal gave no weight to its contents.

16. **Mr Brendan Cholakian**, the injured player for Manly, noted in his witness statement dated 27 July:

"I was running with the ball away from a couple of APIA players, and then came into collision with a 2nd APIA defender (Paul Galimi). Paul made a tackle which then resulted in him being positioned ontop of the ball (sitting on it) for a couple of seconds. David Dapuzzo then came from the front/left of me, positioning himself in between Paul and myself, facing his back towards me. He was right in front of me at this point (couple of cm's distance). With my eyes still focused on the ball, I remember me poking the ball away from Paul's feet before then a second or so later receiving a swinging elbow from David, straight to my nose that hit me so hard it took me off my feet. It took me by surprise as the ball was away from the area that David and I were standing. Immediately my whole face went numb, and I was dizzy. I also felt blood pouring from my nose. I have broken my nose before in a head clash and this felt like a very similar pain. Whilst on the floor, I heard David saying something (felt like it was close to my ear) like get up pussy, or something along those lines. I can't remember exactly what he called me after the words "get up"."

17. Uncontested medical evidence was provided that substantiated that Mr Cholakian had sustained an undisplaced nasal bone fracture. That is, a broken nose.

D. THE HEARING

18. The Respondent, aged 31, appeared before the Tribunal on 20 August 2020.

19. Mr Bourne, for the Respondent, indicated that the Respondent was prepared to plead guilty to the lesser charge of an offence under R1, Serious Foul Play but disputed that the incident was consistent with a charge under R2 Violent Conduct. He made this submission on the basis that if a Charge was brought under that category the Minimum Suspension applicable was six Fixtures (sic. seven Fixtures) and the respondent would then make a further submission that the lowest level of sanction should apply.
20. The Respondent, through Mr Bourne, claimed in submissions 1-4 that he was challenging for the ball and that it was within playing distance at the relevant time of the incident and therefore the correct Charge had to be R1, Serious Foul Play.
21. Mr Bourne was referred to previous Determinations of the Tribunal GPTs 18/46 and 19/27 in which the meanings of both Playing Distance of the ball and Serious Foul Play were considered and ruled upon. Both Determinations came to conclusions that were inconsistent with Mr Bourne's submissions. When asked to distinguish these Determinations Mr Bourne was unable to do so and simply restated his position that the Respondent's actions in this matter were consistent with an offence under R1, Serious Foul Play.
22. Mr Bourne's claim in submission paragraph number 22 that "*the height of Mr Cholakian is also relevant*" was withdrawn when challenged by the Tribunal as this submission is clearly inconsistent with the Talem Qualem rule.
23. The Tribunal referred to the video recording of the incident and asked Mr Bourne to explain to the Tribunal how the actions of the Respondent were consistent with an offence under R1, Serious Foul Play rather than R2, Violent Conduct. Mr Bourne restated his submissions as set out above.
24. Mr Bourne further maintained that the evidence of Mr Adam D'Apuzzo should be accepted given his experience both as an A-League player and member of the FFA MRP.
25. The Tribunal had asked Mr Adam D'Apuzzo what his role on the MRP was and he noted that it was as a "player representative". When asked if he had any referee qualifications he answered in the negative. Mr Adam D'Apuzzo noted that he had sat on 10 or 12 MRPs over quite a few years. He agreed that the opinion of the MRP could be overturned or ignored by the FFA if they saw fit.
26. In his verbal evidence Mr Adam D'Apuzzo noted that his brother was simply trying to "*take off and get the Manly player off his back*" and that he had "*no intention*" to strike the Manly player.

Serious Foul Play/Violent Conduct

27. The Tribunal notes the definition of Serious Foul Play in the Laws of the Game (LOTG) on page 61 of the 2018-2019 Australian edition:

A tackle or challenge that endangers the safety of an opponent or uses excessive force or brutality must be sanctioned as serious foul play.

Any player who lunges at an opponent in challenging for the ball from the front, from the side or from behind using one or both legs, with excessive force or endangers the safety of an opponent is guilty of serious foul play.

Under the Laws of the Game (LOTG) a player, substitute or substituted player who commits the offence of Serious Foul Play must be sent off.

28. However, the definition of Serious Foul Play is distinguished from Violent Conduct as the latter is an offence that takes place "off the ball", that is contact that is not related to a challenge for the ball.
29. The extent of the injury to a player is NOT a factor in determining whether a foul has been committed. One of the most relevant tests is whether the tackle endangers the safety of an opponent and not the injury itself.
30. Mr Crepaldi for Football NSW made the following submissions:
 - a. The correct Charge was Violent Conduct;

- b. The Respondent used his elbow as a weapon;
- c. The ball was nowhere near the Respondent at the time his elbow made contact with the Manly player;
- d. The action of using his elbow is a secondary action and is in no way related to an attempt to play the ball;
- e. The verbal evidence offered by Mr Adam D'Apuzzo in which he stated that the Respondent was "attempting to get the player off his back" is inconsistent with a claim that such action was taken in an attempt to play the ball; and
- f. This was an extremely dangerous act that occasioned bodily harm that was at the higher end of the scale and therefore a significant sanction was warranted.

E. CONSIDERATION & DETERMINATIONS

- 31. The Tribunal has considered the meaning of Serious Foul Play in prior matters and in particular refers the Respondent to GPT 18-46 and GPT 19-27. In those Determinations the Tribunal set out in detail considerations that are important in determining what constitutes Serious Foul Play, Violent Conduct and Playing Distance.
- 32. Mr Adam D'Apuzzo's opinions on the interpretation of the LOTG without any claim to specialist or expert knowledge in the form of registration as a Referee was a concern to members of the Tribunal. Further, the fact that Mr Adam D'Apuzzo was the brother of the Respondent left the Tribunal in no doubt that his evidence was tainted and could not be relied upon, as well as inconsistent with the LOTG.
- 33. The Tribunal noted with approval that the Respondent had been in contact with the Manly player to apologise for the injury he caused. There was divergent evidence relating to the nature of that call with the Manly player claiming that the Respondent abused him whilst the Respondent maintained that he made the call to wish the Manly player well and apologise.
- 34. As the Respondent was not charged with an offence relating to this conversation the Tribunal was not required to make any finding on this matter. However, as it is unusual for a player to make such a call, the Tribunal commended the Respondent for doing so.

F. FINDINGS

- 35. This was a clear case of Violent Conduct. The video evidence clearly shows that the ball was not within playing distance and in any event an elbow to the face of an opponent could not possibly be considered as a legitimate action in an attempt to challenge for the ball. The Tribunal rejected the Respondent's submissions.
- 36. The Tribunal rejected the opinion of Mr Adam D'Appuzzo and placed little weight on his evidence both given his relationship to the Respondent coupled with the fact that he was incorrect under the Laws of The Game (LOTG) in his claim that the actions of his brother, the Respondent, amounted to Serious Foul Play. The Tribunal was concerned that a member of the FFA MRP was ignorant of this aspect of the LOTG and could not distinguish Serious Foul Play from Violent Conduct.
- 37. The Respondent's actions were extremely dangerous and totally unjustified and the Tribunal found that the Respondent used his elbow as a weapon.
- 38. The Tribunal found the Respondent **Mr David D'Apuzzo** GUILTY of the Charge.

G. SANCTIONS

39. The Tribunal found that the actions of the Respondent constituted an offence under Schedule 3, Table A, Offence Code 04-01 - *“Serious violent conduct that has caused bodily harm or responsibility for a Melee (Grade 2)”*.
40. The minimum sanction for this Offence Code is **thirteen (13) Fixtures**. As the actions of the Respondent were in the upper end of the scale the Tribunal determined that the Respondent should be suspended for **twenty (20) Fixtures** from all Football related activities, including training.
41. The Respondent commenced his NPL career in 2005 and played in Football NSW competitions in each of the following years save for two years (2008-2010) when he played in the A-League. Football NSW advised the Tribunal that the Respondent had only received two Red Cards since 2005, one for R4 (DOGSO) and R7 (two YCs). The Tribunal has therefore recognised that this incident is obviously out of character and inconsistent with the Respondent’s behaviour over an extended football career.
42. In recognition of the Respondent’s outstanding on-field behaviour over the past fifteen years, the Tribunal has applied a discount of 25% off his suspension. This means that the Respondent is suspended for **fifteen (15) Fixtures**.
43. The Tribunal issued a **seven (7) Fixture suspension** to the Respondent under GPT 20-04. Once the Respondent has completed this suspension under GPT 20-03, he is then to serve the Fixture Suspension imposed under GPT 20-04.
44. The Respondent is to serve the Fixture suspension in accordance with section 15.6, in particular, sub-sections 15.6(j). However, the Tribunal has, under sub-section 15.6(h), determined that the Fixture suspension will NOT extend to Spectating and for the avoidance of doubt notes that the Respondent is entitled to attend any Fixtures that his club is participating in during the Fixture suspension albeit that he may not enter the Field of Play.
45. The Tribunal determined that the Respondent pay the costs of the Tribunal processes.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with articles 9.6 and 10 of the FNSW Grievance and Disciplinary Regulations 2020. Any appeal must be submitted by completing the online Notice of Appeal form (Prescribed Form 12) to tribunal@footballnsw.com.au with the relevant Application Fee within seven (7) working days of this Final Determination being issued.



David P. Lewis

Chairman

1 September 2020

Schedule 1

Index of Documents

1.	NOTICE OF CHARGE AND ANNEXURES
	Notice of Charge dated 7 August 2020
MO1	Match Official Report of Hugh Fenton-White dated 27 July 2020
MO2	Match Official Report of Maddy Allum dated 25 July 2020
A	Video of Incident - 1st Grade Trial Match- Manly United FC v APIA Leichhardt FC on 25 July 2020
B	Team Sheet - 1st Grade Trial Match - Manly United FC v APIA Leichhardt FC on 25 July 2020
C	Statement of Brendan Cholakian dated 27 July 2020
D	Statement of Brendan Cholakian dated 4 August 2020
E	Medical Report of Dr Elliott Larkin-Carlston dated 31 July 2020
F	Radiologist's Report of Dr Luke Deady dated 6 August 2020
G	Statement of Jackson Harding (MUFC Physiotherapist) dated 6 August 2020
2.	NOTICE OF RESPONSE AND ANNEXURES
	Notice of Response- GPT 20-03
A	Respondent's Submissions
B	Statement of Adam D'Apuzzo dated 14 August 2020
C	Statement of David D'Apuzzo undated
D	Statement of Franco Parisi dated 17 August 2020
E	Video of separate incident between D'Apuzzo and Cholakian

	MISCELLANEOUS DOCUMENTS
	Final Determination GPT 19-27 Brooke Miller
	Final Determination GPT 18-46 (redacted)
	Notice of Interim Suspension- David D'Apuzzo

Schedule 2
Attendee Register

<i>ATTENDEE</i>	<i>POSITION</i>	<i>SIGNATURE</i>
David Lewis	GPT Chairman	
Mendo Cklamovski	GPT Panel Member	
Robert Iaconis	GPT Panel Member	
Lorenzo Crepaldi	Head of Legal & Governance, FNSW	
Michael Kantarovski	Legal & Regulatory Officer, FNSW	
David D'Apuzzo	Respondent	
Alex Bourne	Respondent's Legal Representative	
Brendan Cholakian	Player, Manly United FC	
Franco Parisi	Witness, Player Apia Leichhardt	
Adam D'Apuzzo	Witness	