

**General Purposes Tribunal of Football NSW (In matter GPT 21-08)**

**FNSW v Sydney United 58 FC and Rockdale Ilinden FC**

**Tribunal Determination**

1. This is a determination by the General Purposes Tribunal (**GPT**) that was formed for the purposes of hearing charges brought by FNSW against Sydney United 58 FC (**SUFC**) and Rockdale Ilinden FC (**RIFC**). The GPT has jurisdiction to hear and determine those charges under s. 9.1 of the *Football NSW Grievance and Disciplinary Regulations 2021 (Regulations)*, although as explained further below both SUFC and RIFC raised an objection to the jurisdiction of the GPT to deal with some of the charges brought against them.
2. The GPT is constituted by Stephen Free SC (Chairperson), Anthony Scarcella (Deputy Chairperson) and Shereef Habib SC.

**Background facts**

3. Annexed to the charges, as Annexure A, was a Schedule of Facts relating to the events giving rise to the charges. RIFC and SUFC accepted the accuracy of most of the alleged facts as set out in the schedule. The following summary reflects facts that the GPT considers are established, including by that agreement between the parties. Many of these events are recorded in the video evidence that was provided to the GPT.
4. RIFC and SUFC are each Members of FNSW, within the meaning of the Regulations. The clubs have teams competing in the FNSW National Premier League Competition (**NPL**).
5. On 25 April 2021, RIFC and SUFC played a match in the NPL (the **Match**) at the Rockdale Ilinden Sports Centre (**RI Sports Centre**), the home ground of RIFC. 25 April 2021 is ANZAC Day and the event was marked by a commemorative ceremony prior to kickoff.
6. During the Match there were hostile interactions between spectators at the match who were apparently supporters of SUFC and RIFC respectively. Some spectators moved to different areas within the ground, which precipitated further hostile interactions.
7. Around the 8<sup>th</sup> minute of the Match, three supporters of RIFC, Spectator 1, Spectator 2 and an unidentified third person, moved from the

position from which they were watching the Match to stand at the immediate rear of the area in which a number of supporters of SUFC were located. This precipitated some hostile interactions between supporters of RIFC and supporters of SUFC, including aggressive gestures. One of the SUFC supporters who was involved was Christian Pervan, who advanced through the crowd yelling at the RIFC supporters. Pervan was present at the Match in breach of a ban imposed on him by FNSW in 2018 that prevented him from attending, inter alia, any match in which SUFC were playing.

8. In the 82<sup>nd</sup> minute of the match there was an onfield incident involving a tackle by a RIFC player on a SUFC player. This precipitated a physical and verbal confrontation between multiple players across both teams. Two individuals in the crowd, Spectator 3 and Spectator 2, jumped the fence and entered the field of play. Spectator 3 participated in physical confrontation involving the players. Other RIFC supporters remained on the other side of the fence, but adjacent to the onfield melee. One such supporter, Spectator 4, abused a SUFC player and made aggressive and abusive gestures towards him.
9. At the conclusion of the match a group of SUFC supporters exited through a carpark area at the rear of the seated grandstand. As they passed a group of rubbish bins that were inside the gate some of the supporters retrieved items that were behind the rubbish bins, including bricks and a discarded metal blade of a motor mower. The SUFC supporters then congregated at the far end of the carpark, at the bottom of a set of stairs which leads to a turnstile gate into the grandstand area. The SUFC supporters lit a flare.
10. A number of RIFC supporters gathered at the top of the stairs, near the turnstile gate. The two groups then proceeded to throw projectiles at each other over a period of minutes. The projectiles included the lit flare, a milk crate, hard plastic bread delivery trays, a trestle table, a metal A-frame sign and a half-brick or large rock. There were also other assaults and aggressive charges, including an unidentified SUFC supporter (wearing a Manchester City jersey) spitting at RIFC supporters behind the gate, and other SUFC supporters charging at RIFC supporters. Some kicks were delivered while another individual struck out repeatedly with a doubled-over belt. Another SUFC supporter who was in the area immediately outside the gate brandished a lawn mower blade.
11. Throughout these violent exchanges, which were appropriately described at the hearing as a riot, abusive shouts and chants were exchanged. This included the SUFC

supporters chanting “Croazia” and “Cigani” (the latter being a derogatory term meaning “Gypsy”).

12. These events occurred within metres of many other people, including young children, who remained in the RI Sports Centre after fulltime.
13. Police were called and over 50 police officers attended the RI Sports Centre. A number of arrests were made. These events attracted substantial adverse media coverage over the ensuing period. This included video footage of the post-match riot being broadcast on a number of television networks in the day following the events.
14. The broadcasts featured and prompted significant adverse media comment. The conduct was described as disgraceful and disgusting by the St George Area Police Commander and commented on adversely by the NSW Minister for Sport. Footage of the riot was available for viewing on the news websites. This footage has been viewed by a large number of persons and remains available for viewing. The same is true of the footage available on social media, including on Twitter, Instagram and Facebook.

#### **Charges against SUFC**

15. The following table sets out the charges brought against SUFC (as amended at the hearing to deal with a number of minor errors), and the pleas as advised by SUFC in its response to those charges and as advised at the hearing.

<b>Charge</b>	<b>Summary of conduct alleged</b>	<b>Provision of Regulations allegedly breached</b>	<b>Plea</b>
1	In or about the 82 <sup>nd</sup> minute of the Match SUFC players engaged in a melee (Grade 1) with RIFC players	s. 17.9(b)(iv) s. 16.4(d), with s. 17.9(c)  Alternatively: Sch 3 Table C Offence Code 11-01, with s. 16.6(a)	Guilty to the offence under s. 17.9(b)(iv) and s. 16.4(d)  Guilty to the offence under s. 16.4(d)
2	In or around September 2018 FNSW imposed a sanction on	s. 19.1(i), read with s. 16.4(d)	Guilty to the offence of

	<p>Christian Pervan (a Spectator) banning him from attending SUFC matches</p> <p>In breach of that suspension Mr Pervan attended the match</p>	<p>Alternatively: Sch 3 Table C Offence Code 27-01</p> <p>s. 16.6(a)</p> <p>Sanction under Sch 3 Table C Offence Code 27.02.</p>	<p>misconduct under s. 16.4(d)</p>
3	<p>In or about the 8<sup>th</sup> minute of the Match supporters of SUFC engaged in the conduct set out in paragraphs 7 and 8 of Annexure A</p>	<p>s. 16.4(d), with ss. 19(f) and 16.6(a)</p> <p>Sch 3 Table C Offence Code 09-01</p> <p>Sch 3 Table C Offence Code 06-01</p>	<p>Guilty to the offence under Code 06-01</p> <p>Not guilty to the charge under Code 09-01 (Provocation or incitement of hatred or violence)</p>
4	<p>At the conclusion of the Match supporters of SUFC engaged in the conduct attributed to them in paragraphs 14-18, 20, 23, 25-32 of Annexure A</p>	<p>s. 16.4(d), with ss. 19(f) and 16.6(a)</p> <p>Sch 3 Table C Offence Code 23-01</p> <p>Sch 3 Table C Offence Code 17-01</p> <p>Sch 3 Table C Offence Code 13-01</p> <p>Sch 3 Table C Offence Code 16-01</p> <p>Sch 3 Table C Offence Code 09-01</p>	<p>Not guilty (on the basis that no spectators or supporters of SUFC were involved, within the meaning of the Regulations)</p>

5	At the conclusion of the Match supporters of SUFC engaged in the conduct attributed to them in paragraphs 14-18, 20, 23, 25-32 of Annexure A	s. 16.4(f), with ss. 19(f) and 16.6(a) – conduct that brings the game of football into disrepute etc.	Not guilty (on the basis that no spectators or supporters of SUFC were involved, within the meaning of the Regulations)
6	At the conclusion of the Match supporters of SUFC engaged in the conduct attributed to them in paragraphs 14-18, 20, 23, 25-32 of Annexure A	s. 16.4(g), with ss. 19(f) and 16.6(a) – conduct prejudicial to the image, interests or reputation of the game of football or FNSW.	Not guilty (on the basis that no spectators or supporters of SUFC were involved, within the meaning of the Regulations)

### Charges against RIFC

16. The following table sets out the charges brought against RIFC (as amended at the hearing to deal with a number of minor errors), and the pleas as advised by RIFC in its response to those charges and as advised at the hearing.

Charge	Summary of conduct alleged	Provision of Regulations allegedly breached	Plea
1	In or about the 82 <sup>nd</sup> minute of the Match RIFC players	s. 17.9(b)(iv) s. 16.4(d), with s. 17.9(c)	Guilty

	engaged in a melee (Grade 1) with SUFC players	Alternatively: Sch 3 Table C Offence Code 11-01, with s. 16.6(a)	
2	In or about the 8 <sup>th</sup> minute of the Match supporters of RIFC engaged in the conduct set out in paragraphs 4-6 and 9 of Annexure A	s. 16.4(d), with ss. 19(f) and 16.6(a) Sch 3 Table C Offence Code 09-01 Sch 3 Table C Offence Code 07-01 Sch 3 Table C Offence Code 06-01	Guilty in part Not guilty to charges under Code 09-01 Code 07-01 Code 06-01
3	In or about the 82 <sup>nd</sup> minute of the Match, two supporters of RIFC engaged in the conduct set out in paragraph 11 of Annexure A	s. 16.4(d), with ss. 19(f) and 16.6(a) Sch 3 Table C Offence Code 01-01	Not guilty to the extent that one of the spectators was not a supporter. The charge was otherwise admitted
4	In or about the 82 <sup>nd</sup> minute of the Match, the RIFC supporter Spectator 3, engaged in the conduct set out in paragraph 11 of Annexure A	s. 16.4(d), with ss. 19(f) and 16.6(a) Sch 3 Table C Offence Code 16-01 (Violent Conduct) Sch 3 Table C Offence Code 15-01 (Assault/Striking) Sch 3 Table C Offence Code 06-01	Conduct admitted, but RIFC denies that Spectator 3 was a supporter.

		(Participating in Melee)	
5	In or about the 82 <sup>nd</sup> minute of the Match, supporters of RIFC engaged in the conduct set out in paragraphs 12 & 13 of Annexure A	<p>s. 16.4(d), with  ss. 19(f) and 16.6(a)</p> <p>Sch 3 Table C Offence  Code 06-01  (Offensive, insulting, abusive language or gestures)</p> <p>Sch 3 Table C Offence  Code 33-01  (Threatening or intimidating language or conduct towards individual)</p>	Guilty.
6	At the conclusion of the Match supporters of RIFC engaged in the conduct attributed to them in paragraphs 17, 18, 19, 22, 24 & 28 of Annexure A	<p>s. 16.4(d), with  ss. 19(f) and 16.6(a)</p> <p>Sch 3 Table C Offence  Code 23-01 (Throw missiles at other spectators)</p> <p>Sch 3 Table C Offence  Code 17-01 (Serious violent conduct)</p> <p>Sch 3 Table C Offence  Code 13-01  (Participating in melee)</p>	<p>Not guilty on jurisdictional grounds.</p> <p>If that is rejected, RIFC admits</p> <p>Code 23-01</p> <p>17-01</p> <p>16-01</p> <p>RIFC denies</p> <p>Code 14-01</p> <p>Code 09-01</p>

		Sch 3 Table C Offence Code 16-01 (Violent conduct)  Sch 3 Table C Offence Code 09-01 (Provocation or incitement of hatred or violence)	
7	At the conclusion of the Match supporters of SUFC engaged in the conduct attributed to them in paragraphs 17, 18, 19, 22, 24 & 28 of Annexure A	s. 16.4(f), with ss. 19(f) and 16.6(a) – conduct that brings the game of football into disrepute etc.	Not guilty on jurisdictional grounds.
8	At the conclusion of the Match supporters of SUFC engaged in the conduct attributed to them in 17, 18, 19, 22, 24 & 28 of Annexure A	s. 16.4(g), with ss. 19(f) and 16.6(a) – conduct prejudicial to the image, interests or reputation of the game of football or FNSW.	Not guilty on jurisdictional grounds.

17. We note at the outset that for a number of the charges, there are admissions of guilt in respect of contravention of particular provisions as identified in the charges, but no admissions in relation to alternative formulations of those charges corresponding to different rules under the Regulations. As it transpired at the hearing, it was not suggested by FNSW or either of the respondents that there was any material difference, for the purposes of determining the appropriate sanction, between the charges that were admitted, and the alternative formulations of those charges that were not admitted. Nor did FNSW press for any formal findings of guilt in respect of those alternative formulations.
18. The GPT proceeds in these circumstances on the basis that where the substance of a charge has been admitted in respect of at least one of the charged provisions, it is

sufficient to make a finding accordingly and impose an appropriate penalty. There is no need to make any determination in respect of the alternative formulations of those charges.

### **The hearing**

19. A hearing was conducted on the afternoon and evening of 19 July 2021. Because of movement and meeting restrictions arising from recent outbreaks in the community of COVID-19 infections, the hearing was conducted by videolink between the GPT and the parties. The parties were given an opportunity in the week before the hearing to notify any objection to this course, but each party indicated that it did not oppose the hearing being conducted by video.
20. At the hearing FNSW was represented by Mr David McLure SC of counsel. SUFC was represented by Mr Barry Dean of counsel. RIFC was represented by Mr Dennis Loether, solicitor. Mr Loether is the President of RIFC.
21. The GPT is grateful for the assistance of those representatives, who dealt frankly, directly and fairly with the issues arising in this matter. The respondents are also to be commended for their constructive response to the charges brought by FNSW, including by accepting the factual accuracy of most elements of the case advanced by FNSW and in acknowledging the inherent seriousness of much of the conduct, in particular the post-match riot.
22. The only witness required for cross-examination was Mr Ivicia Konjarski, the Assistant Treasurer of RIFC. Mr Konjarski was in the canteen at RI Sports Centre during the Match and gave evidence in his statement about observing SUFC supporters as they left the ground at the end of the Match. He was asked some questions about what he saw and his vantage point at the relevant times. As it transpired, neither FNSW or the respondents sought to attach any particular significance to the evidence of Mr Konjarski on the question of guilt or penalty.

### **Attendance of Christian Pervan in breach of previous sanction (SUFC charge 2)**

23. SUFC admits guilt to this charge. In September 2018 the GPT imposed a suspension on Mr Christian Pervan banning him from attendance at matches for three years. That suspension was still in operation on the day of the Match on 25 April 2021. Also in September 2018, the GPT found SUFC guilty of having allowed Mr Pervan to spectate at a match even though he was serving a suspension banning him from attending any SUFC fixtures (being the one imposed by the GPT in GPT15-03). The GPT imposed on

SUFC a fine of \$1000, suspended on the basis that if Mr Pervan was found to be in attendance at any SUFC match during the period of his suspension, the suspended fine would be activated.

24. Pursuant to s 19(i) of the Regulations, a Club is responsible for ensuring that sanctions imposed on its Spectators are enforced and adhered to. Any Club which fails to do so will be deemed to have committed Misconduct. The same result may be arrived at by the application of s 16.6(a), on the basis that the Club is deemed to have committed a misconduct offence under s 16.4 where one of its Participants (being here its spectator, Mr Pervan) has committed an offence outlined under s 16.4.
25. SUFC admits that it failed to ensure that the ban on Mr Pervan attending SUFC matches was not enforced and adhered to on 25 April 2021. As such, the contravention of the Regulations is established.

**Crowd confrontation around the 8<sup>th</sup> minute of the Match (SUFC charge 3; RIFC charge 2)**

26. FNSW relied on the video footage of the confrontation that occurred between supporters around the 8<sup>th</sup> minute of the Match. FNSW submitted that it showed supporters making insulting gestures, including a 3 finger salute, and using abusive language.
27. FNSW submitted that the video shows an individual making a right handed salute, which was said to be a politically significant gesture that was apt to incite hatred. We do not consider that there is sufficient evidence to conclude that a gesture having any special political character was made.
28. This particular factual conclusion does not detract from the ultimate conclusion that contraventions of the Regulations are established. Clause 19(f) provides that a Club is responsible, and liable, for the conduct and behaviour of its supporters, whether at home or away matches. The relevant misconduct alleged here includes provocation of violence (Table C Code 09-01), using offensive, insulting or abusive gestures whether in an isolated incident (Table C Code 06-01) or as repeated/excessive conduct (Table C Code 07-01). SUFC confined its admission of guilt to the contention that a breach of Table C Code 06-01 occurred. RIFC did not admit particular Code offences, but admitted that a contravention of s 19(f) occurred.
29. The GPT finds that such a contravention of s 19(f) occurred. At a minimum, conduct contrary to Table C Code 06-01 (use offensive, insulting or abusive language and/or

gestures) occurred. The relevant Club sanction under Table C is to be as determined by the Tribunal.

**Melee on the field around the 82<sup>nd</sup> minute of the Match (SUFC charge 1; RIFC charge 1)**

30. Pursuant to s 17.9(a), each Club must ensure that its Participants (which relevantly includes a club's players) do not engage in Team Misconduct. Team Misconduct relevantly includes Participants engaging in a Melee (Grade 1 or Grade 2) in a Match. Such Team Misconduct by a Club is deemed to be Misconduct by the Club: s 17.9(c). The relevant species of Misconduct is a breach of the Regulations: s 16.4(d).
31. RIFC and SUFC have each pleaded guilty to a charge of Team Misconduct in the form of a Melee (Grade 1). The minimum applicable Club sanction, in respect of a first breach for a Grade 1 Melee, is \$500.

**Involvement of RIFC supporters in and around the onfield melee (RIFC charges 3, 4, 5)**

32. Charge 4 relates to the conduct of Spectator 3 in entering the field of play and engaging in physical confrontation of players. The charge is brought on the basis that Spectator 3 is a supporter of RIFC. The charge is brought in reliance on s 19(f), which provides that a Club is "responsible, and liable, for the conduct and behaviour of its supporters whether at home or away Matches". FNSW also relies on s 16(6)(a) which provides that a Club is deemed to have committed an offence under s. 16.4 where "one of its Participants has allegedly committed any Offence(s) outlined in section 16.4".
33. The Regulations do not contain a definition of "supporter". "Participant" is defined to include, relevantly, a "Spectator". "Spectator" is defined to mean, relevantly, "a person in attendance at a stadium, venue, ground or Centre during any match, competition or training session sanctioned or administered by FNSW".
34. RIFC admits that the conduct alleged in charge 4 occurred, and constituted violent conduct, assault/striking and participating in a melee as alleged by FNSW. Indeed, Mr Loether for RIFC condemned the conduct as abhorrent and disgraceful. The question is whether or not RIFC is in any sense responsible for that misconduct under the Regulations. RIFC denies that Spectator 3 is a "supporter" of RIFC for the purposes of the Regulations. It likewise denies that Spectator 3 is one of "its Participants" for the purposes of s 16(6)(a).

35. The GPT does not consider there to be any relevant difference for present purposes between a “supporter” of a club for the purposes of s 19(f) and a person who is a club’s “Spectator” and hence one of “its Participants”. The possessive concept of a person being one of a Club’s Participants is consistent with the notion that the person is a supporter of a Club.
36. As to what is involved in being a “supporter”, FNSW submits that a “supporter” for the purposes of the Regulations is a person who by their words or actions (which may include such things as dress and behaviour), or both, provides encouragement to one team rather than another, or associates themselves with people who provide such support. FNSW submitted that a person may be a “spectator” at a match without necessarily being a “supporter” of either of the participating teams. This is consistent with the notion implicit in s 16(6)(a) that certain Spectators may belong to one club or another. It is not implicit in the Regulations that every person who spectates on a match does so as a supporter and spectator (and hence Participant) of one club or the other.
37. RIFC urged a different approach which would focus upon whether or not a person was known to the club as a recognised supporter of the club. It submitted that the Club did not recognise Spectator 3 as one of its supporters, or as having any prior affiliation with the club.
38. The process of determining whether or not a particular person fits the description of being a supporter of a Club is an evaluative one which must take account of all the available evidence. It is not a matter that can be established by membership records or equivalent formal criteria. The GPT considers that the interpretation advanced by FNSW is, at least, in broad terms an appropriate way of seeking to determine if a particular spectator is a supporter of one of the clubs involved. The factors pointed to by RIFC concerning recognised affiliation with a club are not necessarily incompatible with the test put forward by FNSW. To the extent that RIFC’s submission implied that a necessary characteristic of being a supporter of a club is that the person is known by the Club’s management to be such a supporter, we do not accept that submission. While such prior recognition by Club management may be a relevant indicator that a person is a supporter, we do not consider that it is a necessary criterion.
39. As for the evidence, FNSW relies on the video evidence as indicating that Spectator 3 came from an area of the ground where the video shows he was located with RIFC supporters, including people wearing RIFC apparel. The events surrounding the

melee are also revealing. Spectator 3 was in the company of other individuals who are acknowledged to be RIFC supporters and it is clear that he was attacking SUFC players. He was eventually restrained and pulled back by RIFC supporters, with whom he appears to have had some association. RIFC submitted that Spectator 3 was then ejected from the ground. While that is an appropriate response, the GPT does not consider that it undermines the surrounding indications in the evidence that Spectator 3 was actively supporting RIFC during the match and was doing so in the company of other RIFC supporters.

40. For these reasons the GPT finds that the Club is guilty of charge 4 because the conduct of Spectator 3 is to be characterised as the conduct of one of “its Participants” and one of its supporters.

**Post-match riot (SUFC charges 4-6; RIFC charges 6-8)**

41. Both SUFC and RIFC submitted that there was no basis for a conviction in respect of these charges concerning the riot, and the GPT had no jurisdiction to impose a penalty, because the conduct in question occurred after the Match had concluded and/or because the conduct occurred outside the venue where the Match was played. On these bases, it is said that none of the participants in the riot can be characterised as either supporters or Spectators for the purposes of the Regulations.
42. We have set out above the provisions of the Regulations, including the defined terms, bearing on the liability of Clubs for the misconduct of their supporters and Spectators. RIFC and SUFC focus upon the fact that a person is a Spectator, according to the definition, only to the extent that the person is “in attendance at a stadium, venue, ground or Centre during any match, competition or training session sanctioned or administered by FNSW”. RIFC and SUFC seek to extract from this definition both a temporal limitation and a locational limitation to the concept of a Spectator. The temporal limitation is that a person is only a Spectator for so long as the match is played, because the definition refers only to a person in attendance “during any match”. As to the locational limitation, the argument is that a person is only a Spectator for so long as they are “in attendance at a stadium, venue, ground”. RIFC and SUFC submit that the same limitations would apply to the concept of a “supporter”.
43. Applied to the facts, RIFC and SUFC focused in their submissions on the locational limitation. As to the temporal limitation, they disavowed any suggestion that a person ceased to be a Spectator (and the Misconduct provisions in the Regulations ceased to

have any reach) as soon as the final whistle was blown. As appeared to be acknowledged at the hearing, that would be a most unlikely construction of the Regulations, given the propensity for misconduct to occur (including involving spectators) after full time. However, it was submitted that at some time after full time the concept of being in attendance at a "Match" comes to an end and a person can no longer be a Spectator.

44. As to the locational limits in the facts of this matter, RIFC and SUFC argued that the effective boundary of the ground and the venue was the turnstile gate where spectators enter the stadium. By this measure, they argued that the riot occurred wholly or at least primarily outside the ground/venue, on the steps and in the carpark beyond the gate. RIFC placed particular emphasis on the area over which it has legal control at the RI Sports Centre, which does not include the carpark.
45. FNSW addressed each of these propositions, namely that the individuals who participated in the riot were not "Spectators" because the match had concluded, or alternatively because they were no longer within the venue at which the match had concluded.
46. FNSW appeared, at least in its primary submissions, to accept the premise of the argument that a Club can only be liable in respect of conduct of a person while that person is doing the things which make the person a "Spectator" according to the definition of that term. As to the duration of a "match", FNSW submitted that it extends beyond the final whistle. How long it extends is not something that can be articulated as an abstract proposition. FNSW accepted that at some point in time the temporal nexus with the match is broken.
47. FNSW made similar submissions in relation to the concept of a "venue" under the Regulations. It submitted that the venue must be taken to include the areas surrounding the ground at which the match is played. Relevantly for present purposes, that would include the carpark from which a number of projectiles were thrown and the stairs leading up to the turnstile gate, where much of the riotous behaviour occurred.
48. It is clear that if the submissions of RIFC and SUFC regarding the limits of the concept of a Spectator/supporter were to be accepted as correct, it would lead to surprising results and expose significant gaps in the treatment of misconduct in the Regulations. As to the suggested temporal limitation, it is notorious that many serious incidents,

prejudicial to the safety of players, officials and spectators, can occur in association with a match but at a time before or after the match itself. Such incidents are apt to affect the interests of the football community and have the potential to bring the game into disrepute in the same way as incidents occurring during a match. It would be surprising if the Regulations were not intended to apply to the conduct of Spectators in such circumstances.

49. The same can be said of the suggested locational limit, based on the physical boundaries of a ground or venue. The facts of this matter perfectly illustrate how arbitrary, if not absurd, a limit that may be. By this measure, a brick thrown by a person from within the venue at a person outside the venue would be covered by the Regulations as the act of a Spectator (at least if it occurred during the Match). But if the person outside the venue threw the brick back and hit a person within the venue, that conduct would not be treated as the act of a Spectator and could not be the subject of a Misconduct charge under the Regulations on that basis, regardless of the timing, and regardless of the fact that the person had attended the venue as a Spectator just moments before. While it would be theoretically possible for the Regulations to operate by reference to hard distinctions of this kind, it would lead to curious if not irrational results. Given the breadth of the matters that are sought to be regulated by the Regulations in the interests of football and those who participate in football activities, we do not think that these limitations were intended.
50. The GPT considers that the supposed limitations with the Misconduct provisions that are said to arise from the definition of "Spectator" do not in fact arise. The definition of "Spectator" does not operate to set the limits of the Regulations in terms of the regulation of conduct and misconduct, or the liability of the clubs for the actions of particular persons. The function of the definition of "Spectator" is to identify particular persons. That is, a person is a Spectator if they meet the description in the definition. It does not follow that the only acts of that person that may constitute misconduct or an offence against the Regulations (and which might thereby form the basis for a Club to be liable for the acts) are those which occur at a venue or ground during a match. The substantive offence provisions apply according to their own terms to the acts that are described in those provisions.
51. For this reason, we do not think anything turns in the present case on a determination of what the physical limits of the RI Sports Centre are. To the extent that it mattered, we would accept the submission of FNSW that the stairs leading to the turnstile gate

would, in any event, form part of the venue or ground. We would also accept that the events were sufficiently closely connected in time to the conclusion of the match that they would also fit within the broader concept of “the Match” which the parties’ submissions contemplated. In this regard, we note that “Match” is defined in the Regulations as “a single meeting of two teams to play football” – the notion of a ‘single meeting’ in that definition is not restricted by reference to arbitrary temporal limitations. But we do not consider these to be essential components of the analysis. The point is rather that those who participated in the riot (on both sides) were persons who were Spectators, on the basis that they had been in attendance in the venue or ground during the Match.

52. The conduct that these people engaged in had the characteristics of misconduct under the Regulations, as charged by FNSW because it involved throwing missiles at other spectators (contrary to Table C Offence Code 23-01), serious violent conduct (contrary to Table C Offence Code 17-01), violent conduct (contrary to Table C Offence Code 16-01) and provocation or incitement of hatred or violence (contrary to Table C Offence Code 09-01). It was also conduct that brought the game of football into disrepute (contrary to s 16.4(f)) and conduct prejudicial to the image, interests or reputation of the game of football or FNSW (contrary to s 16.4(g)). SUFC and RIFC appear to have accepted that the conduct had some (but not all) of these characteristics, such as to constitute Team Misconduct and misconduct in breach of the Regulations for which the Clubs were liable, if the individuals in question were Spectators and the Regulations apply to such post-match conduct occurring when and where it did.
53. FNSW submitted that it was unnecessary to descend to the level of determining how the riot was initiated and which individual or group of individuals, if any, had particular responsibility for provoking or starting the riot. Although SUFC made some faint submissions suggestive of the possibility that RIFC ought to bear a larger share of the responsibility for events, as the home team for the Match, and because of a suggestion that RIFC supporters had acted to provoke a violent response from SUFC, ultimately we did not understand SUFC to be suggesting that substantially different penalties should apply or that findings were required as to the relative levels of responsibility of one group over another.
54. In any event, even if such a contention were made, we do not consider that any process of attributing different levels of blame would assist in the present context, or lead to different penalties being imposed. By any measure, the conduct of all of the

participants in the riot was appalling and very dangerous, to both the participants and to surrounding innocent bystanders including children. No substantial matters were put forward by either party as mitigating the seriousness of the conduct. In fact, each of the respondents frankly and appropriately acknowledged that the riot was disgraceful, very serious and damaging for the reputation of football and each club. None of the conduct is capable of being excused, or even viewed as being of a lower order of seriousness, because of provocation.

### **Penalties**

55. FNSW submitted that in considering the appropriate penalties the GPT should take into account that each of the clubs had been cooperative throughout the investigation into the events by both FNSW and NSW Police, including by assisting with the identification of individuals involved. FNSW submitted, properly, that this was very much to the credit of each club and should be reflected in a discount to the penalties that might otherwise be appropriate.
56. The one qualification to that submission concerned the charges relating to the riot. FNSW submitted that the clubs had put forward a jurisdictional argument that was untenable and unmeritorious, as a basis for denying responsibility under the Regulations for the riot. FNSW submitted that there should be a less favourable view taken of the attitude of the clubs to those charges, than in relation to the other charges. We deal with that submission separately below in the context of dealing with the charges relating to the post-match riot.

### **Penalty to be imposed on SUFC arising from attendance of Christian Pervan in breach of previous sanction (SUFC charge 2)**

57. FNSW submitted that the appropriate penalty for this offence should be as follows:
  - a. Imposition of the suspended fine as imposed in 2018;
  - b. Additional fine of \$3000;
  - c. Further fine of \$3000, suspended until the end of the next season, on the basis that the fine will become payable if SUFC commits a further Table C offence within that period.
58. SUFC queried whether the suspended fine component of the 2018 penalty was now activated. In response FNSW drew attention to the terms of the 2018 GPT determination, which made the suspended sentence over SUFC apply for the duration

of the suspension of Mr Pervan, which was extended by the GPT at the same time. FNSW is correct that the suspended fine of \$1000 imposed in 2018 remained suspended in April 2021 and by reason of the further contravention by SUFC it is now to be imposed.

59. As to the additional fine of \$3000, SUFC accepted that as a second offence of this type the GPT was entitled to treat the contravention as more serious. SUFC did not advance any submissions to persuade us that \$3000 was an excessive fine. We consider that it is an appropriate fine and should be imposed accordingly. The actions of Mr Pervan at this match and his role in many of the events that are the subject of charges against the Clubs serve to reinforce the importance of the Club fulfilling its obligation to keep banned persons from attending games.
60. We also consider it appropriate that an additional fine of \$3000 should be imposed, suspended until the end of the next season. We do not accept the submission of FNSW that the activation of that suspended sentence should occur if SUFC is found guilty of any Table C contravention. Given the range of matters covered by Table C, that is unduly broad. The suspended fine in relation to charge 2 against SUFC should instead operate on the basis that the suspended fine will be activated if SUFC is found guilty of any contravention of s 19.1(i) (whether or not such contravention concerns Mr Pervan or some other person) of the Regulations prior to the end of next season.

**Penalty in respect of crowd confrontation around the 8<sup>th</sup> minute of the Match (SUFC charge 3; RIFC charge 2)**

61. FNSW submits that each club should be fined \$1000.
62. SUFC, while admitting the contravention, argued that offensive language and behaviour is relatively routine at sporting events. SUFC also submitted that there was an element of provocation by the RIFC supporters. On this basis SUFC submitted that a penalty at the bottom of the range of potential penalties was appropriate.
63. We do not accept that the conduct that is the subject of charge 3 against SUFC and charge 2 against RIFC is in the nature of garden variety crude behaviour, of the kind that occurs routinely at sporting events. Nor do we consider, however, that it is at the higher end in terms of seriousness.
64. The GPT considers that a fine of \$500 to be imposed on each club is appropriate in all the circumstances.

**Penalty in respect of melee on the field around the 82<sup>nd</sup> minute of the Match (SUFC charge 1; RIFC charge 1)**

65. FNSW submits that each club should be fined \$1000. As noted above, the applicable minimum Club sanction is \$500.
66. The GPT considers that a fine of \$500 should be imposed on each club in respect of this charge. The melee itself was relatively minor. Although a number of players from each club became involved, the aggression dissipated quite quickly. It is apparent from the video footage that while some players were overly aggressive, at least some players acted responsibly to defuse the situation.

**Penalties in respect of involvement of RIFC supporters in and around the onfield melee (RIFC charges 3, 4 and 5)**

67. In respect of charge 3 against RIFC, FNSW submits that RIFC should be fined \$1000.
68. In respect of charge 4 against RIFC, FNSW submits that RIFC should be fined \$3000.
69. In respect of charge 5 against RIFC, FNSW submits that RIFC should be fined \$1000.
70. The GPT agrees with the proposed fine of \$1000 in respect of charge 3 against RIFC. The entry of Spectators into the field of play, particularly in response to an onfield melee, is a serious matter and has the potential to turn bad situations into much worse ones.
71. In respect of charge 5 against RIFC, the GPT considers that a fine of \$500 is appropriate. The conduct of the RIFC supporters in making aggressive and abusive gestures and comments was inflammatory. However, as it lacked the additional element of entering the field of play the GPT considers a lower penalty is warranted.
72. The most serious misconduct involved that of Spectator 3 in not only entering the field of play, but striking players and becoming directly involved in the melee. In addition to being violent and serious in its own right, this conduct had the potential to ignite much wider conflict. It is somewhat fortuitous that the confrontation between Spectator 3 and the players was resolved relatively quickly. A more severe penalty is warranted in respect of this contravention. The GPT agrees that the fine proposed by FNSW of \$3000 should be imposed.

**Penalties in respect of post-match riot (SUFC charges 4-6; RIFC charges 6-8)**

73. All parties addressed the penalties relating to the charges in respect of the riot without differentiating between the particular offences charged (that is, charges 6, 7 and 8

against RIFC). The GPT approaches the question of appropriate penalties on the same basis by dealing with these collections of charges as a group in relation to each of SUFC and RIFC.

74. As noted above, FNSW submitted that the “jurisdictional” point taken by RIFC and SUFC regarding the applicability of the Regulations to the post-match riot was unmeritorious and that this should be taken into account when determining penalty, by way of undermining or negating the credit that the Clubs should otherwise be given for their constructive and cooperative response to the incidents. RIFC and SUFC resist this characterisation and submit that it was a reasonable point to take, even if it is not ultimately upheld, and it was at least reasonably arguable having regard to the terms of the Regulations. They also emphasised that they did not otherwise seek to cavil with the facts or charges relating to the riot.
75. The GPT does not consider that any negative consequences should flow for RIFC and SUFC, when it comes to penalty, because of their submissions regarding the “jurisdictional point”. The operation of the Regulations in this regard is not straightforward and the GPT considers that the point was taken reasonably and efficiently by RIFC and SUFC. We approach the question of penalty for these charges on the same basis as the other charges, giving due credit to RIFC and SUFC for their cooperative attitude throughout, including in responding to these charges.
76. FNSW submits that each club should be subject to an immediate 6 point penalty deduction, with a further 6 point penalty deduction to apply next season but suspended. The condition of that suspension should be, according to FNSW, the club not being found guilty of any offence under Table C before the end of next season.
77. FNSW submits that each club should also be subject to an immediate fine of \$10,000, with a further \$10,000 suspended on the same terms as the points penalty.
78. FNSW submits that for the remainder of this season and for all of next season, NPL matches between SUFC and RIFC should be played without spectators.
79. FNSW drew attention to the fact that the riot was in fact prejudicial to the reputation of football in NSW. This was inherently likely, given the level of violence and the risk of very serious injury being caused. It was submitted that any reasonable member of the public who saw footage of the riot would have serious reservations about attending a match, at least involving these clubs.

80. RIFC submitted that a 6 point penalty deduction was disproportionate, particularly having regard to the lack of direct culpability on the part of the Club. Mr Loether for RIFC submitted that RIFC had shown itself to be remorseful and should be given full credit for the assistance it provided to FNSW in response to the incident. RIFC did not seek to submit that any of the monetary fines proposed in respect of charges 1-5 was manifestly excessive, but it did argue that the cumulative effect of the penalties was onerous.
81. SUFC similarly submitted that the points penalty was excessive, and suggested that any such penalty should be wholly suspended. Mr Dean for SUFC submitted that a points penalty would operate harshly on the players, who were not at fault. As for the form of suspended penalty proposed by FNSW, Mr Dean submitted that it was inappropriate to have that penalty triggered by the commission of a Table C offence. The suspended points penalty should instead be enlivened only by a further contravention of a similar kind.
82. Both RIFC and SUFC drew attention to the adverse consequences that they have already suffered since the incidents, including lost revenue through being required to exclude supporters from matches.
83. The parties at the hearing gave particular attention to the question of how heavily the clubs should be penalised in circumstances where they are not being held responsible for the conduct of the direct actions of the club itself. Both RIFC and SUFC submitted that visiting a heavy penalty on the clubs will cause the clubs, their players and their loyal and law abiding members to suffer the adverse consequences for the actions of others. Mr Loether for RIFC emphasised that the club operated on limited funds through the hard work of volunteers, and it was those people who would bear the burden of penalties, both financial and non-financial. Mr Dean for SUFC submitted that penalties will have little deterrent effect on thugs, such as those who participated in the riot.
84. FNSW submitted that the Regulations proceed on the basis that clubs are held responsible for contraventions of the rules, including because of the actions of others, and that one of the objects of penalising the clubs in such circumstances is to provide a strong deterrent for the future. This may be expected to be achieved through improving the culture of good crowd behaviour within the community of supporters. In the circumstances of this case FNSW submitted that a monetary penalty alone

would not have the necessary deterrent effect, whereas a points penalty was likely to be much more effective in that regard.

85. We broadly agree with the submissions of FNSW on this point. The Regulations impose strict obligations and liability on Clubs, including in relation to the misconduct of other people. The philosophy underpinning the Regulations includes an expectation that holding Clubs to these standards is one mechanism by which to seek to improve the standard of conduct and protect the interests of football. As FNSW noted in its submissions, s 16.6(c) of the Regulations gives the Executive of FNSW a discretion not to proceed against a Club for the conduct of one of its Participants, including where to proceed against the Club for the actions of its Participants is “unduly harsh or unfair in the circumstances”. This discretionary safeguard is important in two respects. First, it is something of an answer to the complaint about the unfairness of holding Clubs to account for the actions of their Participants. Second and more importantly for present purposes, it shows that the drafters of the Regulations appreciated that the default position is that Clubs will be liable under the Regulations for the actions of their Participants, which may include actions beyond the direct control of the Clubs. That in itself is not a reason to refrain from holding Clubs liable for such misconduct and imposing penalties accordingly.
86. There is also an important consideration of general deterrence. Other Clubs, their supporters and the football community generally, are more likely to comply with the Regulations (and encourage a culture of compliance amongst their players and supporters) if they appreciate that stern penalties apply to contraventions.
87. In relation to the proposed suspended penalties, there is a risk that if the suspended penalties are to be activated in the event of a breach of a Table C provision this harsh consequence may flow from a relatively trivial offence. A more appropriate eventuality to trigger the activation of the suspended sentence would be an offence of a more serious character. It is difficult in the abstract to specify the conduct that should suffice to trigger that result. One device, which we consider should be adopted in this case, is to confine the activating offences to those which involve a contravention of s 16.4(f) (bringing football into disrepute etc.) or s 16.4(g) (prejudicial to the image, interests or reputation of football etc.). Offences of this kind are inherently serious and would be of an order likely to warrant the consequence of activating the suspended penalties.

88. Taking into account all of these considerations, the GPT considers that the following penalties should be imposed on each of RIFC and SUFC in respect of the charges concerning the post-match riot (SUFC charges 4-6; RIFC charges 6-8):
- a. Each club is to have 6 points deducted in the NPL in the current season;
  - b. Each club is to have a further 6 points deducted in the NPL in the next season, with the points deduction suspended, on the basis that the penalty will be activated if, before the conclusion of next season, the Club is found guilty of contravening s 16.4(f) or (g).
  - c. Each club is to be fined \$6000.
  - d. Each club is to be fined a further \$6000, with such additional fine suspended, on the basis that the penalty will be activated if, before the conclusion of next season, the Club is found guilty of contravening s 16.4(f) or (g).
  - e. For the duration of the current season, and for the entirety of the next season, any NPL fixture played between these clubs and any cup fixture played between the NPL teams, is to be played without spectators being admitted to the ground.