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**collections** | **law**  
Legal issues for Australian Archives, Galleries, Libraries and Museums

by Shane Simpson

## PART C COLLECTIONS

### Chapter 6: Collection Management

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## **PART C: COLLECTIONS**

### **6. COLLECTION MANAGEMENT**

#### **6.1 Introduction**

The permanent collection is the public face of the organisation, yet the public can have little idea of the complexity that the collection represents. It is the visible apex of a cloaked pyramid. It is the product of educational, cultural, scientific and social enterprise. It reflects political aspirations, budgetary capacity, directorial leadership, management skill, connoisseurship, and serendipity.

It is a basic obligation of every collecting institution to maintain the integrity of its collection. This obligation affects the life of each piece of collection material – from its selection, acquisition, custody and use through to the time of deaccession and disposal.

Each stage of the relationship between the institution and the material brings with it responsibilities that are demanding yet various: The requirements of prudent acquisition are different from the ongoing demands of public ownership or trusteeship, and are different again from the rigorous processes necessary to bring that relationship to an end. Accordingly, each stage of the material's life within the institution demands active attention. Having detailed and rigorous policies and systems for each stage of the material-institution relationship, is an important indicator of good governance. Such policies must be written, clearly articulated, directive and free of ambiguity. The systems must be replicable irrespective of personnel.<sup>1</sup>

There is nothing glamorous about drafting collection policies, preparing comprehensive documentation, undertaking rigorous investigations of title, drafting quality agreements, requiring prudent warranties and the like. However,

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<sup>1</sup> It is no answer to say that the relevant employee is experienced and understands how the system works. Systems that demand integrity (both as to function and ethics) cannot be dependent on specific personnel. Individuals may be promoted to another position, move to another employer, or die. The new person should be able to know what is expected of him or her by the institution, not merely impose their own individual preferences and quirks upon the organisation. These are the policies and systems of the institution and are not subject to the vagaries of the individuals who may fill the position from time to time.

the quality of a museum's conduct of these matters reflects the quality of its governance and in turn affects the reputation of the museum, its staff and its entire collection.

The chapters that follow do not purport to be a text on collection management: they focus on the legal and governance aspects of acquiring collection items. This is a discussion that is relevant to everyone involved in planning, acquiring and administering the collection, irrespective of role or seniority, for the modern public collecting organisation must examine itself continually to ensure that it is complying with contemporary standards of best practice. While this is a phrase easily mouthed by the dullest of consultants, like many grey clichés, it is true. One might suggest that for many centuries, museums seemed to do just fine unfettered by collection policies, ethical guidelines and legal requirements. Perhaps they did.<sup>2</sup> However, today, we require high standards of conduct and performance from all organisations that receive public money. Good governance is not just something that happens at the highest levels of administration. To be effective, it must flow through all of the work of the organisation. It must inform the publicly invisible worker just as much as those in public and apparently glamorous roles.

Not all of the material in the chapters that follow has the same degree of relevance to all domains within the collection world. For example, readers who work in a government archive or a library might think that the detailed discussion of provenance and title has little application to their work. Similarly, they will have a very different view of deaccessioning to someone from a public gallery. That said, these topics are core to an understanding of the diverse demands of modern collection management. At the very least, an understanding of these issues will permit readers from diverse domains to consider how principles that are relevant in other sectors of the profession might apply in their own institutions.

## **6.2 The presumption of permanence**

Although the public commonly thinks of public collecting institutions as permanent repositories, this is simply not the case. The degree of permanence to be accorded to a collection item depends upon the constitution and structure

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<sup>2</sup> Perhaps we really are missing the likes of Duveen and Hoving?

of the institution, its internal policies, and the nature and the purpose of the material collected.

Indeed the presumption of permanence is an amalgam of professional standards and the law. Whereas the former are often ill-defined and sometimes controversial, the latter are often not properly identified, let alone applied.

### ***6.2.1 The effect of legal structure on presumption***

When considering whether there is a presumption of permanence that affects the collection it is helpful to have a knowledge and understanding of the legal instrument that establishes the organisation. The collection may be set up in one of four ways.

- 1. As part of a government department.**<sup>3</sup> Where the collection is part of a government department, there is no legal presumption of permanence. The collection material is acquired, held and disposed of at the pleasure of the departmental decision makers. There will be laws that impose restrictions or safeguards (for example the oversight role of the Auditor-General) but these are general and are not specifically aimed at departmental collections. Their presumption of permanence is merely derived from tradition and is generally unfounded in law.
- 2. Pursuant to its own statute.**<sup>4</sup> Where the organisation has its own legislation, that statute will always contain provisions that define its function and thus, by inference, affect the degree of permanence required of the collection material. For example s 5 of the *Archives Act 1983* (Cth) describes (at some length) the functions of the National Archives.<sup>5</sup> Then s.6 of that Act sets out the powers of the Archive.<sup>6</sup> Other provisions circumscribe those powers and purposes.<sup>7</sup> Still other provisions go beyond describing functions, powers and parameters; they prescribe activity at a much more atomic, intrusive level. For example, Regulation 3 of the Archives Regulations (Cth)

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<sup>3</sup> For example, a police or defence forces museum.

<sup>4</sup> Federal and state museums, libraries, galleries and archives.

<sup>5</sup> <[http://www.austlii.edu.au/au/legis/cth/consol\\_act/aa198398/s5.html](http://www.austlii.edu.au/au/legis/cth/consol_act/aa198398/s5.html)>.

<sup>6</sup> <[http://www.austlii.edu.au/au/legis/cth/consol\\_act/aa198398/s6.html](http://www.austlii.edu.au/au/legis/cth/consol_act/aa198398/s6.html)>.

<sup>7</sup> For example s 4 of the *State Records Act 1998* (NSW), excludes 'aboriginal relics' from the operation of the Act. So too, are private records in the collection of a State Collecting institution (s 5).

sets out categories of information that the Archives can require from Commonwealth bodies to assist in the appraisal of records.<sup>8</sup> In these structures, the presumption of permanence is determined by the language of the statute. In fact each such statute provides explicit powers enabling the organisation to rid itself of collection material in certain circumstances.<sup>9</sup>

**3. By relying on a non-specific but enabling piece of legislation.**<sup>10</sup>

Common examples of these are museums and galleries established by local government or by universities<sup>11</sup>. These statutory underpinnings are enabling rather than prescriptive: they give no guidance whatsoever as to the legal complexities of keeping cultural material. The local government library, museum or gallery is merely established as a committee of the council and is, for legal purposes, an indivisible part of council.<sup>12</sup> Similarly, unless there is a trust or other structure superimposed,<sup>13</sup> the university/council collection is simply the property of the university/council. There is no legal presumption of permanence.

**4. As a company,<sup>14</sup> trust<sup>15</sup> or incorporated association.** Here, it is the organisation's constitution that sets out the function and ambit of the

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<sup>8</sup> Note that Reg 3 does not set out the list of matters that must be taken into account in appraising records. It is only implicit that, because it has the power to require information for such purposes, information that falls within these descriptions may be relevant to appraisal processes.

<sup>9</sup> For example, see *National Gallery Act 1975* (Cth) s 9 (1) where Council has the power to resolve that a work is to be disposed of by way of sale, gift or destruction. (That power is also limited by that statute: See s 9 (4), destruction is only available where the item has no saleable value. 'The Lord giveth, the Lord taketh away ...').

<sup>10</sup> For example, (a) local government museums, libraries and galleries established under the Local Government Act and (b) trusts created pursuant to non-specific legislation such as the *Crown Lands Act 1989* (NSW): for example, see n 10 below.

<sup>11</sup> To illustrate the generality of a university's power to establish an internal collection, see *Sydney University Act 1989* (NSW), ss 6 and 7.

<sup>12</sup> Take the situation where a city council decides to stop funding its art gallery so that it can put its money into sporting and recreational facilities. The gallery has no individual legal identity. The board members have little power. Assuming that it owns the collection, it can dispose of it and spend the money on swings and roundabouts.

<sup>13</sup> Where there is a trust, careful regard must be had to the terms of the trust as these may have the effect of describing the purpose of the trust, limiting the powers of the trustee, and thus affecting the presumption of permanence.

<sup>14</sup> For example, the Wollongong Public Gallery started as an instrument of local government and then established a separate existence as a company limited by guarantee.

collection, describes its powers and articulates its governance machinery. Again there is no presumption of permanence unless it is imposed by the constitution governing the organisation.<sup>16</sup>

### **6.2.2 Policies of the institution**

The presumption of permanence is also affected by the acquisition and deaccessioning policies of each individual institution. While it can be assumed that an archive or a library of legal deposit will attract a high presumption of permanence, with other institutions the attitudes are more disparate.

For example in art museums there has been a long-running controversy as to the ethics and practicability of deaccessioning.<sup>17</sup> Those of the anti-deaccessioning school maintain a high presumption of collection permanence whereas those who see deaccessioning as merely a tool of collection maintenance and shaping have less truck with the presumption of permanence. For the latter group, the presumption of permanence is antithetical to good governance. For the former, ethical governance puts high value on the presumption of permanence. That said, all of the statutory art museums permit deaccessioning (thus confirming that none of the collections are legally viewed as permanent) and any limits imposed on that right and the manner by which the right may be exercised is generally a matter controlled by internal policies determined by the governing board. It is the deaccessioning policy that articulates each institution's attitude to permanence.

That there should even be a debate about deaccessioning in art museums is seen as almost quaint in other types of collection institutions. Science and social history museums deaccession and dispose of collection items as a matter of

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<sup>15</sup> For example, the New England Regional Art Museum was originally established under the *Crown Lands Act 1989* (NSW) as a reserve trust. By virtue of that Act, such trusts are 'corporations' and have their own legal entity (s 92 (2)). The Minister of Lands appointed the directors/trustees of the trust. Later, by gazette, the Armidale Dumaresq Council was appointed the manager of the trust (see s 95 (1)(a)). Thus the original directors/trustees were removed and the operation of the gallery became part of the administrative responsibilities of council. When NERAM announced that it was going to sell a Tom Roberts to meet its debts, it was really the council (as manager) announcing that it intended selling trust property. To determine the council's right to do so and the existence of any 'presumption of permanence', one must look to the terms of the reserve trust and the statute under which that trust was created.

<sup>16</sup> It makes no difference whether the collection is established with a not-for-profit or a for-profit structure.

<sup>17</sup> Add examples of deaccessioning in Australian art museums.

course. It is largely uncontentious and seen as a functional resource management task rather than a matter of ethics.

### ***6.2.3 Nature or function of the material***

There are many situations in which the nature of the material indicates that it attracts no presumption of permanence. This may be evident at time of acquisition or may become evident much later, for example, when the material has decayed, been irreparably damaged, rotted, become dangerous or for any other physical reason is no longer appropriate to be retained in the collection. This is the case even for organisations with a high presumption of permanence.

Similarly, in institutions in which destruction of material is a necessary part of the purpose for which the material was collected in the first place,<sup>18</sup> where the exhaustion of the material is an expected part of the object's function,<sup>19</sup> or where better examples of the same kind of item are acquired, any presumption of permanence is overborne.

### ***6.2.4 Temporary deposit***

Some of the material in the possession of the institution is not subject to any presumption of permanence. Frequently, it is necessary or useful to take temporary possession of material; for example, so that it can be inspected, appraised, evaluated for acquisition into the collections, considered for loan, researched or copied.

In these situations, the material is not considered part of the collection. The institution does not become the owner of title; it is merely a bailor and, as such, is permitted to do such things as are reasonable to fulfil the purpose of the bailment.

The limits of the collecting institution's rights and obligations should be clearly spelled out in the documentation entered before or at the time that it takes possession of the material. Some institutions use what they call a receipt and put written terms limiting their liability on the back of the document. Notwithstanding that it is called a 'receipt' it does more than merely acknowledge that the material has been taken into the possession of the institution. By putting conditions in it, the document is really a contract of

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<sup>18</sup> Such as science and natural history museums.

<sup>19</sup> For example, a book in a lending library.

bailment: It acknowledges that possession has changed hands **and** sets out (and limits) the liabilities of the borrower.

There are many cases in which it has been successfully argued that one of the parties to a contract did not have sufficient notice of the terms that limited the liability of the other party. This is particularly common when documents have terms on the back of the document. To avoid this, it is essential that the owner who is passing over possession of the material signs the form in such a way as to make it absolutely clear that he or she has seen the whole document and have been made fully aware of its standard terms.

The temporary deposit documentation is in (at least) two parts: The first is the description of the base facts:

- the name, address, telephone number and email address of the owner;
- the date the material was received;
- a description of the material;
- the purpose for which the material is being given into the possession of the institution;
- the temporary deposit number allocated to the item; and
- the condition of the material.<sup>20</sup>

The second part is the statement of rights and obligations of the parties. It is important that the institution excludes any liability that it is not prepared to bear.<sup>21</sup> In most cases the institution will rightly seek to exclude as much liability as possible for the deposited material. After all, temporary deposit is generally at the initiative of the owner, to accomplish an objective of particular interest to the owner and is for the benefit of the owner.<sup>22</sup> Accordingly, the temporary deposit documentation will usually inform the owner that while providing reasonable care, the institution is not liable for the loss damage or theft of the

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<sup>20</sup> While there may be situations in which this step is not required, some description of condition (even if it falls short of a full condition report) is usually prudent. Any obvious marks, cracks, scratches or other damage observable by the naked eye should be noted on the deposit documentation and signed by both parties. It is also prudent to include a clause that states that the description only includes damage in the form of readily observable defects and that the description may not be comprehensive.

<sup>21</sup> For example, the institution may promise that it will be stored and monitored properly but may specifically state that it does not insure, re-house, conserve or catalogue material that is placed in its temporary custody.

<sup>22</sup> Such interests and benefits are not necessarily exclusive to the owner.

deposited material and that insurance coverage is the responsibility of the owner.

It is also in this part of the document that there should be a mechanism that the institution can rely on in the event that the owner does not pick up the material at the end of the temporary deposit period.<sup>23</sup> It is prudent to include a requirement that the owner keep the institution informed of its current address and contact details and provide a mechanism that copes with its failure to do so.<sup>24</sup>

Although it is not a legal matter, it is commonsense to make sure that the temporary deposit material is never mingled with collection material. Keeping it physically separated from the institution's own property is a very simple and basic means of avoiding confusion. Similarly, where the temporary deposit is made up of wool, leather, cloth, fibre or other organic material it should be kept well isolated so that any infestations, mould or other damaging factors will not effect either the institution's own material or other items being held on temporary deposit.

### **6.3 Guaranteeing the integrity of items in collections**

It is a basic obligation of every collecting institution that it should maintain an appropriate level of integrity of the material in its collection. This is process that affects the whole of life of the material within the institution – from its selection, acquisition, custody and use through to the time of deaccession and disposal.

The difficulty is always to determine what is an appropriate level of integrity – both for the object itself and the purpose for which it has been collected. Some

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<sup>23</sup> For example, after defining the 'deposit period' the deposit agreement may state: 'The Owner must collect the Object on the final day of the deposit period. Upon expiration of the deposit period the Object will be held by the Museum at the Owner's sole expense and risk. If the Owner fails to collect the Object the Museum's shall make a reasonable effort to give notice to the Owner requiring it to collect the Object forthwith. Provided that the Museum has made a reasonable effort to provide such notice to the Owner, if the Owner does not collect the Object within 180 days, upon expiration of that period, the Owner shall be deemed to have made an unrestricted gift of the Object to the Museum.'

<sup>24</sup> This provision should have two parts: an obligation to keep the institution informed and a mechanism to deal with any failure to do so. For example in the following, if the owner fails to provide up to date contact details, all the museum is required to do is to give notice to the bailor at the address stated in the agreement: 'Unless the Owner has advised the Museum in writing of any change in its address or contact details it shall be sufficient if any notice is sent to the address of the Owner as stated in this agreement or the address (physical or electronic) last known to Museum.'

objects, such as important documents or works of art may demand high levels of integrity because of their unique nature. Others, such as books, mineral specimens or social history artefacts may attract lower standards because they are replaceable. With the latter, it can be reasonably argued that the integrity of the item is only relevant in so far as it affects the purpose for which the item has been collected. For example, a science museum will have many multiples that are specifically collected so that they can be subjected to testing and investigation techniques that are inherently destructive. A social history museum will have many objects that are both commonplace and replaceable and which do not demand the same level of protection that would be required of unique items. In each instance, there is a 'reasonableness test' whereby the characteristics of the individual item and the purpose of its acquisition must be balanced against the costs of practicability of integrity.

#### **6.4 Integrity of documentation and process**

Every well-administered collection is underwritten by meticulous documentation and administrative systems that promote the purposes of the collection. While not all collecting organisations are big enough to have a full-time registrar, the registration function is central to any properly administered collection. While there is a functional divide between the board members, director, curators and registrars, each is as important as the other in the delivery of the public purposes and objectives of the collection.

It will be obvious to any reader of this book that the development of good documentation and process requires detailed and cautious thought. Similarly documentation and process require maintenance, review, informed criticism, amendment and updating.

Once systems are established it is important that everyone involved in the life of the collection is aware of them, bothers to be acquainted with their content, understands their rationale, and sticks to them. If there are defects in the system, such criticisms are not best dealt with by ignoring or breaching the system but rather through a review process. This applies as much to directors and board members as it does to curators and registrars: Collection management is not something that can be delegated to the registrar and forgotten or ignored. Good governance standards require that all participants in

the life of the collection not only maintain the established administrative procedures but are also involved in their development and review.

In a paper delivered at the ARC 2008 conference, Gordon Morrison, Director of the Ballarat Art Gallery (and a former registrar) listed a number of features of the 'director from hell' – as they affect those responsible for the day-to-day administration of the collection:

- the 'yes-man' for whom no request is too large or too small particularly when responding to the often unreasonable demands of the powerful;
- the director who commits the institution to dealing with loans in unreasonably short time-frames;
- the marketing and sponsorship director who either commits the collection to inappropriate promises or gets inappropriately involved in the negotiation of the terms of the relationship;
- the director who agrees to reciprocal loans without due understanding of the administrative demands of the process;
- the 'can-do' director who believes that the end justifies the means (including acquiring works of doubtful provenance or from toxic owners); and
- directors with no sense of language – who don't understand that 'permanent' and 'loan' do not go together.

Although such comments are made in jest they are also of serious intent. Morrison went on to talk of the need for directors, curators and registrars to develop working relationships of mutual respect and trust. Underlying such working relationships are the development and maintenance and understanding of the systems and documents that permit the collection to be administered in an orderly and disciplined way. Such understanding has to extend to all those whose power directly affects the collection.

Take, for example, universities. Although the director of the university museum may be told that he or she is responsible for the 'university collections', this may be difficult in practice. Integrity of the collection is not always easy to maintain and integrity of professional collection management standards is often

ignored or frustrated by those in power who have no understanding of collection management and no patience for anything that frustrates their own vision.<sup>25</sup>

- Research strategies sometimes fail to determine which entity should have responsibility for owning, storing, caring for the results of particular research. The ownership of particular collections may reside with a research council that funds a particular piece of work, a department, an individual, the university or a university museum, library or art gallery where such a body exists.
- Departmental Heads often have a very proprietorial view of collections in their Department. Since such people are often powerful relative to the Museum Director, this creates tensions. What is significant to one professional can be merely obfuscatory to another.
- Sometimes, collection items are sold to fund a research project.
- Insufficient time may be given to the collection manager to permit an appropriate quality of professional analysis and discretion.<sup>26</sup>

## **6.5 Ethical standards affecting collections**

### ***6.5.1 Kylix goes the shears***

Life has changed. The world of collecting institutions has changed forever. This was achieved neither by the events of 11 September nor by worldwide financial recession. Rather, it was as a result of Marion True (antiquities curator at the prestigious and prodigiously resourced J. Paul Getty Museum) being criminally charged by the Italian police with conspiracy to acquire looted artefacts. The consequences of those proceedings, both in respect of the individual and of the institution itself, are eloquent testimony to the damage that can be done to even the greatest reputations and the richest institutions. If it can happen to True and the Getty, it can happen to any curator, director and institution in Australia.

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<sup>25</sup> The trouble with power is not that it corrupts; it is that it is fertiliser for hubris.

<sup>26</sup> Take the example of the Departmental technician approaching the director of a university museum saying 'we have to clear this room next week and it contains some things that should be in the museum'. In such a situation, there is little time to assess or negotiate. A departmental collection or a retiring academic's collection will typically include objects, prepared research samples (thin-sections, powders for analysis), field note-books, photographs or other images, publications, personal items, artworks etc. In such circumstances the whole collection has integrity but only some items would fit into the collection policy of a university museum, university library, university art gallery, university archive.

For much of the history of collecting institutions, those who argued that collecting procedures should be subject to rigorous ethical standards were voices wailing in the dark. They were seen as weak and insufficiently aggressive; those that never scored the major and newsworthy acquisitions. Since True and the Getty have established that being newsworthy is not necessarily a good thing, there is a revitalised interest in codes of museum ethics.<sup>27</sup>

There is no one repository of ethical standards for collection management. Any consideration of the propriety of a particular action demands consideration of a complex web of indicative documents. Those developed in one country will vary from those of another; ethical standards developed for one kind of collecting institution will vary from those developed for another. This is not the place for a detailed presentation and analysis of these ethical obligations but it is important to at least set out a basic framework by which such matters may be considered because legal issues form one part of the considerations that constitute the ethical whole.

### **6.5.2 General framework of codes and treaties**

There is no shortage of codes of ethics in the profession. Individuals working within collecting institutions will be aware of those that affect them most directly but need to be aware of the diversity of related codes. The framework of obligations may be summarised as follows:

- Local legislation and case law<sup>28</sup>
- International treaties and conventions to which Australia is a signatory<sup>29</sup>

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<sup>27</sup> Not all ethical awakenings are as public as that experienced by the Getty specifically and the antiquities collection generally. The ethics of collecting does change over the years: once upon a time, the collecting of human remains was *de rigour* for natural history museums. Nowadays, this has completely changed and Australia is a world leader in the development of repatriation policies and programs.

<sup>28</sup> This includes the general law of the land regulating crime, contract, copyright, taxation, corporations law, and non-cultural specific legislation such as the various statutes that control the Public Service in each jurisdiction. Of particular importance is legislation that deals specifically with cultural material such as the *Protection of Movable Cultural Heritage Act 1986* (Cth); pt 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (CITES); the *Historic Shipwrecks Act 1976* (Cth); *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

<sup>29</sup> *Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention*, The Hague, 14 May 1954; *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, Paris, 14 November 1970; *International*

- International treaties and conventions to which Australia is not a signatory<sup>30</sup>
- International codes of ethics<sup>31</sup>
- Australian codes of ethics generally applicable to collecting institutions<sup>32</sup>
- Australian codes of ethics applicable to specific collection types<sup>33</sup>
- Non-Australian codes of ethics generally applicable to collecting institutions<sup>34</sup>

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*Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, Rome, 26 October 1961; *Convention concerning the Protection of the World Cultural and Natural Heritage*. Paris, 16 November 1972 (ratified 22/08/1974); *UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict* (The Hague Convention, First Protocol, 1954 (ratified 19/09/1984); *UN Convention on Biological Diversity*, 1992 (ratified 5/6/92); *Convention on International Trade in Endangered Species of Wild Fauna and Flora*; 1973 (ratified 27/10/1976).

<sup>30</sup> *Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, 14 May 1954; *UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects* (1995); *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, The Hague, 26 March 1999; *Convention on the Protection of the Underwater Cultural Heritage*, Paris, 2 November 2001; *Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 17 October 2003; *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris, 20 October 2005.

<sup>31</sup> **General:** ICOM *Code of Ethics for Museums* 2006 <<http://icom.museum/ethics.html>>. **Libraries:** IFLA *Professional Codes of Ethics/Conduct - Collection of professional guidelines for librarians* <<http://www.ifla.org/faife/ethics/codes.htm>>. **Archives:** International Council of Archives' *Code of Ethics* <<http://www.ica.org/en/node/37328>>; International Council on Archives, *Code de déontologie* (1996) <[http://www.staluzern.ch/vsa/texte/kodex\\_f.html](http://www.staluzern.ch/vsa/texte/kodex_f.html)>; UNESCO Audiovisual Archiving: *Philosophy and Principles* <[http://portal.unesco.org/ci/en/ev.php-URL\\_ID=15592&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/ci/en/ev.php-URL_ID=15592&URL_DO=DO_TOPIC&URL_SECTION=201.html)>. **Zoological Parks:** World Association of Zoological Parks and Aquariums (WAZA), *WAZA Code of Ethics and Animal Welfare* (adopted in 2003) <<http://www.waza.org/ethics/index.php?main=ethics&view=ethics>>.

<sup>32</sup> Museums Australia Inc, *Code of Ethics* (adopted in 1984, revised in 1994 and 1999) <<http://www.museumaustralia.org.au/dbdoc/maethics.pdf>>.

<sup>33</sup> **Archives:** Australian Society of Archivists *Code of Ethics* <<http://www.archivists.org.au/asa-code-ethics>>. **Zoological Parks and Aquaria:** Australasian Regional Association of Zoological Parks and Aquaria, *Code of Ethics* <<http://www.arazpa.org.au/AboutCodeofEthics.htm>>; *Code of Practice* <[http://www.arazpa.org.au/About\\_CodeofPractice.htm](http://www.arazpa.org.au/About_CodeofPractice.htm)>.

<sup>34</sup> **US:** The American Association of Museums (AAM), *Code of Ethics for Museums* <<http://www.aam-us.org/museumresources/ethics/coe.cfm>>. **Canada:** Canadian Museums Association (CMA), *CMA Ethical Guidelines* (1999) <<http://www.museums.ca/Cma1/About/CMA/ethics/introduction.htm>>. **Brazil:** Conselho Federal de Museologia, *O Código de Ética Profissional do Museólogo* <[http://www.cofem.org.br/legislacao/leg\\_codigo.htm](http://www.cofem.org.br/legislacao/leg_codigo.htm)>. **UK:** The Museums Association (UK), *Code of Ethics for Museums: Ethical principles for all who work or govern museums in the UK* (2002) <[http://www.museumassociation.org/asset\\_arena/text/cs/code\\_of\\_ethics.pdf](http://www.museumassociation.org/asset_arena/text/cs/code_of_ethics.pdf)>. **Netherlands:** The Netherlands

- Non-Australian codes of ethics applicable to specific collection types<sup>35</sup>
- Codes relating to museum-related professions<sup>36</sup>
- Codes of ethics that relate to particular kinds of related activity<sup>37</sup>

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Museums Association, *Code of Professional Ethics for Museums in the Netherlands* <<http://www.museumvereniging.nl/engels/nmv/ethics/index.html>>. **Pacific Islands:** Pacific Islands Museums Association (PIMA), *PIMA Code of Ethics for Pacific Islands Museums and Cultural Centres* (February 2006) <[http://icom.museum/pdf/E\\_news2006/p8\\_2006-2.pdf](http://icom.museum/pdf/E_news2006/p8_2006-2.pdf)>. **South Africa:** South African Museums Association, *Code of Ethics* (2001) <<http://sama.museums.org.za/ethics.htm>> **Spain:** Asociación Española de Gestores de Patrimonios Culturales, *Código de Deontología* <<http://www.aegpc.org/aegpc/index.html>>.

<sup>35</sup> **Archives, Canada:** Association des archivistes du Québec, *Code de déontologie* <<http://www.archivistes.qc.ca/fonctionnement/docs/deontologie.html>>. **US:** The Society of American Archivists, *Code of Ethics for Archivists* <[http://www.archivists.org/governance/handbook/app\\_ethics.asp](http://www.archivists.org/governance/handbook/app_ethics.asp)>. **UK:** Standing Conference on Archives and Museums (SCAM), on behalf of the Association of Independent Museums (AIM), the Museums Association and the Society of Archivists, *A code of practice on archives for museums and galleries in the UK*, 3rd edn, 2002 <<http://www.archivesandmuseums.org.uk/scam/code.pdf>>. **Art: US:** AAM, *Code of Ethics for AAM* <<http://www.aam-us.org/aboutaam/coe.cfm>>; Association of Art Museum Directors (AAMD), *AAMD Code of Ethics* <<http://www.aamd.org/about/#Code>>. **Spain:** Asociación Española de Gestores de Patrimonios Culturales, *Código de Deontología* <<http://www.aegpc.org/aegpc/index.html>>. **Art History, US:** The College Art Association *Code of Ethics for Art Historians* and the *Guidelines for the Professional Practice for Art History* <[http://www.collegeart.org/caa/ethics/art\\_hist\\_ethics.html](http://www.collegeart.org/caa/ethics/art_hist_ethics.html)>. **Archivists, Canada:** Association of Canadian archivists *Code of Ethics* <<http://archivists.ca/about/ethics.aspx>>. **Earth Science:** Geopolis – Confédération française des acteurs des sciences de la terre, *Réflexion sur l'éthique et la déontologie* <<http://www.geopolis-fr.com/news4.html>>; *Pour un statut de minéralogiste-paléontologue amateur* <<http://www.geopolis-fr.com/deb6.html>>.

<sup>36</sup> **Exhibition:** National Association for Museum Exhibition, *NAME Code of Ethics* <<http://www.n-a-m-e.org/ethics.html>>. **Conservators, US:** American Institute for Conservation, *Code of Ethics and Guidelines for Practice*, <<http://aic.stanford.edu/pubs/ethics.html>>. **Europe:** European Confederation of Conservator-Restorers' Organisations (ECCO), *ECCO Professional Guidelines* (adopted in March 2002) <[http://www.ecco-eu.info/matador/eccosite/ecco\\_contents.php?doc\\_id=170](http://www.ecco-eu.info/matador/eccosite/ecco_contents.php?doc_id=170)>. **Switzerland:** Association suisse de conservation et restauration / Schweizerischer Verband für Konservierung und Restaurierung (SCR/SKR), *Définition de la profession et code de déontologie* <<http://www.skr.ch/grundlagen/grundlagen.html>>. **Canada:** Canadian Association for Conservation of Cultural Property (CAC) and the Canadian Association of Professional Conservators (CAPC), *Code of Ethics and Guidance of Practice* <<http://www.cac-accr.ca/pdf/ecode.pdf>>, <<http://www.capc-acrp.ca/code%20of%20ethics%20and%20glossary.htm>>. **Netherlands:** Dutch Association of professional restorers, *VeRes Code of Ethics* <<http://palimpsest.stanford.edu/byorg/veres/vereseth.html>>. **UK:** United Kingdom Institute for Conservation of Historic and Artistic Works, *UKIC Code of Ethics and Rules of Practice* (1996) <[http://www.ukic.org.uk/ukic\\_ethics.doc](http://www.ukic.org.uk/ukic_ethics.doc)>. **Castings, France:** Syndicat général des fondeurs de France, *Code déontologique des fonderies d'art* (1993) <[http://www.fontesdart.org/SPIP/article.php3?id\\_article=3](http://www.fontesdart.org/SPIP/article.php3?id_article=3)>. **Taxidermy, US:** National Taxidermists Association, *Taxidermists Code of Ethics* <<http://www.taxidermy.net/nta/code.html>>. **Switzerland:** Fédération suisse des préparatrices et préparateurs en sciences naturelles (FSPSN/VNPS), *Code de déontologie de la FSPSN* <[http://www.praeparation.ch/fr/FSPSN\\_info.pdf](http://www.praeparation.ch/fr/FSPSN_info.pdf)>.

<sup>37</sup> **Friends and Volunteers:** World Federation of Friends of Museums, *Code of Ethics for Museum Friends and Volunteers* <[http://www.museumfriends.org/Ingles/i\\_codigo.html](http://www.museumfriends.org/Ingles/i_codigo.html)>. **Museum Shops:** Museum Store Association,

- Codes of ethics that relate to particular kinds collection material<sup>38</sup>
- Codes of ethics developed for individual organisations<sup>39</sup>

Although only the first of these may be **legally** enforceable, the Getty example has made it clear that it is unwise to base one's collection management decision-making solely upon a strict and narrow analysis of legal considerations. The question is not just, 'Would this action be legal?' but rather, 'Does it comply with the numerous and diverse obligations that an organisation of this kind must fulfil?'

### 6.5.3 An Example

By way of example, assume that an Australian institution was considering the purchase of the kylix that undid Marion True and the Getty. What would the process by which the decision makers should follow to ensure the purchase was appropriate?

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*Museum Store Association Code of Ethics* (adopted 1984, revised 2000) <<http://www.museumdistrict.com/membership/EthicsCode.cfm>>. **Fund Raising:** Association of Fundraising Professionals, *Code of Ethical Principles and Standards of Professional Practice* <[http://www.afpnet.org/ethics/guidelines\\_code\\_standards](http://www.afpnet.org/ethics/guidelines_code_standards)>; The Association of Fund-Raising Distributors and Suppliers, *AFRDS Code of Ethics* (<http://www.afrds.org/cofe.html>); Association of Professional Researchers for Advancement, *APRA Statement of Ethics* (2004) <<http://www.aprahome.org/advancement/ethics.htm>>. **Marketing:** Direct Marketing Association, *Guidelines for Ethical Business Practice* <<http://www.the-dma.org/guidelines/ethicalguidelines.shtml>>. **Education Services:** Association for Educational Communications and Technology, *A Code of Professional Ethics* <<http://www.aect.org/intranet/publications/ethics/ethics03.html>>. **Researchers:** Australian Institute for Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Indigenous Studies* <<http://www.aiatsis.gov.au/rsrch/index.htm>>; Australasian Evaluation Society *Ethics Committee and Guidelines* <<http://www.aes.asn.au/ethics.cfm>>; Canadian Evaluation Society *Guidelines for Ethical Conduct* <<http://evaluationcanada.ca/site.cgi?section=5&ssection=4&lang>>; International Council of Museums *Code of Professional Ethics* <[http://icom.org/ethics\\_rev\\_engl.html](http://icom.org/ethics_rev_engl.html)>.

<sup>38</sup> **Indigenous:** *Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services* <<http://www.cdu.edu.au/library/protocol.html>>. **Entomology:** Union de l'entomologie française, *Code de déontologie de l'UEF*, <<http://insecte.uef.free.fr/Code%20de%20d%E9onto.htm>>; Fédération suisse des préparatrices et préparateurs en sciences naturelles (FSPSN/VNPS), *Code de déontologie de la FSPSN* <[http://www.praeparation.ch/fr/FSPSN\\_info.pdf](http://www.praeparation.ch/fr/FSPSN_info.pdf)>, <<http://insecte.uef.free.fr/Code%20de%20d%E9onto.htm>>.

<sup>39</sup> All of the previous discussion has concerned the macro view. It is also important to acknowledge that some collecting institutions have implemented codes of ethics that are specifically created to meet their own needs and those of their stakeholders: for example, National Museum of Australia <[http://www.nma.gov.au/about\\_us/corporate\\_documents/ethics\\_statement/](http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/)>; AIATSIS, *AIATSIS Audiovisual Archive Code of Ethics* <[http://www.aiatsis.gov.au/audiovisual\\_archives/audiovisual\\_archives\\_collection\\_management\\_policy\\_manual/code\\_of\\_ethics](http://www.aiatsis.gov.au/audiovisual_archives/audiovisual_archives_collection_management_policy_manual/code_of_ethics)>.

### Legal Considerations

- Was the object legally excavated?
- What are the legal consequences if it was illegally excavated?
- Was it legally exported from its country of origin?
- If it was illegally exported is there a risk that there will be a claim for its return, by the government from which it was exported?
- Was it legally imported into the country in which it is presently situated?
- If so what are the legal consequences of that illegality?
- If it is not already in Australia, will its import into Australia be legal under Australian law?
- Does the provable provenance of the object establish that the vendor has good chain of title?
- If there are gaps in the chain of title, what is the risk that there will be a claim for the return of the object by its true owner?

The answers to these questions may well persuade the decision-maker to turn down the acquisition. If it does not, the questioning should not end there: even if consideration of the legal issues indicates that the acquisition would be legally safe, it may still breach the ethical standards of the museum profession.

### Ethical Considerations

- Does the purchase comply with the ICOM Recommendations and Code of Ethics?
- Does the purchase comply with the Museums Australia Code of Ethics?
- Does the acquisition comply with the Code of Ethics of the institution?
- Given the international importance of the object, might it be helpful to consider the attitudes expressed in the Codes of Ethics of museum organisations in other key jurisdictions such as the USA or UK?

The full texts of these documents are all readily available to museum professionals so the following extracts relating to the acquisition of collection material are provided merely to illustrate that they all share similar intent albeit with (sometimes significantly) different wording.

#### *ICOM Code of Ethics for Museums*

*The ICOM Code of Ethics for Museums has been prepared by the International Council of Museums. It is the statement of ethics for museums referred to in the ICOM Statutes. The Code reflects principles*

*generally accepted by the international museum community. Membership in ICOM and the payment of the annual subscription to ICOM are an affirmation of the ICOM Code of Ethics for Museums.*

## *2.2 Valid Title*

*No object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. Evidence of lawful ownership in a country is not necessarily valid title.*

## *2.3 Provenance and Due Diligence*

*Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in or exported from, its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item from discovery or production.*

*Principle: Museums must conform fully to international, regional, national, or local legislation and treaty obligations. In addition, the governing body should comply with any legally binding trusts or conditions relating to any aspect of the museum, its collections and operations.*

## *7.1 National and Local Legislation.*

*Museums should conform to all national and local laws and respect the legislation of other states as they affect their operation.*

## *7.2 International Legislation*

*Museum policy should acknowledge the following international legislation which is taken as a standard in interpreting the ICOM Code of Ethics:*

*\* UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention, First Protocol, 1954 and Second Protocol, 1999);*

*\* UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970);*

- \* *Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973);*
- \* *UN Convention on Biological Diversity (1992);*
- \* *Unidroit Convention on Stolen and Illegally Exported Cultural Objects (1995);*
- \* *UNESCO Convention on the protection of the Underwater Cultural Heritage (2001);*
- \* *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (2003).*

#### 8.5 *The Illicit Market*

*Members of the museum profession should not support the illicit traffic or market in natural and cultural property, directly or indirectly.*

*Australia Museums Association Code of Ethics for Art, History & Science Museums (1999)*

- 3.2 *Museums Australia fully supports the international efforts of UNESCO, ICOM and other organisations to control and eliminate international trafficking in stolen and/or illegally exported works of art..., antiquities...and any other museum objects.*
- 3.3 *Museums Australia supports the UNESCO Convention on the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970. Each museum should comply with the terms and ethical principles of the Convention so far as these are applicable to an individual museum authority. The Australian Government is a signatory to this Convention.*
- 3.4 *A museum should not acquire...any object, unless the governing body and responsible officer is satisfied that the museum can acquire a valid title to the ... object in question and that in particular it has not been acquired in, or exported from, its country of origin and/or any intermediate country in which it may have been legally owned, in violation of that country's laws. However where the validity of ownership is in question, the museum could act as custodian pending resolution.*
- 3.9 *If a museum should have in its possession an object which can be demonstrated to have been exported or otherwise transferred in violation of the principles of the UNESCO Convention and the country*

*of origin seeks its return and demonstrates that it is part of that country's national heritage, the museum should, if legally free to do so, take reasonable steps to co-operate in the return of the object to the country of origin.*

#### *United Kingdom: Code of Ethics for Museums*

- 5.9 Reject any item if there is any suspicion that it has been stolen unless, in exceptional circumstances, this is to bring it into the public domain, in consultation with the rightful owner.*
- 5.10 Reject items that have been illicitly traded. Note that the UNESCO Convention (on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property) was finalised in 1970. Reject, therefore, any item if there is any suspicion that, since 1970, it may have been stolen, illegally excavated or removed from a monument, site or wreck contrary to local law or otherwise acquired in or exported from its country of origin (including the UK), or any intermediate country, in violation of that country's laws or any national and international treaties, unless the museum is able to obtain permission from authorities with the requisite jurisdiction in the country of origin.*
- 5.11 Reject any item that lacks secure ownership history, unless there is reliable documentation to show that it was exported from its country of origin before 1970, or the museum is acting as an externally approved repository of last resort, or in the best judgement of experts in the field concerned the item is of minor importance and has not been illicitly traded.*
- 5.12 Contact colleagues and appropriate authorities both in the UK and overseas for any information or advice that may be necessary to inform judgement regarding the legitimacy of items considered for acquisition or inward loan.*
- 5.13 Comply not only with treaties which have been ratified by the UK Government, but also uphold the principles of other international treaties intended to curtail the illicit trade, if legally free to do so.*

#### *Conclusion*

Interestingly, few collecting institutions in Australia have yet fully articulated their own statements as to ethical standards. Some simply adopt the Museums Australia code<sup>40</sup> but most are silent about such issues.

Nevertheless, when one obtains rigorous answers to the legal issues and then applies those answers to the ethical standards expressed in the international, national and collegiate codes, as well as any ethical code governing the individual institution, it would be a 'brave' director who recommended the purchase of the kylix to his or her board of trustees.

#### **6.5.4 1970 or 1972 cut-off dates**

Many museums around the world use the dates 1970 or 1972 as a cut off for determining whether it is appropriate to buy illegally exported material.

These dates relate to the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. It was adopted by UNESCO on 14 November 1970 and became effective on 24 April 1972.

This treaty has no binding legal effect in itself. Each country has to enact its own legislation to give effect to the Convention and Australia did not do so until the Act of 1986. Australia ratified the Convention by passing the *Protection of Movable Cultural Heritage Act 1986* (the '**Act**'), giving the 1970 Convention force in Australian law.

While this Act does provide certain protections to objects forming part of the movable cultural heritage of a foreign country, that protection is not retrospective. It applies only to material that was illegally exported from its country of origin subsequent to the Act coming into force.

Accordingly, whether an item was exported from its country of origin before or after either 1970 or 1972 is not particularly important from a legal perspective. For Australia, the key date is 1986. However, in terms of compliance with professional codes of ethics, it is logical that the key date is 24

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<sup>40</sup> See the ethics statement of the National Museum of Australia <[http://www.nma.gov.au/about\\_us/corporate\\_documents/ethics\\_statement/](http://www.nma.gov.au/about_us/corporate_documents/ethics_statement/)>: 'Professional behaviour of staff of the National Museum will be in accordance with the Codes of Ethics for Art, History and Science Museums published by the Council of Australian Museum Associations in 1985...'. (Note that this Code was revised by Museums Australia in 1994 and 1999 – but for some reason it is only the earlier and outdated edition that is upheld.)

April 1972 – the date that the Convention became effective. That said, many codes take the earlier date, 1970 as the key date.

Such distinctions are not particularly important because a true regard for ethics is not regulated by fine distinctions as to which date is applicable. Nor are they defined by one's legal position. The ICOM code, Museums Australia code and the UK Museums Association code, all make it clear that one must look to the **principles**<sup>41</sup> of the relevant Convention not the narrow **legal** analysis of its enforceability in the local jurisdiction at any particular date.

As Philippe de Montebello, director of the Metropolitan Museum of Art, said in 2007 of his own antiquities department, 'We buy almost nothing anymore.'<sup>42</sup> This is not because the museum has lost its hunger for acquisition; nor that the money has run out. It is simply that some kinds of acquisitions are simply too dangerous to the reputation of the institution, notwithstanding that they may be perfectly legal.

#### ***6.5.5 Ethical use of the collection: the example of strategic loans***

Almost all of the above discussion is focussed on the ethical issues in acquiring collection material. The story does not end there. The ethical obligations follow through to the uses that may be made of the collection. Such matters are discussed in the Codes of Ethics that apply to Australian collecting institutions.

One example of problematic (but not necessarily unethical) conduct is the 'strategic loan'. This is the loan that is made not for curatorial reasons but for the purposes of establishing or maintaining a relationship with a party that is financially, socially or politically powerful. Examples may include the loan of collection material by a public collection to a chain of shopping malls or casinos; to a benefactor who is having a dinner party and needs a couple of important oil paintings to improve the ambiance of splendour and stimulate the juices of philanthropy; to a politician who wants a picture for his or her office (or home).<sup>43</sup>

Many institutions deal with these pressures by maintaining a strategic loan collection that is quite separate from the permanent collection. This is

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<sup>41</sup> See clause 3.9 of the Australian Code and clause 5.13 of the UK Code.

<sup>42</sup> 'Collecting Antiquities, Cautiously, at the Getty', Randy Kennedy, NY Times 26 June 2007.

<sup>43</sup> For a university collection, the irresistible power may be the vice-chancellor; for a regional museum, the mayor or city engineer; for a state collection, a Minister or Premier etc. Power wears different disguises.

particularly common where the institution has an obligation to provide art for the offices of its political masters. In this way, the protection of the permanent collection is assured but the other ethical issues remain undiminished.

There is an obvious ethical issue when there is inappropriate pressure to apply the benefit of a public asset for private purposes – albeit a purpose that may also benefit the institution. The issue goes far beyond that. What is the conservational impact of the strategic use on the collection item? Is the use of the item in this way consistent with the public purposes of the collection? Is it consistent with the statute or constitution of the institution? Is there a real chance that the conduct will deleteriously affect the institution's reputation? Is it a conduct that, when learned of by others of influence, may create an undesirable precedent? Is it a conduct that the board of the institution would want to see featured on the front page of the Sunday newspaper?

## **6.6 Collection management policies**

### ***6.6.1 Introduction***

If it is hard to define what 'good management' is, it is impossible to accurately and concisely set down how to ensure it. Many authors try, and their collective writings undoubtedly contain much collective wisdom. In this discussion we focus on the policies that relate to the management of the collection rather than those relating to the management of the museum itself that will also require policy development.<sup>44</sup>

'reCollections', part of the Australian Museums On Line website, provides a very succinct summary of the management schema that applies to every museum.<sup>45</sup> It has four constituents:

- **policies** set the framework for decision-making in museums.<sup>46</sup>  
Good management ensures that policies are developed, kept up to date, and are understood by all staff;

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<sup>44</sup> Such as privacy, OH&S, human resources.

<sup>45</sup> <<http://amol.org.au/reollections/4/1/03.htm>>.

<sup>46</sup> Museum policies commonly cover the following topics: research, sponsorship, education, volunteers, cultural diversity, interpretation and exhibitions; collection management and conservation; and access to or the return of indigenous material, secret or sacred objects and/or human remains, (ibid).

- **plans** are the blueprints for action, which set out how the aims and policies will be achieved. Policies need plans to turn them into realities. Good management creates and implements plans to cover relevant areas of museum operations;
- **procedures** are the step-by-step instructions on how to carry out tasks they carry out policy and implement plans. Good management develops procedures and ensures that they are followed; and
- **people** are the resources who make the operations of the museum possible. Good management provides for the needs of people.

It is essential that these management policies, plans and procedures are in writing and that they be formally adopted and regularly reviewed by the governing body.<sup>47</sup>

### ***6.6.2 Mission statement***

Every museum needs a mission statement.<sup>48</sup> This document summarises the purpose of the museum. Why is it there? What is it intended to collect, preserve or research? This is the key document in any collection policy. It is the document that tells the world what the organisation is there to do. It is also the document that spawns all of the collection management policies, plans and procedures. By articulating the organisation's purpose, the mission statement provides the touchstone upon which all policies are developed and decisions made.

It should be written. The process of articulating the mission statement is always harder than one might think. All of the organisation's stakeholders should be involved in the process and participants should accept that, when it comes to summarising the basic purposes of the organisation, dissent often follows. This is no bad thing. What the process does is winkle out the, often conflicting, preconceptions and expectations of the stakeholders. It provides an opportunity to ensure that all participants are working to the same goal. Consistency of

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<sup>47</sup> ICOM Code of Ethics, 6.1.

<sup>48</sup> Also referred to as the 'Statement of Purpose', or 'Aims & Objectives'.

commitment is as important as consistency of policy development or of decision-making.

### **6.6.3 Collection policy**

The collection policy is really an umbrella of policies:

- accessioning policies
- registration policies
- conservation policies
- collection development policies
- deaccessioning policies
- disposal and destruction policies<sup>49</sup>

It should articulate:

- the intended scope of the collection;
- what the museum intends to collect;
- the criteria to be applied when acquiring collection material;
- the process by which such decisions are made including the application of due diligence guidelines;
- how that material may be used;
- how it will be managed, maintained, conserved, protected;
- how it will be stored;
- whether it may be deaccessioned; and
- the circumstances in which and the means by which, the disposal of collection items is permitted.

Some institutions deal with these areas briefly and within the same document. Others have more fully articulated and stand-alone policies. This is one area in which 'more is better'. The one paragraph or even one page acquisition policy is likely to be a mere sop rather than a real tool of effective management.

Museums Australia has provided the museum community with a marvellous on-line resource for anyone faced with developing an acquisition policy<sup>50</sup>. It is essential reading.

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<sup>49</sup> Unsurprisingly, these are most fully spelled out in the archive sector. Given the presumption of permanence in that sector, the machinery by which material may be deaccessioned and how it may be disposed of, is much more highly regulated than in other collection disciplines. See, for example, 'Destruction of Records Not Covered by a Disposal Schedule', PROS 97/003 Specification 2, Public Record Office Victoria.

## 6.7 ICOM Recommendations (Ethics of Acquisitions, 1970)

The museum of today is not a mere repository of objects: it is concerned with the acquisition of the objects as an integral part of a specific programme of:

- scientific research,
- education,
- conservation,
- the demonstration of National and International, Natural and Cultural Heritage.

Some museums may encompass all aspects of this far-reaching programme, whilst others may specialize in certain parts of it. Consequently no object should be acquired which has no part to play in the aims of the museum as demonstrated by its programme.

The object being considered for acquisition may come from anywhere within a wide spectrum of definitions, the two extremes of which may be briefly summarized as being:

- objects recognised by scholarship and/or the community where they have their full cultural significance as having a unique quality and are therefore beyond value;
- objects which, though not necessarily rare in themselves, nevertheless have a value which derives from their cultural and natural environment.

The significance of the object (cultural and scientific) will depend upon its being fully documented. As a matter of principle no acquisition should be made without this full documentation, with the possible exception of certain objects which come near to that end of the spectrum characterized by definition (a), paragraph 3, when the

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<sup>50</sup> See <<http://amol.org.au/recollections/4/4/index.htm>>.

essential documentation relative to the latter may be obtained by systematic research after acquisition.

In most fields, direct acquisitions are best obtained by scientifically conducted research missions. They may occur in the mission's own country or abroad. In the latter case they must be conducted with the agreement or the cooperation, and according to the laws of the host country.

Direct acquisitions can also be made through cooperation with a museum or with an institution responsible for the safeguard of the national cultural heritage, in the country possessing the required object. These same principles may also be profitably applied 'mutatis mutandis' to objects which come near to that end of the spectrum characterized by definition (a), paragraph 3.

The object acquired by direct means is as well documented as possible; this is not always the case with indirect acquisitions. Whereas direct acquisitions conducted as described in paragraphs 5 and 6, will always conform to ethical standards, this may not always be the case with the indirect system.

The indirect acquisition, which includes the gift and bequest, is that which has been acquired through one, or more intermediaries. When a museum feels obliged to acquire an object indirectly, this should always be done in observance of the laws and interests of the country from which it is obtained, or the country of origin when the country from which it is obtained is only a place of commercial transit.

The responsibility of the museum professional in those museums which have as their primary function the preservation of the national heritage is threefold:

- to acquire and preserve for the country concerned a comprehensive collection illustrating all aspects of the nation's cultural and natural heritage;

- to control the international movement of objects belonging to this heritage;
- to cooperate with foreign museums and other scientific institutions to ensure adequate representation of that culture on an international scale.

It is imperative that if the museum is to fulfil completely its roles in education and international understanding, its professional staff must observe the highest ethical standards not only in the very important process of acquisition but also in the other fields of their professional activity.

### ***6.7.1 Suggestions for the implementation of the recommendations***

Museum programmes should be published. This will encourage exchange and outside help.

The acquisition of objects by any museum should not be limited to what is necessary for the exhibition halls, but sufficient objects should be collected for study and conservation purposes, for exchange with and for supply to local museums and for international exchange. However, objects should never be accumulated solely for their commercial value.

Material for exchange should encompass objects of sufficiently high standard to attract objects of similar standard from other museums. Exchange should mean not merely object against object but also object against services and equipment.

Documentation acquired by a scientific expedition should be made available to the country in which the expedition was carried out, after a certain agreed period of time, during which the scientific rights are reserved to the discoverer. The same documentation should be made available under the same conditions to the museum in the country which organised the expedition.

With due regard to legal requirements and UNESCO recommendations and conventions relative to sharing the products

of field research, every endeavour should be made to respect the ecological association of a group of objects. Certain objects and collections are sometimes lent to a foreign museum or scientific institution for study purposes. On such occasion they should be returned to the institution to which they belong in the shortest time possible.

With due regard to legal requirements and **UNESCO recommendations and conventions**, the museum which has reason to doubt the licit quality of a previously acquired object should contact the museum or other professional organisation in the country of origin with a view to examining, in each particular case, the steps which should be taken to best preserve the interests of both parties.

If a museum is offered objects, the licit quality of which it has reason to doubt, it will contact the competent authorities of the country of origin in an effort to help this country safeguard its national heritage.

Gifts and bequests should only be accepted with a proviso that in the event of any object proving to have been illicitly exported from another country the authorities of the museum should be empowered to take action as above.

Museums of those countries which, by virtue of political or economic circumstances, hold an important part of the cultural property of countries which were not in a position to safeguard their cultural heritage adequately, should remind their authorities and collectors that they have a moral duty to assist in the future development of museums in these countries.

The museums of any country which bind themselves to follow the ethical rules and the practical proposals formulated in Paragraphs 1 to 19 of this document will agree to offer each other preferential treatment in all professional activities, compatible with the existing laws.