



Equestrian Western Australian Incorporated

ABN: 53 591 481 584

Policy:	Code of Conduct – PREAMBLE
Policy Area:	Board & Governance Policies
Date Approved:	25 th February 2010
Replaces Policy No:	NEW

Important information.

Incorporated Association

If you are a member appointed or elected to a management committee of an association incorporated in Western Australia you are bound by the Rules of the association and the provisions of the **Associations Incorporation Act 1987, which is administered by the Department of Consumer and Employment Protection**

For more information, call **1300 30 40 14**, or send an email to consumer@docep.wa.gov.au.

The Associations Incorporation Act provides protection for members against the possibility of being personally responsible for the association's debts and liabilities.

The **common law** imposes fiduciary duties on committee members and, therefore, incorporation will only offer protection to management committee members who carry out their responsibilities in good faith, with care and diligence and with skill.

Committee Members of Incorporated Associations are bound by Common Law.

Common Law

The Australian courts interpret the laws and ensure that the people responsible for incorporated associations and companies limited by guarantee comply with the law and adhere to acceptable standards.

The common law relating to the **duties and responsibilities** of management committee members and board directors has developed on the basis that these people are in a 'fiduciary' relationship to

the corporation. This means that there is a close relationship between a management committee member/director because they are in a position of trust.

Duties and Responsibilities

You have a legal responsibility if you take part in, or are concerned with, the direction or management of a corporation or an association. This includes any person who has the ability to enter into binding commitments on behalf of the entity or to exercise control over the disposition of its resources such as executive officers, administrators, and people employed in artistic, technical, financial, marketing, development and production roles.

Honesty and Good Faith

You are required to act honestly at all times in the exercise of your powers and the discharge of your duties. You must act with the utmost good faith and for the benefit of the entity as a whole without reference to your personal interests, the interests of your family, or any other party.

Care and Diligence

You are under a duty to exercise the degree of care and diligence that a reasonable person in a similar position would make. The court will consider your background, qualifications, and management responsibilities to determine whether you have met the required level of care and diligence.

Skill

You must exhibit an acceptable level of skill. If you do not have a requisite level of skill then you must take steps to attain it. You must have an understanding of the entity's business and you are under a continuing obligation to keep informed of the entity's activities.

You must maintain a familiarity with the financial status of the entity by a regular review of the financial statements and inquire as to what is disclosed or not disclosed in those statements.

Improper Use of Information or Position

You must not cause detriment to the entity or make improper use of information gained by virtue of your position so as to gain an advantage, either directly or indirectly, for yourself or any other person.

Disclosure of Interests

You must avoid actual or potential conflicts between your interests and those of the entity and not exploit business opportunities for yourself at the expense of the entity. It is not up to you to determine whether you do or do not have a conflict of interest.

If you have a material personal interest in a matter that is being considered at a meeting of the board or management committee you must not vote on the matter or be present when the matter is being considered.

Prevention of Insolvent Trading

You have a duty to prevent the entity from incurring debts if it is unable to pay them as and when they become due and payable. You can be personally liable for the debts if you do.

What is the difference between a company, and an incorporated association?

	Company	Incorporated association
Status	Legal body by law	Legal body by law
Owners	Members	Members
Administration	Director/secretary	Committee
Home	Registered office	Principal place of administration
Life	Perpetual succession	Perpetual succession
Liability	Members of the company are only liable for the money they owe on any shares they own and/or for any amount of money they guarantee to contribute upon winding up of the company.	Members' liabilities are generally limited to outstanding subscriptions and other charges.
Owning	The company itself can own property.	The association itself can own property.
Legal Rights	The company can sue and be sued.	The association can sue and be sued.