

**Football Federation of Australia Disciplinary & Ethics Committee**

**Determination in the matter of a Grievance between  
A-League coach Ernie Merrick (coach Merrick)  
and  
Football Federation of Australia (FFA)**

Committee members:

John Marshall SC (retired), Chair  
Anthony Lo Surdo SC  
Shaun McCarthy

**17 March 2019**

**A. INTRODUCTION..... 1**  
**B. PROCEDURAL BACKGROUND ..... 3**  
**C. THE FFA CODE OF CONDUCT..... 4**  
**D. MATTERS GOING TO THE FINDING OF BREACH ..... 5**  
**E. BROAD RANGE OF AVAILABLE SECTIONS - REPRIMAND NOT SUFFICIENT ..... 7**  
**F. TYPE OF SANCTION – MATCHES NOT DOLLARS ..... 7**  
**G. CONCLUSION..... 12**

**A. INTRODUCTION**

1. This Committee has before it a Code of Conduct matter. Ernie Merrick, the coach of the Newcastle Jets A-League team, (**coach Merrick**) and FFA have a dispute in relation to a sanction imposed by FFA for a Code breach for comments made by coach Merrick in a post-match interview broadcasted on Fox Sports following the game between Newcastle and Perth Glory played in Perth on 27 January 2019. The footage of the press conference was available to view at the following link: <https://www.a-league.com.au/video/full-press-conference-ernie-merrick-15>
2. The match resulted in a 0-2 loss for Newcastle. In the post-match interview coach Merrick provided a general description of the game and the fact that Perth had played the better football on the day.
  - (1) In response to a specific question about the VAR and the possibility of a penalty (at 1:40 to 2:18) he made statements which included the following:

“No, no the guy in the VAR was having a cup of tea. He didn’t have a chance to look at it, he probably fell asleep. When does the VAR change anything nowadays?”

"...with the handball, it just depends which referee you've got; the referees are all different, some give, some don't. If it was against us, it would've been given. We've had four penalties against, and we have never got a penalty this year...."

"...the Roy O'Donovan one, he was wrestled to the ground – pretty blatant. But I don't know who looked at it, but as I said, I think the guy in the VAR doesn't really change any decisions nowadays. They have gone from one extreme to the other. I've got nothing to say about referees. The best team won the game and we've got to score goals."

- (2) In response to a further specific question "*So the O'Donovan one, they didn't even look at that ...*" (At 2:19 to 2:40) coach Merrick said

"I do not know, flashing lights, we must wake them up suddenly. And they go 'Oh'. What can you say? We didn't get anything out of the game, we didn't get a penalty, we didn't score a goal, the best team won."

(Taken from FFA letter dated 29/01/2019 but corrected from the actual audio)

3. For this conduct the FFA issued a letter dated 29 January 2019 which gave coach Merrick the opportunity to provide submissions as to culpability (meaning whether he had breached the Code) and on sanction should he be found to have breached the Code. Coach Merrick provided a letter apparently sent on 5 February 2019, which unfortunately did not specifically address either of the matters on which he had the opportunity to make submissions.
4. Subsequently, FFA issued a letter dated 14 February 2019 which stated that coach Merrick had been found to have breached 2 provisions of the Code, specifically:
  - (1) Clause 5.1(a): "*A Member must not make any statement in public... that is disparaging or derogatory of a Match Official...*"; and
  - (2) Clause 6.1(a): "*... Officials are the public face of football in Australia and so their behaviour is subject to greater scrutiny. Accordingly... an Official must... at all times behave in a manner that promotes and upholds the highest standards of integrity, dignity and professionalism...*".
5. The letter stated that FFA had imposed a sanction of a fine of \$3,000.
6. The letter also made reference to the FFA Leagues Memo 16-005 communicated to Hyundai A-League Clubs, which specifically provides that:
 

"... comments will not be deemed to be in breach of section 5.1, or under any other provision of the Code, to the extent that a ... Club Official offers only an opinion as to an incident or decision from a Hyundai A-League, Westfield FFA Cup or Westfield W-League match even if it is an opinion that disagrees with the decision"; and

"...comments will attract possible sanction under the Code in instances where they question or impugn the honesty, integrity or independence of an individual or body or process, or where they are gratuitous personal comments directed more at the individual rather than the incident or decision".
7. As permitted by clause 7.4 of the Code, coach Merrick contested the determination of FFA by filing a Grievance. That is in effect an appeal from the FFA's determination of breach and the sanction imposed.
8. This is our determination of that matter, which is to "*briefly provide the reasons on which the determination is based*" per clause 18.1 (b) of the Judicial Bodies By-law.

## B. PROCEDURAL BACKGROUND

9. FFA submitted and coach Merrick accepted that the Code of Conduct, Grievance Resolution Regulations, Judicial Bodies By-law and FFA Constitution are applicable. Specifically, it was agreed between the parties that this Committee has jurisdiction to determine coach Merrick's Grievance which in substance is an appeal from the FFA sanction.
10. The Disciplinary Committee sat on the evening of 12 March 2019. Submissions on behalf of FFA were made by Ivan Griscti of Counsel. Submissions on behalf of coach Merrick were made by Darren Kane, an experienced lawyer specialising in sports law and coach Merrick himself.
11. The evidence included footage of the press conference.
12. There was other evidence from FFA on the question of appropriate sanction in the event that a breach was established. FFA tended material which established 2 prior breaches of the Code by coach Merrick.
  - (1) After a match on 15 November 2014 coach Merrick apparently made the following remarks:
    - (a) "...I have learnt that refs treat you differently when you are part of a smaller club..."
    - (b) "...I have discovered though that since I have been at the Phoenix, it's pretty tough. When you're at the Victory, I found I had a better run, I have to say...."

For that he was sanctioned with a reprimand and a \$2,000 fine of which \$1,000 was immediately payable and the other \$1,000 was suspended on certain terms for the balance of the season.
  - (2) After a match on 16 February 2018 coach Merrick paid certain remarks which relate to refereeing and the VAR. For that he was sanctioned with a fine of \$3,000.
13. Coach Merrick relied upon 3 other post-match conferences where other officials have made observations which were not sanctioned by FFA. These are relied upon on the question of the appropriate sanction in the event that a breach was established. Ultimately the Committee did not find those to be sufficiently relevant to impact upon the outcome. At most it shows that another coach may not have been sanctioned for a comment that, it was submitted, may have been more serious than the one made by coach Merrick. The fact that someone may not have been sanctioned for an alleged breach does not ultimately justify a lesser sanction for someone who is found to have committed a breach.
14. The hearing before the Committee was conducted de novo, with representatives of both parties making oral submissions on their behalf. In hearing this Grievance the Committee stands in the shoes of the original decision maker, FFA, and has approached the matter accordingly. Its obligation is to determine whether a breach of the Code is established on the evidence and, if so, what sanction should be imposed.

### C. THE FFA CODE OF CONDUCT

15. The FFA has promulgated a document styled "Code of Conduct". It first took effect on 1 January 2007.
16. Coach Merrick in his capacity as an A League coach has accepted that compliance with the requirements of the Code is part of his obligations as a professional football coach and is enforceable by the FFA.
17. The relevant provisions of the Code of Conduct are set out below:
1. APPLICATION AND SCOPE
    - 1.1 This Code of Conduct aims to promote and strengthen the reputation of football in Australia by establishing a standard of performance, behaviour and professionalism for its participants and stakeholders. In addition, it seeks to deter conduct that could impair public confidence in the honest and professional conduct of Matches or in the integrity and good character of its participants.
    - ...
  5. DISPARAGING MEDIA STATEMENTS
    - 5.1 A Member must not make any statement in public, including any contribution to television, radio or print media that:
      - (a) is disparaging or derogatory of a Match Official, opposition team or any Player or Official;
      - (b) is disparaging or critical of FFA, or any FFA Statute or FFA policy decision, without reasonable basis or justification; or
      - (c) comments on any matter the subject of a current hearing before the Match Review Panel, Disciplinary Committee or the Appeals Committee....
  6. RESPONSIBILITIES OF PROFESSIONAL PLAYERS, REPRESENTATIVE PLAYERS & OFFICIALS
    - 6.1 Professional Players, Representative Players and Officials are the public face of football in Australia and so their behaviour is subject to greater scrutiny. Accordingly, a Professional Player, a Representative Player and an Official must:
      - (a) at all times behave in a manner that promotes and upholds the highest standards of integrity, dignity and professionalism;
      - ...

(underlining added)
18. The sanctions that may be imposed are dealt with by clause 17.1 of the Judicial Bodies By-law which incorporates part of the FFA Statutes, relevantly Art 21.4, which is the list of sanctions that may be imposed by this Committee in its original jurisdiction.
19. Before continuing, a minor issue arose as to the new form of the FFA Constitution. In the new constitution the list of sanctions is in article 21.5 not article 21.4 which is where it was located in the previous version of the Constitution. Mr Kane raised a question of behalf coach Merrick whether that meant there was a fundamental defect in the relevant provisions with the consequence that no sanctions could be imposed. There is in fact no difficulty for several reasons. First, Article 21.6 of the new version Constitution contains transitional provisions which, in the present circumstances, indicate that the existence, function and powers of the Committee are those specified in the previous version of the Constitution. In other words, the

sanctions are those in article 21.4 of the previous of the Constitution. Another answer is that the reference to article 21.4 is in a document which picks up by reference what those sanctions were as at the date of the document. As at that date there were sanctions in article 21.4. A further answer is, in the event that one thought neither of the above was a solution, to treat the matter as simply a typographical error; where the intent is clear. After some discussion on the issue both parties were prepared to proceed on the basis that there was a power to sanction and the available sanctions were those in article 21.4 of the previous form the Constitution; in other words, there was no difficulty of a procedural kind.

#### **D. MATTERS GOING TO THE FINDING OF BREACH**

20. FFA submitted that the matters in quotes at paragraph **2** above establish breach of clause 5.1(a) and clause 6.1(a). The matter proceeded on the basis that it was probably more difficult to establish breach of clause 5.1(a) than clause 6.1(a). FFA submitted that if it was established that there had been a breach of clause 5.1(a) it would follow that there had also been a breach of clause 6.1(a).
21. Whilst on that point, it was accepted on behalf coach Merrick that if a breach of clause 5.1(a) was established, it would be an unusual case if there was not also a breach of clause 6.1(a).
22. The fact that the same matters might constitute a breach of 2 provisions of the Code rather than merely one provision would not impact upon sanction in this case and probably most cases. The sanction which would be applicable to the more serious breach would subsume any other sanction.
23. The Committee has found that there was a breach of both provisions of the Code. The Committee reached that conclusion with some difficulty. Bluntly, it is a close thing. There are many significant factors which have to be taken into account.
24. Whilst the game of football is a serious sporting competition, it is also true that the context in which these matches take place is as part of an entertainment product which requires the coaches to participate in a post-match press conference where they are expected to answer questions posed by various media representatives. That is true for both the coach of the winning team and the coach of the losing team.
25. Coaches are required to sit in front of a microphone and field questions. That can be seen from the image of coach Merrick at the time of the remarks shown below.



26. Like most sporting competitions and perhaps more so than many others, football is a passionate game and coaches usually take heavily the losses of the teams which they coach. In that situation to require coaches to take part in the post-match press conference is often to invite a little outpouring of disappointment. Also, because the nature of football requires humans to make refereeing decisions there will often be decisions which are objectively wrong (hopefully not too often) and (more often) decisions where minds might differ as to whether there was or was not, say, a penalty to be awarded. In these circumstances where human error and human judgment are involved in real-time there is often dissatisfaction as well as disappointment. The coaches are human too and cannot turn off their emotions be it disappointment in the result or dissatisfaction with the refereeing. It is this emotion which can add to the reality and the passion which provides for interesting viewing.
27. If coaches behaved only as robots and dealt out platitudes the post-match press conferences would be of no entertainment value; they would be boring. Nobody wants to see the coach say "it was a game of 2 halves, the better team won the day thank you".
28. It is far more interesting to hear a professional analysis of the football played by one of the key participants namely the coaches.
29. As an example, in this particular case coach Merrick provided a coherent and thoughtful explanation of the interesting mechanics of the game and factors which resulted in good play by the opposing team and skills which his team struggled to counteract for the various reasons he gave. Coach Merrick initially made no mention of the refereeing or any disappointment or any dissatisfaction with the refereeing. It was only when he was asked a specific question that he provided his remarks in what can fairly be said to be a deadpan but humorous style. Again, it is to be noted that the comments he made, which have been found to constitute a breach were in response to questions he was expected to answer. Here the questions pushed on what might be described as an open wound and provoked the response which got coach Merrick into trouble.
30. It was fairly and correctly pointed out that coach Merrick provided the relevant remarks in jest and in a somewhat deadpan and flippant style. It was submitted that he has a dry sense of humour which is an observable fact.
31. It is at this point that the FFA memo referred to in paragraph 6 above is relevant. It would have been open to coach Merrick to respond to the question by saying that he did not agree with the result of the VAR and in his opinion the VAR got it wrong. That would not have been a breach. However, the answer given by coach Merrick in substance denied the VAR official was doing the job; "no no" he said the official "was having a cup of tea". This is not a statement that the official got it wrong; it is a statement that the official was in dereliction of duty by not performing the function at all and instead was having a cup of tea or asleep. Admittedly the remark was made in a humorous way and it is that aspect which causes some difficulty to the Committee. Should the bite in the comments fall away because they might be merely tongue-in-cheek? In some cases, the answer would be "yes" but not presently.
32. Unfortunately for coach Merrick there were a few other things said. The cumulative and repeated effect of the comments tips the balance against coach

Merrick. For example, when referring to the handball his observation that sometimes those are penalties and sometimes not but "*if it was against us it would've been given*" is or is very close to an assertion of bias. It is more than merely a statement of unfortunate statistical outcomes to date perpetuating into the future.

33. The overall impact of the remarks quoted in paragraph **2** above was, in the view of the Committee, disparaging and derogatory of a Match Official contrary to clause 5.1(a) and fell short of a standard of behaviour which promotes and upholds the highest standards of integrity, dignity and professionalism contrary to clause 6.1(a).
34. Accordingly, the Committee finds there has been a breach of the Code and therefore a sanction of some kind is required.

#### **E. BROAD RANGE OF AVAILABLE SECTIONS - REPRIMAND NOT SUFFICIENT**

35. The Committee has commented on the range of sanctions available on previous occasions. The bottom line is that the Committee can impose "*such other disciplinary sanctions or measures as is appropriate in all the circumstances*". That is the concluding power and the reference to "other" is to a long list of available sanctions which include a reprimand, warning, caution, fine, ban on registration, suspension from participation in a match or from a competition altogether, suspension of accreditation including coaching accreditation, a ban from dressing rooms substitutes benches the stadium or taking part in any football related activity altogether and lastly a requirement to carry out community or social work. The result is that the Committee can impose any or all those sanctions or any different sanction provided it is *appropriate* in all the circumstances. This allows the Committee to mould an appropriate sanction to deal with whatever conduct comes before it requiring sanction.
36. In this case, having found a breach, there is little point sanctioning coach Merrick with a warning as he is well aware of his obligations and does not need any reminder. It was submitted on his behalf that in the event of a finding of breach the sanction should constitute only a reprimand. The difficulty with a sanction of only a reprimand is that coach Merrick was reprimanded in the 2014-2015 season and was fined in the 2017-2018 season; on each occasion for post-match comments as to refereeing: see paragraph **12** above.
37. In light of the prior breaches by coach Merrick the Committee is of the view that any sanction must be more than only a reprimand. This raises the question of what form the sanction should take.

#### **F. TYPE OF SANCTION – MATCHES NOT DOLLARS**

38. Notwithstanding the breadth of available sanctions referred to earlier it is important to provide consistency. In this regard a logical and equitable approach going forward which provides for internal consistency and approximate equality is more important than maintaining consistency with past practices in other jurisdictions or codes.
39. For breaches of offences where the conduct falls short of requiring deregistration or total bans from football (or the like) the most common form of sanctions in other jurisdictions of football and other codes of all sports have been either fines

or match suspensions. As any sanction to be imposed here is to exceed a reprimand (for the reasons given above) the relevant available appropriate alternatives are either a fine such as the \$3,000 fine imposed by FFA or a match suspension. Nothing more serious than those is warranted. The question of whether whatever fine or whatever match suspension is imposed is itself suspended on terms is a separate matter. The first question is to determine what form the primary sanction should take.

40. For example, on field violations by players are routinely sanctioned with a suspension from matches. On very rare occasions a fine has been imposed but by and large the Committee has avoided fines because of the large discrepancy in the wealth and earnings of players and the desire to make a sanction have a common impact. A similar approach has been taken in other football jurisdictions. Similarly, other styles of all sports in this country and overseas have imposed match sanctions for on field and/or on court violations. As the Committee has noted on other occasions football in Australia is played a context where AFL and NRL are popular and approaches to sanctions in those games are considered potentially relevant comparisons. In both NRL and AFL on field breaches are almost always dealt with in terms of sanctions of matches not fines. It is also the approach of rugby in Australia and internationally.
41. Notwithstanding this, violations of codes of conduct or equivalent in football and other ball sports which occur off field and/or off court have largely been dealt with by way of fines, a point made in a submission of Football Coaches Australia for coach Merrick. That is the case at least with the EPL and the AFC. It is also the case with international rugby for initial offences but there has been a trend to apply a match sanction for repeated offences.
42. A recent example in a different sport was the rant by Paul George and NBA player who said after a game "... *We don't get a fair whistle. We haven't gotten a fair whistle all year. ... it's a piece of s--- being on that floor. ...*" For those remarks he was fined USD 25,000. His NBA salary this season is USD 30,560,700 (his total earnings would greatly exceed that as he has a lucrative shoe contract with Nike). As a percentage of his salary alone, the fine represents 0.08%. The point is that although to most people and certainly most spectators the USD 25,000 fine is very large, in relative terms compared to his NBA salary the fine is minuscule.
43. That historically there has been a distinction drawn between misconduct on field (which usually attracts a sanction in terms of matches) and misconduct off field (which usually attracts a sanction in terms of fine), does not really explain why there is such a distinction and whether there should be one.
44. In the opinion of the Committee and in particular the Chair this an important question; should there be such a distinction? In considering that question it is first useful to look at prior decisions of the Committee (there are no relevant decisions of the Appeal Committee).
45. The Committee is aware of 4 earlier decisions involving FFA coaches.
  - (1) The earliest in point of time was coach Herbert decided in 2010. He was expelled from the technical area as a result of the referee concluding that he had used *offensive, insulting or abusive language*. There was a mandatory match suspension which could not be overturned under the rules as they were at the time (and continue to be in such a situation - which is different



to a Code of Conduct violation). On that occasion the Committee imposed one further match which was suspended on certain terms. That case was curious at least because coach Herbert denied using the words but the Committee had to proceed on the basis that he had used the words and was not able to afford him an opportunity to dispute the underlying facts.

(2) The next case, and the one most similar involved coach Bleiberg and was decided on 1 December 2011. That involved a post-match interview and was procedurally similar in that it involved the same provisions of the Code of Conduct. The comments made in that case by coach Bleiberg were more serious than those of coach Merrick. On that occasion a fine of \$3,000 was imposed (the FFA had initially imposed a \$5,000 fine) together with a one match sanction which was suspended on certain terms.

(a) Prior to the hearing involving coach Bleiberg the Committee was provided with information as to sanctions against coaches and that information is set out at paragraph 25 of the decision in that case; it need not be repeated here. In short, in Australia post-match criticism by players or coaches of referees had resulted in fines ranging from \$2,000 to \$10,000 and in England fines from £8,000 up to £30,000 for EPL managers in relation to comments as to referees.

(b) In relation to the FFA's imposition of a match suspension coach Bleiberg was asked during his hearing whether he viewed a fine of \$5,000 as more serious than a one week suspension. He said that he viewed a suspension as more serious. This was noted in paragraph 36 of that decision.

(3) In 2013 the Committee decided the case involving coach Aloisi. He had confronted the referee and said in a loud voice, *"It hit him in the back. Every fucking week. You're killing us. Fucking disaster you are"*. In this regard the case is similar to that involving coach Herbert (which was noted by the Committee in its determination at the time) but is quite different to this case involving coach Merrick. In imposing a sanction of 2 matches the Committee said at paragraph 28:

This decision must not be read as condoning Mr Aloisi's conduct. He has acknowledged his error and it is a serious one. In the future any coach who behaves in this way could expect to receive a sanction of 3 matches. It is primarily Mr Aloisi's prior exemplary record which has caused us to reduce the proposed sanction from 3 matches to 2 matches.

(4) The 4<sup>th</sup> decision involved coach Amor 29 November 2016. The facts are quite different. It is only relevant in that he was a coach and the sanction was in terms of matches not a fine.

46. What is apparent is that the 3 relevant decisions involved criticism by a coach of a referee; in 2 cases during the game and in one after the game in the post-match media interview. Given that similarity there does not seem to be any readily apparent reason why a sanction of a match (or matches) should apply where the criticism is made during the game and a fine should apply where the same criticism is made in a post-match interview.

47. Take the hypothetical situation of a coach making comments during the game that the referee was biased and cheating. If that was overheard by one of the match

officials the coach might be expelled and a mandatory match sanction (at a minimum) would apply under the A league disciplinary regulations. On the other hand, if the comment was not detected during the game but picked up by television coverage and broadcast, the conduct would probably fall to be dealt with under the Code of Conduct (unless treated as an obvious red card omission where the referee was the equivalent of unsighted). It should not matter how the conduct was detected and initially dealt with, the sanction should be essentially the same. Contrast that with the situation where the exact same comment was not made on the sideline by the coach during the game but rather was made in the post-match interview. The post-match interview is a compulsory part of an A league match and takes place very shortly after the final whistle. There does not seem to be a good reason why a fine is an appropriate sanction for the identical comment made in the post-match interview whereas if made during the game there would have been a mandatory match sanction as the minimum sanction.

48. This points to a sanction in terms of matches being appropriate rather than a sanction of a fine in dollars.
49. Another difficulty with a fine in dollars is the difficulty of comparing a fine with a match sanction; what is the conversion rate? If similar conduct is to be treated similarly but one with matches and the other with fines how does one set a fine to be equivalent to one match? There is obviously no fixed conversion rate. It could not be said that a fine of \$3,000 equated to one match and \$5,000 equated to 2 matches. Coach Bleiberg thought that a \$5,000 fine was less than a one match suspension but that could be because of his own financial circumstances or possibly because any fine would have been paid by the club. To another coach to have to pay oneself a fine of \$5,000 out of one's own pocket might be regarded as more onerous than a sanction of one match.
50. A further difficulty with fines is trying to compare fines in other football jurisdictions with fines that might be imposed in Australia by FFA. As noted earlier, as at 2011 fines in England ranged from £8,000 up to £30,000 for EPL managers in relation to comments as to referees. How would that compare to a Australia? Does one apply the foreign currency exchange rate? If that happened the fines would be astronomical by Australian standards. There is simply not the money in football in Australia that there is in England.
51. If one were to look outside football to other ball sports, how would one compare the fine given to Paul George in the NBA? Knowing that the fine imposed on him represented 0.08% of his salary, for a \$3,000 fine to constitute 0.08% of the coach's salary, the coach would have to have a salary of \$3,750,000. On the information available to the Committee that is considerably more than 10 times the salary of the highest-paid A league coach.
52. Then of course there is a difficulty which arises from the fact that not all coaches earn the same amount nor have the same assets. For some a fine of \$3,000 may be affordable quite easily, however for others it may be a considerable financial burden. Add to that the fact that any fine might not be tax-deductible, means that a fine might be a considerable and onerous burden. The reality is that fines do not impact equally.
53. Another factor is the decisions of this Committee are taken into account by State committees and committees of lower leagues and associations throughout

Australia. The problem of imposing a fine that is appropriate in amount in leagues where the salaries are even lower and where some are at most semi-professional becomes more acute. It is difficult for an association to translate a \$3,000 fine for an A league coach to an appropriate fine for a voluntary coach of a regional representative team. It is also important to discourage the perception that the governing body gets a profit from sanctioning coaches by receiving fines. There is no such difficulty with the sanction in terms of matches.

54. Finally, there is the difficulty that in some cases the fine may not in fact be paid by the coach but is paid by the club. The evidence given to the Committee was that it was common for clubs to pay the fines for coaches. In such a situation the fine is less likely to act as a deterrent.
55. In this situation the above matters are to be weighed against the fact that historically off field comments usually have been dealt with by fines in other high level football jurisdictions and other codes of ball sport. In the view of the Committee that history is not sufficient and the balance is in favour of imposing a sanction in terms of matches not a fine in terms of dollars.
56. The Committee is of the opinion that a sanction in terms of matches bites equally irrespective of the salary and wealth of a coach and is more appropriate than a fine in this situation.
57. To adopt this approach does not inhibit the range or progression of sanctions. First, to do this is not to create a hard and fast rule that fines are *never* appropriate. Next, it can be appreciated that the progression of sanctions might start with a warning, then a reprimand and then a sanction of a match which might itself be suspended on certain terms.
 

Note: There is always the step of compulsory community work (such as coaching clinics being provided on a voluntary basis); although many of the coaches already do that and to take up more of their free time in the off-season often might not be appropriate.
58. In this case in light of the finding that there has been a breach by coach Merrick and the conclusion that a reprimand would not be sufficient, the appropriate sanction is a ban for one match. Further, as coach Merrick has been previously fined for similar post-match comments, the Committee is of the view that a fine may not provide sufficient deterrence.
59. The next question is whether that one match sanction should itself be suspended on certain terms. In the view of the Committee it should be suspended. One reason is that the finding of breach was a very close one and the Committee as a whole did not consider it a very serious breach. Another reason is the collection of matters pointed to by Mr Kane on behalf of coach Merrick relating to the long-standing record of coach Merrick and the high standard in which he has carried out his role. During the hearing coach Merrick was asked whether he felt he would be likely to reoffend if the sanction was suspended on certain terms for the rest of the season. Coach Merrick assured the Committee that he would not reoffend and with a smile said he would "be a good boy".
60. In the view of the Committee it is important to make some observations as to the character of coach Merrick. He is an extremely experienced coach, having coached at a high level for many years. He is knowledgeable in relation to the

game, articulate and his intelligence is manifest. He is exactly the sort of coach and official that the A League and football ought be proud to have.

61. Of course, the points made in paragraph **60** above cut both ways. Given his experience and intelligence the comments that he made, which are set out in paragraph **2** above, are ones which ought not have been made. In effect he suggested that the VAR was not doing the job (akin to being asleep at the wheel).
62. In all the circumstances and taking into account the earlier breaches the Committee concludes that the sanction set out below is appropriate.

#### **G. CONCLUSION**

63. The Disciplinary Committee makes the following determination:
  - (1) There has been a breach of clause 5.1(a) and of clause 6.1(a) of the Code of Conduct.
  - (2) There is to be a sanction of one (1) match which, subject to what follows, shall be served as provided and in the manner specified for match sanctions in the A-League Disciplinary Regulations.
  - (3) However, the one (1) match sanction is suspended and shall only be triggered in the event that coach Merrick is found to have committed a further breach of clause 5.1(a) of the Code prior to the end of the current Hyundai A-League season, including finals.

*DRAFT*

**J E Marshall SC (retired)**  
**Chair, FFA Disciplinary & Ethics Committee**