

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

GPT 20/07



Date of Hearing	17 September 2020
Date of Final Determination	29 October 2020
Respondent	The Respondent
Attendees, Witnesses & Documents	Refer to Schedules 1 and 2 attached
The basis upon which the matter is before the General Purposes Tribunal	Football NSW Grievance and Disciplinary Regulations 2020 Sections 9.2, 9.4, 16.4(d); FFA Code of Conduct; and Football NSW Competition Regulations
Key Words/Phrases	Serious Foul Play, Schedule 3, Table A, R1, Offence Code 05-01 - " <i>Conduct causing serious injury</i> "; video evidence; jurisdiction to upgrade a yellow card to a red card; meaning of Serious Foul Play.
Finding & Sanction	Guilty Suspended for seven (7) Fixtures commencing 17 September 2020
General Purposes Tribunal Members	Mr Anthony Scarcella (Chair) Mr Robert Iaconis Mr Mendo Cklamovski

INTRODUCTION AND JURISDICTION

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

NOTICE OF CHARGE

2. On 3 September 2020, FNSW issued a Notice of Charge (the Notice of Charge) to the Respondent, a Participant as defined in Schedule 1 of the Regulations, relating to her conduct during an U14's Women's NPL match between Sydney Olympic FC (Olympic) and Illawarra United Stingrays (Stingrays) on 2 August 2020 at Peter Moore Field (the match).
3. The Notice of Charge issued to the Respondent specified that she was charged by FNSW under sections 9.2 and/or 9.4 and/or 16.4(d) of the Regulations as follows:

CHARGE 1	
CONDUCT ALLEGED:	During the U14's Women's NPL match between Sydney Olympic FC and Illawarra United Stingrays FC (the Club) on 2 August 2020 at Peter Moore Field, [the Respondent] made contact with the leg of an opposition Player, [the Sydney Olympic player], causing it to fracture.
THIS CONDUCT IS ALLEGED TO BE IN BREACH OF:	Sections 9.2 and/or 9.4 and/or 16.4(d) of the Football NSW Grievance and Disciplinary Regulations, namely: <ul style="list-style-type: none">• Schedule 3, Table A, Red Card Offence R1 - Serious Foul Play, Offence Code 05-01, "<i>Conduct causing serious injury</i>".

4. FNSW has a general power to investigate any incident that may constitute a breach of the Regulations. Section 1(e) of the Regulations provides:

"Where an incident may constitute a breach of these Regulations and a breach of the FFA Rules and Regulations (for example, the FFA Code of Conduct or the FFA National Member Protection Policy), Football NSW may in its absolute discretion determine the appropriate governing document under which to investigate, process, and penalise (if necessary) any matter."

5. Section 9.1 of the Regulations relevantly provides:

"(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. Section 9.2 of the Regulations relevantly provides:
 - “(a) The Board or the Executive may investigate any matter which in its opinion is relevant to whether or not a charge of Misconduct or Disrepute ought to be laid. Such investigation may be initiated on the basis of a written report or complaint of a Member, a Match Official Report, or on the basis of any other evidence which in the opinion of the Board or the Executive, is credible.
 - (b) Such investigation may be carried out by the Board or the Executive as it sees fit and Members are required to cooperate fully with Football NSW in the conduct of that investigation and must do so within the timeframe specified in any correspondence issued by Football NSW. A Member agrees that any information provided to Football NSW may be used as evidence in bringing a charge under this section 9.2 and may be provided to any party so charged. ...”
7. Section 9.4 of the Regulations is entitled “Matters of Importance” and provides:

“The Executive, in its absolute discretion, may refer any matter it determines, in its absolute discretion, to be important to the interests of football in the State, Football NSW or FFA to the General Purposes Tribunal for determination. For the avoidance of doubt, such matters include (but are not limited to) those involving Members involved in football or futsal at any level in the State.”
8. Section 16.4 of the Regulations defines the meaning of Misconduct. Section 16.4(d) includes in the definition of Misconduct any act or omission by a Member which “constitutes a breach of these Regulations including the Offences set out in Schedule 3: Table of Offences”.
9. The Offence with which the Respondent has been charged in the Notice of Charge is to be found in Schedule 3, Table A, Red Card Offence R1 – Serious Foul Play, Offence Code 05-01 – Conduct causing serious injury. The minimum suspension for a first offence is a Mandatory Match Suspension (MMS) + 6 Fixtures.
10. The documents attached to the Notice of Charge are listed in the attached Schedule 1.
11. As a result of the alleged contact made by the Respondent on the Sydney Olympic player (the tackle) in the match, the Match Official issued the Respondent with a yellow card. In the evidence, the tackle has also been referred to as the “challenge” by some of the witnesses.
12. FNSW obtained statements from the Match Official and the Sydney Olympic player. FNSW was also provided with video footage of the tackle by Olympic. It

then sought advice from Mr Kris Griffiths-Jones, Referees Development and Education Manager, Football NSW.

13. After reviewing the information and documentation in its possession and video footage of the tackle, the Executive determined that the matter was deemed to be important to the interests of football in the State, FNSW or Football Federation of Australia (FFA) such that it should be referred to the GPT for determination pursuant to section 9.2 and/or section 9.4 of the Regulations. Accordingly, FNSW issued the Respondent with the Notice of Charge.

NOTICE OF RESPONSE

14. The Respondent being 14 years of age, submitted a Notice of Response through her mother on 11 September 2020 together with the supporting documents listed in the attached Schedule 1.
15. In the Notice of Response, the Respondent pleaded not guilty to the Offence.
16. The matter was then referred to the GPT for hearing.
17. Prior to the GPT hearing the parties submitted further documents. Those documents are included in the attached Schedule 1.

THE HEARING AND THE EVIDENCE

18. The hearing before the GPT took place by audio visual link on 17 September 2020.
19. Mr Lorenzo Crepaldi, Head of Legal & Governance, FNSW appeared for FNSW. Mr Paul Folino-Gallo of counsel appeared for the Respondent.
20. In light of the additional material submitted by the Respondent, Mr Crepaldi sought leave at the hearing to amend the conduct alleged in the Notice of Charge as follows:

“During the U14’s Women’s NPL match between Sydney Olympic FC and Illawarra United Stingrays FC (the **Club**) on 2 August 2020 at Peter Moore Field, [the Respondent] made contact with an opposition Player, [the Sydney Olympic player], causing [the Sydney Olympic player] to suffer a fracture to her left leg.”

21. The GPT granted FNSW leave to make the above amendment.
22. In order to accommodate witnesses, and because the hearing was by audio visual link, the parties did not object to witnesses being heard out of the usual order.

The Sydney Olympic player’s evidence

23. Neither the parties, nor the GPT required the Sydney Olympic player’s attendance at the audio visual hearing. FNSW relied on the Sydney Olympic player’s statement dated 7 August 2020.

24. FNSW relied on the Sydney Olympic player's statement.
25. The GPT noted that the Sydney Olympic player's statement was written in emotive language and that a large part of it focussed on her perception of how Stingrays had played the game.
26. In respect of the tackle, the Sydney Olympic player relevantly stated:

“In the last quarter of the game, I scored the winning goal for our team bringing the score to 2-1. Then not even a minute after the opposition kicked off I was illegally tackled after already passing the ball, the Illawarra Stingrays player who I understand from the witness statements is [the Respondent] launched herself straight into my leg. There is video evidence of this tackle that shows she was clearly not aiming for the ball. I don't know if she was angry because her team was now losing or if she usually plays this horribly but either way, I don't think this reckless behavior [sic] is acceptable as I now have a broken leg and will not be able to play soccer for several months. This girl's actions on the field have severely impacted myself and my team yet she was only punished with a yellow card.”
27. The Sydney Olympic player further stated that the tackle caused a 9 cm “break straight down my tibia”. She expressed her opinion that the yellow card the Respondent received from the Match Official should be upgraded to a red card and a suspension.

The medical evidence

28. In evidence, there were two x-ray images purporting to demonstrate the closed fracture to the Sydney Olympic player's left distal tibia. The Respondent raised no objection in respect of these images.
29. In evidence, there was a Canterbury Hospital Emergency Department Discharge Referral dated 2 August 2020 by Dr Timothy Echevarria in respect of the Sydney Olympic player's attendance at that hospital.
30. In the Discharge Referral, Dr Echevarria described the Sydney Olympic player as a 14 year old girl who presented with “a left ankle injury after being tackled in a soccer game”. He reported that x-rays demonstrated an undisplaced left distal tibial fracture. A history was taken from the Sydney Olympic player that she had been playing football that morning when she was tackled at the left medial ankle by an opponent, who also landed on her and her ankle went into inversion. There was pain around the medial and lateral aspects of the left ankle. On examination, Dr Echevarria observed that the Sydney Olympic player was tearful; sitting in a wheelchair with her shin pad still in place; her left ankle was strapped; she was tender on palpation maximally over the anterior inferior tibiofibular ligament; tender at the distal tibial/fibula borders and deltoid lateral ligament complexes; and there was decreased left ankle range of motion on all movements.
31. The Respondent raised no objection in respect of the medical evidence contained in the Discharge Referral.

The Match Official's evidence

32. FNSW relied on the evidence of the Match Official, the Match Official who refereed the match. The Match Official's attendance at the audio visual GPT hearing was requested by the GPT.
33. The Match Official's written statement was by way of an email to Mr Griffiths-Jones dated 27 August 2020 and its subject was described as "Incident Report". The Match Official stated:

"This incident happened towards the end of the game , Illawarra String rays [sic] have just scored, the ball was played back from Sydney Olympic, this is when the Illawarra player attempted to chase down and win the ball back from two other Sydney Olympic players as this attempt of winning the ball back failed, Sydney Olympic passed it one more time this is when the Illawarra player did a reckless slide tackle at a moderate speed which made contact with the ankle of the Sydney Olympic player, I gave a yellow card to the player that made the offends [sic]."

34. The GPT noted the brevity of the report, which was hardly surprising as the match had been played some 25 days earlier in a situation where the Match Official had no cause to issue an incident report, nor address his mind to the tackle any earlier than he did. Accordingly, no criticism can fairly be directed at the Match Official, who the GPT found to be a cooperative witness.
35. The Match Official's oral evidence at the audio visual hearing added little to his incident report. Questioning of the Match Official revealed that he was refereeing Women's NPL matches in the 12 years to 17 years age groups and Men's NPL matches in the 12 to 15 years age groups. He had two years' experience as a referee.

The first video footage of the tackle (Video 1)

36. FNSW relied on the video footage of the tackle in its evidence. The video footage was provided to FNSW by Olympic. This video footage will be referred to as "Video 1".
37. Video 1 showed the lead-up to the tackle; the tackle; and the aftermath of the tackle at "normal" speed. Video 1 could be paused and watched frame by frame. GPT members viewed Video 1 prior to the audio visual hearing.
38. Video 1 was of poor quality, in that, the vision was quite blurred.

Mr Kris Griffiths-Jones' evidence

39. FNSW relied on the expert witness statement of Mr Kris Griffiths-Jones, Referees Development and Education Manager, Football NSW dated 28 August 2020.
40. Mr Griffiths-Jones had viewed Video 1 of the tackle and had a conversation with the Match Official.

41. Mr Griffiths-Jones stated that he was providing his opinion in relation to the tackle based on his experience and knowledge as a National League Referee and Video Referee.
42. Mr Griffiths-Jones stated that the Match Official had informed him that he felt the tackle warranted a yellow card because the point of contact was with the ankle. In Mr Griffiths-Jones' opinion, the tackle warranted the issuing of a red card. He opined that "in this type of tackle", the offending player is reaching for a ball they would probably not win as it is rolling away from them. In a desperate attempt to win the ball, the player will lunge at the ball, with a straight leg, at speed and with studs showing. Often, the tackle is late and the opposition player has already played the ball when the tackler comes through. He further opined that tackles of this nature have the potential to severely injure the opponent, especially when contact is made above the ankle.
43. The GPT noted the somewhat unusual manner in which Mr Griffiths-Jones expressed the above opinion. He referred to "this type of tackle" and provided his description of "this type of tackle". However, he did not specifically describe the tackle that was the subject of these proceedings. One would expect an expert witness in Mr Griffiths-Jones' position to do so.
44. Mr Griffiths-Jones opined that, after viewing Video 1, "contact was probably made above the ankle to create such a severe injury". He also opined that the Match Official's vision would have been slightly obstructed by players and that would have impacted his ability to successfully identify the point of contact. Ideally, the Match Official should have been a metre or two further left, which would have opened up an ideal angle to view the tackle. However, he did not blame the Match Official for missing this red card tackle because they are rare in the age group he was refereeing and he would have had little experience in dealing with such incidents based on his age and level of experience.
45. FNSW relied on a further expert witness statement from Mr Griffiths-Jones dated 14 September 2020. The statement was contained in the body of an email sent at 9:36 am, after FNSW had provided Mr Griffiths-Jones with a copy of the Notice of Response and additional material.
46. Mr Griffiths-Jones' statement may be summarised as follows:
 - (a) He did not believe that the Respondent went into the tackle to deliberately hurt the Sydney Olympic player.
 - (b) Players have a duty of care towards their opponents and must consider their actions on the day to prevent major injuries.
 - (c) The tackle in question can cause serious injury due to the speed of the player, the lunging motion with the studs showing and the point of contact to the opponent's leg.
 - (d) The Respondent did not win the ball in a fair manner, otherwise, the ball would have travelled towards the benches. It did not. It travelled in a forward motion towards the Olympic goal. The latter indicated that the Sydney Olympic player played the ball in a fair manner. If

Video 1 is paused at the point of contact, one can see that the ball is about one to two metres away from the players.

- (e) At no point did the Sydney Olympic player contribute towards her own injury. She won the ball in a fair manner.
 - (f) He has 22 years' experience as a referee, 14 years at a national level. He has viewed thousands of football incidents and has an excellent understanding of serious foul play tackles.
47. In an email from Mr Griffiths-Jones to FNSW on 14 September 2020 at 12:56 pm, the former explained that when the point of contact in a tackle is low and less likely to cause serious injury, a yellow card is warranted. When the point of contact is made above the ankle, then the tackle has a high chance of serious injury and would warrant a red card.

The Respondent's evidence

48. The Respondent participated in the audio visual hearing.
49. The Respondent had not submitted a written statement prior to the audio visual hearing and she was granted leave to provide oral evidence at the hearing. As she was a minor, the GPT explained to her that she was to listen to the questions asked of her and do her best to answer those questions truthfully. She stated that she understood the explanation provided to her.
50. The Respondent stated that she is 14 years of age and has been playing football for 10 years.
51. The Respondent described the circumstances of the tackle as having "happened quickly". She lost possession of the ball as she was trying to pass it to her right winger. She tried to regain possession. Her focus was on getting the ball to her right winger. The Sydney Olympic player "came in diagonally". She did not intend to tackle the Sydney Olympic player. She did not even see the Sydney Olympic player coming. The Sydney Olympic player fell to the ground in pain. The Respondent asked the Sydney Olympic player if she was ok. She said to the Sydney Olympic player, "Just stay down". The Respondent stated that she was then shown a yellow card by the Match Official.
52. The Respondent stated that she felt sorry that the Sydney Olympic player was injured and that she hoped she would get "better quickly".
53. In response to questioning by Mr Crepaldi, the Respondent stated that she had already stood down for two matches since having been issued with the Notice of Charge. She then volunteered that she had torn a muscle in her foot on 30 August 2020 and was not currently training or playing due to that injury.

Mr Mathew Jessep's evidence

54. In evidence, there is a letter from Mr Mathew Jessep, Principal Lawyer and Consultant of Game Legal | Game Consulting dated 7 September 2020. The letter was headed "Reference for Player [the Respondent]". The letter was submitted on behalf of the Respondent.

55. The letter also provides Mr Jessep's "observations of the accident", which were tantamount to submissions. Mr Folino-Gallo on behalf of the Respondent, advised the GPT that he did not rely on those observations by Mr Jessep.
56. Mr Jessep provided a glowing personal reference for the Respondent. As there was no issue raised by FNSW as to the Respondent's character, there was no need for the personal reference to be summarised here as its contents will be considered in respect of any sanction.

Mr Bruce Tilt's evidence

57. In evidence, there is a statement by Mr Bruce Tilt dated 9 September 2020. Mr Tilt is the Head Coach of Stingrays in the NSW Women's NPL. The statement was submitted on behalf of the Respondent.
58. Mr Tilt stated that he had 45 years' experience coaching football at the elite level and had a huge amount of experience in analysing football. He did not explain what he meant by "analysing football".
59. Mr Tilt stated that he had watched Video 1 and concluded that the Respondent had reached the ball first and kicked it forward to her winger. He further observed that the Sydney Olympic player "might have been a fraction late" and contacted the Respondent and thus, caused injury to herself. He then stated that there was not a clear picture of the actual contact or a clear picture of who had reached to the ball first.
60. Mr Tilt was critical of Mr Griffiths-Jones' report dated 28 August 2020. He alleged that Mr Griffiths-Jones could only be surmising what may have occurred because Video 1 did not provide a clear indication of the point of contact. Whilst he respected Mr Griffiths-Jones' expertise, he opined that without clear vision of the contact made, he did not believe that the on-field decision should be overruled.
61. Mr Tilt expressed the mitigating circumstances in the case as follows:
 - (a) The Respondent is a much taller girl than the Sydney Olympic player.
 - (b) The Respondent got to the ball first.
 - (c) the Sydney Olympic player ran into the Respondent.
 - (d) The referee was unable to see actual contact.
 - (e) The video footage was inconclusive, as there was no definitive picture of an actual point of contact.
62. Finally, Mr Tilt opined that the Match Official dealt with the incident in the game and therefore, there was no case to answer.
63. Mr Tilt then went on to provide a positive short sporting character reference for the Respondent. There was no need for the reference to be summarised here as its contents will be considered in respect of any sanction.

Dr Sharon Holdsworth's evidence

64. In evidence, there is a letter from Dr Sharon Holdsworth, House Coordinator, St Mary Star of the Sea College, Wollongong dated 6 September 2020. The letter was submitted on behalf of the Respondent and amounted to a glowing character reference for the Respondent. There was no need for the reference to be summarised here as its contents will be considered in respect of any sanction.

Ms Katherine McDonogh's evidence

65. In evidence, there is a statement by Ms Katherine McDonogh, President of Illawarra Stingrays dated 11 September 2020. The statement was submitted on behalf of the Respondent.
66. Ms McDonogh stated that she was at the match. Large parts of the statement were unrelated to the issue at hand, namely, the tackle.
67. Ms McDonogh stated that the Respondent was in her first year of NPL youth and that her inexperience as a player should also be considered. In her opinion, there was clearly no malice or viciousness on the Respondent's part in the tackle.
68. The Match Official issued a yellow card to another player after the Sydney Olympic player had been carried from the field of play. The game team sheet did not record the Respondent having been issued with a yellow card.
69. Ms McDonogh stated that the Respondent was going for the ball and not the player. The Respondent had lost the ball and was clearly trying to win it back in the last minutes of the game. After the tackle, the Respondent showed immediate remorse and tried to assist the Sydney Olympic player. The Respondent did not launch herself into the tackle. In Ms McDonogh's view, it was an unfortunate accident involving two young players.
70. Ms McDonogh submitted that consideration should be given to the Respondent's above average height and development for her age. Often a larger player is perceived to be more physical. This is not so in the Respondent's case.
71. Ms McDonogh stated that the Respondent and Stingrays have taken accountability in the incident. The Respondent stood down voluntarily from playing pending the GPT's determination and had not participated in games on 6 September 2020 and on 13 September 2020.
72. In her oral evidence at the audio visual hearing, Ms McDonogh affirmed that the Respondent had been stood down voluntarily pending the GPT's determination. She stated that, initially, she was not aware of the injury to the Respondent's foot. However, she stated that by 14 September 2020, she was aware that the Respondent was injured. She denied misleading FNSW and the GPT in relation to this issue.

Mr Geoffrey Wilson's evidence

73. In evidence, there is a statement by Mr Geoffrey Wilson, U14s Coach Illawarra Stingrays dated 10 September 2020. The statement was submitted on behalf of the Respondent.
74. Mr Wilson concluded that the Respondent's tackle was a "tired tackle" because she had played a match the previous day. The tackle occurred at the end of her second match in two days. He stated that there would be no way that the Respondent set out to hurt the Sydney Olympic player in the tackle.
75. Mr Wilson stated that the Respondent had demonstrated much remorse at the tackle and was very upset that the Sydney Olympic player's leg had been broken. The Respondent had willingly sat out her team's last two games.

Mr Scott Muttdon's evidence

76. In evidence, there is an undated statement by Mr Scott Muttdon, Principal Physiotherapist, BaiMed Physiotherapy & Sports Injury Clinic.
77. The statement is unrelated to these proceedings and referred to another football player. The statement has clearly been inadvertently included in the Respondent's evidentiary documents.

Mr Ross Bragg's evidence

78. In evidence, there is an undated statement by Mr Ross Bragg. The statement was submitted on behalf of the Respondent. Mr Bragg disclosed that he knows the Respondent's family "very well".
79. Mr Bragg stated that he had been requested to provide an opinion in relation to the charge laid against the Respondent based on his experience of officiating in sport over 50 years. Mr Bragg's experience included refereeing regional squash; national judge and coach for male gymnastics; National League Basketball Referee; International Starter and Referee for swimming; officiating at FINA Commonwealth Games, Olympic Games, Pan Pacific Games, Pan American Games, Oceania and Trans-Tasman meets.
80. The GPT noted that Mr Bragg held no officiating experience in football.
81. Mr Bragg stated that, based on his extensive experience officiating in sport, the dominant philosophy of officiating continues to be that, if there is any doubt, then the athlete gets the benefit of the doubt. He also opined that only official videos approved by the relevant sporting organisation should be accepted as evidence in consideration of an infringement or protest. Other unauthorised videos should not be accepted.
82. Mr Bragg opined that Video 1 was taken from a distance too far away to enable close criticism and scrutiny of the action that occurred. He then went on to challenge the expert evidence of Mr Griffith-Jones in respect of his use of the word "probably" when referring to "contact was probably made above the ankle to create such a severe injury". Mr Bragg opined that Mr Griffith-Jones use of the word "probably" indicated uncertainty, assumption and doubt. Further, in

Mr Bragg's view the referee was in a very good position to observe the whole incident. There were clearly no players obstructing his view.

83. Mr Bragg then provided a short sporting reference in respect of the Respondent.

Mrs Christine Smith's evidence

84. In evidence, there is a letter from Mrs Christine Smith, Classroom Teacher/Sports Coordinator, St Joseph's Catholic Parish Primary School, Bulli dated 9 September 2020. The letter was submitted on behalf of the Respondent.

85. The letter amounted to a strong character reference for the Respondent. There was no need for the reference to be summarised here as its contents will be considered in respect of any sanction.

The second video footage of the tackle (Video 2)

86. The Respondent provided FNSW access to and relied on this video footage of the tackle in her evidence. This video footage will be referred to as "Video 2".

87. Video 2 showed the lead-up to the tackle; the tackle; and the aftermath of the tackle at "normal" speed and in slow motion. Video 2 could be paused and watched frame by frame. GPT members viewed Video 2 prior to the audio visual hearing.

88. Video 2 was of significantly higher quality than Video 1.

Mr Richard Socratous' evidence

89. In evidence, there is a statement by Mr Richard Socratous dated 17 September 2020. The statement was submitted on behalf of the Respondent as an expert witness.

90. Mr Socratous stated that his relevant qualifications included Level 2 Referee (theory) and full Level 3 Referee. He refereed for five seasons between 2015 and 2019 inclusive. In 2019, he regularly refereed men's Premier League Reserves and performed the duties of the fourth Official in Men's Premier League. He had refereed Women's Premier League and had refereed a Women's Premier League grand final.

91. Mr Socratous stated that he had viewed the two available videos. It was unclear as to whether he was referring to Video 1 and Video 2 or, the normal speed and slow motion speed of Video 2.

92. Mr Socratous opined that, after having viewed the video evidence, he believed that the Match Official made the correct decision to caution the Respondent for reckless play on the basis of his positioning and the details of the incident; the application of the Laws of the Game (LOTG); and the Respondent's age and good character.

93. Mr Socratous opined that the Match Official was in the best position to see the tackle, namely, 10 to 15 yards from the tackle at an angle of approximately 45°. The video footage was taken about 100 yards away from the incident on a bad

angle, which made it almost impossible to be certain of the point of contact. The Respondent did not go in with studs up or studs showing. She was playing the ball. The Sydney Olympic player got to the ball fractionally sooner than the Respondent, making the latter's tackle fractionally late.

94. Mr Socratous referred to the definition of a reckless tackle in the LOTG. He opined that the Respondent could have been guilty of a reckless tackle because she had eyes for the ball only and made every effort to get to the ball first. Such a case warranted a yellow card.
95. Mr Socratous then referred to the definition of serious foul play in the LOTG and focused on the elements in the definition of brutality; excessive force; and endangering the safety of an opponent. The tackle was not brutal. It was an honest attempt to play the ball and not the player. It was just fractionally late. The Respondent did not use excessive force. The Respondent did not set out to endanger the safety of her opponent because she had eyes for the ball only and she was not making a tackle. She was using the normal amount of force required to kick the ball. The tackle was more one of recklessness than serious foul play.
96. Mr Socratous stated that the Respondent is 14 years of age; had no history of serious foul play; that she was of good character; and the captain of her team.
97. Mr Socratous criticised FNSW for considering the injury to the Sydney Olympic player; reviewing the video; and then working backwards "searching for anything to justify the outcome".
98. In his oral evidence at the audio visual hearing Mr Socratous repeated the contents of his statement. In response to questioning by Mr Crepaldi, he conceded that he had not made a complete reference to the LOTG. He also conceded that the Respondent was lunging for the ball but denied that she was using excessive force.
99. The GPT noted that, in parts, Mr Socratous delivered his evidence in an emotive manner and adopted the role of advocate for the Respondent.
100. After Mr Socratous had completed his oral evidence, the Respondent's father, in response to a question, advised that Mr Socratous was a friend of his family that they had not "seen for a while".

Mr Kris Griffiths-Jones response to Video 2

101. On 14 September 2020, FNSW provided Mr Griffiths-Jones with a link to Video 2.
102. On 14 September 2020, after having reviewed the "clearer footage", Mr Griffiths-Jones reported in the body of an email sent at 5:11 pm as follows:

"I still believe the tackle is a red card as the Stingrays player runs in with speed, tackles with a straight leg, studs showing and making contact with the SO player around her right ankle. All these considerations contribute to a red card tackle. I note that the point of contact is not what breaks the SO players [sic] leg and it is the fall from the tackle which breaks the players [sic] left leg. Under no circumstance did the SO player contribute

to her own injury and that Illawarra player as a duty of care when committing these types of tackles.”

103. In his oral evidence at the audio visual hearing, Mr Griffiths-Jones maintained the opinions he expressed in his reports. He confirmed that he was a Level 1 Referee and that he had refereed 107 A-League matches and had been the VAR in 150 A-League matches. He also confirmed that he “does a lot of video analysis”.
104. Mr Griffith-Jones was critical of Mr Socratous’ evidence. He disagreed with Mr Socratous and stated that the tackle was a lunging tackle with excessive force. The Respondent did not get the ball. He referred to an “elephant touch” and a “donkey touch”. The Respondent went into the tackle with a straight leg and studs showing. There was a high risk of serious injury in such circumstances. The Respondent was clearly endangering the safety of her opponent. The Respondent’s tackle was late. She was lunging using the full force of her body. Finally, Mr Griffith-Jones observed that the character reference Mr Socratous provided for the Respondent in his written statement undermined his independence as an expert witness.
105. Mr Folino-Gallo put it to Mr Griffiths-Jones that the opinion he provided in his statement dated 28 August 2020 was speculative because he had assumed that the Sydney Olympic player had fractured her right leg at the point of contact. Mr Griffiths-Jones responded that it did not change the nature of the Respondent’s tackle on the Sydney Olympic player. The Respondent went in with a straight leg with studs showing and those studs were up at the point of contact.

Mr Mathew Cheeseman’s evidence

106. FNSW relied on the expert witness statement of Mr Mathew Cheeseman, Referees Manager at Football Federation Australia dated 15 September 2020.
107. Mr Cheeseman’s statement was contained in an email to FNSW sent at 8:31 am on 15 September 2020 at the request of FNSW, who had provided him with Video 2.
108. Mr Cheeseman stated that he had previously held the position of Referees Manager at Football West. His on-field career included 10 years on the A-League match official panel and four years on the FIFA international list. He currently holds the highest FFA qualifications as a referee (Level 1 Emeritus); assessor (Level 1) and instructor (Level 2).
109. Mr Cheeseman had viewed Video 2 and expressed the opinion that the challenge by the Respondent was a lunge towards the Sydney Olympic player with her studs showing.
110. After referencing frame by frame images sourced from Video 2, it appeared to Mr Cheeseman that, the Respondent’s extended leg came down making contact onto the lower part of the inside right ankle of the Sydney Olympic player (the standing leg), slightly above the line of her footwear. He further opined that, with the lunging nature of the challenge, the point of contact, and the use of the studs to make contact, the challenge was worthy of a red card.

SUBMISSIONS

111. Mr Folino-Gallo for the Respondent made oral submissions at the hearing and Mr Crepaldi for FNSW made oral submissions in reply. At the conclusion of Mr Crepaldi's submissions, Mr Folino-Gallo sought leave to provide further written submissions on a timetable to be determined by the GPT.
112. Mr Folino-Gallo submitted that he needed more time to consider and respond to the oral submissions made by Mr Crepaldi at the hearing. He had only recently been briefed to appear for the Respondent and was not in a position to properly respond to Mr Crepaldi's submissions. Due to his late involvement in the matter, he did not have an opportunity to provide the GPT with the Respondent's written submissions prior to the hearing. Not granting him leave, would prejudice the Respondent.
113. Mr Crepaldi opposed the application on the basis that the Respondent should have been fully prepared to respond to the case at the hearing.
114. The GPT members adjourned to private session to consider the application. Whilst the GPT considered that Mr Crepaldi's position had merit, it considered and determined that, in the interests of procedural fairness, the Respondent's application ought to be granted.
115. The GPT granted the Respondent leave to lodge the Respondent's written submissions by 24 September 2020 and that FNSW lodge any submissions in reply by 1 October 2020. Both sets of written submissions were lodged within the timeframes set by the GPT.

The Respondent's submissions

116. The Respondent's oral submissions at the hearing were encapsulated and expanded upon in Mr Folino-Gallo's detailed written submissions dated 27 September 2020.
117. It is not the GPT's intention to summarise those lengthy submissions in this determination. However, all such submissions and arguments have been considered. Relevant parts of the submissions will be dealt with under the heading "Consideration and findings" later in this determination.
118. The Respondent's position may be summarised as follows:
 - (a) The GPT and FNSW do not have jurisdiction to disturb the finding of the Match Official in awarding the yellow card to the Respondent.
 - (b) In the alternative, the Respondent should be found not guilty of the charge of Serious Foul Play.
 - (c) In the alternative, the Respondent should not be found guilty of the charge, of Serious Foul Play causing serious injury because the causal nexus has not been established on the evidence.

- (d) In the alternative, if the charges are made out, the Respondent should be given the minimum sanction by reason of her clean record, her youth and the fact that the objective seriousness of the offence is on the lower end of the spectrum.

FNSW's submissions

- 119. FNSW relied on its initial detailed written submissions dated 16 September 2020; its oral submissions made at the hearing on 17 September 2020; and its detailed written submissions dated 1 October 2020 in response to the Respondent's written submissions dated 24 September 2020.
- 120. It is not the GPT's intention to summarise all those lengthy submissions in this determination. However, all such submissions and arguments have been considered. Relevant parts of the submissions will be dealt with under the heading "Consideration and findings" later in this determination.
- 121. FNSW's position may be summarised as follows:
 - (a) FNSW and the GPT have jurisdiction to correct the Match Official's error in this case under section 9.4 of the Regulations.
 - (b) In the alternative, FNSW relied on section 9.2 of the Regulations.
 - (c) The offence of Serious Foul Play, Offence Code 05-01, "Conduct causing serious injury" in the Regulations has been made out on the evidence.

CONSIDERATION AND FINDINGS

The jurisdictional issue

- 122. FNSW has a general power to investigate any incident that may constitute a breach of the Regulations: section 1(e) of the Regulations.
- 123. Relevant to this case, section 9.1(a) of the Regulations provides that the GPT has jurisdiction to hear and determine charges of Misconduct and Disrepute and Offences disclosed in Match Official Reports (section 9.2 of the Regulations) and any other matter which the Executive determines, in its absolute discretion, is important to the interests of football in the State (section 9.4 of the Regulations).
- 124. The Respondent was charged by FNSW under sections 9.2 and/or 9.4 and/or 16.4 of the Regulations.
- 125. The relevant parts of section 9.2 of the Regulations were set out at [6] above.
- 126. Section 9.4 of the Regulations was set out in full at [7] above.
- 127. The definition of Misconduct in Section 16.4(d) of the Regulations was set out in [8] above.
- 128. The Respondent submitted that FNSW's reliance on section 9.4 of the Regulations was disingenuous and contrived to avoid the difficulties that it

would no doubt encounter if it engaged with the appropriate provisions that were apt to be considered in these proceedings. The Respondent further submitted that the present case fell within section 9.2 of the Regulations. As a matter of construction, section 9.2 of the Regulations was plainly intended to “cover the field” and section 9.4 of the Regulations had no application to this case. Giving section 9.4 the interpretation FNSW contended, would render sections 9.2 and 9.3 completely otiose. The process adopted by the FNSW Executive fell within the contemplation of section 9.2 (d) of the Regulations. FNSW’s conduct of the matter conformed with sections 9.2(e)(ii) and 9.2 (g) to (k). In those circumstances, there cannot be another mechanism for investigating and sanctioning Misconduct that occurs on the field. FNSW may wish to gloss over the fact that the process it undertook fell wholly within section 9.2, but it is fatal to FNSW’s case that the Tribunal has no jurisdiction to determine this matter.

129. FNSW submitted that section 9.4 of the Regulations was the more appropriate section under which to bring these proceedings. However, it submitted that it was open to the GPT to find that the present case fell within section 9.2 of the Regulations. FNSW disagreed that the engagement of section 9.4 of the Regulations would render sections 9.2 and 9.3 completely otiose because the latter mentioned sections deal with specific sets of circumstances and prescribed procedures for dealing with those circumstances. FNSW submitted that it did not serve participants, FNSW or its independent tribunals to have one broad provision to “cover the field”. FNSW submitted that, from time to time, there will be circumstances where neither sections 9.2 nor 9.3 apply, either for substantive or procedural reasons, or both. Accordingly, FNSW requires a broad provision to allow it to take appropriate action where it determines that it is in the interests of “football in the State, Football NSW or FFA” to do so.

130. The Respondent submitted that the jurisdiction of FNSW in relation to red card offences was confined to the matters set out in section 7.1 of the Regulations. There was no red card issued to the Respondent in the match. It was not open for FNSW to engage with the mechanism set out in sections 7.2 and 9.2 of the Regulations. FNSW does not have the power to substitute a red card for a yellow card. This accords with the principle that primacy must be given to the Match Official’s findings on the field. In this match, the Match Official’s analysis was that the tackle in question constituted a yellow card offence. It is not open for FNSW to now challenge the Match Official’s decision, as it goes against the well-established “Field of Play Doctrine”. This doctrine was supported and upheld by the Court of Arbitration for Sport, in *(OG Rio) 16/028 Behdad Salimi & National Olympic Committee of the Islamic Republic of Iran (NOCIRI) v. International Weightlifting Federation (IWF)* where the Arbitrators stated at [35] that they:

“do not overturn the decision made on the playing field by judges, referees, umpires or other officials charged with applying the rules of the game unless there is some evidence that the rule was applied arbitrarily or in bad faith”.

The Respondent submitted that it was plain that the decision made by the Match Official was not applied arbitrarily or in bad faith.

131. FNSW submitted that given no red card was issued to the Respondent in this case, FNSW cannot rely on section 7 of the Regulations to deal with such a

matter. Even if it did, it would be inappropriate to do so because, in such cases, there is only a limited ability for the accused to challenge a suspension under section 7 (see section 8.2 of the Regulations). With section 7 of the Regulations being unavailable, the conduct of the accused should not go unpunished and FNSW must then look to other alternatives for taking action. The available options are to take action under section 9.2 and/or section 9.4 of the Regulations.

132. The Respondent submitted that the process adopted by FNSW in this case was antithetical to the National Disciplinary Regulations of FFA 2020 (NDR), where section 3.1(b) states that the referee makes all disciplinary decisions during a match and those decisions, subject to the limited exceptions in the NDR, are final. Section 3.2 of the NDR relevantly provides that a competition administrator may cite a participant to appear before its Disciplinary Committee in relation to a red card; and expulsion; or a serious infringement that has escaped the referee's attention. In this case, the Respondent was not issued with a red card. There is no definition of "a serious infringement" in the LOTG, the NDR or the Regulations. In FNSW GPT 18-46, the GPT suggested that "a serious infringement" should be appropriately read as a reference to an offence that would justify the issuance of a red card to a participant.
133. FNSW submitted that the decision in FNSW GPT 18-46, which was followed in FNSW GPT 20-03 and FNSW GPT 20-04, is authority for the proposition that charges may be brought under section 9.2 for on-field matters that did not result in the accused being issued with a red card. In those cases, FNSW relied on section 3.2(d)(ii) of the NDR to cite the accused. However, in this case, the tackle did not escape the Match Official's attention and, therefore, FNSW is unable to rely on section 3.2(d)(ii) of the NDR. Accordingly, doubt is cast on FNSW's ability to bring a charge under section 9.2 of the Regulations in circumstances where the offence did not escape the Match Official's attention. FNSW submitted that, in order to overcome any potential issues in this regard, the Executive may refer such a matter to the GPT under section 9.4, where it determines that it is important to the interests of football in the State, FNSW or FFA to do so.
134. The Respondent submitted that section 7.6 of the Regulations does not contemplate an ability to review a yellow card when a red card is warranted. The lacuna in the Regulations is no answer, nor is it a pathway to extend the operation of section 9.4 of the Regulations to cover a situation it was plainly never intended to contemplate. If FNSW wishes to preserve a power to review yellow card or no call decisions by Match Officials, it must revisit the contents of the Regulations. Further, the Respondent submitted that section 7.6 of the Regulations only allows FNSW to revisit a Match Official's decision for obvious error in first-grade matches in FNSW Men's NPL 1 and Women's NPL 1 competitions. The Respondent submitted that, to the extent that FNSW GPT 18-46 was relied on by FNSW for some broader proposition that applied to the present case, it was incorrectly decided.
135. FNSW submitted that it must have the ability to take action in the circumstances where a Match Official failed to issue a red card against a Participant who commits a red card offence. There could be a number of reasons for a Match Official failing to issue a red card. In this case, FNSW submitted that the Match Official's inexperience was the reason. Section 9.4 the Regulations gave FNSW

the power to take the action it did in this case. Once the GPT is satisfied that FNSW has such a power, the GPT's role is to determine the guilt of the Respondent and any applicable sanction. It is not the GPT's role to determine whether the proceedings should have been brought in the first instance, subject to the fetter on FNSW's absolute discretion referred to in the Respondent's submissions.

136. In FNSW GPT 18-46, the cited player was alleged to have kneeed/kicked an opponent two to three times whilst the opponent was on the ground. The Match Official ruled on the incident and awarded an indirect freekick against the cited player for playing in a dangerous manner. The Match Official's written report to the GPT stated that he was 10 metres from play and that his assistant was 20 metres from play and neither of them observed any kicking of the opponent to the upper body. There was video evidence of the incident. On 19 July 2018, FNSW issued a Notice of Charge under sections 9.2 and 16.4 (d) of the Regulations. The jurisdictional issue involved the former section 3.2(d)(iii) [now 3.2(d)(ii)] and section 3.3 of the NDR, which apply to FNSW and grant it a discretion to cite a Participant if the conditions under section 3.2 and section 3.3 are met. The cited player argued that there was no "serious infringement" that had escaped the Match Official's attention. The GPT referred to two cases that established the practice of a Football Association reviewing the on-field conduct of a player post-match, notwithstanding the fact that the Match Official had made a ruling in relation to the relevant incident. The GPT found that FNSW had the jurisdiction to refer the matter to the GPT. It further found that a Red Card infringement should be the test of what constitutes a "serious infringement" for the purposes of section 3(d) of the NDR and that the knee making contact with the head/neck of an opposing player was a "serious infringement".
137. The first case referred to in FNSW GPT 18-46 was *English FA v Ben Thatcher (Manchester City)* which involved an incident where Manchester City's Ben Thatcher elbowed Portsmouth's Pedro Mendes in the face in a violent challenge near the sideline and rendered him unconscious (Thatcher's Case). The English FA cited Mr Thatcher to appear before its Disciplinary Committee and charged him with "serious foul play" notwithstanding that the Match Official had issued him a yellow card and ruled on the incident. Mr Thatcher was subsequently suspended by the English FA for 8 matches with a further 15-match ban suspended for two years. The effect of Thatcher's Case was that his yellow card was upgraded to a red card post-match, as is sought to be achieved by FNSW in the Respondent's case. The English Football Association is one of the biggest Football Associations in the world. Whilst it has a different system of governance to FNSW, it does not prevent FNSW and this GPT from looking to its disciplinary process for guidance. Of course, the GPT is not bound by the decision in Thatcher's case.
138. The second case referred to in FNSW GPT 18-46 was *FFA -v- Roy O'Donovan*, which was determined by the Disciplinary (and Ethics) Committee of FFA (the Committee) on 7 January 2016 (O'Donovan's Case). In an A-League match on 31 December 2015, Mr O'Donovan (Central Coast Mariners) head-butted Manny Muscat (Wellington Phoenix) in or about the 58th minute. The Match Official did not see the incident as it took place behind him away from play. The Match Official consulted his Assistant Referee, who advised that it had been a push by Mr O'Donovan and that a yellow card was the appropriate sanction. The Match

Official issued Mr O'Donovan with a yellow card and the match continued. The Committee noted at [3]:

“In this matter there has been a referral under clause 9.40 of the Disciplinary Regulations. In the case of a referral under clause 9.40, FFA will have determined in its sole and absolute discretion that a Referee has made an Obvious Error and that a failure to remedy the Obvious Error would be prejudicial to the interests or good image of football in Australia. That is what has happened here. Although not a matter for our review, we observe that the circumstances of this matter fully justified the referral by the FFA. ...”

Mr O'Donovan did not challenge the Committee's jurisdiction to hear his case and he pleaded guilty to the charge. The Committee imposed an eight match suspension.

139. The decision in FNSW GPT 18-46, which was followed in FNSW GPT 20-03 and FNSW GPT 20-04, was authority for the proposition that charges may be brought under section 9.2 for on-field matters that did not result in the accused being issued with a red card. In those cases, FNSW relied on the section 3.2(d)(ii) of the NDR to cite the accused where “a serious infringement has escaped the Referee's attention”. In this case, the tackle did not escape the Match Official's attention and, therefore, the GPT is not satisfied that FNSW is able to rely on section 3.2(d)(ii) of the NDR to bring the charge. Similarly, GPT is not satisfied that FNSW can bring the charge under section 9.2 of the Regulations in circumstances where the offence did not escape the Match Official's attention. FNSW cannot rely on the Obvious Error provisions within the meaning of section 7.6 of the Regulations.
140. As is evident to the GPT in this case, from time to time, there will be circumstances where neither sections 9.2 nor 9.3 of the Regulations apply, either for substantive or procedural reasons, or both. Section 9.4 of the Regulations is a broad provision that provides FNSW with a mechanism to take appropriate action where it determines that it is in the interests of “football in the State, Football NSW or FFA” to do so. This case falls into one of those circumstances.
141. After having carefully considered the detailed submissions made by the parties in relation to the issue of jurisdiction and for the reasons stated above, the GPT was satisfied and found that under section 9.4 of the Regulations, FNSW had the power to refer this matter to the GPT.
142. Having found that section 9.4 of the Regulations conferred on FNSW the mechanism to refer this matter to the GPT, it is appropriate, in light of the submissions made by the parties, to turn to the exercise of its absolute discretion under the section.
143. The Respondent submitted that the basis of the fettering of the absolute discretion goes beyond the implied duty of good faith recognised in the preponderance of legal authorities in New South Wales. The authorities are clear that such limitation applies as a matter of necessary implication. Therefore, the rationale for such a limitation is not grounded in some general doctrine of “good faith”, but rather that it is presumed to be the reasonable expectation and

therefore, the common intention of the parties that there should be a genuine and rational, as opposed to an empty or irrational, exercise of discretion. The Respondent referred to the relevant authorities in her written submissions.

144. FNSW submitted that the exercise of the Executive's discretion under section 9.4 of the Regulations is not fatal to the Respondent or any other accused against whom it is used. The discretion is not used to convict and sanction an accused but rather to bring the accused before an independent tribunal before which, the accused is entitled to lead evidence, cross-examine witnesses, be legally represented and make oral and written submissions. The independent tribunal will then make a finding on the question of guilt and sanction, if necessary. FNSW exercised its discretion in a reasonable manner. The present case can be distinguished from the classic cases dealing with absolute discretion relied on by the Respondent for the above reasons.
145. The GPT found that FNSW did not fetter the discretion conferred on it by section 9.4 of the Regulations. FNSW obtained statements from the Match Official and the Sydney Olympic player. FNSW was also provided with video footage of the tackle. It then sought advice from Mr Griffiths-Jones. After reviewing the information and documentation in its possession and video footage of the tackle, the FNSW Executive determined that the matter was deemed to be important to the interests of football in the State, FNSW or FFA, such that it should be referred to the GPT for determination pursuant to section 9.4 or, in the alternative, section 9.2 of the Regulations. FNSW then issued the Respondent with the Notice of Charge. Accordingly, the GPT finds that FNSW exercised its discretion under the section in good faith and in a genuine and rational manner. It exercised its independent judgment in the matter based on the information provided to it.
146. Although arguably not a matter for our review, the GPT observed that, in the circumstances of this case, its referral to the GPT was justified under section 9.4 of the Regulations.

The tackle

147. The Sydney Olympic player's evidence was that the Respondent launched herself straight into her leg. She did not say which leg. She stated that the tackle caused a 9 cm "break straight down my tibia". Unsurprisingly, the Sydney Olympic player's description of the tackle was cursory.
148. The unchallenged medical evidence is that the Sydney Olympic player suffered an injury to her left ankle and an undisplaced left distal tibial fracture following a tackle in a football match when her left ankle went into inversion.
149. The Match Official described the tackle as a reckless slide tackle at a moderate speed which made contact with the ankle of the Sydney Olympic player when the respondent was attempting to win the ball back. He did not specify which ankle. The GPT finds that the Match Official is a young referee of two years' experience in Women's NPL matches in the 12 years to 17 years age groups and Men's NPL matches in the 12 to 15 years age groups. As submitted by FNSW, his experience, in reality, falls short of two years because of the reduced number of fixtures as a result of the COVID-19 interruption to football this year.

150. The Respondent described the circumstances of the tackle as having “happened quickly”. Her focus was on getting the ball to her right winger. The Sydney Olympic player “came in diagonally”. She did not intend to tackle the Sydney Olympic player. She did not even see the Sydney Olympic player coming. The Sydney Olympic player fell to the ground in pain. The Respondent gave her oral evidence in a forthright manner and impressed the GPT as a witness of truth.
151. After viewing Video 1, Mr Griffiths-Jones, somewhat cautiously, stated that “contact was probably made above the ankle to create such a severe injury”. He opined that when the point of contact in a tackle is low, it is less likely to cause serious injury, and a yellow card is warranted. When the point of contact is made above the ankle, then the tackle has a high chance of serious injury and would warrant a red card. Video 1 was of poor quality, in that, the vision was quite blurred. Whilst acknowledging Mr Griffiths-Jones extensive experience as a match referee and video referee at the highest level of football in Australia, the GPT found the point of contact in the tackle difficult to ascertain at both normal speed and frame by frame due to the blurriness of the video footage. On this basis, the GPT gave little weight to Mr Griffiths-Jones’ statement dated 28 August 2020 based on his review of Video 1.
152. Mr Tilt was critical of Mr Griffiths-Jones’ statement dated 28 August 2020. He alleged that Mr Griffiths-Jones could only be surmising what may have occurred because Video 1 did not provide a clear indication of the point of contact. Whilst he respected Mr Griffiths-Jones’ expertise, he opined that without clear vision of the contact made, he did not believe that the on-field decision should be overruled. Whilst the GPT agreed with the fact that Video 1 did not provide a clear indication of the point of contact in the tackle, in the light of the better quality in Video 2, the GPT disagreed with Mr Tilt’s opinion.
153. Ms McDonogh’s evidence was that the Respondent was going for the ball and not the player. The Respondent had lost the ball and was clearly trying to win it back in the last minutes of the game.
154. Mr Wilson’s evidence was that the Respondent’s tackle was a “tired tackle” because she had played a match the previous day. The tackle occurred at the end of her second match in two days.
155. The GPT did not give Mr Bragg’s evidence any weight. He had been requested to provide an opinion in relation to the charge laid against the Respondent based on his experience of officiating in sport over 50 years but he held no officiating experience in football.
156. The GPT gave no weight to the evidence of Mr Socratous because he had assumed the role of an advocate in both his written statement and in his oral evidence. Further, the character reference he provided for the Respondent in his written statement undermined his independence as an expert witness.
157. Video 2 was of significantly higher quality than Video 1. After having reviewed Video 2, Mr Griffiths-Jones confirmed his belief that the tackle warranted a red card. He opined that the tackle was a lunging tackle with excessive force. The Respondent did not get the ball. The Respondent went into the tackle with a straight leg and studs showing. There was a high risk of serious injury in such circumstances. The Respondent was clearly endangering the safety of her

opponent. The Respondent's tackle was late. She was lunging using the full force of her body. Mr Griffiths-Jones denied that his statement dated 28 August 2020 was speculative because he had assumed that the Sydney Olympic player had fractured her right leg as it was the point of contact. His incorrect assumption about the right leg having been fractured did not change the nature of the Respondent's tackle on the Sydney Olympic player. The Respondent went in with a straight leg with studs showing and those studs were up at the point of contact.

158. Mr Cheeseman's evidence, after referencing frame by frame images sourced from Video 2, was that, the Respondent's extended leg came down making contact onto the lower part of the inside right ankle of the Sydney Olympic player (the standing leg), slightly above the line of her footwear. He further opined that, with the lunging nature of the challenge, the point of contact, and the use of the studs to make contact, the challenge was worthy of a red card.

159. "Serious foul play is defined in Law 12 of the LOTG at page 111 as follows:

"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."

160. Under the LOTG at page 110, a player who commits the offence of "serious foul play" must be sent off.

161. FNSW submitted that the primary issue was whether the Respondent committed "serious foul play". Neither the extent of the injury, nor the injury itself are elements of the offence and therefore, they are not factors to be considered in determining whether a foul has been committed. The issues of injury and extent of injury go only to the grading of the offence and whether the offence is aggravated. In this case, the Sydney Olympic player suffered a fracture to her left leg and such fracture was caused by the Respondent's tackle or challenge. FNSW submitted that the offence was made out on the evidence and was supported by the expert evidence of Mr Griffiths-Jones and Mr Cheeseman.

162. The Respondent submitted that FNSW failed to establish that the challenge was performed with excessive force or that it endangered the safety of the Sydney Olympic player. Further, the fact that the Sydney Olympic player was injured cannot be considered in the analysis of determining whether there was "serious foul play". Therefore, it must be concluded that the Respondent made a challenge on the ball that warranted no more than a caution rather than a red card. In support of the latter submission, the Respondent relied on a decision of the Independent Regulatory Commission of the Football Association in the matter of a wrongful dismissal claim successfully brought by Tottenham Hotspur FC on behalf of Mr Heung-min Son on 5 November 2019.

163. In relation to the issue of causation, the Respondent disputed the causal nexus between the tackle or challenge and the Sydney Olympic player's injury. The Respondent referred to the oft quoted case of *March v E & MH Stramere Pty Ltd*

(1991) 171 CLR 506 in relation to the issue of causation and the difficulties and the shortcomings of the “but for” test sought to be applied by FNSW. The Respondent submitted that, FNSW have not negated the possibility, if not the probability that the steps taken by the Sydney Olympic player so as to avoid further contact likely contributed and/or caused the injury she sustained.

164. FNSW referred to section 5D of the *Civil Liability Act 2002* (the CLA), which modified the common law of negligence in New South Wales. FNSW also referred to the case of *Hudson Investment Group Limited v Atanaskovic Hartnell & Ors* [2014] NSWCA 255 and correctly submitted that the effect of section 5D(1)(a) of the CLA is that factual causation is to be determined by the “but for” test. That is, “but for the negligent act or omission, would the harm have occurred?” Accordingly, FNSW submitted that “but for” the tackle committed by the Respondent; the Sydney Olympic player would not have suffered the injury she did.
165. The CLA has codified the common law of negligence. Where causation is in issue each case must be determined on its own facts. Questions of fact are to be determined on the basis of the evidence, including, where applicable, expert opinions. What is required is a common sense evaluation of the causal chain. The Respondent sought to submit that the link in the chain of causation was somehow snapped by some contribution, act or omission by the Sydney Olympic player. The latter submission has no foundation and was unanimously rejected by the GPT. The GPT is satisfied that the tackle was causative of the Sydney Olympic player’s injuries.
166. The Respondent submitted that little weight could be placed on Mr Griffiths-Jones evidence in the light of his incorrect assumption that the Sydney Olympic player had sustained the fracture to her right leg. Further, his unaltered opinion as to causation of the injury after becoming aware that it was the Respondent’s left leg that was fractured, meant that no weight should be given to his evidence. The GPT had the concerns referred to above about Mr Griffiths-Jones’ evidence in respect of his review of Video 1. However, whilst the responses in his written and oral evidence after reviewing Video 2 could be interpreted as short or terse, Mr Griffiths-Jones engaged sufficiently with the issue and explained why his incorrect assumption as to which leg had been fractured made no difference to his expert opinion. Accordingly, the GPT accepted the expert opinion expressed by Mr Griffiths-Jones following his review of Video 2. Mr Griffiths-Jones’ expert opinion was supported by the expert evidence of Mr Cheeseman, who was a truly independent expert witness and whose unchallenged evidence, the GPT accepted.
167. The GPT has carefully considered all the documentary and oral evidence in these proceedings. In respect of the tackle, the GPT was satisfied on the balance of probabilities and found that:
 - (a) The Respondent lunged into the challenge with her studs showing.
 - (b) The Sydney Olympic player played at the ball with her foot in a fair manner.
 - (c) The Respondent entered the challenge late and after the Sydney Olympic player played at the ball with her foot.

- (d) The Respondent's extended leg came down making contact onto the lower part of the inside right ankle of the Sydney Olympic player's standing leg, slightly above the line of her footwear.
- (e) As a result of the contact made onto the lower part of the inside right ankle, the Sydney Olympic player fell to the ground, inverted her left ankle, suffered an injury to her left ankle and an undisplaced left distal tibial fracture. These injuries were serious.
- (f) The challenge endangered the safety of the Sydney Olympic player.
- (g) The charge of Serious Foul Play, Offence Code 05-01, "*Conduct causing serious injury*" under Schedule 3, Table A, Red Card Offence R1 of the Regulations is made out.
- (h) As a result of the Match Official's youth and relative inexperience as a referee, he issued the Respondent a yellow card, when he should have issued her with a red card for the challenge on the Sydney Olympic player.

SANCTION

168. The GPT found that the actions of the Respondent constituted an offence under Schedule 3, Table A of the Regulations, Offence Code R1 Grading 05-01 – Serious Foul Play – Conduct causing serious injury.
169. The minimum sanction for a first offence under Offence Code R1 Grading 05-01 is a Mandatory Match Suspension (MMS) plus six (6) Fixtures, that is, a total of seven (7) Fixtures.
170. The Tribunal History produced by FNSW in respect of the Respondent demonstrated a good record. The GPT noted the evidence of the Respondent's good character submitted by a number of witnesses. The GPT accepted the Respondent as a witness of truth. On the video evidence, the Respondent clearly expressed her concern for the welfare of the Sydney Olympic player in the aftermath of the tackle. She genuinely expressed her contrition in her oral evidence before the GPT. The GPT took all the above mentioned matters into account when it considered the sanction to be imposed and decided that imposing the minimum sanction, in the circumstances, would be appropriate.
171. FNSW submitted that the GPT should have regard to the fact that the Respondent was injured during her club-imposed stand-down and that some, if not all, of any suspension should be served while the Respondent was fit and available for selection. When asked by the GPT to explain how it could put into effect such a submission, FNSW was unable to assist. Accordingly, the GPT determined that, in the circumstances and without any further information to assist it, the suspension imposed should take effect from the date of the GPT hearing, namely, 17 September 2020.
172. The Respondent is suspended for **seven (7) Fixtures** under Offence Code R1 Grading 05-01 – Serious Foul Play – Conduct causing serious injury to take effect from **17 September 2020**.

173. The Respondent is to serve the Fixture Suspension in accordance with section 15.6 of the Regulations, in particular, sub-section 15.6(j). However, the GPT determined, under sub-section 15.6(h), that the Fixture Suspension will NOT extend to Spectating to attend any Fixtures in which her club participates during the Fixture Suspension, albeit that she may not enter the Field of Play.

174. The GPT determined that the Respondent pay the costs of the GPT processes.

Aggrieved parties to a determination of the FNSW General Purposes Tribunal may lodge an appeal to the FNSW Appeals Tribunal in accordance with sections 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.



Anthony Scarcella

Hearing Chair

29 October 2020

Schedule 1

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K.	Further statement of Kris Griffiths-Jones dated 15 September 2020
L.	The Respondent's FNSW Tribunal History
MO1.	Statement of the Match Official dated 27 August 2020
N.	FNSW written submissions dated 16 September 2020
	NOTICE OF RESPONSE AND ANNEXURES
	Notice of Response dated 11 September 2020

1.	Statement & submissions of Mathew Jessep dated 7 September 2020
2.	Statement of Bruce Tilt dated 9 September 2020
3.	Letter from Dr Sharon Holdsworth dated 6 September 2020
4.	Statement of Katherine McDonogh dated 11 September 2020
5.	Statement of Geoffrey Wilson dated 10 September 2020
6.	Undated statement of Scott Muttdon
7.	Undated statement of Ross Bragg
8.	Letter from Christine Smith dated 9 September 2020
9.	Respondent's further written submissions dated 14 September 2020
10.	Statement of Richard Socratous dated 17 September 2020
11. & 12.	Further video footage (x2) of the subject incident (Video 2)
	POST HEARING WRITTEN SUBMISSIONS
A.	Respondent's written submissions dated 24 September 2020
B.	FNSW's further written submissions in reply dated 1 October 2020

Schedule 2



**GENERAL PURPOSES TRIBUNAL
GPT 20-07
Thursday, 17 September 2020 at 6.30pm
via Zoom**

ATTENDEE REGISTER

<i>ATTENDEE</i>	<i>POSITION</i>
Anthony Scarcella	GPT Vice-Chairman
Robert Iaconis	GPT Panel Member
Mendo Cklamovski	GPT Panel Member
Lorenzo Crepaldi	Head of Legal & Governance, Football NSW
Michael Kantarovski	Legal & Regulatory Officer, Football NSW
[The Respondent]	Respondent
[Respondent's father]	Respondent's Support Person
Paul Folino-Gallo	Respondent's Legal Representative
Kathy McDonogh	Club Representative, Illawarra United Stingrays FC
Richard Socratous	Witness
[The Match Official]	Match Official
Kris Griffiths-Jones	Referees Development and Education Manager, Football NSW
Mathew Cheeseman	Referees Manager, Football Federation Australia