

CHAPTER FIVE: DEACCESSIONING¹

1. Meaning of Deaccessioning

The word 'deaccessioning' has so far escaped the attention of dictionary authors, yet in the world of collecting institutions, it is commonly used. Even amongst collecting institution professionals, however, there is no certainty as to its meaning or scope. At the very least, it means the administrative removal of an item from the collection.² Others, however, insist that the term includes not only the administrative removal of the item from the collection but also its disposal. My view favours the former, because deaccessioning and disposal are different and distinct procedures, with different risks and different purposes. After all, every disposal of collection material has been preceded by a deaccessioning – but not all deaccessioning is followed by disposal.³

Perhaps the differentiation may not be of great significance, for it would be unusual to contemplate the removal of an item from a collection without, at the same time, considering the appropriate manner of disposal. For the purposes of this chapter, deaccessioning is treated as being separate from disposal, although they live their lives as conjoined twins.

2. Context

It is fascinating that the word 'deaccessioning' has such different implications depending on the kind of collecting institution in which it is uttered. In libraries, the deaccessioning of duplicate or out-of-date material is uncontentious in either principle or practice. Similarly, the deaccessioning of material in social history, technology, and natural history collections is both necessary and commonplace.

In art museums however, there is a longstanding controversy as to the propriety of deaccessioning. (The reasons for and against deaccessioning are discussed below.)

Archives are quite different again. Of all participants in the collection sector, archives have the most developed machinery for examining and controlling the deaccessioning process. It is not surprising that they have stringent clearance, justification and descriptive requirements given that archive collection material bears a very high presumption of permanence – but only for its assessed period of importance.

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² By removal from the collection register, catalogue or database that details what material is in the collection.

³ It's another version of, 'all cows are four-legged animals; not all four-legged animals are cows'.

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3. Rationale for deaccessioning

There are many reasons for how a work comes to be deaccessioned, including the wish to rid the collection of inferior material, clerical errors, space problems, the cost of maintenance and storage, the decay, deterioration or disease of the item, irretrievable loss or irreparable damage, duplication, the desire to raise money for the purchase of superior or more appropriate material, change of collection focus, non-compliance with the accessioning policy, repatriation and so on. No longer can we afford to treat a collecting institution as a mausoleum of culture.

There is nothing inherently wrong with deaccessioning. In itself there is usually nothing illegal or unethical about deaccessioning. It is done all the time.

- **Collection improvement.** But for deaccessioning, it would be impossible for museums to develop or even maintain their collections. The cost of administering, storing, securing, conserving the collection is the same whether the work is core to the collection or merely the consequence of an earlier, errant purchasing decision.
- **Collection function.** Some collection material, such as some of the material in natural history collections, is specifically held so that it can be used in research programs – many of which require the damage or destruction of the material. The books in public libraries have similarly limited life expectancies. This is material that was accessioned in the knowledge and expectation that it would, one day, be deaccessioned.
- **Change of collection function.** Some would argue that as the primary role of museums and art galleries has transformed from collecting to public access and engagement, these institutions need fewer works but of greater quality or greater public interest.
- **A consequence of other decisions.** Where a government or an institution decides to repatriate collection material such as human remains or sacred objects; where a library decides to close a collection area or a particular type of material (such as, say, periodicals).
- **Application of governing rules.** For some types of collections (such as government archives) deaccession is a normal procedure that is mandated by legislation.

The general deaccessioning policy of the Museum of Applied Arts and Sciences in New South Wales brings together a number of these points:⁴

In summary, objects are assessed for deaccessioning on the basis of their relation to the current Collection Development Policy, their significance, condition, cost of their conservation and storage, whether they duplicate other objects in the collection and where an individual, group, organisation or community establishes greater claim on ownership than the Museum for 'moral, ethical, personal, compassionate, cultural, religious or legal reasons

Irrespective of the field of the collection, the golden thread of this issue requires that the policies of the institution be clearly and publicly articulated and that the mechanisms by which such policies are implemented, be transparent and immune from accusations of impropriety. Even the most fervent disciple of deaccessioning would agree that there are inherent dangers involved in the process and that the 'when', 'what', 'why' and 'how' of deaccessioning, determines whether such conduct is appropriate professional activity or a bastard act.

4. Arguments against deaccessioning

There are various situations or factors that may indicate that deaccessioning would be inappropriate or even unlawful.

- **Statutory prohibition.** Where the organisation has a governing statute, that Act, or regulations or administrative directives that may flow from it, may limit or prohibit certain deaccessioning.⁵

⁴ Museum of Applied Arts and Sciences, "MAAS Collection Development Policy" (approved December 2015) at 10: available at http://www.powerhousemuseum.com/collection/collection_development_policy.pdf.

- **Constitutional prohibition.**⁶ Deaccessioning may be contrary to the constitution of the organisation. More often, constitutional limitations relate to the disposal of collection material rather than its mere deaccessioning.
- **Transaction forbidden.** These may arise from preconditions imposed on gifts and bequests. They can also arise from trust arrangements. For example, if the item was donated to the institution on the condition that it not be disposed of, or on the condition that it be on public display at least two months a year, any attempt to deaccession and dispose of the item may be in breach of the conditions of gift.
- In some of these situations, depending on the strict legal effect of the transaction documentation, although the intention of the donor may have been clear, it may not be legally enforceable. For example, in many bequests the intentions of the deceased are expressed in a manner that is 'indicative' but not technically 'enforceable'.⁷ In such cases, deaccessioning may raise ethical questions but may not be unlawful.
- **Characteristic of the material.** In art galleries, there has been considerable and ongoing debate as to whether any deaccessioning is appropriate, or indeed ethical. In the art gallery context, it is argued that the object is not just rare, scientifically, historically or socially significant: Each work is the unique expression of its creator. It is an approach that sees the inferior works of an artist as important (if not as valuable) as the superior ones, for each work is an insight into its creator and none is a substitute for any of the others.
- **Danger of fashion.** Artists and their work are subject to the cyclical vagaries of fashion, and a work that was seen as sufficiently significant to warrant acquisition in one era may well fall from grace in a later era – only to undergo reassessment in a yet later era. There are many examples of museums that have deaccessioned major holdings at the low ebb of the fashion tide only to be unable to buy them back at high tide. This factor is particularly important in art museums where this danger is particularly high.
- **Danger of damage to market.** The fact that art galleries collect the work of living artists creates another complexity: When the work of a living artist is deaccessioned from a public collection, the market for the artist's work is likely to be deleteriously affected. For this reason, some art museums have a policy prohibiting the deaccessioning of living artists.
- **The whole is greater than the parts.** There are museums in which the collection is interesting for reasons other than merely being a sum of its parts. For example, the library of a famous philosopher or composer may be more interesting because of what it tells us about that person than the value of the individual books it contains. These are situations in which the public has an interest in maintaining the collection intact: the collection is itself a collectable.
- **Damage to donor relationships.** No donor (family) wants to see their generosity discounted and deemed unworthy. Deaccessioning may be objectively warranted, but its effect on the organisation's past and future donors can be very destructive. Much diplomacy is required and controversy must be averted.
- **The deaccessioning is for an unethical or controversial purpose.** Even when deaccessioning is permitted, irrespective of the type of institution, the deaccessioning of material from a collection can be controversial. It is not sufficient to argue that the money from the sale is to be applied to the objects of the museum. (These objects may include administrative purposes.) All of the national and international codes of ethics are clear that, where any material is sold, the money raised must be applied to the purchase of

⁵ It is interesting to note that deaccessioning is a central element in most of the European and British controversies concerning repatriation of cultural material – the Elgin Marbles (or the "Parthenon Marbles" as they are now often called) are but one example. In those jurisdictions, the material held in the public institutions is actually owned by the State and it is not within the power of the collecting institution to deaccession any of its collection unless it is legislatively empowered to do so. It is not a matter for the discretion of the institution.

⁶ No, not THAT constitution!

⁷ For example, if the deceased said in her will: 'I give my Grecian urn to the Australian Museum. They should never sell it as it has been precious to my family for many generations'. The gift made in the first sentence is simple and complete. The second sentence is only an unenforceable request. It has moral or ethical weight but is not legally binding.

other material for the collection. It is not acceptable for such sums to be applied to construction, renovation, administration and the like.⁸

5. Controversy

In the 1960s and 1970s, the American museum world seemed to be continually rocked by 'deaccessioning scandals'. More often than not, these were really 'disposal scandals'. These affected not only small under-financed and under-staffed museums; they included some of the very biggest names in the field: The Metropolitan Museum of Art,⁹ the Brooklyn Museum, the Norton Simon Museum, the Smithsonian Institution, the Boston Museum, the Carnegie-Mellon, the John Hopkins University Museums, the George F Harding Museum and the Art Institute of Chicago, as well as smaller ones such as the Museum of American Indian-Heys Foundation.¹⁰

The United States experience is informative but not determinative in Australia. There are some very important differences between Australian collecting institutions and those of the United States. In particular, most Australian institutions are government-owned and publicly-funded; in the United States, most are non-government and privately funded. The standards applied to collection management decisions in a non-government, privately funded environment are subject to less regulation and less rigorous review and audit than those in governmental, publicly-funded institutions.

In Australia, there have to date been few major deaccessioning or disposal scandals. This may be because Australians are more honest or more professional than their American counterparts, which seems improbable; or because the collections are not worth misappropriating, which is simply untrue. Rather, most collecting institutions have learnt from the American experience and have either introduced procedures that will help avoid improprieties or are rather better-educated as to the issues involved.

There was a considerable amount of deaccessioning in the 1930s, 1940s, and 1950s, as art galleries around Australia swapped material so as to fill gaps in their collections. In the 1980s, the most controversial examples involved the removal of objects from collections and handing them back to traditional owners. Certainly, the 1982 deaccessioning and sale by the Art Gallery of New South Wales of two works by Willem Menzler (for the purpose of raising funds for the purchase of an undisclosed larger work), went unremarked, and certainly did not attract the international controversy that the Metropolitan Museum created in the early 1970s when it did similar things, but on a grander scale.

5.1 *A more recent example*

In late April 2004, the front pages of Australian newspapers carried a story of a good man, successful and senior in his profession, tarnished by the innuendo of improper and indeed fraudulent conduct, and as the articles implied, taking 'retirement' before the final ignominy of being sacked. This was the most recent, and very public, deaccessioning scandal. The difference this time was that it was in Australia.

Did it really merit front-page treatment? Yes, probably it did. The scandal had taken place over the course of several years in the Parliamentary Library of NSW. The collection was old and valuable; there was a strong odour of conflict of interest and the main protagonist, NSW Parliamentary Librarian, was so naïve as to make newsworthy incriminating statements, seemingly on request.

Had he really done anything so wrong? Certainly he did not think so. As far as he was concerned he was selling off those parts of the collection that were no longer useful to the library so that the shortage of shelf space could be addressed. He believed that the criteria of selection for deaccessioning and the chosen manner of disposal had been appropriate and in the best interests of the library. In his view, there was no wrongdoing because the money

⁸ In this context, we note a suggestion from a junior government backbencher that the National Gallery of Australia's "Blue Poles" be sold to pay off government debt. He was quickly slapped down by the Commonwealth Finance Minister, who labelled the work "a national treasure", that the government had no plans to sell the work and that it would be a matter (in any case) for the board of the Gallery to "*manage its portfolio*".

⁹ Mr Hoving, again. Shortly after Ms Adelaide de Groot died, leaving a Van Gogh and a Rousseau as part of her bequest to the Met, Hoving quietly sold them both to fund another purchase ...

¹⁰ Rumbings of outrage over deaccessioning practices continue: see, for example, the 2011 report of a range of US collecting institutions putting up various works of art for sale: http://www.nytimes.com/2011/01/27/arts/design/27sell.html?_r=1 .

thus raised was to go to the administrative purposes of the library, purposes that needed such funding because of financial problems caused by budgetary cutbacks.

There was more than one victim in this scandal. Certainly the Parliamentary Librarian was one, although it must be said that his wounds are entirely self-inflicted. Another, may be the collection, although it may well be that the works were appropriate for deaccessioning. Without doubt however, the reputation of the NSW Parliamentary Library and potentially the entire public collections sector was tarnished.

Every senior professional working in public collecting institutions is aware that, even where there is no suggestion of conflict of interest, deaccessioning is highly contentious and, throughout the world, is a common cause of public controversy. It is particularly so in the world of art galleries: Art is subject to fashion and the whim of the museum's current director and it is always tempting to dispense with yesterday's fashion in order to acquire works of the new. For art museums, two issues make these decisions particularly pointed: first, the works deaccessioned are frequently very valuable; and second, the objects are usually unique. Once gone, they are irreplaceable.

In social history collections and natural history collections, deaccessioning is frequently undertaken to rationalise holdings that contain unuseful multiples (how many flatirons or duplicate rock samples are really necessary). In libraries, deaccessioning is the natural result of the ephemeral quality of some of the collection and the inherent characteristics of the purposes for which the material was initially required (such as editions of text books for public lending that have been superseded or multiples of series no longer required when the series is digitised). Given the cost of storing, conserving, insuring, securing, and documenting collection objects, there is no question that all modern collection institutions have to undertake prudent deaccessioning.

What is to be learned from the scandal at the Parliamentary Library? It is not that deaccessioning is, in itself, bad. Rather, the problem is why it is undertaken. Further, it should be remembered that it is almost never the *deaccessioning* itself that causes the problem. It is the *disposal*.

In the case of the Parliamentary Library scandal, even the newspaper reports are instructive:

- The Parliamentary Librarian's downfall happened because there was no detailed, considered and approved policy or procedure in place by which collection items could properly be deaccessioned and disposed. Had he been implementing a policy and procedure that had been carefully articulated and formally approved, there would have been little scope for controversy and even less for scandal and ignominy. Deaccessioning and disposal should be a fundamental part of every collection management policy. If it is not, the management policy is, quite simply, inadequate. This is the responsibility of the institution's senior management and the governing entity that is responsible for the governance of the organisation.
- It is no answer to say that the money raised by the deaccessioning and disposal was to be put to the administrative purposes of the organisation. It is clearly stated in all museum codes of ethics, national and international, that any money raised by this process must be reinvested in the collection itself and not used for administrative or capital purposes.
- The process should never allow a cynical third party (such as a newspaper reporter) to allege that the process was tainted by conflict of interest. This is always difficult, for one of the characteristics of humans is that we can always convince ourselves that we are acting with propriety and in the good of the cause. Ethics are things that are breached by others. For this reason, the judgement should not be left entirely to the sensibilities of the individual. The policy and the procedure should assist (indeed require) the individual to act appropriately. This is a basic tenet of good management and governance and it must apply to the director and governing entity of the institution as well as their subordinates.
- There is no template that can provide an appropriate deaccessioning and disposal policy for every institution. Each has different types of collections, different histories, different collection rationales, and different staffing and financial and resources. That said, each institution should have such a policy. It is a core to risk management and is an essential of good governance.

- When a scandal does erupt, the institution should have a procedure in place by which it can make certain that the figure at the centre of the fire does not talk to reporters. The last person who should have been speaking to reporters was the Parliamentary Librarian – the focus of the media heat. This task should have been in the control of someone trained and skilled in handling the media in crisis situations. How many of our directors have crisis media skills training? How many have a protocol that swings into effect when that first reporter telephones? Many would say that they don't need it. The Parliamentary Librarian may well have had a similar view.
- The Parliamentary Librarian was an honest man, deeply committed to his collection and his profession. But that saved neither his reputation, nor his collection, nor his profession, from being tarnished. If anything positive is to be learned from this sad story, it is this: deaccessioning and disposal is both necessary and dangerous. Accordingly, every public collecting organisation should have very carefully thought through, clearly articulated, policies and procedures for ensuring the appropriateness of such processes. Such protocols protect those responsible for the governance of the collection. They protect the collection from those same people.

6. Ongoing debate

The following, is an excerpt from the *UK Museums Journal*:¹¹

YES: David Ewing, director, Geffrye Museum, London
The Geffrye Museum follows the MA guidelines. In principle, items bought by museums are held on behalf of the public and the aim should be to keep the collections in the public domain. We would offer items to other museums first and then sell on the open market only if there was no public home for them. The proceeds would then be used to enhance the collection. This situation hasn't arisen at the Geffrye, but before disposing of any object we would need to be absolutely confident about title and know its provenance to make sure disposal would not be disputed. The material we hold in our collections is relatively straightforward; we don't hold culturally sensitive material or human remains. The Geffrye has a well-defined collecting policy, a small purchase fund and limited space, so the collection is not growing very fast. We probably acquire an average of 100 items a year. In my view, disposal of museum collections is justifiable as a process of rationalisation; it should never be done in order simply to raise money. The benefits of selling should be about enhancing the collection and not about developing an income stream for the museum. Rationalising the collection should allow scarce resources to be directed more efficiently. Many museums hold surplus material in their collections, which takes up valuable storage space and

NO: Timothy Wilson, Keeper of Western Art, Ashmolean Museum, Oxford
The tacit contract between UK museums and donors is, in my experience, different from America (where deaccessioning to buy more coveted items is a given), especially in museums such as mine. The Ashmolean has grown since 1683 by the generosity of donors who have regarded it as a permanent home for their treasures. It retains the sometimes eccentric character of a collection of collections. People still regularly seek assurances that the museum will never sell works of art they might leave us. Ideal donors let us accession items suitable for the museum and sell the remainder to make acquisitions in their name. But sales of things once accessioned, with the occasional exception of narrowly – defined duplicates, are a betrayal of donors' expectations. Selling things of doubtful authenticity or that are out of fashion is no better. Increasingly, the history of our great museums is regarded as worth studying. The late Clive Wainwright showed how disastrously post-1945 deaccessioning of Victorian art and of 'mistakes' weakened the V&A's ability to display its own early history, a crucial chapter in world museum history. The history of faking is a developing branch of art history and the source of fascinating exhibitions; and if we root out fakes, how do we teach connoisseurship? So let others deaccession; it is not

¹¹

(2004) January *Museums Journal* 41.

requires curatorial and conservation care. It makes sense to dispose of it ethically and if it generates some income to benefit the core collection, so much the better.

The dynamic nature of this area was demonstrated in October 2007 when the UK Museums Association changed its code of ethics on deaccessioning. After debate at its annual conference, it now permits disposal for financial gain in exceptional circumstances. These are:

- when it will improve public benefit from the remaining collection;
- is not done to meet a short-term funding deficit;
- Is a last resort measure;
- is done after prior consultation; and
- if the deaccessioned item lies outside the core collection.¹²

It is interesting to consider how this will work in practice.¹³ Its dangers are considerable. Each of the criteria is flawed in that it provides strength only to the hands of those who seek convenient solutions. For example:

- Any competent lawyer can construct a cogent argument for the deaccessioning of collection material on the ground that it will improve public benefit from the remaining collection. It is no criterion at all.
- Deaccessioning is not the answer to short-term funding deficits – nor is it the answer to long-term ones. Indeed, those responsible for the governance of the organisation cannot properly look to the deaccessioning of collection items to resolve the organisation's long-term funding deficits. To do so is lazy and irresponsible.
- The vagueness of describing something as a 'last resort', is astounding. One person's 'last resort' is another person's stimulus. It is too easy to say that there was no other option. There are always other options. You might not have worked out what they might be – but to say that something is a 'last resort' tells you more about the decision maker's state of mind than it does about the difficulty of the problem.
- 'Prior consultation' is essential and must be undertaken with all of the stakeholders. Who is relevant will vary but would include internal records, donors, a range of third-party experts, the board and relevant government authorities.
- If the material is outside the accessioning policy that is a good reason to deaccession (unless as with some collections, the history of the collection and its vagaries, is part of the cultural heritage of the collection).

So, how do those responsible for a collecting organisation ensure that its deaccessioning practice is both legal and ethical?

¹² (2007) 185 (November), *The Art Newspaper* 19.

¹³ For example, at the same time that the Association changed its ethical guidelines, Fisk University in Nashville was dabbling its toes in this troubled brook. Georgia O'Keefe donated a 101-piece collection of art and photography to the financially strapped Fisk University. Alice Walton (the Wal-Mart heiress) has offered \$30 million for a 50% interest in the O'Keefe collection. If approved, the collection would spend half its time at Fisk and half at the new museum of American art that Mrs Walton plans for Arkansas. Further, Mrs Walton would pay \$1 million towards refurbishment of the museum, would appoint five members to the committee that oversees the collection and would have an option to purchase the Fisk's remaining 50% should it ever decide to sell. At time of writing, the O'Keefe estate is seeking to stop the agreement, claiming that it contravenes O'Keefe's instructions that the collection not be sold: (2007) 185 (November), *The Art Newspaper*.30.

7. Regulation of deaccessioning

There are four sources of restraint and guidance in relation to deaccessioning in Australia:

- if the institution is established by statute, the statute:
- if the institution is established as a company, the governing constitution:
- any relevant transaction documents: and
- professional codes of ethics.

7.1 Statute

Statutory regulation is of two kinds – specific and general. Where the collecting institution is established by statute, most of those statutes make some glancing reference to deaccessioning. For example, the *National Gallery Act 1975* states:

Section 9: Disposal of works of art from national collection

'(1) Subject to subsection (4), where the Council is satisfied that a work of art in the national collection:

(a) is unfit for the national collection; or

(b) is not required as part of the national collection;

the Council may resolve that the work of art be disposed of by sale, gift or destruction.

(4) The Council shall not resolve that a work of art be disposed of by way of gift or destruction unless the council is satisfied that the work has no saleable value.

(5) Where:

(a) the Council has resolved, in accordance with this section, that a work of art be disposed of; and

(b) the Minister has approved of that disposal;

the Gallery may dispose of that work of art accordingly.'

Where the collection is a line department within a Ministry, (and thus does not have its own legislation), it will still be subject to the general rules of government record management, retention and disposal.¹⁴

Local government galleries and museums are not established pursuant to their own act of parliament. Rather, they are created under the general powers given by the state to local authorities to provide amenities to their residents within their council area. These are governed by general guidelines approved by the council and almost never deal with collection management issues such as deaccessioning. This is the subject of frequent concern. Collections owned by local government museums and galleries are not the property of the relevant gallery or museum but are the property of the local council. They are thus subject to the vicissitudes of local politics: The attitude, understanding and support of the mayor and the general manager of the council are the key to the governance of the museum, irrespective of the desires of the committee apparently charged with the role. The museum and its collection are subject to the funding priorities of the council itself. In museums owned by local councils, no statute prevents deaccessioning and disposal of the collection, in whole or in part. The protection of, or danger to, the collection is political, not statutory.¹⁵

Public archives usually have clear statutory authority for deaccessioning (or 'reappraisal' as it is commonly referred to in that sector.) See, for example, s 24 of the *Archives Act 1983* (Cth).

¹⁴ Except in the case of archives, such rules do not regulate the deaccessioning of collection material although they do affect the documentation relating to each collection item.

¹⁵ A similar situation prevails with university collections – and for a recent example, see the reported moves of Hartford University in the United States in early 2016 to sell a collection of political memorabilia: <http://bigstory.ap.org/article/5258de6c244e49c0aa89bfd27b0694d5/outrage-over-colleges-plans-sell-political-memorabilia>

24. Disposal, destruction etc. of Commonwealth records

(1) Subject to this Part, a person must not engage in conduct that results in:

(a) the destruction or other disposal of a Commonwealth record; or

(b) the transfer of the custody or ownership of a Commonwealth record; or

(c) damage to or alteration of a Commonwealth record.

Penalty: 20 penalty units.

(1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance of the offence, that the record is a Commonwealth record.

(2) Subsection (1) does not apply to anything done:

(a) as required by any law;

(b) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives;

(c) in accordance with a normal administrative practice, other than a practice of a Department or authority of the Commonwealth of which the Archives has notified the Department or authority that it disapproves; or

(d) for the purpose of placing Commonwealth records that are not in the custody of the Commonwealth or of a Commonwealth institution in the custody of the Commonwealth or of a Commonwealth institution that is entitled to custody of the records.

In each jurisdiction, there will be numerous statutes that impose or regulate the retention or disposal of records.¹⁶ These are the starting point for identifying or defining appropriate deaccessioning and disposal procedures. Under that high level of authority there are usually cascading regulatory requirements.¹⁷ For example, government directives (of whatever kind) will generally require that records must be retained for as long as they are needed to meet business needs, the requirements of organisational accountability and community expectations. Those records deemed to be of continuing value need to be identified and retained in a useable form for the appropriate length of time.¹⁸

As soon as the records no longer comply with that directive, they are likely to be suitable for disposal.¹⁹

It is for each public authority to devise a formal disposal schedule and have that approved by the State Archivist. It also must devise and implement its own process for reappraisal and disposal. Such a process will ensure that the disposal is restricted to records that are no longer required for business, accountability or cultural purposes, and that any such disposal will be legal, systematic and consistent.

7.2 Constitution

Some collecting institutions are established as independent corporate entities using the structure of a company limited by guarantee. Such companies are subject to their governing constitution but these too, rarely refer to

¹⁶ For example in Queensland alone, these include: *Public Records Act 2002*; *Public Service Act 1996*; *Electronic Transactions (Queensland) Act 2001*; *Judicial Review Act 1991*; *Freedom of Information Act 1997*; *Evidence Act 1977*; Public Sector Industrial and Employee Relations Directives; Financial Management Standard 1997; Recordkeeping (IS40); Retention and Disposal of Public Records (IS 31); Managing Technology-Dependent Records (IS41); ICT Maintenance and Disposal (IS19); and the *Information Privacy Act 2009*.

¹⁷ Many jurisdictions provide general guidelines to their statutory authorities and departments (for example, Qld: *General Retention and Disposal Schedule for Administrative Records*) but even then each government body designs its own practical reappraisal machinery.

¹⁸ See, for example, the Queensland "information standard" IS31 (Retention and Disposal of Public Records).

¹⁹ If the principles of retention are the positive, then the principles of deaccessioning and disposal are the negative.

deaccessioning. Such constitutions rarely deal with matters of collection management. Where they do, these legal mandates are never as fulsome or as carefully articulated as codes of ethics.²⁰

7.3 *Transactional documents*

These are the documents that relate to the various transactions between the institution and its 'clients'. These may include all forms of conditional deeds of gift, bequests and contracts. They also include all notes and correspondence that relate to the collection items.

Such documents may affect collecting institution's right to deaccession. It is not uncommon, for example, for a benefactor to donate or bequeath an item on the condition that it not be deaccessioned.²¹

Further, there is the question whether such documents should, themselves, be retained or disposed of. Where they provenance, describe or authenticate a collection item, there is no question that they must be retained for as long as the institution considers the item important enough to retain.²²

Even if the item to which the documents relate is deaccessioned and disposed of, it may still be good practice to retain the relevant documentation – for what it then documents is not so much the item but the history of the collection.²³

7.4 *Codes of ethics*

Codes of ethics are not law. They are not enforceable. They carry no legal sanctions. They are merely collective expressions of acceptable conduct within the profession, argued drafted (after extensive consultation and discussion) and developed by the museum profession itself. They are, however, valuable because they are the reflection of collective experience. In the highly contentious area of deaccessioning, it would be an ill-advised decision that was not informed by such statements of appropriate governance and practice.

Internationally, codes of practice in relation to deaccessioning have common themes.

- A collecting institution has a long-term duty to the public to maintain the collection and the items within it. It must balance the duty of maintaining and enhancing collections for future generations with that of providing appropriate services to today's public.²⁴
- A collecting institution must have a clearly articulated accessioning policy so that deaccessioning is less likely to be needed and, if it is, that policy can greatly assist in articulating why a particular item should be deaccessioned.
- The process by which collection items are selected for deaccessioning must ensure that all relevant issues are considered and that the decision is being made for appropriate reasons.
- The persons responsible for making the recommendations and the decisions must be identified. The process must provide in-built safety mechanisms to ensure that such decisions are not the consequence of individual whim or ideology. The participation of an independent and expert third party in the decision-making process is valuable.
- The decision must recognise the interests (legal and otherwise) of the people who made, used, owned, collected or gave the items that are considered for deaccessioning.

²⁰ That said, that where a collecting institution has tax-deductible status, its constitution will (or rather, should) state that, on wind-up, any available assets are to be distributed to another like-minded and non-profit organisation. This presumes, however, that any items (including collection items) are left over after payment of any and all debts ...

²¹ Of course, that word is not usually used. It is more common for the condition to speak of 'not sold' or 'not disposed of'.

²² That said, contemporary practice appears to be for original documentation to 'travel' with the object, and for previous owners to keep only copies for their records.

²³ It can be important to the history of the collection to document how and why an item came into the collection, what happened to it while it was in the collection and, eventually, why it was deaccessioned and disposed of. At this stage, you are documenting the collection rather than individual items within it.

²⁴ 6.4, *Code of Ethics for Museums*, Museums Association UK, 2002.

- The reason for the deaccessioning should be fully argued and clearly recorded.
- The process by which the decisions have been made must be fully and transparently documented.
- The decision as to what is to be done with any money raised by the deaccessioning should be established before the deaccessioning is undertaken.
- The method of disposal (whether by exchange, gift, private sale, public auction etc) should be appropriate.

The Museums Australia Code of Ethics chooses not to deal with deaccessioning itself. Rather it focuses on the disposal of objects but is silent as to their deaccessioning.

In contrast, the archive world is alive with discussion and guidance as to this process. It recognises that not everything can be kept, and acknowledges that most of the material retained by archives will have a half-life. The value of a record will be assessed according to a complex set of criteria including ethical, legal, administrative, financial, research, social, historical and cultural requirements and expectations.

Some larger organisations have their own codes of ethics. In one infamous instance, a Victorian organisation that was facing funding issues, decided to deaccession and sell an important painting. Its code of ethics forbade deaccessioning so, on legal advice, its board voted to suspend the operation of the prohibition, passed the motion to deaccession the work, and then voted to restore the effectiveness of the code of ethics. The president of the organisation argued at a Museums Australia conference that this conduct was appropriate and legal. Perhaps it was legal.

8. Policies & procedures

8.1 *Collection management policy and the accessioning policy*

Before you can devise a satisfactory deaccessioning policy you have to have an adequate accessioning policy as part of your collection management policy.²⁵ Quite simply, a good accessioning policy reduces the problems faced by museum administrators in allocating the limited resources available to the acquisition, maintenance, conservation, storage, security and exhibition of collection material. It also reduces the frequency with which the museum will need to face issues of deaccessioning and disposal and when deaccessioning is mooted, gives the staff a more clear understanding of why the object was accessioned in the first place. If the reason for accessioning the object is understood, the reasons given for deaccessioning will have to take these into account.

8.2 *Formulating appropriate policies and procedures*

While it is unquestionable that the museum must have the power to deaccession material from its collection, it is essential that sensible checks and balances be adopted to ensure that the exercise of those powers is both proper and well advised. To do this, each collection needs a detailed, considered, procedure to identify what material must be retained and what material should be deaccessioned.

Each institution must develop its own deaccessioning policies so that they fit the needs, nature and size of the institution and the collection. There is no one model that is right for all. That said, good deaccessioning policies have similar characteristics.

(a) *Can you prove you own it?*

The most basic requirement of deaccessioning is that the records prove ownership. One might say that it should never have been accessioned in the first place if ownership could not be proved – and one would be right. But there are several instances where an Australian collection has deaccessioned (and disposed of) material from its collection only to have someone claim that they or their forebear was the owner of it. Some of the earliest collection material is often the most lumpen in the collection and worthy of deaccessioning – but the quality of its acquisition documentation makes it difficult to do without risk.

²⁵ The collection management policy will include a written statement of the museum's purposes and explains how those are furthered by the activities of the museum. The accessioning policy should really be just a part of the larger collection management policy.

(b) *Was any limitation on deaccessioning attached to the acquisition?*

Do the records reveal whether there are any legal restrictions on deaccessioning the material? For example, sometimes there are conditions of gift that will prevent this action.

(c) *Would the deaccessioning comply with the legislative obligations of the institution?*

Where the institution's constitution or statute provides for deaccessioning, you must take care to comply fully with them. No 'ifs'. No 'maybes'.²⁶

(d) *Who are the right decision makers?*

Does the procedure clearly identify those who are entrusted to make such appraisals? Are they sufficiently qualified, trained and experienced to undertake that responsibility?

(e) *Does the process protect against undue influence?*

The decision should not be the decision of one person. Not even the director. In a major collection it will usually involve the Senior Curator in charge of the relevant collection area, the Registrar, the Director and then the Board.

The Curator can make expert assessments as to the place of the material in the collection, the Registrar is able to inform the process as to any legal or administrative conditions or impediments relating to the material and the Director is responsible for supervising the over-all probity of the decision and assuring the Board that the deaccession is appropriate.²⁷

It is important that all of the people who are in charge of the material and the decision, actually state their recommendation in writing. The procedure needs to make it clear to the Board that all of their key staff approve of the recommendation, not just the director.²⁸

(f) *What consultation is necessary or desirable as part of the assessment process?*

If in doubt, the curator should always seek an outside opinion and that opinion should be made available to the other decision-makers.

(g) *What are the particular needs and practices of the sector?*

Different collection types will require different procedures. Even where organisations are within the same general collection area (say, archives) the procedures will vary enormously depending upon the needs and expectations upon the individual types.²⁹

(h) *Does the policy require³⁰ the deaccessioning submission to make recommendations as to the appropriate mode of disposal?*

Good deaccessioning process requires a good disposal process and it is incumbent on those making the recommendation to the Board also to give the Board guidance as to the most appropriate way of removing the material from the collection and disposing of it. Outcry rarely occurs because of the deaccessioning itself: It arises at the time of disposal.

²⁶ Refer to the example above of the *National Gallery of Australia Act* (Clth) that permits deaccessioning only for certain reasons and only provided that certain conditions are met. See also section 14 of the *National Gallery of Victoria Act* (Vic), which provides that disposal of any work in the State collection may only occur if the work is "unnecessary and inappropriate" to the Council's activities (and then only once the Governor-in-Council has given approval.

²⁷ For example: '*The Curator should submit a proposal for deaccessioning to the appropriate Assistant Director for approval. If approved, the Assistant Director should forward it to the Director. The proposal should provide catalogue information about the object and a statement about the object and a statement justifying the deaccessioning proposal.*' (Museum of Applied Arts and Sciences).

²⁸ Many of the USA examples of deaccessioning problems arose where the director exerted undue influence on the curatorial staff – or have failed to take into account their professional opinions. The Board needs full information.

²⁹ Art museums will require very different procedures from social history museums.

³⁰ For example where the archive is maintained within a government department, library, company, school or law firm.

(i) *Does the policy allow for a period of reflection?*

Good deaccessioning policies provide an opportunity to reconsider. A cooling-off period. For example, the Museum of Applied Arts and Sciences provides for a two-year delay between the making of the deaccessioning decision and the actual deaccessioning.

(j) *Is there a formal process for that reflection?*

The reason for having a period of reflection is to protect the collection from improper or hasty decisions. It would be just administrative humbuggery if the staff had to wait say, two years merely to put into effect the decision already made. No. The cooling off period is only effective if, at the end of the period, the decision is re-evaluated. The policy should require this re-evaluation and should set out who is responsible for initiating it and supervising the task.³¹ In large institutions, this will be the Registrar. For example, at the Museum of Applied Arts and Sciences the policy states that:

The Registrar will be responsible for maintaining files relating to Notifications of Deaccessioning. At the end of the two year period, the Registrar will notify the relevant curator that the review of the decision is now required. The Registrar will alert the Curator to any use made of the object during the two year period which might affect the decision to deaccession, or the method of disposal of the object. If the decision to deaccession stands, the Registrar will amend all relevant records in relation to the object, and arrange for disposal of the object as indicated by the Board.

As useful as this is, I would suggest that it could be tightened by requiring the Curator reconsidering the decision to do so formally and to send that decision up the line again to the Assistant Director and the Director – because each may have cause to reconsider (but for different reasons.)

(k) *Record the deaccessioning history of the collection*

Whenever material is deaccessioned the collection register should be notated so that it is clear that the material has been deaccessioned and its current status recorded. It may have been deaccessioned from one collection and accessioned into another (say, the educational collection); or it may have been destroyed or exchanged. The file should reflect the history of the material while in the possession of the organisation. This information is part of the provenance of the material and part of the history of the collection. Accordingly, the material should usually be photographed and all documentation retained, notwithstanding that Elvis has left the building.

It is not possible to set out a cookie-cutter deaccessioning policy or process for all types of collection organisations, though our comments above will provide a framework. In addition, pay attention to how you explain decisions to your community. For example, the Indianapolis Museum of Art has a webpage on its site dedicated to listing every object that is to be sold. Information is given as to why the object is to be disposed of, and the ultimate sale price (or estimated value). It also provides information as to what new art works are purchased with the proceeds of the sales and a link to the Museum's deaccession policy – thus providing at each stage a level of explanation and transparency that both educates the public as to how the Museum goes about its business and also doubtless mitigates against public outrage.³²

³¹ For example, 'In order to safeguard against mistaken assessment of the future use of an object, a period of two (2) years should elapse between approval by the Board of Trustees of the deaccession and disposal of the object, at which time it would be reviewed by the Curator. The review of the Curator's recommendation by the appropriate Assistant Director and the Director, guards against ill-considered or subjective decisions by one person.'

³² See <http://collection.imamuseum.org/browse/deaccessioned-artworks/>.