

Decision of the
OFC Disciplinary Committee

Comprising

Allen Parker (Cook Islands), chairman; Sione Fa'otusia (Tonga), member; Toetasi Tuiteleleapaga (American Samoa), member; William Banjoy (Papua New Guinea), member; and Don Marahare (Solomon Islands), member

by telephone from Port Moresby

on 12th July 2015

in respect of the matter of

New Zealand Football Inc.

Regarding

the eligibility of the player Deklan Wynne in the match between New Zealand and Vanuatu played on 10 July 2015 in the OFC Olympic Qualifying Tournament in Port Moresby, Papua New Guinea.

(Articles 3, 10, 13, 16 and 17 of the FIFA Regulations for Olympic Football Tournaments; Articles 5, 6 and 7 of the Regulations Governing the Application of FIFA Statutes;
Article 70.1 of the FIFA Disciplinary Code; Articles 37 and 39 of the OFC Statutes;
Articles 32A, 73, 85, 102, 111, 117, 125, 127, 128, 129, 130, 131, 132, 141 of the OFC Disciplinary Code)

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SUMMARY OF FACTS

- 1 The Oceania Football Confederation (hereinafter: '*OFC*') Men's Olympic Qualifying Tournament (hereinafter: '*the tournament*') was conducted during the XVth Pacific Games in Port Moresby, Papua New Guinea from 3-17 July 2015.
- 2 In accordance with arts 3.2 and 17 of the FIFA Regulations for the Olympic Football Tournaments: Games of the XXXI Olympiad Rio de Janeiro 2016 (hereinafter: '*Olympic Regulations*'), OFC was the confederation responsible for organising and delivering the tournament.
- 3 The tournament included representative teams from Fiji, Federated States of Micronesia, New Caledonia, New Zealand, Papua New Guinea, Solomon Islands, Tahiti and Vanuatu. The winner of the final of the tournament will represent OFC at the Men's Football Tournament of the 2016 Olympic Games in Rio de Janeiro.
- 4 On 10 July 2015, the semi-finals for the tournament took place between:
 - Fiji and Papua New Guinea where Fiji won 3-1
 - New Zealand and Vanuatu where New Zealand won 2-0.
- 5 Following the New Zealand and Vanuatu match (hereinafter: '*the match*'), the team manager of Vanuatu Football Federation (hereinafter: '*VFF*') lodged a protest to the match commissioner in charge of the match (**Exhibit 1**). The team manager alleged that the representative team of New Zealand fielded two ineligible players, namely **No.3. Deklan Wynne** and **No.18 Sam Burfoot**. As soon as OFC received the protest, it informed the New Zealand team manager. The complaint was handed to the team manager, who read and acknowledged the protest, in the presence of the OFC Head of Competitions, Michael Song.
- 6 According to the match summary, the list of players and the officials' reports (**Exhibit 2**), only the player **No. 3 Deklan Wynne** (referred hereinafter as "*the player*") took the field in the match.
- 7 As **No.18 Sam Burfoot** did not take the field in the match, the Committee therefore agreed that it could not deal with this matter.
- 8 VFF contended that the player did not qualify to represent New Zealand in accordance with art 7 of the Regulations Governing the Application of the FIFA Statutes (hereinafter: '*the FIFA Statute Regulations*'), which given the player's age,

required that he either be born in New Zealand or have a parent or grandparent born in New Zealand.

- 9 A copy of the player's passport provided by the OFC Competitions Department confirmed that the player was not born in New Zealand (**Exhibit 3**).

Full Name: Deklan Terrence WYNNE

Date of Birth: 20 March 1995

Place of Birth: Johannesburg

Passport Number:¹ [REDACTED]

Date of issue of passport: 9 January 2015

- 10 By email on 11 July 2015 at 06.26am,² the OFC Competitions Department asked New Zealand Football (hereinafter: 'NZF'), to confirm the following questions in respect of the player:³

Dear Rob,

Please see the attached file for the complaint letter from VFF, which was lodged shortly at the conclusion of yesterday's match, contesting the player eligibility of #3 Decklan WYNN and #18 Samuel BURFOOT.

Both players have presented that they have a valid New Zealand passport prior to the Pacific Games, which there are no issues.

There was a follow up letter which we received in hard copy (a scanned copy will be sent you as soon as possible this morning) late last night which VFF is requesting for additional information in relation to the player.

Could you please confirm with an evidence (a birth certificate or a passport) for both Decklan WYNN and Samuel BURFOOT:

- That one of his biological parents were born in New Zealand, or
- That one of his grandparents were born in New Zealand

Can you please respond as a urgency?

Thank you very much for your cooperation in this matter.

Kind regards,

Michael

Michael Song | OFC Head of Competitions

- 11 By further email on 11 July 2015 at 9.15am, the OFC Competitions Department wrote to NZF as follows:

Dear Rob,

Due to the technology issues we have had since last night at the hotel and at the Bisini ground, a scanned copy could of their follow up report on their complaint could not be sent to ur emails.

¹ Redacted for privacy reasons.

² All times recorded for correspondence are in Papua New Guinea local time (GMT+10).

³ The correspondence included in this decision has been copied from the original correspondence and therefore includes any errors that were in the originals.

Please accept my apologies on this.

For your information, please take note of the attached images of the follow up letter from VFF.

Thank you for your cooperation and we look forward to your response urgently.

Kind regards,

Michael

- 12 By further email on 11 July 2015 at 13.31pm the OFC Competitions Department wrote to NZF as follows

Dear Rob,

Can we please receive a reply by 5pm PNG time?

If we cannot come to a resolution of this subject, we will seek direction and advice from FIFA as a matter of urgency.

Thank you for your cooperation.

Best regards,

Michael

- 13 By email on 11 July 2015 at 13.44pm, NZF replied as follows:

Dear Michael

My apologies for the delay in replying to this but we have had power issues at the hotel and no internet all day.

I have just returned from the stadium visit to find the internet restored and all your emails in my inbox.

Item **3.3.5 Eligibility** in the Pacific Games Soccer Technical Handbook clearly refers to the Article 26 of the Pacific Games Charter (PGC) regarding challenges to eligibility.

In particular PGC Item 26.4 read in conjunction with item 26.7 make it clear that all challenges to eligibility were required to have been lodged no later than 35 days before the commencement of the Pacific Games and finalised no later than 20 days before the commencement of the games.

As you are aware it is normal practice for football tournaments to have a process in place where eligibility is finalised well before the tournament commences.

New Zealand Football therefore believes that this complaint from VFF has been lodged to late for consideration.

Many thanks.

Rob Pickstock – International Teams Manager

- 14 OFC Competitions Department replied at 15.39pm, 11 July 2015:

Dear Rob,

After receiving the second letter from VFF, OFC have accepted VFF's protest due to the significance this context.

As a consequence, FIFA rules regarding the protest (art. 10 of the Olympic Football Tournament Regulations – with OFC coordinator and OFC General

Secretariat) will take precedence over the Pacific Games rules (3.3.5 Eligibility of the Pacific Games, as you mentioned).

Therefore, we are looking into this matter and would appreciate your cooperation accordingly.

Best regards,

Michael

15 NZF replied at 17.57pm, 11 July 2015:

Dear Michael,

Fred has passed on this issue to me as New Zealand Football Rules and Legal Manager.

We are currently looking into this matter and will have an informed reply for you later tonight. Our initial view is that both Declan Wynne and Sam Burfoot are eligible to play for the New Zealand u23 in the current tournaments.

In the meantime, please send me copies of both of Vanuatu's formal protests so that we can address this issue with all facts at hand.

I also have copies of the FIFA Disciplinary Code, Pacific Games Football Technical Handbook and FIFA Olympic Games football regulations.

Any other relevant regulations, please send copies to me as a matter of urgency.

I note below that you have requested a reply by 5pm PNG time - now lapsed). In the circumstances, it is appropriate that New Zealand Football is allowed a more reasonable time to consider the relevant rules and regulations, as well as copies of the actual protests.

Please note that we have also instructed our external Counsel Shelley Eden who will also consider all relevant information once we have it at hand.

Please be assured that this has New Zealand Football's urgent attention.

Kind regards,

Brandon Chik

16 OFC Competitions Department wrote to NZF at 18.25pm, 11 July 2015:

Dear Rob,

Further to our emails today and the protest by Vanuatu Football Federation.

OFC requests once again whether New Zealand Football is able to confirm that in respect of the player No.3 Decklan Wynn that you can provide evidence that one of his biological parents or his grandparents was born in New Zealand in accordance with Art 7(b) and (c) of the Regulations governing FIFA Statutes.

If you are not able to provide this evidence (by 19.00pm PNG time) then OFC would like to refer the protest of Vanuatu Football Federation to FIFA Disciplinary Committee at 19.00pm (PNG time) in accordance with Art. 10.3 of the FIFA Regulations for the Olympic Football Tournament and ask FIFA to make a determination whether No.3 Decklan Wynn was eligible to

represent New Zealand in the match between New Zealand U23 vs Vanuatu U23 held on 10 July 2015 in Port Moresby, Papua New Guinea.

As for No. 18 Sam Burfoot as he did not play in the said match his eligibility cannot be subject to this inquiry by FIFA but FIFA may decide at a later date to investigate his eligibility as he played for New Zealand in the match New Zealand vs New Caledonia on 7th July 2015.

We look forward to your information on No.3 Decklan Wynn as soon as possible.

Regards

Michael Song | OFC Head of Competitions

17 NZF replied at 19.07pm, 11 July 2015:

Dear Michael,

Thank you for your email and for sending through the protest from Vanuatu. We have a number of points that we wish to make to you regarding the protest and the necessity or otherwise of it being referred to FIFA. You have given a forty minute timeframe for your determination. With respect, this does not give us adequate time to address you properly, and we would like the opportunity to do this. Our legal counsel has been instructed and is working on submissions for you. Please can we have until 20h00 PNG time (22h00 NZ time) to make these points.

Thank you for your consideration. As advised earlier, this has our urgent attention.

Regards,

Brandon

18 NZF replied at 19.14pm, 11 July 2015:

Dear Brandon,

Thank you for your reply.

Your extension has been given until 20h00 (PNG Time).

Thank you for your cooperation.

Kind regards,

Michael

19 NZF (through their solicitors) replied at 20.15pm, 11 July 2015:

Dear Michael

I act for New Zealand Football and have been instructed to advise in relation to this matter. Thank you again for your accommodation while NZF deals with this unexpected challenge.

A draft response has been prepared and circulated, and will be with you very soon.

Kind regards

Shelley Eden Partner

20 NZF (through their solicitors) sent the following email at 20.31pm, 11 July 2015:

Dear Michael

Introduction

We refer to earlier correspondence tonight, in particular the protest by Vanuatu Football Federation to the eligibility of the above players to represent New Zealand in the match between New Zealand U23 vs Vanuatu U23 held on 10 July 2015 in Port Moresby, Papua New Guinea (the **Match**).

OFC has requested that in respect of the player No.3 Deklan WYNNE New Zealand Football (NZF) provides evidence that one of the player's biological parents or his grandparents was born in New Zealand in accordance with Art 7(b) and (c) of the Regulations governing FIFA Statutes. If this evidence is not provided then OFC intends to refer the matter to the FIFA Disciplinary Committee for a determination.

The protest is also against player No. 18 Sam BURFOOT however as you have correctly noted, he did not play in the Match. Accordingly we are confining this submission to the eligibility or otherwise of Deklan WYNNE.

Obviously if the matter is referred to FIFA then NZF will make submissions to the Disciplinary Committee as appropriate. We are instructed however to take this opportunity to address you on a number of points which, we believe, make the protest patently incorrect and therefore not suitable to refer to FIFA. We consider that you have the authority to make this initial determination, in order that the matter not go any further, with the resultant waste of FIFA resources, not to mention unnecessary stress and disruption for the player concerned and the NZ U-23 team.

There are two key points that we wish to make:

- (1) The player has been played in good faith, based on representations that the player was eligible to play, and on the basis that any opportunity for objection had passed;
- (2) The correct regulation as to eligibility for player Deklan WYNNE (and, for that matter player Sam BURFOOT) is Art 6 of the Regulations governing FIFA Statutes, with which the player is compliant.

We discuss these further below.

Player played in good faith

In the build up to this competition, lists of players were circulated with the opportunity provided for member associations to protest eligibility, in accordance with the Pacific Games Rules.

On about 14 June 2015 an email was sent by Andrew Minogue, Executive Director of the Pacific Games Council to a number of addressees, in which he stated:

In accordance with Article 26.10 of the Constitution, please find attached the list of athletes eligible to participate in the 2015 Pacific Games, "20 days prior to the commencement of the Games". This spreadsheet is also on the PGC website. Thanks to all the PGAs for finalising passport data for their athletes and confirming their eligibility.

Players Deklan WYNNE and Sam BURFOOT were included in the attachment of eligible players.

NZF understands that OFC is now saying that FIFA regulations apply and the Pacific Games Rules are not the applicable regulations. In fact, the reverse

has been represented to NZF, with them having been provided with a copy of the Handbook for the competition. Irrespective of the correct position, NZF relied in good faith on the assessment by the governing body of the competition of player Deklan WYNNE being eligible. Had this not occurred, NZF would simply have not played the player. NZF has acted in reasonable reliance on the representations made.

NZF also relied on there having been no protest made by any other team. Vanuatu, and all other teams, had the opportunity to protest earlier, players' names having been circulated in accordance with the Pacific Games Rules. With respect, it is not now open for Vanuatu to seek to have a second opportunity to protest eligibility. This is not in the spirit of fair play so vital to the game of football.

Correct statute

In any event, the protest is totally unfounded. Player No.3 Deklan WYNNE was born in South Africa on 20 March 1995. He is 21 years old. He obtained a New Zealand passport on 9 January 2015. He holds in effect, for the purposes of football regulations, two nationalities, South African and New Zealand.

That being the case, the applicable regulation is not Art 7(b) and (c) of the Regulations governing FIFA Statutes, but Art 6.1(d).

The rationale for this view is in the wording of Art 5.1, which provides:

Any person holding a permanent nationality that is not dependent on residence in a certain Country is eligible to play for the representative teams of the Association of that Country.

This does not refer to country of birth. This player is a New Zealand passport holder. He is not dependent on residence in New Zealand to play for New Zealand. He has not played for another representative team of another country. He is eligible to play for New Zealand.

Art 6.1 goes on to refer to circumstances when a player has two nationalities. It provides:

Art 6 Nationality entitling players to represent more than one Association

1 A player who, under the terms of Art 5, is eligible to represent more than one Association on account of his nationality, may play in an international match for one of these Associations only if, in addition to having the relevant nationality, he fulfils at least one of the following conditions:

d) he has lived continuously on the territory of the relevant Association for at least two years.

The Player Deklan WYNNE has lived in New Zealand continuously for at least two years.

This is a sensible outcome. Art 7 simply cannot apply. Otherwise, no players in an U-23 competition who had two nationalities would ever be eligible to play for his new country. This cannot be what is intended by the regulations.

Conclusion

In our submission, it is clear that Player No.3 Deklan WYNNE was eligible to play in the Match. Further NZF has complied with the competition regulations and reasonably relied on representations made that the player was eligible to play. No disciplinary sanction therefore needs to be imposed and the matter does not need to be referred to FIFA.

We look forward to hearing from you.

Kind regards

Shelley Eden Partner

- 21 At 16.58pm 11 July 2015, OFC wrote to the FIFA Competitions Department as follows:

Dear Mr Savic,

Following the match yesterday between New Zealand U23 and Solomon Islands U23⁴ in the OFC Olympic Qualifiers, Solomon Islands lodged a protest against the eligibility of two players in the New Zealand U23. The two letters are attached. The first letter submitted within 2 hours after the match and the second letter within 24 hours after the match. (we have signed originals) The OFC Competitions Department requested New Zealand Football today to provide evidence that the players in question in whether they have a parent or grandparent born in New Zealand in accordance with Art. 7 of the Regulations Governing the FIFA Statutes. To date New Zealand have been unable to provide the relevant evidence. We are therefore referring the matter to FIFA Disciplinary Committee to consider the matter urgently.

This is because the New Zealand U23 has qualified for the final match tomorrow Sunday 12 July 2015 at 18.00pm (PNG time) or Sunday 12 July 08,00am (GMT) (in 24 hours) and therefore an urgent decision is required by FIFA. In one hour a full report will be submitted by OFC Competitions Department

But is there an FIFA emergency number OFC can call to discuss the matter with FIFA the process.

Kind Regards

Tai Nicholas | OFC General Secretary

- 22 At 20.34pm on 11 July 2015, the FIFA Deputy Head of Disciplinary & Governance: Legal Affairs Division replied as follows:

Dear All,

According to Art. 70 par. 1 of the FIFA Disciplinary Code with regard to the matches and competitions not organized by FIFA, the confederations that organize matches are responsible for enforcing sanctions imposed against infringements committed in their area of jurisdiction.

In this particular case (Pacific Games), the FIFA Disciplinary Committee is not competent to deal with the disciplinary matters i.e. with this protest.

In case additional clarifications are needed please feel free to contact me.

Best regards,

Wilma Ritter

⁴ This was an error and should have been Vanuatu U23. This was corrected by advising FIFA of the error.

Deputy Head of Disciplinary & Governance

Legal Affairs Division

FIFA

- 23 Given the advice and direction by FIFA, the OFC Competitions Department convened the OFC Disciplinary Committee (hereinafter: the '*Committee*') by telephone circular.

PROCESS FOLLOWED BY THE COMMITTEE

- 24 In accordance with art 10.3 of the Olympic Regulations, VFF made a protest regarding the eligibility of the player. The protest was made in writing to the relevant match commissioner within two hours of the match,⁵ and followed up with a written report within 24 hours of the match. See **Exhibit 4**. Article 10 of the Olympic Regulations states:

Art. 10 Protests

3. Protests regarding the eligibility of players nominated for matches in the preliminary competition shall be submitted in writing to the FIFA Match Commissioner within two hours of the match in question and followed up immediately with a full written report, including a copy of the original protest, to be sent in writing and by registered letter to the FIFA general secretariat, and shall be dealt with by the FIFA Disciplinary Committee. Protests regarding the eligibility of players nominated for matches in the final competitions shall be submitted in writing to the FIFA general secretariat no later than five days before the opening match and shall be dealt with by the FIFA Disciplinary Committee.

- 25 According to art. 117.1 of the OFC Disciplinary Code (hereinafter: the '*ODC*'), disciplinary infringements are prosecuted automatically by the Committee. Article 117 of the ODC states:

Art. 117 Commencement of proceedings

1. Disciplinary infringements shall be automatically prosecuted.
2. Any person or authority may report conduct that he or it considers incompatible with the regulations of OFC to the judicial bodies via the OFC Secretariat. Complaints may not be made orally all complaints shall be in writing.
3. Match officials are obliged to expose infringements, which have come to their notice.

- 26 In accordance with the ODC, the Committee members were called from Port Moresby to consider the protest, on the instruction of the Chairman. The Chairman referred to art 141 of the ODC to confirm that the decision could be made via telephone, given the circumstances. Article 141 of the ODC states:

Art. 141 Emergencies

⁵ In OFC tournaments, Match Coordinators fulfil the same function of a FIFA Match Commissioner (i.e. the Match Commissioner is the person in charge the administration of that particular match); however the VFF letter addresses their letters to the FIFA Match Commissioner.

1. If circumstances so require, the secretariat may arrange deliberations and decision taking to be conducted via telephone conference, videoconference or any other similar method.
2. Art. 115 par. 2 is, in this case, no longer applicable
3. The secretary takes minutes as if it were a chaired meeting.

27 Article 102 of the ODC sets out the right to be heard:

Art. 102 Contents

1. The parties shall be heard before any decision is passed.
2. They may, in particular:
 - (a) refer to the file;
 - (b) present their argument in fact and in law;
 - (c) request production of proof;
 - (d) be involved in the production of proof;
 - (e) obtain a reasoned decision.

28 The right to be heard needs to be applied in context. In the present case, the tournament was underway and the final was scheduled to be played on Sunday 12 July 2015 at 18.00pm.

29 The Committee decided that NZF had been afforded a right to be heard given the context of this case. Several requests were made via email to NZF Management (included above) in which evidence was sought that the player met the criteria in art 7 of the FIFA Statute Regulations. This was requested after providing NZF a full copy of the protest lodged by VFF. The Committee also noted the extension of time given to NZF following their request, in accordance with art 101 of the ODC. NZF's written submission was filed after that extension, and considered by the Committee.

30 After reaching its decision, in accordance with art 125 of the ODC, the Committee communicated its decision by email to NZF (without grounds) in a letter dated 12 July 2015 (preliminary version). Article 125 of the ODC states:

Art. 125 Decisions without grounds

1. The judicial bodies may decide not to communicate the grounds of a decision and instead communicate only the terms of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the terms of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding.
2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal, where applicable, begins upon receipt of this motivated decision.
3. If the parties do not request the grounds of a decision, a short explanation of the decision shall be recorded in the case files.

- 31 Don Marahare (member) was not available by telephone at the time the decision was made on 12 July 2015, but was available on 13 July 2015 and confirmed that he agreed with the Committee's decision. The Committee noted, however, that his vote was not needed for a quorum.
- 32 The Committee's decision was confirmed by fax on 14 July 2015, on which date a final version of the letter was delivered to NZF by fax. The final version of the letter (dated 12 July 2015) was the same as the preliminary version, apart from the insertion of one paragraph. This paragraph (second to final) was inserted to provide the necessary procedure and timelines for NZF to request the grounds of the decision. The timeline to request an appeal therefore commenced on 14 July 2015. This is in accordance with art 111 of the ODC, which states:

Art. 111 Form: General Rule

1. Decisions communicated by fax shall be legally binding. If necessary decisions may be communicated by registered letter which shall also be legally binding.
 2. Electronic mail is not permitted.
 3. In certain circumstances, the special provisions set out in Art. 109 may apply.
- 33 By letter dated 14 July 2015, NZF requested the grounds for the Committee's decision. Under art 125 of the ODC, this is within ten days from the receipt of the terms of the final decision by fax. The grounds of the decision are set out below.

LEGAL REASONS FOR DECISION

Jurisdiction

- 34 By letter dated 21 April 2015 to the General Secretary of FIFA, OFC submitted a proposed format for the 'OFC Qualifying Format for Olympic Football Tournament 2016' (**Exhibit 5**). By letter dated 24 April 2015 to the General Secretary of OFC, FIFA acknowledged that the 2015 Pacific Games was to be used by the OFC as the qualifying men's tournament for the Olympic Football Tournaments Rio 2016 (**Exhibit 6**).
- 35 In accordance with art 3.2 of the Olympic Regulations, therefore, OFC is the responsible body for the organisation and delivery of the preliminary competition, pursuant to FIFA's approval of OFC's proposal that the 2015 Pacific Games serve as the preliminary competition for OFC for the Olympic Football Tournaments Rio 2016. Article 3 of the Olympic Regulations states:

3 Confederations

1. The preliminary competitions shall be organised by FIFA in collaboration with the confederations. The confederations shall establish a competition format, which shall require approval from FIFA.
2. The confederations may propose to FIFA that existing tournaments serve as the preliminary competitions for the Tournaments. In case FIFA accepts such a proposal, the respective confederations shall be

solely responsible for the organisation and delivery of such preliminary tournaments.

- 36 In accordance with art 70.1 of the FIFA Disciplinary Code (hereinafter: the 'FDC'), OFC was responsible for enforcing sanctions imposed against infringements committed during the tournament.

70 General rule

1. With regard to matches and **competitions not organised by FIFA** (cf. art. 2), associations, confederations and sports organisations that organise matches for cultural, geographical, historical or other reasons are responsible for enforcing sanctions imposed against infringements committed in their area of jurisdiction. If requested, the sanctions passed may be extended to have worldwide effect (cf. art.136 ff.).

(emphasis added)

- 37 The Committee therefore is the responsible body with respect to the present matter and in accordance with art 85 of the ODC, the Committee has jurisdiction to sanction any breach of OFC regulations. Article 85 states:

Art. 85 General jurisdiction

The Disciplinary Committee is authorised to sanction any breach of OFC regulations, which does not come under the jurisdiction of another body.

- 38 This is consistent with art 37.2 of the OFC Statutes, which states that the Committee has jurisdiction to pronounce the sanctions described in the OFC Statutes and the ODC on members, clubs, officials, players, match agents and players' agents. Article 37 states:

Article 37: DISCIPLINARY COMMITTEE

1. The function of this body shall be governed by the OFC Disciplinary Code. The committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.
2. The committee may pronounce the sanctions described in these Statutes and the OFC Disciplinary Code on Members, clubs, Officials, Players and match and players' agents.
3. These provisions are subject to the disciplinary powers of the Congress and Executive Committee with regard to the suspension and expulsion of Members.

Decision regarding the ineligibility of the player

- 39 According to art 13 of the Olympic Regulations, each Participating Member Association taking part in the tournament is responsible for ensuring that its players are eligible to play in the tournament. The eligibility of players is to be determined in accordance with the relevant FIFA statutes, regulations and rules. Article 13 of the Olympic Regulations states:

Art. 13 Eligibility of Players

1. Each association taking part in the Tournaments shall ensure the following when selecting its representative team(s):
 - (a) all players shall hold the nationality of its country and be subject to its jurisdiction;
 - (b) all players shall be eligible for selection in accordance with the FIFA Statutes, the Regulations Governing the Application of the FIFA Statutes and other relevant FIFA rules and regulations.
2. The Participating Member Associations are responsible for fielding only eligible players. Failure to do so will lead to the consequences stipulated in the FIFA Disciplinary Code.
3. Protests regarding the eligibility of players shall be decided by the FIFA Disciplinary Committee in accordance with the FIFA Disciplinary Code (cf. art. 10 par. 3).
4. All players participating in the preliminary and final competitions of the Tournament shall be born on or after 1 January 1993.

40 Therefore, in accordance with art 13 of the Olympic Regulations, the eligibility criteria for players in this tournament are provided by FIFA Statute Regulations. The relevant provisions are arts 5, 6 and 7, and are set out below.

5 Principle

1. Any person holding a permanent nationality that is not dependent on residence in a certain Country is eligible to play for the representative teams of the Association of that Country.
2. With the exception of the conditions specified in article 8 below, any Player who has already participated in a match (either in full or in part) in an Official Competition of any category or any type of football for one Association may not play an international match for a representative team of another Association.

6 Nationality entitling Players to represent more than one Association

A Player who, under the terms of art. 5, is eligible to represent more than one Association on account of his nationality, may play in an international match for one of these Associations only if, in addition to having the relevant nationality, he fulfils at least one of the following conditions:

- (a) He was born on the territory of the relevant Association;
- (b) His biological mother or biological father was born on the territory of the relevant Association;
- (c) His grandmother or grandfather was born on the territory of the relevant Association;
- (d) He has lived continuously on the territory of the relevant Association for at least two years.

7 Acquisition of a new nationality

Any Player who refers to art. 5 par.1 to assume a new nationality and who has not played international football in accordance with art. 5 par. 2 shall be eligible to play for the new representative team only if he fulfils one of the following conditions:

- (a) He was born on the territory of the relevant Association;
- (b) His biological mother or biological father was born on the territory of the relevant Association;
- (c) His grandmother or grandfather was born on the territory of the relevant Association;
- (d) He has lived continuously for at least five years after reaching the age of 18 on the territory of the relevant Association.

- 41 NZF submitted in its letter to the Committee dated 11 July 2015 that arts 5 and 6 of the FIFA Statute Regulations are the applicable provisions in this case. NZF argued that, on acquiring New Zealand citizenship, the player assumed “permanent nationality” in New Zealand which “is not dependent on residence ...”. Therefore, as a result of his dual nationality (South African and New Zealand), the player was “eligible to represent more than one Association on account of his nationality”, making art 6 the relevant provision. NZF argued that in order to represent one of those Associations (in this case, New Zealand), the player only needed to meet the criteria in art 6, which the player did.
- 42 The Committee, however, disagreed with NZF’s submission and applied art 7 to determine the player’s eligibility. The Committee noted that, when considered in the context of the eligibility scheme (arts 5, 6 and 7), art 7 is the only provision that could apply to the player. Otherwise, on NZF’s interpretation, art 7 would be a redundant provision.
- 43 Article 6, titled ‘Nationality entitling Players to represent more than one Association’ refers to a “Player who, under the terms of art. 5, is **eligible to represent more than one Association on account of his nationality ...**” (emphasis added). Article 7 on the other hand, titled ‘Acquisition of a new nationality’, refers to any “Player who refers to art. 5 par.1 **to assume a new nationality ...**” (emphasis added).
- 44 When arts 5, 6 and 7 are interpreted in context, it is clear that art 6 refers to instances where, by virtue of a person’s nationality at birth, they are eligible to represent more than one Association. This occurs when one Association shares a common nationality with another Association (for example, France and Tahiti). In such instances, the player must meet the criteria of art 6 to be eligible to play for one of those Associations.
- 45 Article 7, on the other hand, refers to instances where a player acquires a “new nationality”. In such instances, the player must meet the criteria of art 7 to be eligible to play for the Association of the player’s “new nationality”. As would be expected, the criteria in such cases is more onerous than where a player has an entitlement to represent more than one Association by virtue of his or her nationality at birth.

- 46 The Committee noted that the inclusion of arts 6 and 7 reflect the global applicability of FIFA rules. FIFA rules must apply internationally, and cover the full range of possibilities with respect to a player's nationality.
- 47 In this case, the player did not have New Zealand nationality, having been born in South Africa. Rather, the player assumed a "new nationality" in January 2015 when he was granted New Zealand citizenship. In this case, therefore, art 7 is the only applicable provision. Accordingly, in order to be eligible to play for New Zealand representative team, the player had to fulfil one of the alternative conditions stipulated in art 7 of the FIFA Statute Regulations.
- 48 In light of the information stated on the player's passport (that the player was born in Johannesburg, South Africa), the player could not satisfy the criteria provided by art 7(a). The Committee also noted that the player, who is born on 20 March 1995, could not satisfy the criteria provided by art 7(d). On this basis, the OFC requested evidence from NZF that the player had a parent or grandparent that was born in New Zealand, in order to prove that the player was eligible under the criteria in arts 7(b) or (c). As the NZF failed to provide such evidence, the Committee determined that the player was ineligible to play in the tournament.
- 49 If a player takes part in an official match despite being ineligible, under art 73.1 of the ODC, the player's team will be sanctioned by forfeiting the match and paying a minimum fine of NZD500. Article 73.1 of the ODC states:

Art. 73 Ineligibility

1. If a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. Art. 32) and paying a minimum fine of NZD500.
- 50 According to art 32A of the ODC, teams sanctioned with a forfeit are considered to have lost the match by 3-0. If the goal difference at the end of the match in question is greater than 3.0, the result on the pitch is upheld. Article 32A of the ODC states:

Art. 32A Forfeit

1. Teams sanctioned with a forfeit are considered to have lost the match by 0-3.
2. If the goal difference is greater than three, the higher score is upheld.

Applicability of FIFA rules

- 51 Finally, for the sake of completeness, the Committee acknowledged NZF's argument (as communicated in its submission to the Committee dated 11 July 2015) that it was led to believe that the Pacific Games Rules were the applicable regulations with respect to determining the eligibility of its players for the tournament. The Committee did not agree with NZF's submission in this regard.
- 52 On 25 October 2013, NZF signed a FIFA entry form stating that it undertook to participate in the preliminary competitions for the Men's Olympic Football Tournament. In doing so, NZF undertook to observe the Olympic Regulations whereby art 16 prescribes participating associations to accept that all the

disciplinary matters will be dealt with by the OFC on confirming its participation in the tournament. Article 16 of the Olympic Regulations states:

Art. 16 Tournament entries – preliminary competitions

1. The associations shall confirm their participation by sending the official entry form, duly completed, and specifying whether the entry concerns their men's and/or women's team, to the FIFA general secretariat by the deadline set by FIFA.
2. Entries sent by fax shall be confirmed by sending the official entry form by post to the FIFA general secretariat.
3. On entering the preliminary competition(s), the Participating Member Associations undertake to:
 - (a) observe these Regulations and, if applicable as per art. 3, par. 2 above, those drawn up by the respective confederation;
 - (b) accept that all the administrative, disciplinary and refereeing matters relating to the preliminary competitions shall be dealt with by FIFA or, if applicable as per art. 3, par. 2 above, the respective confederation in compliance with the respective regulations;
 - (c) observe the principles of fair play and the FIFA Code of Conduct.

ABILITY TO APPEAL

- 53 In accordance with arts 127, 128, 129, 130 and 131 of the ODC, NZF can lodge an appeal to the Appeals Committee against this decision if it objects to the Committee's representation of the facts or considers that the Committee applied the law incorrectly. An appeal must be communicated to OFC in writing within fifteen days of the communication of this decision.
- 54 In accordance with art 132, if NZF intends to lodge an appeal, it must deposit \$1,500 (NZD) into OFC's bank account within fifteen days from the date of the appeal.

Art. 127 Contestable decisions

An appeal may be lodged to the Appeals Committee against any decision passed by the Disciplinary Committee and Ethics Committee, unless the sanction pronounced is:

- (a) a warning;
- (b) a reprimand;
- (c) a suspension for less than three (3) matches or of up to two (2) months;
- (d) a fine of less than NZD1,000 imposed on a Member Association or a club and of less than NZD500 in other cases

Art. 128 Eligibility to appeal

1. Anyone who is affected by a decision and has an interest justifying amendment or cancellation of the decision may submit it to the Appeals Committee.
2. Member Associations may appeal against decisions sanctioning their players, officials or members. They shall have written agreement of the person concerned.

Art. 129 Time Limit for Appeal

1. The party intending to appeal shall announce his decision in writing within fifteen (15) days of the communication of the decision.
2. The announcement of the intention to appeal shall be sent directly to OFC. The petition of appeal shall, however, be forwarded to OFC via the member association.
3. The member association receiving the petition of appeal shall forward it immediately to OFC. The decisive moment for complying with the time limit for lodging this petition is the moment it reaches the OFC.

Art. 130 Grounds for complaint

The appellant may object to insufficient representation of the facts and wrong application of the law.

Art. 131 Petition of appeal

1. The appellant shall submit his petition of appeal in writing.
2. The appellant's petition of appeal shall include the necessary arguments, reasons and means of proof and be signed by the appellant or his representative, subject to Art. 121.

Art. 132 Deposit

1. A party intending to lodge an appeal shall deposit the amount of NZD1500 to OFC's bank account within fifteen (15) days from the date of the appeal.
2. The appeal shall be deemed inadmissible without the aforesaid deposit.
3. This amount shall be reimbursed to the appellant should the appeal be upheld. Costs and expenses payable by an appellant who loses the case are deducted from this amount. Any remaining amount is reimbursed to him. If the deposit is insufficient, the appellant will be ordered to pay the difference.
4. If an appeal is dismissed, the deposit shall be forfeited.

55 An appeal will be heard by the Appeal Committee, convened in accordance with art 39 of the OFC Statutes. Article 39 of the OFC Statute states:

Article 39: APPEAL COMMITTEE

1. The function of this body shall be governed by the OFC Disciplinary Code and OFC Code of Ethics. The committee shall pass decisions only when at least three members are present. In certain cases, the chairman may rule alone.

2. The Appeal Committee is responsible for hearing appeals against decisions from the OFC Disciplinary Committee and the OFC Ethics Committee that are not declared final by the relevant OFC regulations.
3. Decisions pronounced by the Appeal Committee shall be irrevocable and binding on all the parties concerned. This provision is subject to appeals lodged with the Court of Arbitration for Sport (CAS).

Signed at

on this 20th day of July 2015

A handwritten signature in black ink, appearing to read 'Tai Nicholas', with a long horizontal flourish extending to the right.

Tai Nicholas

General Secretary

Oceania Football Confederation