



Pregnancy Guidelines

for

State, Territory and Regional Associations
&
Clubs

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BACKGROUND

The Australian Baseball Federation (ABF) is constantly reviewing policies to ensure members' rights and obligations are respected. Recently the ABF adopted new guidelines which relate to players and officials who are pregnant.

These guidelines require players and officials to notify the ABF of their pregnancy on becoming aware of such fact. Upon receiving notification of a player's or official's pregnancy, the ABF retains discretion to take such action as it deems appropriate in the circumstances having regards to the Australian Sports Commission Guidelines on Pregnancy and Sport (ASC Guidelines).

The ABF has adopted this set of pregnancy guidelines to assist the ABF and its member State and Territory Associations manage issues involving pregnancy amongst players and officials in the event of being notified in accordance with ABF regulations and agreements.

The ABF is grateful to Softball Australia for kind permission to use and adapt the Guidelines originally prepared for Softball Australia by Lander and Rogers Lawyers in 2004.

These guidelines have been prepared to assist State and Territory Associations in managing issues involving pregnancy amongst players and officials. These Guidelines are based on the ABF's Pregnancy Guidelines, but have been amended to apply to State, Territory and Regional Associations and Clubs (Associations and Clubs).

TO BAN OR NOT TO BAN?

Whilst the *ASC Guidelines* are not particularly definitive or prescriptive, they do support the position that a pregnant player / official should be given the opportunity to decide for herself, in consultation with her medical advisors, whether or not to participate whilst pregnant. This position is advocated by the ASC on the basis of current medical evidence and legal advice as to the risks and potential liability surrounding the issues.

Further, in weighing the negligence and discrimination considerations, the following factors are relevant:

- the number of potential actions under discrimination legislation is likely to be higher than potential actions in negligence;
- an action under discrimination legislation is likely to be successful;
- it is less likely that a plaintiff will prove all four elements of negligence against a sporting organisation;
- there is unlikely to be insurance cover for compensatory awards for deliberate breaches of discrimination legislation which means that the sporting organisation bears the full extent of that cost;
- there is likely to be insurance for a negligence action, with the result that the sporting organisation will only be liable for the premium and any excess.

It should be noted that a player's / official's inclusion in a team continues to be governed by the Association's and Club's team agreement (if any) and selection policy (if any). As such, should an Association or Club not exclude the player / official on the basis of her pregnancy, it will retain the right to not select her in the team on the basis of its discretion contained within the team agreement and selection policy.

PREGNANCY GUIDELINES

The ABF recommends that Associations and Clubs not ban pregnant players / officials but rather adopt and implement the attached checklist of issues to consider prior to and upon notification of pregnancy by a player / official.

The attached checklist has been developed in accordance with the *ASC Guidelines* which suggest that sporting organisations may owe a duty of care to pregnant players / officials to advise them that:

- continued participation in the particular sport during pregnancy poses theoretical risks to them and to their unborn child; and
- they should seek advice from an appropriately qualified medical practitioner as to:
 - the risks involved in participating in that particular sport while pregnant; and
 - whether it is safe for them to continue participating in that sport while pregnant and, if so, for how long they should continue to participate.

This obligation can be best dealt with by a clear statement to this effect being:

- included in the team agreement, registration forms or such similar document; and
- displayed in a prominent place where pregnant players / officials are likely to see it.

This obligation does not require Associations and Clubs to provide advice or issue guidelines as to the health risks of continued participation in baseball. Indeed, providing advice or issuing guidelines of this type is potentially dangerous as Associations and Clubs then become potentially liable for their correctness.

From a risk management point of view, the advice given to the pregnant player / official ought to be given by the player's / official's own doctor and not by the Association or Club doctor. Association and Club doctors should not certify a pregnant player / official as being fit to participate. This certification should be given by the player's / official's own doctor for whose actions the Association or Club is not vicariously liable.

If the player / official obtains advice from an appropriately qualified medical practitioner, she can make an informed decision on medical grounds as to whether she continues to participate and, if so, for how long.

In addition, the following risk management strategies should be considered by Associations and Clubs to minimise exposure to liability:

- securing appropriate indemnities and / or releases from players / officials; and

- taking out appropriate insurances. Associations and Clubs should review their insurance policies to ascertain whether cover extends to claims which are made by a pregnant player / official or her child. The amount of insurance cover should also be checked to ensure it is sufficient to cover a claim of a child injured *in utero*.

Associations and Clubs should ensure that team agreements and registration forms include a release and indemnity from players / officials. The indemnity should include any claim for injury which is subsequently made by the then unborn child of a pregnant player / official.

Note however, the value of such indemnity will depend on the financial status of the player / official. It is preferable to include the indemnity in current team agreements and / or registration forms rather than seek to obtain an indemnity from the player / official upon notification of pregnancy, as the request may, in itself, constitute discrimination.

In certain circumstances an additional duty may be imposed on an Association or Club. This may arise where an Association or Club is aware or should be aware that the pregnant player / official either has not obtained appropriate medical advice or is ignoring such medical advice. In such cases, there may be a duty on the Association or Club to take positive steps to protect both the mother and the unborn child. These positive steps may include:

- arranging for the mother to see an appropriately qualified medical expert; and
- counselling the mother to cease participating of her own accord, or out of regard to the unborn child.

Please refer to the attached Association and Club Pregnancy Checklist. The checklist outlines the factors which should be considered in addressing this issue by Associations and Clubs prior to and post notification of a player's / official's pregnancy.

Australian Baseball Federation

Association and Club Pregnancy Checklist

The ABF supports the position that a pregnant player / official should be given the opportunity to decide for herself, in consultation with her medical advisors, whether or not to participate whilst pregnant.

The ABF has formed this position in light of the Australian Sports Commission Pregnancy in Sport - Guidelines for the Australian Sporting Industry and on the basis of current medical evidence and legal advice as to the risks of injury and potential liability surrounding the issue.

This checklist has been developed to assist Associations and Clubs in dealing with the issue prior to and post notification of a player's / official's pregnancy.

Prior to Notification	Yes	No
<p>1. Has the Association or Club included in team agreements, player registrations or the like an obligation on the player / official to notify the Association or Club that the player / official is pregnant?</p> <p>For example:</p> <p><i>“A player, team official or umpire must notify [insert Association / Club name] of the fact that she is pregnant immediately upon becoming aware of such circumstance.</i></p> <p><i>Upon receipt of notification, [insert Association / Club name] will consider what further action (if any) should be taken in respect of the participation of the player, official, or umpire in accordance with the Australian Sports Commission Guidelines on Pregnancy and Sport.”</i></p>		
<p>2. Has the Association or Club advised players / officials that continued participation in baseball during pregnancy poses theoretical risks to them and to their unborn child?</p>		
<p>3. Has the Association or Club suggested that pregnant players / officials seek advice from an appropriately qualified medical practitioner as to:</p> <ul style="list-style-type: none"> • the risks involved in participating in baseball while pregnant; and • whether it is safe for them to continue to participate in baseball while pregnant and, if so, for how long they should continue to participate. 		

Prior to Notification cont...	Yes	No
4. Has the Association or Club reserved the right of the Association or Club to request from the player / official evidence that she has obtained medical advice in respect of her participation whilst pregnant (note this does not refer to the substance of the medical advice as such information is confidential and subject to privacy considerations)?		
5. Have the statements in 1, 2 and 3 been included in the team agreement, registration forms or similar documents?		
6. Have the statements in 1, 2 and 3 been displayed in a prominent place where pregnant players / officials are likely to see it?		
7. Have appropriate indemnities and / or releases been included in the team agreement, registration forms or similar documents?		
8. Does the Association or Club have appropriate insurance, which extends to claims which are made by a pregnant player / official or her child? If yes, is the amount of insurance appropriate?		
Post Notification (include reference to the date when the following occurred and name of Association / Club official that crosschecked the checklist)	Yes	No
9. Has the pregnant player / official sought advice from an appropriately qualified medical practitioner, independent to the Association or Club as to: <ul style="list-style-type: none"> • the risks involved in participating in baseball while pregnant; • whether it is safe for her to continue participating in baseball while pregnant and, if so, for how long she should continue to participate? 		

Post Notification cont... (include reference to the date when the following occurred and name of Association / Club official that crosschecked the checklist)	Yes	No
<p>10. Assuming the player / official has obtained advice from an appropriate qualified medical practitioner, has she decided to continue to participate?</p> <p>If yes, for how long?</p>		
<p>11. Is the Association or Club aware that the pregnant player / official either has not obtained appropriate medical advice or is ignoring such medical advice?</p> <p>If yes, has the Association or Club taken positive steps to protect both the mother and the unborn child, such as:</p> <ul style="list-style-type: none"> • arranging for the mother to see an appropriately qualified medical expert? • counselling the mother to cease competing of her own accord, or out of regard to the unborn child? 		

