

## RWC 2019 DISCIPLINARY DECISION



Match	Australia v Fiji		
Player's Union	Australia	Competition	RWC 2019
Date of match	21/09/2019	Match venue	Sapporo Dome, Sapporo.
Rules to apply	Regulation 17 World Rugby and RWC 2019 Tournament Disciplinary Programme		

### PARTICULARS OF OFFENCE

Player's surname	Hodge	Date of birth	26/08/1994
Forename(s)	Reece		
Referee Name	Ben O'Keefe	Plea	<input type="checkbox"/> Not admitted
Offence	Law 9.13: A player must not tackle an opponent early, late or dangerously. Dangerous tackling includes, but is not limited to, tackling or attempting to tackle an opponent above the line of the shoulders even if the tackle starts below the line of the shoulders.	Citing <input checked="" type="checkbox"/>	
Summary of Sanction	Three (3) weeks suspension, up to and including 11 October 2019		

### HEARING DETAILS

Hearing date	25 September 2019	Hearing venue	Offices of Atsumi & Sakai, Tokyo
Chairman	Nigel Hampton QC (New Zealand)		
Other Members of Disciplinary Committee	Frank Hadden (Scotland; former International Coach and Head Coach of Scotland at RWC 2007) Jose Luis Rolandi (Argentina; former International Referee)		
Appearance Player	YES <input checked="" type="checkbox"/>	Appearance Union	YES <input checked="" type="checkbox"/>
Player's Representative(s)	Mark Martin QC (Counsel); Patrick Molihan (Manager of Australia)	Disciplinary Officer and/or other attendees	Yvonne Nolan (DDO); Alistair Maclean (WR)
List of documents/materials provided to Player in advance of hearing	<ul style="list-style-type: none"> <li>• Citing Commissioner's Report of 22/09/2019 (with Fijian team's Citing Referral of 21/09/2019 attached);</li> <li>• Reports of the match day officials (being those of the Referee, his 2 Assistant Referees and the Television Match Official (including clarification of an aspect, on 23/09/2019));</li> <li>• Statement of the Fijian number 7 player, Peceli Yato;</li> <li>• Medical Reports of 22/09/2019 and 25/09/2019 on the Fijian number 7;</li> <li>• 12 minutes 18 seconds of video clips of incident;</li> <li>• Other formal documentary materials (match team sheets, match timeline, RWC 2019 ToP disciplinary section, WR's Regulation 17, as at 01/08/2019).</li> </ul>		

### SUMMARY OF ESSENTIAL ELEMENTS OF CITING/REFEREE'S REPORT/FOOTAGE

1. **Referee:** "Incident not seen live. At the subsequent stoppage in play due to the injury I asked my TMO if there was any obvious foul play to cause the injury, the reply was that there was no obvious foul play seen".
2. **AR1:** "I did not see the incident as I was on the other side of the field".

3. **AR2:** *"My view live was that I didn't see any foul play on Fiji number 7. I thought it was just a 'rugby collision'"*.
4. **TMO:** *"No foul play seen live. At the subsequent stoppage in play due to an injury, I checked two angles for potential foul play and saw none. I reported this to the referee when asked".*  
On inquiry made on behalf of the Judicial Panel, as to which two angles he, the TMO, looked at, he responded: *"1) the live camera angle again i.e. the first one shown. 2) One from the left of the tackle i.e. showing Hodge's left arm making contact",* which he later clarified as being, he believed, *"15 reverse SSM ...in slow motion"*.
5. **Citing Commissioner's Report** (relevant extracts):*"At a Fiji lineout approximately 15 metres from the Australian line, Fiji 7 receives the ball on the 5 metre line and runs around the front of the line towards the Australian goal line. Australia 14 (Hodge) moves to takes (sic) up a defensive position in the direct running line of Fiji 7. As he approaches Australia 14, Fiji 7 holds the ball in his right hand close to his chest and raises his left arm across his chest preparing for impact. Australia 14 remains in an upright position and in making contact with Fiji 7 turns his body, rising up, whereby his right shoulder makes contact with the chin of Fiji 7. Australia 14 is knocked back in the collision and Fiji 7 falls forward onto the ground and loses possession of the ball which goes into touch. Play continues with a quick lineout taken by Australia. Fiji 7 receives treatment and is removed from play for an HIA. He does not return to the game".*  
*"Taking into account the World Rugby Decision Making Framework for high tackles, this incident involves an illegal high tackle which makes contact with the head, with a high degree of danger and therefore meets the red card threshold. ... . Reece Hodge is therefore cited for a contravention of Law 9.13".*

#### ESSENTIAL ELEMENTS OF OTHER EVIDENCE (e.g. medical reports)

**The Medical Report** of 25 September 2019 (on the Fiji 7, Peceli Yato) was an updated version of the original 22 September Report, and relevantly reads:

*"History of current injury.*

*Peceli sustained a head knock during our game on Saturday. ...*

*He knows that he had a head knock and recalls getting up onto his knee. He was initially alert and orientated on the field but given he was slow to get up with a suspicious mechanism he was removed for further assessment. On review of the video, Peceli's head appears to contact the shoulder of an opponent when tackled front on. He initially lies on his back, and is slow to get up on one knee.*

*A HIA1 was performed which he was below baseline with symptoms of a generalised headache, and a reduced concentration (digit backwards) score. Given his headache symptoms, suspicious video evidence and HIA1 assessment he was permanently removed from the game. At half time he reported an increasing headache which still persists. Peceli reported a brief LOC around the time of the contact following the game (denied on the field/at the time of HIA1).*

*His HIA2 assessment post-game was back to baseline except symptoms of a headache. He had a poor night's sleep on the first night but has otherwise slept well. HIA3 revealed he had increasing symptoms of headache, 'pressure in head', dizziness, blurred vision, sensitivity to light/noise, fatigue/low energy, and difficulty concentrating.*

*These have subsequently all improved but largely all remain. He has been unable to complete any of the stages of the graduated return to play due to these symptoms. He trialed the first stage of the graduated return to play (light aerobic exercise) with a bike as his symptoms were trending the right way but he had to stop at 5 minutes as he had symptoms of dizziness. We will trial this again when he is ready.*

*His neurological examination remains unremarkable.*

*[Player's medical history redacted]*

[REDACTED]

[REDACTED]

[REDACTED]

#### *Impressions*

*Peceli is suffering from a concussion with persistent symptoms following a head knock on Saturday. His prognosis remains uncertain given he's only 4 days post injury. He remains symptomatic and has not gone through any of the stages of the graduated return to play yet".*

**Fiji 7's (Peceli Yato) statement** included, relevantly, the following:

*"I ran down the left side of the field. As I came to Hodge, I lowered my height slightly in preparation for contact and to be ready to offload the ball.*

*I did not expect his contact to be so high. From the moment he hit my face I blacked out and woke up when I was on my back".*

### **SUMMARY OF PLAYER'S EVIDENCE**

#### **Opening Submissions**

Counsel, Mr Martin, opened the Player's case by accepting that the Player and his representatives had had timely access to all documents and materials; that there were no preliminary matters; and that the Player accepted that he was the person named in the Citing Commissioner's Report.

Counsel advised that the Player raised 3 issues: (a) that the Player did not accept that the Citing Report gave a true and accurate account of the incident under scrutiny; (b) that the Player did not accept that he committed an act of foul play; and (c) that the Player did not accept, in any event, that the incident met the red card threshold.

Counsel advised that the only witness to be called to give evidence was the Player.

But before the Player was called, his counsel outlined the gist of his evidence, illustrating that outline by reference to video clip "22 Yard left SSM" at 8 mins 19 secs into the video.

It was contended, on behalf of the Player, in a précis of the written submissions filed, that:

as the Fiji 7 ran down the field towards the try-line, he (Fiji 7) formed the deliberate intent to run over the top the Player, which the Fiji 7 obviously thought at the time was the best way to defeat the tackle, and lowered his body height accordingly, deciding to take the Player head on;

the first contact between the 2 players was the Fiji 7's forearm which contacted the Player's right forearm and had the effect of pushing the Player back;

the Player, realising that there might be a clash of heads, sensibly turned his head away to his left, which brought his right shoulder around to the left as well, as part of a "defensive" or protective reaction on his part;

Fiji 7 was moving forward on contact, but the Player was not, as he then was attempting to perform a "soak" tackle;

the contact of the Player's right shoulder with the left jaw of Fiji 7 was the result of the Fiji 7 running into the Player's shoulder, as the Player performed his self-protective reaction.

#### **The Player's evidence.**

In his account he described how, as trained, he was covering the possibility of a chip kick being made, behind the defensive line, and anticipating a normal lineout was heading to his left across field. When he realised that Fiji 7 was breaking around the front of the lineout, the Player thought Fiji 7 was going for the corner. So he ran a course, at roughly a 45 degree angle, to try and cut Fiji 7 off, intending to make a right shoulder tackle at the height of waist/hips/knees.

However, Fiji 7 stepped off his left foot as the Player came across, leaving him, the Player, in a poor position to make the right shoulder tackle. So, he decided to try and make a "soak" tackle. When the Player realised that Fiji 7 was coming straight towards him, front on, he turned his head to his left to try and avoid a head to head contact.

The Player said that he had no intention to strike Fiji 7 on the head with his shoulder (which he accepted had occurred), but that his intent was to "wrap up" the ball and Fiji 7. Given his intention to wrap up the ball, the targeting of his right shoulder was around the ball.

The Player also explained why he did not apologise to Fiji 7 (or to the Fijian team, some of whom he knew as club mates) after the match, as he was not aware that he had done anything that might be put under scrutiny.

In answer to questions from Panel members, the Player agreed (by nodding) that he was going to need to make a decent hit given the proximity to the try-line; he accepted that when he changed from going to attempt a tackle around waist/hips, to an attempt at a "soak" tackle he knew that he would have to soak up a fair bit of force, to stop Fiji 7 getting over the try-line.

At 4 mins 17 secs on the video, he said that he was still thinking that he could make a right shoulder tackle, low around Fiji 7's waist/knees.

At 4 mins 18 secs he accepted that he had then realised that he was not in a position to make a right shoulder, low tackle, that he was reacting to the Fiji 7 change and was thinking of self-preservation and a "soak" tackle.

The Player accepted that Fiji 7 was in a normal position for a player doing what he was doing (carrying the ball), and that Fiji 7 was not abnormally low.

He conceded that he was not in a good position to affect the tackle he attempted.

He said that his actions were very reactionary; that everything happened so quickly; that he had never had an occurrence like this happen to him before, i.e. trying to tackle in such a situation; and that he had no technique to fall back on.

The Player conceded that he had no effective knowledge of WR's "Decision making framework for high tackles"; had not been trained on it; was not across it because the tackles he makes are predominantly in the waist to knees area. (To the Panel, this was of some general concern; and will be commented on later).

### **Closing Submissions**

Mr Martin spoke to his written submissions. He submitted that:

the contact made was through Fiji 7 coming forward in the way he did; that the Player was not coming forward; that with Fiji 7 keeping going forward, it was his head that contacted the Player's right shoulder, and not the Player's shoulder contacting into Fiji 7's head; that Fiji 7, as he ran towards the Player, and stepped to his right, had lowered his height "significantly", thus contributing to the contact between shoulder and head; although when questioned by Panel members as to that (and taken to the video at 8 mins 19 secs) could not point to evidence supporting that contention. Indeed, he accepted that that footage would indicate a possible rising up of the Fiji 7's body prior to contact.

He submitted, again, that the Fiji 7 had made a concerted effort to run into the Player with as much force as he could, lowering his body height. (The Panel observes that the Fiji 7 was not asked by the Player's representatives to give evidence, that the suggested concerted effort to run over the Player is not contained anywhere in the Fiji 7's statement and so that suggested effort must remain only that, a suggestion).

He pointed out the contents of the Reports of the Referee and the AR2, who had not seen any foul play, with the AR2 stating he thought it just a "rugby collision". At that stage the Panel had the video played and stopped at 4 mins 18 secs, which showed the Referee some 4 metres, and almost directly, behind the 2 players at the time of their contact, and the AR2 some 3.5 metres behind the players, at a narrow angle, meaning, in the view of the Panel, that those match officials would have had, in all probability, no view of the actual impact between the Player's shoulder and Fiji 7's jaw.

It was submitted that the contact with the head of Fiji 7, which occurred in this tackle, was accidental and neither intentional nor reckless, but rather the consequence of "an unfortunate, forceful collision" and, therefore, not foul play.

It was strongly submitted that what had occurred was that Fiji 7, "whilst running towards the try-line, sees the Player, lowers his height, raises his arms in a protective manner in front of his chest and chin and runs directly at the Player. This was a deliberate action by Fiji 7 to run directly into the Player".

It was submitted that this deliberate, "chosen" act by Fiji 7 was "aggressive" and that the step by the Fiji 7 was a step back towards the Player and into him to bash the Player out of the way. (As noted earlier, a contention not put to Fiji 7).

And that the Player should be given the benefit of the doubt. (Not the standard of proof involved in these proceedings, the Panel notes).

Alternatively, and in any event, it was submitted that if it was foul play, it was such that, using the WR “Decision making framework for high tackles”, there was not, in the circumstances here, a sufficient high degree of danger to meet the red card test.

#### **FINDINGS OF FACT**

The image from the video clip (“26 22 yard Left SSM”) at 8 mins 19 secs shows the point in time of contact between the right shoulder of the Player and the left jaw of Fiji 7.

It is an image from a video clip which was not looked at by the TMO when he was asked by the Referee if there “was any obvious foul play” – it was not one of the 2 clips the TMO looked at. That clip which he looked at, and from which he described seeing the Player’s “left arm making contact”, was “15 reverse SSM”. This clip, at 7 mins 19 secs, shows that arm contact, but does not show the contact occurring on the other side of the Player’s body (i.e. with his right shoulder to the Fiji 7’s head).

On the balance of probabilities, the Panel found, from all the evidence that what led up to that shoulder/jaw contact was as set out immediately below. (And throughout this Decision, any factual finding made by the Panel, has been made to that standard of proof).

The short, successful lineout throw, made by Fiji 2 to Fiji 7, does take the Australian players by surprise. The Player, from his position further infield, runs across towards, and then into, the running line of Fiji 7, intending to make a tackle on him.

The Fiji 7 sees the Player approaching and does 2 things: first, still running at speed and at a normal running height, and without any appreciable change of that height, he brings his left arm up across his chest, preparing for the probable impact; and, secondly, makes a legitimate step off his left foot, to his right, possibly to avoid being bundled into touch, possibly to try and avoid, or at least disadvantage, his would-be tackler. Such a manoeuvre by a ball runner approaching an intended tackler is not unexpected.

The Player at no time lowers his own body in preparation for his intended tackle, and adopting the Citing Commissioner’s words, “remains in an upright position”. The Player set his feet and maintained a high body position as contact approached. Given his body position, the Panel’s view is that the Player made an error of judgment as to what to do with his right shoulder. The Player’s absence of knowledge of, and training in, the “Decision making framework for high tackles” may have possibly played a contributory part.

(In his counsel’s submissions, it was stated that the Player “lines up F7 to affect a right shoulder tackle however F7 steps inside and the Player has no time to readjust his position”. The Panel could find no video footage which showed the Player lowering himself as he lined up Fiji 7, recalling that the Player, in his evidence, had said that his intent was to make that right shoulder tackle on Fiji 7 at waist/hip height).

The Player was still in that upright position immediately before, and on, contact.

As contact becomes imminent, the Player turns his head and his upper body towards his left, bringing his right shoulder inwards (towards his left) and slightly upwards, thereby putting his right shoulder in line to make direct contact with the Fiji 7’s jaw, which it did. To the Panel, the setting of the Player’s feet and the movement of his shoulder indicate actions other than just a “soak” tackle, and were more indicative of an active tackle.

## Discussion

The Panel worked its way through a question trail in considering this incident. A copy of that trail is sent with this Decision and should be attached to it.

The Panel found that the Player, as he acknowledged, did attempt to carry out a tackle on Fiji 7. His left arm can be seen wrapping; and his right arm was in the process of wrapping.

Given the Player's upright position when he attempted to make this tackle, and given that the tackle included, inter alia, the Player's shoulder hitting the jaw of Fiji 7, the Panel concluded that this was a dangerous tackle, as defined in Law 9.13.

The Panel decided that there was recklessness in the actions of the Player in making this dangerous high tackle. First, his body position was high before contact, and remained high at contact. In the Panel's view, he was never low enough, even to achieve the kind of right shoulder, low, tackle he first intended. Secondly, there was no attempt made by him to modify his height in order to avoid the potential for contact with his opponent's head. Thirdly, instead he turned his right shoulder inwards and slightly upwards, putting the shoulder in a line where it would make direct contact with Fiji 7's jaw (which it did).

The tackle, thus being foul play, and unlawful, in the Panel's view, did cause head contact (the Player, through his counsel's submissions, had accepted the head contact, from the start).

In assessing the degree of danger, the Panel followed the WR "Decision making framework for high tackles", having incorporated that Framework into the question trail.

The Panel took the view that the "Video signs indicating higher degree of danger", set out in the Framework, are just that: indicators. They are not exhaustive; nor are they mandatory – Counsel for the Player accepted that that was so, during the course of his submissions.

As to "Preparation" the Panel noted as significant the Player's turning in (and slightly up) of his right shoulder immediately before and on contact. The Panel does not accept that the submission that this was just the Player maintaining his position.

As to "Contact" initially the Player, coming across at speed to intercept Fiji 7, had the intention of carrying out an active tackle, and despite the change of course by Fiji 7 as he stepped to the right, there was still, in the Panel's view, an active component in the "soak" tackle which he said he then was attempting to make (the setting of his feet, the positioning and moving of his shoulder). In the Panel's view, there was no attempt made to pull out of contact. In addition, the contact made to the head was with a shoulder, which had been moved into line with the opponent's head.

Having regard to those indicators, the Panel concluded that the degree of danger here was high.

Next, the Panel looked at whether there were factors present here, which might affect that degree of danger, for better or worse.

The Panel took the (tentative) view that the existence of a factor which might be said to be "against mitigation" did not, of itself, prevent a decision maker from going on to look at whether there were mitigating factors present which might reduce the degree of risk. In the factual circumstances as found by the Panel to exist here, no definitive conclusion needed to be reached by the Panel as to that.

The Panel found that both the Player and Fiji 7 were in open space, and that the Player had a clear line of sight before contact, a factor against mitigation.

As to mitigating factors, of those listed in the Framework, the Player did not make “a definite attempt to change height in an effort to avoid ball carrier’s head”; the Fiji 7 did not suddenly drop in height; the Player was not “unsighted prior to contact”; there may have been some reactionary component to some of the Player’s actions in the tackle, but the Panel did not see clear and obvious evidence that the tackle was a “reactionary” one; and the contact was not indirect.

Having worked through the way through the Framework, applying its evidential findings as it went, the Panel concluded, on the balance of probabilities that the red card threshold had been met. This was a “high tackle with...contact between the tackler’s shoulder...and the B(all) C(ARRIER)’s head or neck, with high degree of danger, and mitigation is not applied”.

As a result the Panel decided that the citing should be upheld.

**DECISION**

Breach	Proven <input checked="" type="checkbox"/>
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**SANCTIONING PROCESS**

**ASSESSMENT OF SERIOUSNESS**

Assessment of Intent – R 17.19.2(a)-(b) (or equivalent Tournament rule)
Reckless <input checked="" type="checkbox"/>
State Reasons
There was recklessness in the actions of the Player in making the tackle: (a) his body position was high before contact and remained high at contact; (b) there was no attempt to modify his height in order to avoid the potential for contact with Fiji 7’s head; (c) instead he turned his right shoulder inwards, and slightly upwards, putting it in line to make direct contact with Fiji 7’s jaw, which it did, causing injury.
Gravity of player’s actions – R 17.19.2(c) (or equivalent Tournament rule)
Forceable contact to the head, with a shoulder.
Nature of actions – R 17.19.2(d) (or equivalent Tournament rule)
Turning his right shoulder inwards, and slightly upwards, putting it in line to make direct contact with the opponent’s jaw.
Existence of provocation – R 17.19.2(e) (or equivalent Tournament rule)
Nil.
Whether player retaliated – R 17.19.2(f) (or equivalent Tournament rule)
Not applicable.
Self-defence – R 17.19.2(g) (or equivalent Tournament rule)
Not applicable.
Effect on victim – R 17.19.2(h) (or equivalent Tournament rule)
Removal from the match; suffered a concussion/head injury, failed an HIA, still with uncertain prognosis.
Effect on match – R 17.19.2(i) (or equivalent Tournament rule)
Not applicable.
Vulnerability of victim – R 17.19.2(j) (or equivalent Tournament rule)
Direct contact, with force, to the head.
Level of participation/premeditation – R 17.19.2(k) (or equivalent Tournament rule)
Reactive decision made in short space of time.

Conduct completed/attempted – R 17.19.2(l) (or equivalent Tournament rule)
Tackle partially completed.
Other features of player’s conduct – R 17.19.2(m) (or equivalent Tournament rule)
Nil.

**ASSESSMENT OF SERIOUSNESS CONTINUED**

Entry point		
<input type="checkbox"/>	Mid-range: Six (6) Weeks <input checked="" type="checkbox"/>	<input type="checkbox"/>

**ADDITIONAL RELEVANT OFF-FIELD AGGRAVATING FACTORS**

Player’s status as an offender of the Laws of the Game – R 17.19.4(a) (or equivalent Tournament rule)
Not applicable; “clean” disciplinary record.
Need for deterrence – R 17.19.4(b) (or equivalent Tournament rule)
Nil.
Any other off-field aggravating factors – R 17.19.4(c) (or equivalent Tournament rule)
Nil.

Number of additional weeks: Nil (0)

**RELEVANT OFF-FIELD MITIGATING FACTORS**

Acknowledgement of guilt and timing – R 17.19.5(a) (or equivalent Tournament rule)	Player’s disciplinary record/good character – R 17.19.5(b) (or equivalent Tournament rule)
	“Clean” disciplinary record over a considerable, and distinguished, playing career. Good character and repute.
Youth and inexperience of player – R 17.19.5(c) (or equivalent Tournament rule)	Conduct prior to and at hearing – R 17.19.5(d) (or equivalent Tournament rule)
	Exemplary.
Remorse and timing of remorse – R 17.19.5(e) (or equivalent Tournament rule)	Other off-field mitigation – R 17.19.5(f) (or equivalent Tournament rule)
As explained in his evidence.	

Number of weeks deducted: 3

Summary of reason for number of weeks deducted:  
The good disciplinary record and character, combined with his exemplary conduct at all stages of the hearing process.



## Dangerous Tackle – Question Trail

1. Was this a tackle or a shoulder charge?
2. If a tackle, was it “dangerous”? (Law 9.13: “*Dangerous tackling includes...tackling or attempting to tackle an opponent above the line of the shoulders even if the tackle starts below the line of the shoulders*”).
3. If it was a dangerous tackle, then is it illegal? i.e. was that dangerous component of the tackle intentional or reckless or accidental?
4. If illegal, applying the World Rugby “Decision making framework for high tackles”, did that dangerous tackle cause head/neck contact?

Such contact, the framework suggests, is to be identified by:

- (a) clear evidence of contact to ball carrier’s head/neck; or
- (b) the ball carrier’s head visibly moves backwards from the contact point; or (c) the ball carrier requires an HIA.

5. What was the degree of danger? The framework suggests one should look at 3 factors: Preparation, Contact and Follow through.

*Preparation:* does the tackler

- (a) draw his arm back prior to contact?
- (b) leave the ground?
- (c) swing his arm forward prior to contact?

*Contact:*

- (a) is tackler attempting an active/dominant tackle; or a passive/soak, or pulling out?
- (b) is tackler’s speed and/or acceleration into tackle high?
- (c) does a rigid arm or elbow make contact with ball carrier’s head as part of a swinging motion?

*Follow through:*

does tackler complete the tackle (as opposed to immediate release/withdrawal)?

6. Is there any mitigation as to the tackle and the contact? The framework states the following factors should be considered:
  - (a) were both players in open space with tackler having either clear line of sight and/or time before contact?
  - (b) is there clear and obvious evidence that the tackler made a definite attempt to change height in order to avoid the ball carrier’s head?
  - (c) is there clear and obvious evidence that the ball carrier suddenly drops in height (e.g. earlier tackle, trips, dives to score)?
  - (d) is there clear and obvious evidence that the tackler was unsighted prior to contact?
  - (e) is there clear and obvious evidence that that this was a ‘reactionary’ tackle’, immediate release?
  - (f) is there clear and obvious evidence that the contact was indirect (i.e. starts elsewhere on the body, slips/moves up resulting in minor contact to head/neck)?
7. Has the red card test been met?