

# What should you do if you notice something that is outside your area of expertise is wrong on a project?

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As a construction professional, it is clear that you have a duty to your client to use reasonable care, skill and diligence in performing your work.

It is equally clear that your contractual duties will largely be defined by the scope of your retainer. The standard of skill implied into your contract will correspond with your duty to use reasonable care and skill in providing the professional services.

What happens though if you are engaged on a project. During the course of the project it becomes apparent to you that all is not as it should be for other aspects of the project for which you are not engaged to assist. These other aspects are outside the area of your particular expertise.

Must you warn of such matters? Or is the best option to simply confine yourself to dealing with those areas you are employed as an expert to deal with.

The position in Australia is untested.

It has been said that any construction professional has a duty to alert the client to any issues which come to his/her attention, even if these issues are outside the professional's area of expertise. The reason for this is:

- either to discharge the professional's duty to ensure that the works are fit for purpose;
- alternatively, to meet the standard of a reasonably competent professional.

This is fine as far as it goes. However, it does not really address the heart of the issue. This is, in what circumstances should a professional bear a risk that he/she has not intended to assume.

## *Turning a blind eye will not do.*

In England, there are a number of cases that have considered the duty to warn of defects or dangers in the context of a contractor's duty to warn of design defects.

These cases deal with the situation of a danger or problem arising in connection with an issue that is outside the ambit of the professional's expertise.

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For example, a contractor on a project recognises that a defective design has the potential to give rise to water ingress to structures on site.

The cases have found that if a professional with reasonable competence ought to have been aware and could be reasonably expected to warn of that danger/problem, it is not enough for the professional to rely upon a lack of expertise in that field.

This would suggest that the more obvious the problem, the easier it will be for a duty to warn to be established.

How might this be applied in Australia?

- It is highly likely that a professional will need to actually know or believe that there is a problem. If he/she does not, the problem will need to be obvious enough, that to miss it would be in breach of the general duty of competence. A danger to health or safety is likely to satisfy this. The grey area is how much less will do;
- Generally, the more specialist the work is that is performed by one professional, the less likely it will be that it will be found that an expert in another field ought to be aware of the problem;
- It is likely to be enough for a professional to show that he/she considered the risk and made appropriate enquiries of the expert in the field who then provided a satisfactory response.

The lesson? A general awareness of project issues is required. Once an issue has been identified, it should be advised to the client. Turning a blind eye will not do.

And what if a construction professional notices a problem on a project he/she is not involved with? Another topic for another time...



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