

Pregnancy Guidelines

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Lander & Rogers Lawyers

Updated: March 2016

Review date: March 2017



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1 Background

- 1.1 Softball Australia (**SAL**) does not prohibit pregnant players and officials from participating in national championships, national teams and other SAL activities.
- 1.2 We do however require players and officials to notify us when they become aware they are pregnant. On receipt of this notification we retain the right to take appropriate action, having regard to the Australian Sports Commission Guidelines on Pregnancy and Sport (**ASC Guidelines**) and the SAL Member Protection Policy.
- 1.3 These Pregnancy Guidelines, prepared with the support of Lander & Rogers Lawyers, will assist SAL, and our Member States, Associations and Clubs manage issues involving pregnancy.

2 Legal issues

- 2.1 Whilst the ASC Guidelines are not definitive or prescriptive, they do support the position that a pregnant player or official should be given the opportunity to decide for herself, in consultation with her medical advisers, 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 issue.
- 2.2 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 would bear 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.
- 2.3 It should be noted that the inclusion of a player or an official in a team continues to be governed by the relevant SAL, Member State, Association or Club team agreement (if any) and selection policy (if any). As such, if a player or official is not excluded on the basis of her pregnancy, SAL, the Member State, Association or Club retains the right to not select her on the basis of its discretion contained within the team agreement and selection policy.

3 Pregnancy Guidelines

- 3.1 It is recommended that pregnant players and officials not be excluded from participating, but rather the attached Checklist of issues be considered prior to and upon notification of pregnancy by a player or official.



- 3.2 The attached Checklist, which has been developed in accordance with the ASC Guidelines, suggests that sporting organisations may owe a duty of care to pregnant players or officials to advise them that:
- their own health, and the wellbeing of their unborn child, is of utmost importance in their decision about whether to continue playing sport
 - Continued participation in the particular sport during pregnancy poses theoretical risks to them and to their unborn child
 - they should take into account their changed physical condition, use common sense and not take unnecessary risks
 - They should seek advice from an appropriately qualified medical practitioner as to:
 - The risks involved in participating in that particular sport while pregnant
 - 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.
 - the ultimate decision whether or not to participate in softball will always be theirs, whilst having regard to the circumstances
- 3.3 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
 - Displayed in a prominent place where pregnant players and officials are likely to see it.
- 3.4 This obligation does not require SAL, Member States, Associations or Clubs to provide advice or issue guidelines as to the health risks of continued participation in Softball. Indeed, providing advice or issuing guidelines of this type is potentially dangerous, as the provider of advice then becomes potentially liable for their correctness.
- 3.5 From a risk management point of view, the advice given to the pregnant player or official ought to be given by their own doctor, and not by a SAL, a Member State, Association or Club doctor. The latter should not certify a pregnant player or official as being fit to participate. This certification should be given by the player's or official's own doctor, for whose actions SAL, the Member State, Association or Club is not vicariously liable.
- 3.6 If the player or official obtains advice from an appropriately qualified medical practitioner, the player or official can make an informed decision on medical grounds as to whether she continues to participate and, if so, for how long.
- 3.7 In addition, the following risk management strategies should be considered by SAL, the Member States, Associations or Clubs to minimise exposure to liability:
- Securing appropriate indemnities and/or releases from players or officials
 - Taking out appropriate insurances. SAL, Member States, Associations and Clubs should review their insurance policies to ascertain whether cover extends to claims which are made by a pregnant player or 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*.



- 3.8 SAL, Member States, Associations and Clubs should ensure that team agreements and registration forms include a release and indemnity from players or officials. The indemnity should include any claim for injury which is subsequently made by the then unborn child of a pregnant player or official. Note however, the value of such indemnity will depend on the financial status of the player or 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 or official upon notification of pregnancy, as the request may in itself constitute discrimination. The team agreements and registration forms can also include a disclaimer from the player or official waiving all rights to future claims arising from her participation in softball. However, a woman cannot give the same disclaimer on behalf of her unborn child.
- 3.9 In certain circumstances, an additional duty may be imposed on SAL, or a Member State, Association or Club. This may arise where SAL, the Member State, Association or Club is aware or should be aware that the pregnant player or official either has not obtained appropriate medical advice or is ignoring such medical advice. In such cases, there may be a duty on SAL, the Member State, 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
 - Counselling the mother to cease participating of her own accord, or out of regard to the unborn child.

4 Pregnancy Checklist

- 4.1 This Checklist outlines the factors which should be considered by SAL, Member States, Associations and Clubs in relation to pregnant players and officials.
- 4.2 SAL supports the position that a pregnant player or official should be given the opportunity to decide for herself, in consultation with her medical advisers, whether or not to participate whilst pregnant.
- 4.3 SAL has formed this position in light of the ASC Guidelines and on the basis of current medical evidence and legal advice as to the risks of injury and potential liability surrounding the issue.

	Prior to Notification	Yes	No
1	<p>Is there an obligation in team agreements, player registrations or the like for the player or official to notify SAL, the Member State, Association or Club that they are pregnant?</p> <p>For example:</p> <ul style="list-style-type: none"> • A player, team official or umpire must notify <i>[insert SAL/Member State/Association/Club name]</i> of the fact that she is pregnant immediately upon becoming aware of such circumstance. • Upon receipt of a notification, <i>[insert SAL/Member State/Association/Club name]</i> will consider what further action (if any) should be taken in respect of the participation of the player, official or 	<input type="checkbox"/>	<input type="checkbox"/>



Prior to Notification		Yes	No
	umpire in accordance with the ASC Guidelines		
2	Has SAL, the Member State, Association or Club advised players and officials that continued participation in Softball during pregnancy poses theoretical risks to them and to their unborn child?	<input type="checkbox"/>	<input type="checkbox"/>
3	Has SAL, the Member State, Association or Club suggested that pregnant players and officials seek advice from an appropriately qualified medical practitioner as to: <ul style="list-style-type: none"> • The risks involved in participating in Softball while pregnant • Whether it is safe for them to continue participating in Softball while pregnant and, if so, for how long they should continue to participate. 	<input type="checkbox"/>	<input type="checkbox"/>
4	Has SAL, the Member State, Association or Club reserved the right to request from the player or 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)?	<input type="checkbox"/>	<input type="checkbox"/>
5	Have the statements in 1, 2 and 3 been included in the team agreement, registration forms or similar documents?	<input type="checkbox"/>	<input type="checkbox"/>
6	Have the statements in 1, 2 and 3 been displayed in a prominent place where pregnant players and officials are likely to see them?	<input type="checkbox"/>	<input type="checkbox"/>
7	Have appropriate indemnities and/or releases been included in the team agreement, registration forms or similar documents?	<input type="checkbox"/>	<input type="checkbox"/>
8	Does SAL, the Member State, Association or Club have appropriate insurance, which extends to claims which are made by a pregnant player or official or her child? If yes, is the amount of insurance appropriate?	<input type="checkbox"/>	<input type="checkbox"/>
Post Notification Include reference to the date when the following occurred and the name of the SAL, the Member State, Association or Club official that cross-checked the Checklist.			
9	Has the pregnant player or officials sought advice from an appropriately qualified medical practitioner, independent of SAL, the Member State, Association or Club, as to: <ul style="list-style-type: none"> • The risks involved in participating in Softball while pregnant • Whether it is safe for her to continue participating in Softball while pregnant and, if so, for how long she should continue to participate? 	<input type="checkbox"/>	<input type="checkbox"/>



	Prior to Notification	Yes	No
10	<p>Assuming the player or official has obtained advice from an appropriately qualified medical practitioner, has she decided to:</p> <ul style="list-style-type: none"> Continue to participate? If so, for how long? 	<input type="checkbox"/>	<input type="checkbox"/>
11	<p>Is SAL, the Member State, Association or Club aware that the pregnant player or official either has not obtained appropriate medical advice or is ignoring such medical advice?</p> <p>If yes, has SAL, the Member State, 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? 	<input type="checkbox"/>	<input type="checkbox"/>



Review history of Softball Australia's Pregnancy Guidelines

Version	Date	Updates
One	July 2010	<ul style="list-style-type: none">• Template developed
Two	March 2016	<ul style="list-style-type: none">• Reviewed by Lander & Rogers