

## DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

### DETERMINATION IN THE FOLLOWING MATTER:

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| <b>Player and club</b>                                       | Harry Novillo, Melbourne City FC  |
| <b>Alleged offence</b>                                       | R2 – Assault on a Player (e.g. violent conduct when not challenging for the ball) |
| <b>Date of alleged offence</b>                               | Friday 08.04.2016   |
| <b>Occasion of alleged offence</b>                           | Match between Adelaide United and Melbourne City FC                               |
| <b>Date of Disciplinary Notice</b>                           | Tuesday 12.04.2016  |
| <b>Basis the matter is before the Disciplinary Committee</b> | A referral: see clause 3.3(a) and 9.25(b)   |
| <b>Date of Hearing</b>                                       | Tuesday 19.04.2016  |
| <b>Date of Determination</b>                                 | Wednesday 20.04.2016  |
| <b>Disciplinary Committee Members</b>                        | John Marshall SC, Chair<br>Lachlan Gyles SC<br>Peter Tsekenis                     |

#### A. INTRODUCTION AND JURISDICTION

1. The issue before the Committee is whether the second match of a two match sanction proposed by the Match Review Panel (**MRP**) against Harry Novillo of Melbourne City FC (**the player**) should be overturned. That depends (at least) upon whether the offence should be downgraded from row 4 to either row 2 or row 5 of the table of offences annexed to the Disciplinary Regulations.
2. At half time in the match between Adelaide United and Melbourne City FC there was an unfortunate situation involving many players in an altercation. In that altercation the MRP determined that the player struck out with his leg towards an Adelaide player. In what follows we set out why the Committee upholds the sanction proposed by the MRP.
3. The Committee has jurisdiction under clause 4.4 of the "FFA A-League Disciplinary Regulations" applicable to the 2015-2016 A-League season (**the Disciplinary Regulations**) to determine matters which have been referred to it pursuant to the Disciplinary Regulations. When a matter is duly referred, clause 3.3(a) provides that the Committee must determine the matter and impose such sanctions as are authorised and appropriate to the determination.
4. In this matter the MRP acted under clause 9.1(c)(i). As a consequence the provisions of clauses 9.19 - 9.21 are applicable. That led to the issue of a Show Cause Notice dated 11.04.2016 and a response on behalf of the player by Melbourne City FC dated 12.04.2016. The MRP then made a determination under

clause 9.22(b) that an Offence had been committed and issued a Disciplinary Notice dated 12.04.2016 pursuant to clause 9.24. The Disciplinary Notice appears below:



### DISCIPLINARY NOTICE (MRP Citation)

TO: (Player) Harry Novillo OF (Club) Melbourne City FC


The Match Review Panel (MRP) provides this Disciplinary Notice (Notice) to you in accordance with the Hyundai A-League Disciplinary Regulations (Regulations).

The purpose of this Notice is to advise you of the following:

1. On Monday, 11 April 2016 you were advised that the MRP had cited you in relation to an incident which took place while you were playing for your Club against Adelaide United on Friday, 8 April 2016 in or in about the 45<sup>th</sup> minute of the match. Specifically, the incident involves an interaction with opposition players and team officials, where you appear to strike out with your leg in the direction of opposition players (the *Incident*);
2. At its meeting of Tuesday, 12 April 2016 the MRP reviewed the submissions lodged by your Club in response to the Show Cause Notice issued on 11 April 2016;
3. The MRP has determined that you committed the Category 1 Offence, as specified under "Annexure A – 6. Table of Offences", of R2 - Assault on a Player (e.g. violent conduct when not challenging for the ball);
4. The Minimum Sanction for the Offence under the Regulations is two (2) Hyundai A-League matches (being the Mandatory Match Suspension plus one (1) additional Hyundai A-League match); and
5. The MRP has proposed the Minimum Sanction of two (2) matches, being the Mandatory Match Suspension plus one (1) additional Hyundai A-League match.

#### Player Options

6. As the MRP has proposed the Minimum Sanction stipulated at "Annexure A – 6. Table of Offences" for R2 – Assault on a Player, the Player or Club may:
  - (a) accept the sanction proposed at paragraph 5 above; or
  - (b) refer the matter to the Disciplinary Committee for the consideration of whether Exceptional Circumstances exist which would enable a Judicial Body to impose a sanction outside of the Range of the Table of Offences.
7. You must notify FFA of your election by forwarding the enclosed Election Form to FFA by 12.00pm (AEST) Wednesday, 13 April 2016.
8. If FFA does not receive the properly completed Election Form by the time specified in paragraph 7 above, you are deemed to have accepted the proposed sanction.

Signed:   
 \_\_\_\_\_  
 For and on behalf of the Match Review Panel

Date: 12 April 2016  
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5. The player elected under paragraph 6(b) of the Disciplinary Notice to exercise his rights under clause 9.25(b) of the Disciplinary Regulations. The Disciplinary Notice incorrectly paraphrases clause 9.25(b). Clause 9.25(b) provides that the

Committee should hear "*the sole question of what additional sanction should be imposed applying the range in the Table and in accordance with the Regulations*".

6. The function of the Committee in such a case is to determine the question of what additional sanction should be imposed over and above the Mandatory Match Suspension which must be served. In the circumstances of this referral guilt or innocence of the player is not up for review. That issue has been finally determined by earlier processes. The Committee has no jurisdiction to deal with that question and will not express any view on that topic.
7. In this case if the Committee has the same view as the MRP as to the categorisation of the offence then the minimum, applying the range, is as specified in row 4 of the Table. That results in the Mandatory Match Suspension plus one additional match (i.e. 1 + 1 = 2 matches). Under clause 9.24 the MRP determined that the appropriate sanction within the range was the minimum.
8. It is open to the Committee to upgrade or downgrade the offence; albeit not to eliminate the Mandatory Match Suspension. The Committee is not bound by the categorisation of the red card by the MRP (clause 11.1(d)) and is also empowered to determine whether there are Exceptional Circumstances.

#### **B. THE HEARING**

9. On the evening of Tuesday 19.04.2016 the Committee heard the referral of the above matter. At the conclusion of the hearing (following deliberations and pursuant to clause 20.4 of the Disciplinary Regulations) the Committee verbally announced the result of the hearing. These are the written reasons of the Committee in the "*shortest form reasonably practicable*" (see clause 20.3(c)).
10. At the hearing Disciplinary Counsel was Mr Anais d'Arville and the player was represented by Mr David Grace QC and Mr John Didulica.
11. The evidence at the hearing comprised the footage from several angles, the Disciplinary Notice, the player's disciplinary record, and the oral evidence of the player.

#### **C. FACTS**

12. We have had the benefit of seeing the incident from several different angles of footage from Fox Sports.
13. In around the 45th minute of the game (ie as the players left the field for half time) the player was walking towards the tunnel to exit the field of play. The player appeared to be conversing with Isaías Sánchez (**Sánchez**) of Adelaide United, shaking his finger towards Sánchez before placing his hand beneath Sánchez's chin. The next two stills from the footage show that from two angles.



14. The player said he did this because he heard swearing in Spanish.
15. Marcelo Carrusca of Adelaide United (**Carrusca**) then pushed the player in the back. From the footage the Committee can ascertain that Carrusca instigated the contact with the player. This is shown in the screenshot taken from the Fox Sports footage below.





16. The contact caused the player to collide with a group of players and trainers. A melee ensued between representatives from both teams in which the player turned around and attempted to confront Carrusca.





17. An Adelaide United trainer appears to restrain the player and attempts to remove him from the melee. At this point the player strikes out with his right leg in the direction of opposition players.



18. In the photo above, the player's right leg can be seen extended horizontally. His pale blue sock can be seen between the man in a dark blue tracksuit and the player with a green bib. The player's foot is not visible and what can be seen is the player's lower leg ending around the area of the player's ankle. His leg is well extended towards an Adelaide player. The conclusion reached by the Committee is that by leaning backwards, the player was able to extend his leg further than otherwise. In terms of cause and effect, it was not a case where he was falling backwards and thrust out his leg for balance.
19. The sequence of his movement can be seen below:





20. The subsequent footage shows the player return to the melee seemingly to participate in more physical altercations.
21. At a later point the player leaves the field and moves down the tunnel. Further unfortunate events occurred in the tunnel. The player had not gone to the dressing room and seemed to be involved in some way in what occurred in the tunnel. That the player is so involved in the melee is relevant to any discretionary aspects of a sanction such as the matters argued in paragraphs **24(15)** and **25(7)** below.

#### **D. SUBMISSIONS**

22. Reference has been made to clause 11.2 of the Disciplinary Regulations and to clause 11.3 which provides:

Where an additional sanction above the Mandatory Match Suspension is to be imposed, a sanction outside of the Range at the Table of Offences may be imposed by a Judicial Body only in Exceptional Circumstances that must be detailed in the Determination.

23. The player does not assert there were "Exceptional Circumstances" as defined. Rather the player seeks to have the committee downgrade the categorisation of the offence to be either offence 5 (R6 for players) being serious unsporting conduct, or offence 2 (R6 for players) being use of an offensive gesture (ie the use of the leg). Clause 11.1(d) provides:

[A Judicial body] is not bound by the categorisation of an offence by the Referee, other Match Official or the Match Review Panel.

24. The matters submitted on behalf of the player included:
  - (1) Prior to the incident, the player overheard Isaiás Sánchez of Adelaide United make insulting remarks towards fellow Melbourne City FC player Bruno Fornaroli as the players were leaving the field of play.
  - (2) The player sought to intervene between Isaias and Fornarol whilst walking with other players towards the tunnel at half-time.
  - (3) The player was forcefully pushed by Adelaide United player Carrusca causing him to collide with other players and officials.
  - (4) The player turned to face the person responsible for the pushing. He was subsequently restrained by a Melbourne City official and an Adelaide United official. Whilst the player was restrained, contact was made to the player's stomach by an unknown person from Adelaide United.
  - (5) At the time of the incident, the player raised his right leg to separate himself and a teammate from the melee, leaning back as he did so.
  - (6) The raising of the player's right leg was with little force, no contact was made with any person, there was no apprehension or fear on the part of any person involved and there was no reaction by any person to the player's actions. Therefore there is no actual assault and it was noted that the action was instantaneous.
  - (7) The player was on the periphery of the melee for a further 9 to 10 seconds and did not commit any act of misconduct during this time.



- (8) The player's act of raising his leg was not done for the purpose of assaulting any player.
  - (9) The player acted without premeditation as an attempt to separate himself and a teammate from any adverse actions by opposition players involved.
  - (10) The player's act should not be compared to a determined kick making contact.
  - (11) There is no evidence to suggest that the player intended to assault any person.
  - (12) The player's actions, at worst, could be considered 'reckless'; with the consequence that a lower categorisation must apply.
  - (13) The Committee should make their determination in light of a recent decision of the MRP in the matter of Fahid Ben Khalfallah. There Khalfallah used his foot to attempt to trip an opponent off the ball and this was ruled to be a serious unsporting conduct (Offence 5).
  - (14) The conduct did not qualify as "excessive force" as referred to in page 129 of the Laws of the Game (2015/2016). There could be no assault within the meaning of the rules without contact.
  - (15) If the offence was downgraded to a lower category, one match or two matches with the second suspended, was an adequate sanction.
25. The matters submitted by Disciplinary Counsel included:
- (1) The player's conduct satisfies that of Offence 4.
  - (2) Video demonstrates that the player, by acting with his leg, was not seeking to remove himself from the melee but was rather kicking out in the direction of opposition players.
  - (3) The appropriate finding is that the player intended to kick at one or other opposition player, or at least in the direction of opposition players.
  - (4) If no contact was actually made, that fact does not preclude a finding that the player acted in a manner that constituted "violent conduct when not challenging for the ball".
  - (5) The player intended to kick an opposition player without excuse it should be inferred that the player intended an assault.
  - (6) Kicking (at least during half time) should be interpreted as an excessive use of force according to the Laws of the Game.
  - (7) If the offence was downgraded to a lower category, two matches is the appropriate sanction.

#### **E. CONSIDERATION AND FINDINGS**

26. At the very minimum, the conduct was as the player said "a kick with intention to split everyone away". The Committee finds that the player did intend to kick at one or other opposition player.
27. In that part of the Laws of the Game providing guidelines for referees, at page 119 the following appears:

"Using excessive force" means that the player has far exceeded the necessary use of force and is in danger of injuring his opponent.

28. No force was necessary in the situation. On one view, any force in a situation like this is excessive. The Committee is of the view that any intentional kick does far exceed "*the necessary use of force and is in danger of injuring his opponent*". In any event that is only a guideline and satisfying what is in the guideline is not mandatory for the conduct to fall within row 4 of the table of offences. In this case the conduct was violent; it was an intentional kick when there was no ball in the vicinity. An opposing player or trainer may have been on the receiving end and/or further escalation of the melee may have occurred with attendant violence. The Committee is of the view that the conduct of the player in this case and the circumstances in this case are entirely different to that which recently came before the Committee in the matter of Berisha.
29. It is open to the Committee to determine that a sanction longer than that proposed by the MRP should apply. Were it not for the extenuating circumstances within cause 11.2(d), a kick, as has been found to have taken place here, would be deserving of a sanction greater than two matches.

**F. RESULT**

30. The sanction we impose is 1 match over and above the Mandatory Match Suspension. The result is the same as proposed by the MRP in the Disciplinary Notice.

*John Marshall*

J E Marshall SC, Disciplinary Committee Chair  
Wednesday 20.04.2016