

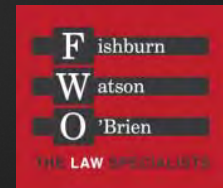


Where is the line? Ego, ethics and expectations

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Overview

- ▶ Why are ethics important?
- ▶ What are the key guidelines?
- ▶ What is your potential civil and criminal liability?
- ▶ Case studies
 - ▶ Prosecution of Orogen Pty Ltd and its director
 - ▶ Acquittal of Gordon Wood - A cautionary tale for environmental professionals
- ▶ How can you manage client expectations and liability issues?



Why are ethics important?

- ▶ Credibility and corporate reputation, membership of EIANZ
- ▶ Civil liability (negligence, void professional indemnity insurance)
- ▶ Criminal liability
 - ▶ For example, offence of providing misleading information about waste (s144AA Protection of the Environment Operations Act)
 - ▶ \$1,000,000 maximum penalty for a corporation
 - ▶ \$240,000 maximum penalty or 18 months jail



Warning: criminal liability extends to consultants

- ▶ Liability for “causing or permitting” environmental offences”
 - ▶ Waste transport offences
 - ▶ Pollution offences
 - ▶ Compliance with clean-up notices
- ▶ Liability for aid, abet or procuring commission of offence
 - ▶ Knowledge of circumstances of offence
 - ▶ Participate in an element of offence
- ▶ Director and manager liability under environmental legislation
 - ▶ Bigger risk for smaller consultants!



What does it mean to be a professional?

Credibility is the key

1. Expert Witness Code – Uniform Civil Procedure Rules
2. Accreditation – Guidelines for NSW Site Auditor Scheme
3. EIANZ Code of Ethics, Certified Environmental Practitioner Scheme
4. Community and professional expectations

What does it mean to be an expert?

- ▶ Opinion not admissible unless exception under the Evidence Act (NSW)
- ▶ Expert opinion: “specialised knowledge based on training, study or experience”
- ▶ Expert Witness Code sets out important information on:
 - ▶ Duty to the Court – not an advocate for a party
 - ▶ Structure of report
 - ▶ Importance of making assumptions and qualifications clear
 - ▶ Duty to notify court if opinion changes



Stages of practice



1

Engagement



2

Preparation of reports



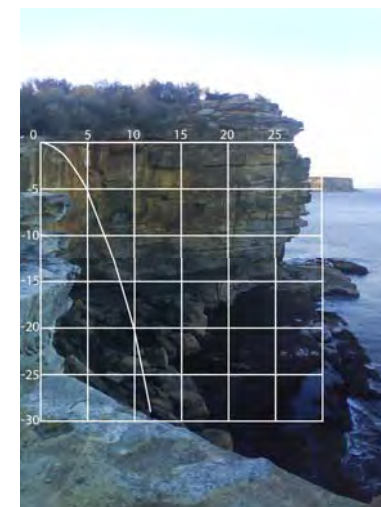
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Project management



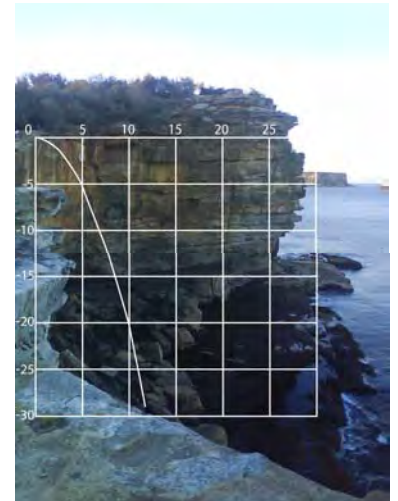
Ego and expert evidence don't mix...

- ▶ Gordon Wood convicted of the murder of Caroline Byrne in 2008
- ▶ Conviction overturned 2013
- ▶ Location of body critical - did she jump?
- ▶ Critical evidence for prosecution: A/Professor Rod Cross, expert in Plasma Physics
- ▶ Location of body critical - did she jump?



Temptation to solve problem – how far is too far?

- ▶ Court of Criminal Appeal criticised expert:
 - ▶ “Poisoned by police investigation”
 - ▶ A risk for long projects – know your role/limits
 - ▶ Outside accepted specialised knowledge – not expert evidence
 - ▶ Expert was “actively making evidence” using “not sophisticated experiments”
 - ▶ Have assumptions been sufficiently identified qualified?
 - ▶ Published a book about the trial “Evidence for Murder: How Physics convicted a murderer”
 - ▶ Described how he “solved the problem” to secure conviction



Case study – Orogen Pty Ltd and its director

- ▶ Development site for a Nathan Tinkler development company
- ▶ 10ha site – 4ha of Koala habitat
- ▶ Consultant engaged:
 - ▶ Project life of several years
 - ▶ Controversial development
 - ▶ Demanding client
 - ▶ Several disciplines required to complete project
 - ▶ Time pressures



What happened?

- ▶ The then DECCW investigated illegal clearing:
 - ▶ Both Orogen Pty Ltd and one of its director prosecuted in the Land and Environment Court
 - ▶ Convicted and fined for **causing** damage to habitat of a threatened species
 - ▶ Company and director fined total of \$160,000 but ordered to carry out environmental project.
 - ▶ Project not carried out so the director prosecuted and fined again \$16,000
- ▶ No other parties prosecuted
- ▶ Why? What is relevance to other environmental consultants?

What went wrong?

1

Engagement

- Scope included: "Responsibility for legislative compliance"

2

Report preparation

- Prepared "Site improvement plan"
- Staff did not have experience
- What vegetation can be cleared?
- What requires legal or expert advice

3

Project Management

- Delegated responsibility
- Attended site briefings and instruct contractor
- Not present to supervise work

In conclusion

- ▶ Credibility is critical
- ▶ Importance of the three stages:
 1. Engagement
 - ▶ be clear about what you are doing and not doing
 2. Giving advice
 - ▶ Get expert or legal advice on issues that are controversial or critical
 - ▶ Don't let ego get in the way
 3. Project management
 - ▶ Are you assuming liability for the job gone wrong?

