

Pregnancy IN SPORT

Guidelines for
the Australian
Sporting Industry



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Important information

This publication is intended as an information source for the Australian sporting industry, its administrators, coaches, officials and other staff, employed or voluntary. It is not intended as, nor is it suitable to be used as, advice to sports participants. Pregnancy in sport is essentially a medical issue, and it is therefore vital that pregnant women who wish to participate in sport obtain medical advice before doing so.

Disclaimer

The issues discussed in this publication can be complex, and resolutions will vary from person to person and jurisdiction to jurisdiction. This document should not be considered a substitute for professional legal or medical advice. While care has been taken in the preparation of this material, the writer and publisher do not accept responsibility for any errors or omissions, nor for the result of actions taken on the basis of this information.

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Introduction

It is now widely recognised that active people have better health than those who are not active. We know that Australian people, and particularly Australian women and girls, are not as active as they should be, and so may not be as healthy as they could be. To improve this situation, government and the sports industry in Australia have been cooperating to help women and girls become more active.

‘When we’re looking at the potential of alienating a participation base . . . we need to make informed decisions.’

Derek Humphery-Smith, ANZSLA — the sports law association, and the Lander and Rogers Lawyers workplace relations and sports law group, at the National Forum on Pregnancy and Sport

Australia has also signed the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which sets out women’s fundamental human rights. As a signatory to this convention, Australia must ensure women’s equality with men, including their equal participation in sport. Both federal and state legislation in Australia make discrimination because of gender or pregnancy unlawful, including in sport.

However, the increasing participation of women in sport has given rise to specific situations that present a number of legal, medical, insurance and ethical issues. In particular, advances in medicine and shifts in social attitudes have produced the situation where more and more women are participating in sporting activities while pregnant.

When a national sporting organisation implemented an interim ban on pregnant players in June 2001, legal proceedings resulted. The ban made pregnancy in sport a focus of media attention, and also saw the Australian sports industry reconsider its attitudes to pregnant participants.

The Australian Sports Commission (ASC), with Sport Industry Australia, hosted the National Forum on Pregnancy in Sport in Sydney on 1 August 2001. Participants from all aspects of sport in Australia, including government, non-government, health, legal and industry sectors, took part. This booklet is based on the conclusions of that forum, and on other expert contributions.

Some of the most important questions raised by participants, coaches, officials, facility managers and administrators at this forum included:

- Should pregnant women participate in sport?
- If so, what health and legal implications are there for both the mothers and their unborn children?

- Should restrictions apply that determine when and in which sports they may play?
- Who should make decisions about these issues?
- What rights do pregnant athletes, their unborn children, other participants, coaches, officials, administrators and facility managers have in relation to this matter?
- How do policy makers and administrators balance these complex matters to ensure that more women participate in sport and physical activity?

As the answers to such questions often depend on the individual circumstances, this booklet cannot provide all the solutions, but it can ensure that those involved in making these decisions are better informed about this issue.

Managing pregnancy in sport in sporting organisations

The health and wellbeing of pregnant women and their unborn children is the most critical factor in all thinking about this topic, so the most important question is who should make decisions about whether and when pregnant women should play sport. In the face of any evidence to the contrary, the consensus of experts in a wide range of related fields is that pregnant sportswomen should make these decisions themselves, in consultation with their medical advisers.

All those involved in sport have certain responsibilities to other participants, such as preventing discrimination in sport and taking reasonable care to ensure the continuing safety, health and wellbeing of all participants. To assist in managing these and other responsibilities, all sporting organisations should have policies in place that clearly outline their aims in such areas,



and how they will go about achieving them. These policies can help to protect participants, manage risks practically, and control insurance and legal costs, and such policies may also help to protect organisations against litigation.

A vital part of ensuring that risk is kept to an absolute minimum is education and awareness. With adequate information about the potential risks of playing sport while pregnant, women can decide whether or not to play while pregnant and, if they do play, when they should stop. As the pregnancy progresses, most women will voluntarily cut down on their level of training or competition — decisions about when and how to do this should be made by women in consultation with their medical advisers.

Sporting organisations can help by advising participants that there may be risks involved, and by advising them to obtain medical advice about those risks. Pregnant participants should be aware that their own health, and the wellbeing of their unborn children, are of utmost importance in their decision about whether to continue playing sport.

Overview of Key Points

- Underpinning all comments and guidelines in this document is the consensus of the forum that decisions about the participation of pregnant women in sport must be made in consultation with medical advisers.
- Medical experts who took part in the National Forum on Pregnancy and Sport advised that damage to the womb of the kind that could injure an unborn child is usually associated with forces equivalent to those occurring in a car accident. All medical experts agreed that falls and direct contact of the kinds that occur during contact sports were unlikely to cause damage to the womb or the unborn child.
- While there is no proof that a woman playing sport has ever damaged her unborn child, it should be noted that there is also little recorded evidence on the issue.
- A ban on pregnant women's participation in sport may contravene state and federal anti-discrimination laws. A pregnant participant has the right to lodge a complaint against the banning organisation on the grounds of discrimination because of pregnancy.
- Organisations can ask all participants to provide information concerning their health — including a pregnancy — that may be important to a treating doctor should an accident occur (however, participants are not **obliged** to provide this information) (see the ASC's *Guide to best privacy practices for sporting organisations* under Resources page 35).
- There are no recorded legal cases in Australia in which a child who has sustained sports-related prenatal injuries has taken action against a mother, a mother's doctor, an organiser or an official of the sport, or a fellow participant. The only Australian example of a child successfully suing its mother for prenatal injuries involved injuries sustained in a motor vehicle accident.
- A mother can provide a legal disclaimer that she will not take action against an organisation, and an indemnity (protection for costs) for any action her child may take against an organisation in the future. However, a mother cannot sign a **disclaimer** on behalf of her unborn child.
- Upon reaching adulthood (or through an adult representative), a child who suffered a prenatal injury may make a claim against its mother or any other entity that can be found to have been negligent, including a sporting organisation.
- Organisations should ensure that their public liability insurance, professional indemnity insurance, and directors and officers insurance are current and do not contain exclusions for pregnant participants.
- Administrators of sporting organisations should seek up-to-date information on the benefits and risks of exercise during pregnancy (see Resources page 35 at the end of this booklet).
- While the benefits of women staying active during pregnancy are well documented, all decisions about the matter should be made by the individual participant in consultation with medical advisers.

Guidelines

These guidelines are intended as a practical checklist for all those concerned with pregnancy in sport. However, because each person, each pregnancy, each legal case and each sport is different, these guidelines can only assist in a general way with making decisions about this issue. Sporting organisations and their staff should also keep up to date with developments in medicine, the law, the insurance industry and ethical debate to ensure that rules and practices are relevant and in line with new legislation and current thought, and that the way people perceive these issues is soundly based in fact. See the Resources section at the end of this publication for the contact details of organisations that can provide the latest relevant information.



The administrator or facility manager

- Be aware of relevant federal, and state or territory anti-discrimination legislation and how it affects your organisation and sport.
- Evaluate the measures you should take to limit the likelihood of pregnant participants being harmed and take reasonable care to ensure that such measures are carried out.
- Respect and support the rights of women who wish to continue exercising while pregnant.
- Ensure that policies are in place to outline the organisation's commitment to equal opportunity and avoiding discrimination, particularly where pregnant women are concerned, and review the rules and regulations, and the organisation's constitution, with this in mind. Ensure that everyone in your organisation understands these policies and commitments. It is important that the policies are continually updated.

- Ensure that insurance policies are up to date and provide appropriate cover.
- Develop practices that minimise the risk of injury to all participants.
- Seek professional medical or legal advice when necessary and ensure that this advice is available to coaches and officials when required.
- Avoid giving advice that you are not qualified to give, and encourage pregnant athletes to obtain and act on professional medical advice, particularly about the risks of continuing to play and when to stop.
- Provide a clear statement containing this advice in the registration form for your sport or competition, or in similar documents, and display a similar notice in a prominent place where all will see it.
- Ensure that coaches select participants on the basis of merit and capability.

The coach

- Encourage athletes to obtain and act on professional medical advice with regard to pregnancy and sport.
- Respect and support the rights of women who wish to continue exercising while pregnant.
- Avoid giving advice that you are not qualified to give.
- Select participants by merit and capability, without discriminating on the basis of pregnancy.
- Ensure that insurance policies are up to date and provide appropriate cover.

The official

- Advise pregnant athletes that there may be risks involved in participating while pregnant, and that they should obtain medical advice about whether to participate and for how long.

- Provide a clear statement containing this advice in the registration form for your sport or competition, or in similar documents, and display a similar notice in a prominent place where all will see it.
- Apply the rules and laws of the sport or activity equitably at all times.
- Place the safety and welfare of all participants above all else.
- Respect and support the rights of women who wish to continue exercising while pregnant.
- Avoid giving advice that you are not qualified to give.
- Ensure that insurance policies are up to date and provide appropriate cover.

The pregnant participant

- Before making the decision about whether to continue to participate in sport, obtain expert medical advice, and obtain a clear understanding of the risks, particularly in regard to your sport.
- Regularly review your training and performance program with your medical adviser.
- Consider discussing the implications of your pregnancy with coaches, officials and administrators.
- Consider your insurance cover and ensure that it is adequate and relevant.
- Use common sense and do not take unnecessary risks.
- Take into account the changes in your physical condition.
- Do not increase the intensity of your sporting program while you are pregnant, and always work at less than 75 per cent of your maximum heart rate.
- Watch for warning signs, such as bleeding or abdominal pain, and see a doctor immediately if these occur.

Frequently Asked Questions

These questions and answers can only be used as a very general guide, as each person's circumstances, and so all cases, are different and must be treated individually from a counselling point of view. This section should not be regarded as legal or medical advice and should not be acted on as such. Professional legal or medical advice should be obtained if further assistance is required.



How can a sporting organisation best protect itself against potential claims for injuries to pregnant women or their foetuses that occur in sport?

Sporting organisations should advise pregnant women who wish to continue playing sport that there may be risks, and that they should obtain medical advice about their health, and about whether to keep playing and for how long. They can do this by including that information in the registration form for that sport or competition, and by displaying a similar notice in a prominent place where participants will see it.

Sporting administrators may ask participants to sign a release that will indemnify the administrator and the sporting organisation if claims are made for injury that occurred during sporting activity. However, the obligation to take reasonable care to prevent injury or harm to participants cannot be removed, and agreements of this sort cannot always protect the organisation or its administrators. Agreements that seek to absolve

organisations from liability for injuries in respect of pregnancy alone may be discriminatory too, and could then attract other litigation.

Other ways in which sporting organisations can protect themselves against such claims include ensuring that:

- their insurance is up to date and that it provides appropriate cover;
- they have taken reasonable steps to ensure that the rules of the game are followed;
- they have taken reasonable steps to ensure that the playing environment is safe for all players; and
- their policy documents clearly outline their position on pregnancy in sport (for example, a club may have a policy that pregnant women should continue to play if they wish to and if medical advice supports that choice).

Can participation in sport bring on a miscarriage in a pregnant woman?

The advice of Sports Medicine Australia, the Australian Medical Association, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and the Australian College of Sports Physicians is that it is very unlikely that continuing to participate in most sports could result in a miscarriage. They also consider that it is very unlikely that a sporting injury or a fall could cause a miscarriage, if women follow the advice of their medical advisers, exercise within reasonable limits, and follow the other precautions outlined in the Health and Medicine section following.

If a player in the team I coach became pregnant just before she was to captain a team at the Commonwealth Games, and still desperately wanted to play, but my sport had a ban in place on pregnant participants, would she be able to challenge that ban?

Provided she could show that she was not selected solely on the basis of her pregnancy, and that she was capable of performing the duties of the role adequately, she would be able to challenge the ban. The selection policy of the sport will influence such cases and, if sports' selection policies do not state clearly that selection is based on merit and ability alone, they could be found to be discriminatory.

Do participants in the team I coach have to tell me when they become pregnant and, if so, when?

Everyone has the right to privacy. Subject to any agreement participants may have made to the contrary, they are under no obligation to inform you, as coach, or other participants about their pregnancy. Participants should consult with medical advisers about the risks and, with their help, make an informed decision about whether to continue playing and when to stop.

However, if they do not tell you or your club that they are pregnant, and they or their unborn children are later injured, they could be found liable for exposing themselves to an avoidable risk. For instance, if a training regime could have been modified to suit their condition and fitness level, but you didn't know they were pregnant and so didn't make that modification, they might be liable.

What should I do if a pregnant player wants to continue to play in a team I coach?

Advise the player to obtain medical advice before making the decision about continuing to play. Warn the player that there may be risks and that she should discuss these with her doctor, as well as whether it is safe for her to continue participating and, if so, for how long. Support the player's right to make her own decisions about her health and her body, and her right to the benefits of an active life.

With the agreement of the woman concerned, advise your sporting organisation or club that you are coaching a pregnant player and ask administrators to ensure that insurance is up to date and provides appropriate cover.

As a coach, what advice can I give to a player in my care who is opposing a pregnant player?

People's perceptions about pregnancy often lead them to believe that pregnant women are more vulnerable to injury than they actually are, particularly in the first trimester (the first three months) of pregnancy. You, as coach, could recommend that participants obtain relevant medical information about the risks and benefits of playing when pregnant to ensure that they are aware of the facts of the situation. This can apply to anyone engaged in sport or physical activity who has difficulty accepting pregnant women on the field of play: education may be the key to better attitudes.

If a pregnant woman continues to play despite medical advice, what should the sporting organisation do?

The organisation should counsel her about obtaining and acting on appropriate medical advice. It may also recommend that she use an independent doctor, not the club doctor, to avoid a potential conflict of interest and to prevent the club taking on additional responsibilities for the participant. Administrators should ensure that all insurance is up to date and provides appropriate cover. If she continues to play despite medical advice to the contrary, then the organisation may have to consider its position and seek legal advice.

Administrators, officials and coaches should not give medical or legal advice themselves.

Should an organisation formalise its guidelines about pregnancy in sport by having women sign a disclaimer, release or indemnity if they wish to continue to play while pregnant?

It is a good idea from a legal perspective. The more the organisation does to protect itself and its participants, the more likely it is to avoid liability. Administrators should obtain legal advice about the form and wording of documents to be used for these purposes.

Health and Medicine

This section of the resource represents the views of the Australian Institute of Sport, the Australian Medical Association, the Royal Australian and New Zealand College of Obstetricians and Gynaecologists and Sports Medicine Australia.

‘We really shouldn’t be condoning any messages which do not encourage women to continue their involvement in sport and physical activity . . . There are enough barriers facing women without adding any which are not based on scientific evidence.’

Professor Wendy Brown, Sports Medicine Australia, Professor of Physical Activity and Health, University of Queensland, at the National Forum on Pregnancy and Sport

‘There is no doubt that there is no medical reason why women should be prevented from playing sport in pregnancy if they wish.’

Dr Michael Sedgley, chairman of the federal council of the Australian Medical Association, at the National Forum on Pregnancy and Sport

While there may be risk involved in physical activity for some pregnant women, most doctors and researchers believe that the benefits of being active far outweigh the risks, even for those who wish to continue to participate at a high level.

Provided that pregnant women regularly consult with their medical advisers, comply with the medical advice they receive, and adopt a

commonsense approach to planning their training and performance program, it is unlikely that playing sport will cause them problems. For instance, Sports Medicine Australia advises pregnant women who have exercised regularly to maintain a moderate exercise level (that is, at no more than 75 per cent of maximum heart rate).

It is also important that women’s pre-pregnancy levels of training and fitness, and the types of sports they play, are taken into account when planning the type, intensity, duration and frequency of

the exercise to be undertaken during pregnancy. Individual maternal and foetal responses to exercise, varying levels of maternal fitness, and potential coexisting medical conditions and pregnancy complications mean that counselling of pregnant sportswomen should always be done on an individual basis.

Pregnant participants should be encouraged to select and consult with medical advisers with appropriate specialist expertise, such as sports physicians, obstetricians, or general practitioners who have training in sports medicine.

Risks: setting the record straight

Medical professionals currently consider that women with normal pregnancies who are already active can continue to play many sports during pregnancy without affecting the course or outcome of their pregnancy. Women who are not active can begin a training program of moderate intensity and low impact after seeking medical advice.

However, while medical evidence in this area is still developing and inconclusive, it is clear that there may be some risks that pregnant sportswomen should consider. These include:

Hyperthermia (overheating) in the foetus (especially during the first trimester of pregnancy)

It is important for pregnant women to avoid prolonged overheating during exercise. Taking the following precautions will help a pregnant player reduce the risk of overheating:

- drinking plenty of water and other fluids regularly (to maintain hydration levels);
- eating nutritious and regular meals (to maintain energy);



‘The question is not whether women should play sport during pregnancy: it is rather, is there any reason why they should not?’

Dr Michael Sedgley, chairman of the federal council of the Australian Medical Association, at the National Forum on Pregnancy and Sport

- avoiding exercise in the hottest or most humid parts of the day, especially prolonged exercise;
- ensuring that indoor exercise spaces are cool and well ventilated;
- resting or substituting frequently when playing team sports;
- limiting participation in sport in the third trimester to three sessions or less each week; and
- reducing exercise intensity as the pregnancy progresses.

It is believed that less than two per cent of sports injuries in Australia — for men and women — are abdominal injuries, and that the rate of abdominal sporting injuries in women is around one-quarter of that, or 0.5 per cent. (These figures also include injuries to the whole torso and chest, so the actual incidence of abdominal injury may be smaller still.)

These figures are taken from a paper by Professor Caroline Finch, Sports Medicine Australia, chair of the National SportSafe Committee and director of the Sports Injury Research Unit at Deakin University, at the National Forum on Pregnancy and Sport

Traumatic injury to the mother or foetus

The risk of traumatic injury to a mother or foetus during sport or physical activity is theoretical and very small. Serious abdominal injuries of the kind that may compromise a mother or her foetus are rare and are usually associated with motor vehicle accidents or domestic violence.

The stage of pregnancy is an important factor in determining whether and how long pregnant women should continue to participate in sport. In the first trimester, the foetus is contained within its mother's pelvis and so is protected from injury by the skeletal structure of its mother's body. As pregnancy continues, the foetus moves higher in its mother's body and becomes more susceptible to injury from a blow or other impact. Different activities may be appropriate for women in different stages of pregnancy.

Physically active pregnant women should consider the likelihood of injuries in their sports, in consultation with their medical advisers. They should then decide whether they can accept that risk, for themselves and their foetuses, by continuing to play.

Risks will vary according to individual circumstances (the kind of sport played, the fitness of the woman concerned and so on). However, there are some particular physical and health factors concerning active pregnant women that sporting organisations, administrators, coaches, officials, and the women themselves, should be aware of:

- Theoretically, pregnant women may be more vulnerable to falls because the growing foetus causes a shift in their centre of gravity, which can affect their balance and coordination in later months.

- Theoretically, hormonal changes in preparation for the birth may also result in ligament and joint laxity, making women vulnerable to injuries or falls (they should also avoid excessive stretching and jerky ballistic movements as a result).
- As the foetus rises higher in the mother's abdomen later in the pregnancy, it is more vulnerable to direct impact injuries.

Sports Medicine Australia recommends that pregnant women avoid sports such as scuba diving, parachuting, waterskiing, martial arts, gymnastics, horseriding and trampolining.

Some medical studies have shown that vigorous exercise throughout pregnancy may result in a slightly lower birth weight. This has been attributed to the reduced development of fat cells.

Sports Medicine Australia recommends that pregnant women (and, indeed, all athletes) stop exercising if they experience any abnormal symptoms, such as:

- *pain, particularly chest and abdominal pain;*
- *headache;*
- *an unusually high heart rate;*
- *decreased foetal movements;*
- *insufficient weight gain;*
- *amniotic fluid leakage;*
- *nausea;*
- *uterine contractions;*
- *vaginal bleeding;*
- *sudden swelling of ankles, hands and face;*
- *dizziness; or*
- *unusual shortness of breath.*

‘The conclusions that I believe we have here are that there is a very low risk of abdominal injury in women athletes, full stop . . . Most sports-related abdominal injuries are just not the sort of thing that would lead to foetal distress or other damage to the foetus anyway.’

Professor Caroline Finch, of Sports Medicine Australia, chair of the National SportSafe Committee and director of the Sports Injury Research Unit at Deakin University, at the National Forum on Pregnancy and Sport

Benefits

Pregnant women who were active before becoming pregnant may benefit in many ways from regular participation in sport. These benefits may include:

- a reduced risk of developing cardiovascular disease;
- better general health;
- a reduced risk of developing some forms of cancer;
- a reduced risk of acquiring type 2 and gestational diabetes;
- a reduced risk of developing osteoporosis;
- a reduced risk of obesity and unhealthy weight gain;
- improved self-esteem and self-image;
- a greater sense of wellbeing and quality of life;
- more social contacts; and
- improved respiratory function, cardiac output, blood volume, strength and endurance.

Throughout pregnancy there are increases in respiratory volume, cardiac output and blood volume to help meet the increasing oxygen and energy requirements of the foetus.

Women who were not active before becoming pregnant should consult with their medical advisers before beginning to exercise. They may

benefit from regular low-level activity, such as walking and swimming.

The main benefit to women of continuing to play sport during pregnancy is that it helps to maintain and improve fitness.

Both the Australian community generally, and the sports community will also benefit socially and economically from having a larger pool of healthier women in sport and physical activity. Substantial cost savings may be made in terms of public health expenditure alone.

‘Actually encouraging women to be active during pregnancy could be very good in terms of lowering Australia’s overweight and obesity problem.’

Professor Wendy Brown, Sports Medicine Australia, Professor of Physical Activity and Health, University of Queensland, at the National Forum on Pregnancy and Sport

The Law

This section of the resource represents the views of ANZSLA — the sports law association, Tony O'Reilly of Minter Ellison Lawyers, the Human Rights and Equal Opportunity Commission, and the federal Attorney-General's Department.



As more pregnant Australian women are beginning or continuing to be active during their pregnancies, some legal considerations are coming to light. So far, there have been no cases reported in Australia where an organisation or another participant has been sued by a mother or a baby for injuries caused during sporting activity. However, rising insurance premiums and sporting organisations' improved understanding of their responsibilities for the safety of participants in their care have now increased awareness of the likelihood of legal action in sporting situations.

Since conflicts can arise between the legal right of pregnant women to participate in sport and the risks of participating, sports administrators must ensure that their organisation meets its legal and insurance obligations, and its obligations to avoid discriminating against pregnant women who wish to participate. If an organisation attempts to exclude a woman from its facilities because she is pregnant, it may be found to have unlawfully discriminated against her. If an organisation could be seen as not having taken all reasonable steps to

prevent a pregnant woman from being injured, it could be found liable (that is, responsible and under a legal obligation), and could be sued. As each pregnancy is different, and each sport is different, sporting organisations should seek professional legal advice regarding the way their particular sport should deal with these issues.

The two main areas of the law that are affected by the increasing participation of pregnant women are negligence (including what is known as liability) and discrimination.

Preventing liability for negligence

This area of Australian law deals with people's obligations to take reasonable care to prevent other people being harmed.

Duty of care

A person or an organisation will, in certain circumstances, owe a 'duty of care' to another person or organisation to take reasonable care to prevent them being harmed. Whether a duty of care exists will depend on the relationship between those concerned. In sport, those who may have a duty of care include people who assume a responsibility (for instance, by agreeing to coach an athlete or referee a game), or those who have relevant skills or expertise (for instance, a sports administrator).

Sporting organisations, administrators and facility managers usually have a duty of care to participants to take reasonable care to ensure that safe playing surfaces and equipment are provided.

Participants have a duty to ensure that they take reasonable steps to prevent injury to other participants, officials or spectators in the course of play.

Doctors have a duty of care to their patients to take reasonable steps to provide them with proper information and health care.

In the case of Lynch v Lynch (1991), a child successfully sued her mother for prenatal injury, claiming that her mother's actions were negligent. In this case, the claim concerned a car accident. The court said that the mother did owe a duty of care to the unborn child, and that this duty could be breached by prenatal neglect or carelessness that causes injury. This means that, legally, a pregnant woman may be personally responsible for the health of her unborn child.

Duty of care to pregnant athletes

Organisations and administrators

Sporting organisations may owe a duty of care to pregnant athletes to advise them that there are theoretical risks involved in participating while pregnant, and to advise them that they should obtain medical advice about whether to participate and for how long. Sports administrators can fulfil this duty of care by including a clear statement containing this advice in the registration form for their sport or competition, or similar documents, and by displaying a similar notice in a prominent place where competitors will see it.

Sporting organisations and their personnel should not provide advice to pregnant participants on the health risks of participating. Doing so could put both staff and organisations at risk of being found

liable and sued for negligence. Providing such advice, or even issuing guidelines, could also mean that sporting organisations then become liable for the accuracy of the information and for ensuring that it's properly disseminated.

Sports administrators' duty of care to pregnant athletes does not require them to place a blanket ban on the athletes' participation in a particular sport from a specific stage of pregnancy. Such a ban could be seen as discriminatory (see Preventing discrimination page 24), and may also assume an additional responsibility, and therefore an additional potential liability.

Other participants

Other participants owe a pregnant athlete the same degree of duty of care as they would any other participant — they must take reasonable care not to cause harm to other participants. Participants will be liable for injuries that they cause by playing outside the rules of the game in a way that other players would not ordinarily and reasonably expect.

Duty of care to the unborn children

Pregnant athletes

Pregnant athletes owe a duty of care to their unborn children to take reasonable care to avoid foreseeable risks of injury. They can usually fulfil that duty by obtaining advice from appropriately qualified medical practitioners as to the risks involved in participating in a particular sport while pregnant, and following that advice.

Sports administrators

Sports administrators can fulfil their main duty of care to the unborn children of pregnant athletes by fulfilling the duty of care owed to the athletes

themselves. As we have seen, they should advise the athletes that there are theoretical risks involved in participating while pregnant, and that they should obtain medical advice about whether to participate, and for how long.

Sports administrators may owe an extra duty of care where they are aware, or ought to be aware, that a pregnant sportswoman either has not obtained appropriate medical advice, or is ignoring it (see pages 21–22 for more information on what the options are in these situations).

Other participants

Other participants can also fulfil their duty of care to the unborn children of pregnant athletes as they fulfil their duty to the pregnant athletes themselves. Participants will be liable for injury if they play outside the rules of the game in a way that other players would not ordinarily and reasonably expect.

Managing the risk of liability in sporting organisations

It is impossible to eliminate all risk from our lives: many women choose to live with the substantial risks of driving a car, smoking and drinking while pregnant, but society does not ban pregnant women from these activities. Instead of imposing bans on pregnant participants, organisations might instead consider asking participants to sign a release or indemnity from claims for injury, which could be part of the registration form for the sport, facility or activity.

However, the obligation to take reasonable care to prevent participants being injured or harmed cannot be removed, and agreements of this sort cannot always protect the organisation or its administrators. Agreements that seek to absolve

organisations from liability for injuries related to pregnancy alone may be discriminatory too, and could then attract other law suits. Organisations and their staff should warn pregnant players that there may be risks involved in continuing to participate, and advise them to obtain medical advice about their health and the health of their foetuses.

Bans

It has been suggested that one way organisations may contain their legal liability for injury is by banning the participation of pregnant women, because the cost of an anti-discrimination claim that might result may be less than the cost of a negligence claim made by a pregnant woman who continued to play and was injured. However, not only does this approach ignore the rights of the women concerned, it also assumes that a negligence claim will arise and succeed, and that insurance will not cover that event.

It is also possible that any resulting claim of discrimination would succeed if pregnant women were excluded on a discriminatory basis, so the organisation may find itself out of pocket, and with increasing insurance premiums, as a result (see Preventing discrimination page 24). Other disadvantages of such bans include:

- Even women who would wish to inform their sporting organisations about a pregnancy may not be able to do so at an early stage, as many women do not know that they are pregnant until months after conception.
- They would be very difficult to enforce and monitor, as the sporting organisation would have no authority to obtain information about the health status of participants (unless particular legislation or a contractual agreement made this possible).

- They may encourage some women to lie or not disclose their pregnancy in order to continue to participate.
- They do not recognise that every woman, every pregnancy, every sport and every position/activity on the field is different and that a response that treats these as the same may infringe the rights of some of those affected.
- They do not recognise women's right to take responsibility for their own bodies, health and wellbeing.

Pregnant professional sportswomen may be under contract to organisations as employees, and in this situation the organisations and their administrators owe those women an even greater duty of care than if they were not employed. Organisations employing pregnant sportswomen, and wishing to limit their participation, may also be limited by the laws of restraint of trade (which prevent parties from adversely affecting how others engage in their businesses). It would be difficult for a club that had, for instance, imposed a blanket ban on pregnant players, to show that this was reasonable to all parties (such as women who play sport for a living), as the law requires. Each case is different and organisations should ensure that they obtain professional legal advice in such situations.

A blanket ban may also contravene the *Trade Practices Act 1974*, if it results from an agreement between clubs in a professional league and prohibits a club from using the services of a particular person (in this case, this might be the pregnant participant) or a particular class of person (pregnant participants in general). If sporting organisations set limits on how long pregnant women may compete, they may also be assuming a responsibility, and perhaps a duty of care, that they did not have previously, and they

may run the risk of applying it incorrectly. Sports administrators should also obtain legal advice on such matters through the referral service provided by ANZSLA — the sports law association.

Other management issues

Sports administrators may face additional problems in the rare circumstances where pregnant athletes are not acting in their own best interests. An administrator may become aware that a pregnant athlete is continuing to participate against medical advice, or has not obtained medical advice when a doctor would probably recommend against participating. Examples of this include an obviously pregnant athlete continuing to participate in kickboxing or rugby union.

As we have seen, the duty of care that a sporting administrator owes an unborn child of a participant is usually fulfilled when the administrator fulfils the duty of care owed to the athlete herself. However, if the administrator knows that the athlete is not heeding medical advice, or may not have obtained it, despite recommendations from the administrator's organisation, the situation is different. In these extreme circumstances, the administrator may owe an additional duty to the unborn child to attempt to stop the pregnant athlete participating.

The obligations that may be imposed on a sporting administrator in such a case will depend on the individual circumstances of the case. If an administrator knows that, despite being advised to do so, an athlete has not sought medical advice about the risks of continued participation, and that that advice would probably be that she stop participating, the administrator should then communicate directly with the athlete, preferably in writing. The communication should clearly state

that the athlete should obtain medical advice about the safety of continued participation in the sport for both herself and her unborn child. Such correspondence should be recorded and, if possible, endorsed by the athlete.

If the administrator believes that the player has **still** not obtained medical advice even after such a communication, it would then be prudent for the administrator to do what in ordinary circumstances he or she should never otherwise do — provide the athlete with material about the medical reasons for retiring from play. It would also be prudent for the administrator to try to counsel the athlete about retiring from play, for the sake of the athlete's own health and that of her unborn child.

In the situation where a player continues to participate **contrary to medical advice**, it would also be prudent for the administrator to try to counsel the athlete about retiring from play.

If, in either of these cases, the player cannot be persuaded to stop participating, the responsible sporting organisation may then have to face an even more difficult question — should it ban the player from participating? Banning her participation would be in both her interests and the interests of her unborn child, but imposing such a ban could contravene the *federal Sex Discrimination Act 1984* (SDA), or similar state or territory laws, and expose the organisation to prosecution under those laws.

In these circumstances, the sporting organisation could discuss the matter directly with the Human Rights and Equal Opportunity Commission (HREOC). The commission may grant the sporting organisation an exemption from the provisions of the SDA for up to five years (see page 24 for more information on the operation of the

SDA). Even if the commission decides not to grant an exemption, it may still be able to assist with information and strategies in relation to pregnancy and discrimination issues.

Who can sue and who can be sued?

Sporting organisations in Australia can be incorporated or unincorporated bodies. Officers of an incorporated sporting organisation can be liable to the organisation itself if they fail to perform their duties adequately.

If an officer of a sporting organisation failed to take reasonable care to ensure that a hockey surface was safe and a hockey player, whether pregnant or not, was hurt, that officer may be liable to the organisation for that failure, and so may be legally responsible for the injury.

Officers in an unincorporated association are at even greater risk of being found liable because, unless the organisation is registered as an unincorporated association under relevant state laws, it is not a legal body at law. As a result, the association's officers are legally responsible for its actions, even if they were not individually at fault.

While there have been no cases reported in Australia of pregnant athletes or their children suing for injuries caused during sporting activity, this does not mean that it will not happen at some time in the future. While the potential for injury is extremely small, it is not just limited to the mother and baby: other participants potentially have the right to sue, even spectators and sporting organisations. The law also says that people can claim compensation for psychological injuries, not just physical ones.

Those who can be liable for negligence include pregnant women themselves (as in the *Lynch v Lynch* case discussed above), sporting organisations and administrators, facility managers, officials and coaches. The degree to which sporting organisations exercise control over the participation of sportspeople can affect whether they would be considered by the law to have a duty of care for those people.

Many elite female athletes face immense pressures, both financially and professionally, to continue competing when pregnant. Those around them, including administrators and sporting organisations, may have a duty of care to ensure that those pressures do not adversely affect the health and wellbeing of mother and child.

However, in exercising that duty of care, those involved must ensure that they do not ignore the rights of the pregnant woman to control her own life, or to make decisions on behalf of her child. This may mean that the administrators' or organisations' duty of care is limited to taking reasonable care to provide a safe sporting environment, advising pregnant women that there may be risks involved in participating, and advising them to obtain and act on medical advice.

Adult participants can be seen to have accepted the risks of their sport simply by continuing to play (which is called voluntary assumption of risk). They can also release sporting organisations from liability for injury by signing an agreement to that effect. However, an unborn child cannot consent to the risks of the game, and cannot sign a release. Mothers also may not give that release or consent on behalf of their unborn children.

Current legal precedent suggests that an unborn child is owed a duty of care by his or her mother,

her treating doctor, and in some cases, by the mother's employer (if she is employed in sport).

Although children cannot sue until they are born, they can then sue retrospectively for injuries that occurred while in the womb. The law in this area must consider the rights of the child in conjunction

with those of the mother to choose what to do with her own body while she's pregnant. The pregnant woman must balance her right to do as she chooses against her duty to act in the best interests of herself and her child.

How do the courts assess liability and negligence?

A case under this area of law must show that:

- a duty of care existed;
- that there was a failure or breach of that duty of care;
- that this failure or breach of the duty of care caused the injury (called causation); and
- that the damage suffered was not so remote from the claimed cause that those owing the duty of care could not have reasonably foreseen the occurrence.

We have already discussed what is involved in a duty of care above. The law judges whether a duty of care has been breached by assessing what a 'reasonable' person might do in the circumstances of the case. There is more likely to be a duty of care if a contract is involved.

'I've heard one leading obstetrician/gynaecologist say that, in terms of understanding miscarriage, what the medicos know at the moment is like a map of Australia and what they need is a street directory of every city and town. So there may well be problems in proving causation.'

Tim Frampton, O'Donnell Frampton Salzano Solicitors, and president of ANZSLA — the sports law association, at the National Forum on Pregnancy and Sport

To show causation, a person making a claim has to prove that an action or omission by the person they are suing was the cause of the damage suffered. As little research has been done on foetal injury and miscarriage, it may be difficult to prove the connection between the injury and the cause in the case of an injury to a mother or unborn child in sport. Without that proof, there cannot be a successful negligence claim.

The law says that the damage suffered by the person making the claim must not be so remote (for instance, in terms of time) from what is being claimed as the cause that it is difficult to make the connection between the two things. People are only expected by the law to foresee to a reasonable extent whether something that they do may later cause harm to others.

Defences against claims of negligence include voluntary assumption of risk, where the person making the claim is shown to have understood the risks involved yet continued to participate, so accepting the risks and absolving other parties of their duty of care and liability. However, injuries can result from risks that are not a regular part of the sport concerned, such as foul play, and it would be hard to show that a participant assumed such risks when playing.

Because of this voluntary assumption of risk, pregnant women who intend to remain active should be aware that they may be accepting the risks associated with that activity in the eyes of the law.

Preventing discrimination

Freedom from discrimination on the grounds of sex, pregnancy or potential pregnancy is a fundamental human right, and consequently it is protected by legislation at the federal, state and territory level. The SDA (the federal Sex Discrimination Act 1984) makes it unlawful to discriminate against pregnant women in work, in the provision of goods, services and facilities, in clubs and in the administration of federal laws and programs. All states and territories also have anti-discrimination laws that make discrimination against pregnant women unlawful.

What does the Act do?

Under the SDA, discrimination includes actions taken on the basis of pregnancy and potential pregnancy. This means that it is unlawful to discriminate against a woman because she is pregnant or because she may become pregnant. Similar prohibitions apply under legislation in each state and territory. Discrimination can take the form of either **direct** or **indirect** actions.

Direct discrimination occurs when a pregnant woman is treated less favourably than another person because of her pregnancy. Bans on pregnant women participating in sport because they are pregnant may be considered direct discrimination.

Direct discrimination on the basis of pregnancy might occur where, for example, a gym refuses access to its facilities to a pregnant woman because she is pregnant. In that case, the gym will have acted unlawfully.

Indirect discrimination is concerned with conditions, requirements or practices that are neutral or seem non-discriminatory on the surface, but that disadvantage members of a particular group, in this case, pregnant women. Indirect discrimination can sometimes be hard to identify, but people against whom discrimination claims are made cannot defend themselves by saying that they did not intend to discriminate. If the action is discriminatory, it does not matter whether they intended it to be or not.

Indirect discrimination is only unlawful where the condition, requirement or practice is not reasonable in the circumstances. Deciding whether something is reasonable involves considering the nature of the disadvantage to the pregnant woman, the feasibility of overcoming that disadvantage, and whether that disadvantage is proportionate to the result sought by the person imposing the condition, requirement or practice.

If a sporting club unreasonably insisted that, to be eligible for selection for a team, players must complete a standard exercise routine that included exercises unsuitable for women in the middle and later stages of pregnancy, the organisation could be indirectly discriminating against those women.

It is unlawful to discriminate against pregnant women in the administration of federal government programs. This can include any program that is being run on behalf of the federal government by an organisation using federal government funding. For example, if an

organisation received a federal government grant to encourage women to play soccer, or to promote a mixed athletics program, that organisation would be discriminating in the administration of its program if it treated a woman less favourably because she was pregnant.

Examples of discrimination in sport

A local council organised a lunch-time mixed basketball competition for local businesses, and made it a requirement that none of the team members were pregnant. A pregnant woman who wanted to play in the competition could make a complaint that the council was discriminating against her because of her pregnancy by refusing to provide her with access to the council's sporting facilities and services.

If the organisers of a 15-kilometre fun run decided that they would not accept pregnant women into the competition, they would be unlawfully discriminating on the basis of pregnancy.

Pregnancy testing

The SDA and other discrimination laws do have provisions that determine whether organisations can require women to provide certain information about pregnancy, or to undergo pregnancy tests.

Requiring a woman to undertake a pregnancy test to prove that she is not pregnant before she competes may or may not amount to unlawful discrimination, depending on the circumstances. The use of information obtained in this way may also lead to a claim of unlawful discrimination. If the information is used to treat a woman less favourably because she is pregnant, for example, by stopping her from competing, a sporting organisation, coach or administrator may be unlawfully discriminating on the basis of pregnancy.

Bans on pregnant women playing sport may encourage a woman to hide her pregnancy. She may therefore miss the opportunity to discuss practical measures to ensure her own and her foetus's health and safety with her coach or sporting organisation.

Other participants

Some participants, coaches, officials or administrators are uncomfortable with the idea of pregnant women playing sport. They may say that knowing a participant is pregnant would detract from the pleasure and enjoyment of the game for them, that the game would be different for them with a pregnant participant on the field, or that they wouldn't be comfortable in that situation. The personal comfort level of other participants cannot be a valid defence for discrimination on the basis of pregnancy.

Clubs

The provisions of the SDA cover clubs, and these are defined as having at least 30 members and selling or supplying liquor to be consumed on their premises. Clubs covered by the SDA must ensure that they do not, for example, refuse pregnant women access to the benefits of club facilities, such as sporting teams, sporting competitions or gym equipment. Making decisions on who will play in a club team based on pregnancy would amount to discrimination, because it would be giving pregnant women less access to club benefits than others. Discrimination can also apply to applications for, and conditions of, club membership. Some states have much wider definitions of clubs than the SDA, so it is important that club managers check whether state or territory legislation applies, even if the SDA does not.

Exemptions

There are exemptions to the SDA, as has been mentioned. Some permanent exemptions include voluntary bodies — non-profit associations or other bodies — whether incorporated or unincorporated, but not clubs, registered organisations, bodies established by a federal, state or territory law, or associations that provide grants, loans, credit or finance to their members. Voluntary bodies are exempted from the SDA in connection with the admission of members or the provision of benefits, facilities and services to members of that body. Again, state and territory legislation can differ from the SDA, so organisations should keep up to date with the requirements of all legislation. For more information about exemptions, contact HREOC (contact details appear under Resources on page 35).

Discriminatory termination of employment

In addition to being protected by anti-discrimination law, employees of sports organisations may be protected by the federal Workplace Relations Act 1996, where termination of employment contracts is specifically prohibited on the grounds of sex, pregnancy or absence owing to maternity leave.

How are complaints dealt with?

Women who feel that they may have reason to complain of discrimination on the grounds of pregnancy would be well advised to establish a dialogue with the individual or organisation concerned. They may be able to find out why the

discrimination has occurred and negotiate to redress the situation without having to take further steps.

If that is not possible, HREOC and the equivalent state and territory authorities will consider complaints of discrimination from pregnant women on a case-by-case basis. If the complaint cannot be conciliated, HREOC will conclude its examination of the issue, and the affected person may then apply to the Federal Court of Australia, or the Federal Magistrates Service, to have the original allegations heard and a final determination made.

Insurance

This section of the resource represents the views of Rod Hughes and IEA Brokers Pty Ltd.

It is vital that sporting organisations and their personnel (administrators, managers, trainers, coaches, participants and officials) have appropriate insurance in place at all times, not just when pregnant players are involved. Generally, the sorts of insurance policies discussed below provide the kinds of cover outlined. It is important to remember, though, that all insurance companies' policies are not the same and that the wording of policies can vary, even though they may go by the same name. Because of this, it's essential that those obtaining insurance always read policies carefully and familiarise themselves with the contents.

Insurers use underwriting guidelines to determine what they will and will not insure. They take into account conditions that might apply, the history of claims and the likelihood of claims in the future. In Australia, there have so far been no actual cases in association with pregnancy that would give an insurer any reason to review the position of pregnancy under liability insurance policies. Sporting organisations and their personnel can and should buy appropriate insurance to deal with situations that may arise as a result of pregnancy.

Insurance relevant to sporting organisations and their staff who might have pregnant sportswomen in their care includes the kinds discussed here.



Public liability insurance

Public liability insurance covers a person or an organisation if they become legally liable to pay compensation for a personal injury or property damage that occurred in connection with the insured premises or business. Personal injury can extend to include factors besides bodily injury, such as shock, fright, and mental anguish, and some policies even include discrimination. The event that caused the injury must have been something that was not expected or intended.

There is no general exclusion related to pregnancy under a public liability insurance policy, so these policies usually apply equally to pregnant women.

Exclusions

Legal claims by employees against employers are generally excluded under public liability insurance, because these are covered by other types of insurance, such as workers' compensation

insurance. The wording of standard public liability policies also excludes breach of professional duty, such as the situation where advice is given to another person — a third party.

If a coach gave advice to an athlete under her/his care that was later seen to have been wrong, and as a result an injury or damage to property occurred, that would not be covered under a public liability insurance policy (but it would be under professional indemnity insurance).

Professional indemnity insurance

Professional indemnity insurance covers people or organisations against claims for compensation for breach of professional duty through negligence (by way of act, error or omission). Those who should be covered by a professional indemnity insurance policy are people who may be giving advice or providing a professional service to those within the sporting organisation. This includes administrators, coaches, referees, first-aid providers, and any others who are particularly involved in providing professional advice. Both organisations and individuals within organisations must be specifically covered (that is, mentioned in the policy as insured).

If a coach provided training instructions to a pregnant athlete and that athlete, in carrying out those instructions, suffered an injury to herself or her unborn child, and sued the coach, the coach's legal liability (what he or she would have to pay by way of compensation and legal expenses) would be covered by this kind of policy.

There is no exclusion on the basis of pregnancy under this type of insurance.

Directors and officers insurance

Directors and officers insurance covers directors and other officers of organisations against wrongful acts they may commit while performing their duties within the organisations. This includes breach of trust, breach of duty, making misleading statements and neglect, error or omission. It is best if a policy of this kind also covers the organisation as a legal entity, as well as the individuals concerned.

If an officer of a sporting organisation is accused of negligently investing the organisation's funds, directors and officers insurance would cover any award made by a court against the officer (or compensation that the officer had to pay), and the legal expenses of defending the officer in the courts (up to the limit set by the policy).

Exclusions

This insurance excludes liability for injury or property damage (these are usually covered by public liability or professional indemnity insurance). Because of this, a case brought by a pregnant athlete who sues an officer for injury caused by the officer's negligence would not be covered by this kind of insurance. Employment practices liability insurance (see below) is usually not automatically included in this type of insurance, but may be available as an optional extension.

Employment practices liability insurance

This type of insurance covers actions against employers by employees, including actions for unfair dismissal or discrimination claims.

If a pregnant employee claimed that she had been dismissed because she was pregnant, employment practices insurance would provide protection to the employer.

Exclusions

This kind of insurance excludes claims for personal injury.

Personal accident insurance

Personal accident insurance covers participants who are injured while playing sport. This kind of insurance is not connected to or dependent on claims for negligence, but simply entitles the injured participant to certain benefits, as set down in the insurance policy, if they are injured.

It normally includes a death and permanent disability cover, it often includes medical expenses, and it often includes loss of income. The level of cover provided must be agreed between the insurer and the person insured at the time the policy is bought.

Exclusions

It is important to note that this kind of policy generally excludes events that result either directly or indirectly from, or become worse because of, pregnancy, childbirth or miscarriage.

However, if a pregnant player participates this does not affect the cover provided under a personal accident policy to other participants.

If a participant was injured while participating and the injury related to her pregnancy, it would not be covered by personal accident insurance.

However, if a pregnant participant sprained her wrist and the injury had nothing to do with her pregnancy, then the injury should be covered by this kind of policy.

Workers' compensation legislation

The vast majority of people participating in sports are not protected under workers compensation legislation because the legislation is framed around employees, and athletes are not generally considered employees. However, there are exceptions, for example, jockeys. In the rare instances where participants are considered workers and are covered by this legislation, there is no specific exclusion on the basis of pregnancy.

Ethics

This section of the resource represents the views of ethicists who participated in the National Forum on Pregnancy and Sport.

Ethics involve making decisions about what one ought to do. However, discussing ethical issues is rarely a matter of simply determining right from wrong; the issues are often complex and there are frequently no 'right' answers. To complicate matters, while ethics and the law often overlap, things that are ethical can sometimes be unlawful, and things that are lawful can also be unethical.

When sporting organisations are pondering ethical dilemmas, they consider such basic human rights as equality, the right to respect and dignity, the right to live free of discrimination, the right to autonomy and the right to liberty.

It is generally understood that one person's rights should not be upheld at the expense of another's, and that, if society discriminates against one person or a class of people, it must justify such

discrimination. Many ethicists believe that each person should enjoy the maximum degree of freedom consistent with not harming another person or constraining another person's liberty.

'Liberty is seen as either negative liberty, the absence of restraint, or positive liberty, being able to make choices about life.'

Dr Simon Longstaff, St James Ethics Centre, at the National Forum on Pregnancy and Sport

From time to time, sporting organisations may face some ethical dilemmas, including those related to pregnancy in sport. To deal with such dilemmas, leading ethicists Dr Margaret Kelaher, of the Key Centre for Women's Health in Society, and Dr Simon Longstaff, of St James Ethics Centre, outline below some of the critical considerations for sporting organisations concerned with pregnancy in sport issues.

Dr Margaret Kelaher

Women, including pregnant women, are expected to participate fully in most aspects of society now, a significant change from the situation during the first half of the twentieth century. Pregnant women should be treated as equal to any other member of society: treating them in any other way would be discriminatory. They have the same rights to the benefits that exercise can bring as have others in our society. The increasing likelihood that many women will continue to exercise during pregnancy means that policy making about pregnancy in sport must balance the beneficial aspects of exercise with protecting maternal and foetal health.

In Australia, women usually make their own choices in pregnancy, except when risks to the foetus are high and beyond maternal control. Most pregnant women are deeply committed to the health of their unborn children, so this usually works well — pregnant women, once educated about the risks, tend to do everything in their power to minimise harm to the foetus.

However, hazards to the foetus are often greatest in the first trimester of pregnancy, when women may not even be aware that they are pregnant.

Public perceptions of risks often do not reflect actual risks, and so concerns about pregnancy in sport often do not reflect the real level of risk involved (see Health and Medicine above). The ethical position of those who wish to limit or



‘Netball only exists because ladies, due to their constitution and their clothing, were considered unable to play the more vigorous basketball. Women in the 1960s in America were playing basketball on a half court because they were too delicate to run up a full court. The fact that we are even having a conversation about pregnancy in sport indicates that we’ve come a very long way.’

Dr Margaret Kelaher, Key Centre for Women's Health in Society, at the National Forum on Pregnancy and Sport

prevent pregnant women participating in sport is based on the idea that this participation represents a conflict between the interests of the mother and the interests of the foetus. However, this is not necessarily the case. Since the introduction of antenatal care, medical opinion has suggested that the benefits of moderate exercise for both mother and child outweigh the risks.

Health risks are usually categorised as either external (that is, beyond the control of the individual, such as pollution or radiation) or internal (that is, within individual control, such as smoking or drinking alcohol). Society has been willing to regulate pregnant women's health, as far as external risks are concerned, by warning and excluding pregnant women from, for instance, having X-rays while pregnant. By contrast, control of internal risks is usually left up to the women concerned. Women are increasingly seen by the medical and legal professions as primary decision makers during pregnancy, however it is also assumed that their decisions are informed by expert medical advice. Research on antenatal care suggests that the levels of information that women receive about health risks vary greatly.

Women's ability to care for their foetuses will to some extent reflect their own level of knowledge, and will vary from person to person and circumstance to circumstance. The heated debate about pregnancy in sport demonstrates how medical, epidemiological and legal opinions of risk can often differ from popular perceptions. Women's decisions in regard to the health of their unborn children can only reflect the best of their knowledge, and therefore it is important to ensure that women have the best knowledge. The nature of the debate about pregnancy in this issue certainly suggests that many people do not know what the real risks are, and that many people have also not taken into account changing social attitudes to pregnancy in sport when they think about this matter.

Dr Simon Longstaff

In the debate about whether pregnant women should be prevented from playing sport, it is the unborn children, the pregnant athletes and the sporting organisations involved whose rights must be weighed and balanced. One way to develop a position on the ethical issues concerning pregnancy in sport is to look at the rights of each of these groups, and assess where the balance may lie.

Unborn children and pregnant athletes have the right to protection from injury and risk of injury, and this has implications for both pregnant women and their sporting organisations. Making poor decisions in the ethical arena can have significant consequences for sporting organisations, as they share some of the legal and ethical responsibility for ensuring that conditions do not arise in which preventable harm could occur to pregnant athletes or their unborn children. Organisations could suffer damage to their reputations as a result of unethical behaviour that allowed an injury to occur — even if they were not legally liable. This could also affect an organisation's economic future, and even the future success of its athletes.

Foetuses have the right to be cared for by their parents — pregnant athletes share in the responsibility for protecting their unborn children. Athletes also have a right to determine the shape of their own lives even if pregnant, and this in turn should include the right to engage in activities that might actually represent some risk to an unborn child, such as driving a car, playing sport and so on. It is impossible to remove all risk from the path of an unborn child.

Parents should be assumed to have the best interests of their children in mind and be allowed to balance the competing interests that arise from

time to time, because in principle no group has a stronger interest in the welfare of children than parents. Parents should also be allowed to assert and protect their privacy, especially in relation to something as intimate as pregnancy. It should be up to parents to decide when they will tell others about a pregnancy. The recognition of these responsibilities, and of the fact that unborn children cannot assert their own rights, does not indicate that a third party, such as a sporting organisation, may step in if it feels it's necessary. It is also in the interests of the child that parents take these responsibilities and assume these rights.

If an organisation insisted that pregnant women had to reveal their pregnancies at particular times, or banned them from sport in order to protect the unborn children, it would then be breaching the rights of those women to liberty and privacy, unless it could justify the decisions on other grounds. In order to justify such a ruling, an organisation might have to show that a serious risk to the health of the women and their unborn children existed. However, in the absence of any clear and unambiguous evidence that exercise (and most sports) might harm pregnant women and their unborn children, it's difficult to see how any organisation could be justified in infringing women's rights in this way.

Privacy

From December 2001, private sector provisions in the federal *Privacy Act 1988* regulated the way many private sector organisations collect, use, secure and disclose personal information. Individuals now have the right to know what information an organisation is holding about them and a right to correct that information if it is wrong. Organisations' collection of personal and sensitive information — including health

information — about people is also now regulated by the Privacy Act. Organisations are required to have the permission of those about whom they wish to collect sensitive information if they are not collecting it by law, or if it is not necessary to prevent or lessen a serious and imminent threat to the life or health of any individual. Exclusions allow organisations to maintain employee records without these requirements.

These provisions aim to give people greater control over the way information about them is handled in the private sector. Individuals can also make a complaint if they think information about them is not being handled properly. The new private-sector provisions apply to organisations (including not-for-profit organisations) with an annual turnover of more than \$3 million and to all health service providers. Businesses with an annual turnover of \$3 million or less are generally exempt from the new laws, though there are some exceptions (see Resources page 35 for contact details for the Office of the Federal Privacy Commissioner, from which more information is available, and for details of the ASC's publication, *Guide to best privacy practices for sporting organisations*).

Every patient has a right to a confidential relationship with his or her doctor, but the ethics of this can become complicated if the doctor is part of the team or is employed by the sporting organisation. Doctors' ethical responsibilities are clear: they must treat their patients properly and respect the patients' wish for privacy. However, their legal responsibilities could be different, particularly if the patient is obliged by a contract to disclose information about health issues that affect the ability to play. In situations where the doctor sees a reason to disclose information about such a matter, he or she will usually discuss this with a participant and explain why it may be necessary.

Conclusion

Several prominent Australian sportswomen have competed at an elite level well into pregnancy. These women have led the way in changing attitudes about pregnancy in sport — pregnant sportswomen can compete successfully at the highest levels. Likewise, other prominent sportswomen have chosen to retire from play when they found that they were pregnant. The decision is a matter of personal choice and, as long as women base their decisions on up-to-date information and professional advice, both choices are equally valid.

Women should consult with medical advisers, make themselves aware of the facts about pregnancy in sport, and ensure that they make informed decisions about participating. Sporting organisations and their personnel should be aware of the risks and realities, and should take reasonable steps to ensure the safety of players and their unborn children.

The sports industry, pregnant athletes and our society in general will benefit from this reasoned and up-to-date approach to pregnancy in sport.

Resources

Further reading

ANZSLA — the sports law association (2001) *Pregnant athletes: a review of the legal issues.* Paper on the Australian and New Zealand Sports Law Association website at www.anzsla.com.au/forum_paper.html.

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Opie, H (2001) Medico-legal issues in sport: the view from the grandstand. *The Sydney Law Review* 23(1), 386–92.

Sports Medicine Australia (2002) SMA statement: the benefits and risks of exercise during pregnancy. *Journal of Science and Medicine* 5(1), 11–19 (available by mail from Sports Medicine Australia or by email from smanat@sma.org.au).



Useful contact information

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Sydney NSW 1042
Tel: (02) 9284 9600
Complaints infoline: 1300 656 419
General inquiries and publications: 1300 369 711
TTY: 1800 620 241
Fax: (02) 9284 9611
Email: complaintsinfo@humanrights.gov.au
or paffairs@humanrights.gov.au
Website: www.humanrights.gov.au

**Commonwealth Office of the Status of Women
Department of the Prime Minister and Cabinet**

3–5 National Circuit
Barton ACT 2600
Tel: (02) 6271 5722 (inquiries)
Fax: (02) 6271 5751
Email: women@pmc.gov.au
Website: www.osw.dpmc.gov.au

Office of the Federal Privacy Commissioner

Level 8, Piccadilly Tower
133 Castlereagh Street
Sydney NSW 2000

or

GPO Box 5218
Sydney NSW 1042
Tel: 1300 363 992 (for the cost of a local call
anywhere in Australia)
TTY: 1800 620 241
Fax: (02) 9284 9666
Email: privacy@privacy.gov.au
Website: www.privacy.gov.au

Sport Industry Australia

1 Phipps Close
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or

PO Box 342
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**Sports Medicine Australia
National Office**

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