DISCIPLINARY COMMITTEE OF THE FOOTBALL FEDERATION OF AUSTRALIA

INITIAL DETERMINATION IN THE FOLLOWING MATTER:

Player and club	Steve Pantelidis of Gold Coast United
Alleged offence	Offence of Assault on a Player (e.g. violent conduct when not challenging for the ball)
Date of alleged offence	15 August 2009
Occasion of alleged offence	Match between Gold Coast United and North Coast Fury
Date of Disciplinary Notice	17 August 2009
Basis the matter is before the Disciplinary Committee	A referral: see clause 3.3(a) and 10.2(b)
Date of initial hearing	Wednesday 19 August 2009
Date of initial Determination	Wednesday 19 August 2009
Disciplinary Committee Members	John Marshall SC, Chair Milan Blagojevic Mark Shield

A. INTRODUCTION AND JURISDICTION

1. The Committee has jurisdiction under clause 4.4 of the "FFA A-League Disciplinary Regulations" applicable to the 2009-2010 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.

2. In this matter there has been a referral under clause 10.2(b) of the Disciplinary Regulations. In the case of a referral under clause 10.2(b) the following will have occurred:

   (1) the Match Review Panel ("**the MRP**") will have decided (in its sole opinion) that the incident escaped the attention of the referee (see clause 9.17);

   (2) the MRP will have decided the incident should have been sanctioned with a direct red card (see clause 9.19(a));

   (3) the consequence of the above is that the player will have an automatic Mandatory Match Suspension (in this case 1 match per clause 6.5(a));

   (4) the MRP <u>also</u> will have formed the view that, on the material available to the MRP, an additional sanction of up to 4 matches over and above the Mandatory Match Suspension was warranted (see clauses 9.20 & 9.21); on this occasion the MRP has proposed an additional sanction of 1 match;

(5) a Disciplinary Notice will have been issued; and

(6) the player will have elected not to accept the terms of the Disciplinary Notice.

3. That is what has happened here.

4. The Disciplinary Notice was in this form:

DISCIPLINARY NOTICE (Match Review Panel Citation)

TO: *(Player)* STEVE PANTELIDIS OF *(Club)* GOLD COAST UNITED

The Match Review Panel (***MRP***) provides this Disciplinary Notice (***Notice***) to you in accordance with the FFA A-League Disciplinary Regulations (***Regulations***). The Match Review Panel has considered the following matter in accordance with the Regulations.

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

	SANCTION
PART A: The Match Review Panel has reviewed the A-League Match between Gold Coast United and North Queensland Fury on 15 August 2009	
The Match Review Panel considers that you have committed an Offence of Assault on a Player (e.g. violent conduct when not challenging for the ball) which occurred at or about the 69th minute of the above match.	
PART B: On the basis of the Match Review Panel deeming that you have committed an Offence:	
The Match Review Panel issues you with the following Mandatory Match Suspension	One (1) match
PART C: On the basis of the Match Review Panel deeming that you have committed the specific Offence described above:	
The Match Review Panel proposes to sanction you for an additional period on the basis of the Offence. In this instance, this period is:	One (1) match
The total sanction to be served by you is:	**Two (2) matches**

Any sanction issued in Part A or Part B cannot be appealed by the Player or the Club.

The Player can elect to accept or reject any sanction proposed by the Match Review Panel at Part C. If the Player rejects the penalty, the Player (or the Club on his behalf) should complete page 2 of this Notice and forward it to FFA by 12.00noon (Your time) Tuesday 18 August 2009.

A Player is deemed to have accepted the sanction at Part C in the event that the Player or the Club fails to lodge with FFA, on behalf of the Player, the Prescribed Form DR02 with FFA by the above time.

5. The above Disciplinary Notice contains a statement:

> "Any sanction issued in Part A or Part B cannot be appealed by the Player or the Club. The player can elect to accept or reject any sanction proposed by the Match Review Panel at Part C…"

6. Those two sentences indicate that all the player could do, according to the Disciplinary Notice, was challenge the additional match suspension over and above the one match mandatory match suspension. That reflects an interpretation of the Disciplinary Regulations that all that is referred is the sanction over and above the match mandatory match suspension. That interpretation is consistent with the fact that if the MRP does seek to apply a sanction over and above the match mandatory match suspension then there is no Disciplinary Notice issued and therefore nothing that the player would have to refer to the Committee. That suggests there is no review of the finding of an offence. We understand the above was the interpretation of the FFA prior to this case.

7. In contrast to that interpretation Mr Pantelidis contended that he was entitled to challenge the finding of the offence, the mandatory match suspension and the additional match suspension; ie every aspect of what had been done by the MRP.

He had so contended by letter of 18 August 2009 (Ex A_3). This issue was not resolved prior to the hearing commencing.

B. THE HEARING

8. On the evening of Wednesday 19 August 2009, the Committee sat to hear the referral of the above matter. Mr David McLure appeared as Disciplinary Counsel. The player was represented by Mr Palmer and Mr Haseler.

9. Early into the hearing it became apparent that the FFA had decided to accept the assertion of the player that there was a full right of appeal on all aspects of the disciplinary notice, not merely the additional match suspension. The consequence, the FFA (rightly) accepted, was that the notice had a defect in it, or at least contained a statement that was erroneous.

10. Mr Palmer on behalf of Mr Pantelidis submitted that:

    (1) the notice was invalid and that the hearing had not been properly convened;

    (2) the hearing should not take place on Wednesday 19th; and

    (3) FFA would have to issue a new notice and there could be a hearing next week.

C. THE WIDER JURISDICTION IS UPHELD

11. The position accepted by the FFA raised a question as to the jurisdiction of the Committee to hear all aspects of the incident. If the FFA concession was well based, the Committee would have the wider jurisdiction as asserted by Mr Pantelidis which would raise for consideration the matters in paragraph **10** above. It would also raise a question as to whether player Pantelidis ought be granted an adjournment. It is important to note that this jurisdiction would only arise if the Disciplinary Committee was prepared to accept that interpretation (which it did happily; the reasons for that follow).

12. For the interpretation now accepted by the FFA to be correct, the Disciplinary Regulations must be interpreted in a particular way. First it involves reading "the matter" where it appears in clause 10.2(b) as meaning the whole of the Disciplinary Notice, not just the additional proposed sanction. Clause 10.2(b) provides:

> 10.2 Upon receipt of a Disciplinary Notice proposing a sanction (issued pursuant to clause 9.13 or 9.21), the Participant may elect to:
>
> (a) accept the proposed sanction; or
>
> (b) refer <u>the matter</u> to the Disciplinary Committee for Determination,
>
> (underlining added)

13. That argument is supported by clause 9.2(1)(a) which provides that the Disciplinary Notice must give details of the "alleged" offence. On the other hand there are contrary indications such as those mentioned in paragraph **6** above and also how to read "the matter" in a similar way in clause 9.14(b) which provides:

> (b) refers the matter to the Disciplinary Committee for hearing <u>to determine the additional sanction</u> to be imposed in accordance with these Regulations.
>
> (underling added)

14. From the above it is now apparent that there is some ambiguity in the Disciplinary Regulations.

15. Two significant factors point in favour of the wider jurisdiction of this Committee. There is justice in reading disciplinary rules in favour of according greater procedural and remedial rights to the group sought to be disciplined (here players) provided that to do so will not unduly impede efficient workings of the administration of the game. Procedural and remedial rights on the field are greatly limited as the referee must control the game as it unfolds. To some extent quick and efficient procedures after a match may militate against full procedural and remedial rights that are available at law outside a football context. However in a case such as this there is a sound basis to afford players a right of review as to whether the alleged offence occurred. Second, there is attraction to treating the term "matter" broadly as the whole of the controversy or dispute.

16. For the above reasons the Disciplinary Committee accepts the interpretation as to wider jurisdiction and in doing so indicates that it will continue to apply that interpretation of the Disciplinary Regulations for however long the Disciplinary Regulations are in that form. One anticipates that an amendment to confirm and clarify this interpretation may be made.

17. A potential consequence of this interpretation of the Disciplinary Regulations is that "the matter" may have to be interpreted in a similar way in clause 9.14(b), albeit there may be countervailing arguments with such an interpretation of that clause. How best to achieve consistency with the "obvious error red card" provisions may be delicate and thankfully does not arise here. One assumes that will be reviewed by the FFA in any amendments to the Disciplinary Regulations.

18. In all the above no criticism is levelled at the FFA (in accepting the wider review process urged by player Pantelidis and affording players greater procedural and remedial rights) as with the best drafting some situations will arise that has not been fully tailored for. It is already apparent that to achieve consistency will be no easy drafting feat.

D. AN ADJOURNMENT IS APPROPRIATE

19. As to the matters in paragraph **10** above, the Committee heard from Mr McLure, and further from Mr Palmer.

20. The Committee was of the view that there was prejudice to player Pantelidis in that he would have wished to have appeared in person to meet the charge and there was other evidence which may have been available to be called if he had appreciated he had a wider review.

21. In these circumstances the Committee raised with Mr Palmer whether a course acceptable to the player would be to adjourn the hearing, permit Mr Pantelidis to play pending a future hearing, to have a hearing on a date next week which was suitable to Mr Pantelidis and to proceed that way in lieu of a fresh notice being issued. After some discussion, Mr Palmer accepted that that was a reasonable course.

22. Pursuant to clause 20.4 of the Disciplinary Regulations, the Committee is permitted to verbally announce the result of the hearing. That was what was done.

E. RESULT

23. The result was that the hearing was adjourned. Mr Pantelidis is free to play up to and including the date of the adjourned hearing, the disciplinary notice is to be amended to delete the erroneous material and there is leave to amend it to properly inform the player of the ability to challenge all parts of the disciplinary notice.

24. The adjourned hearing is to take place on Thursday 27 August 2009, commencing at 4.00pm.

25. At the adjourned hearing the evidence (limited as it is) will have to be taken afresh and the existing exhibits can be re-tendered if the parties so desire. The intent being the adjourned hearing will start with a clean slate.

26. So that there will be no doubt, at the adjourned hearing it will be open to player Pantelidis to argue that he has not committed the alleged offence.

John Marshall

J E Marshall SC, Disciplinary Committee Chair
Thursday, 20 August 2009