

COLLECTIONS LAW

LEGAL ISSUES FOR AUSTRALIAN ARCHIVES, GALLERIES, LIBRARIES, AND MUSEUMS BY SHANE SIMPSON

INTRODUCTION

The body of a collecting institution is made up of many interconnected parts. Although some of those parts do not readily recognise the importance of the role played by others, their interdependence is irrefutable. Everyone involved in the life of the institution plays a role in ensuring that the public purposes of the collection are fulfilled.

To the modern collection, those working in collection management are no more or less important than those who work as curators. Both are essential. For the institution to operate with maximum effectiveness, each must understand and respect the needs of the other, for neither are there to serve their own interests. The responsibility of every staff member is to the public purposes of both the collection and the institution.

This is a book about the legal issues that arise in the daily life of a collecting institution. Although its subject may be expected to be dry, it is written for the professionals working within collecting institutions. If 'dry' means that there aren't many car chases, it is dry. However there are lots of intellectual labyrinths that you will find fascinating. If I am right, there will be many sections that will make you think, 'Ah, that's how that works' or "So that's how it can be done!'

This book is a personal approach. It is a result of many years working for collecting institutions and seeing the difficulties that arise and noting how those problems can be resolved, or even better, avoided in the first place. Some readers will disagree with some of my comments. That is as it should be. Experiences differ and the evaluation of experiences is a subjective affair. I hope that through the way that the project has been developed, these differences will work to enrich and improve the book.

The project started when, some years ago, I proposed the project to the National Museum of Australia. It was greeted with great enthusiasm and support, but politics and people changed. Then the Collections Council of Australia became the publisher and it was during this period that the project took its current shape. The work is now published by Simpsons Solicitors – one of the only firms in Australia to specialise in servicing the legal needs of collecting institutions.

It is important to appreciate that Collections Law has placed its roots strongly in the collection community. While I devised the table of contents, those subject areas were debated within and approved by the both the National Museum and later, the Collections Council of Australia. Each area has a number of experts from the profession who have volunteered to read drafts and make comments. These experts have been an extraordinary resource for it is their experience and skill that ensures that the material is professionally accurate and relevant.

In some chapters, I have invited an expert to be the author or co-author. These are subjects on which I do not have sufficient experience, to thunder and pontificate.

When all of the chapters are complete it is intended that the book be published in paper form. It may remain a digital creature. That decision is not wholly mine.

So much for process. Now a last word about purpose. Collecting institutions are unusual in that they own and administer assets worth many millions of dollars. Yet they do so without the support of much legal expertise. Smaller organisations rely on the generous support of volunteer lawyers from their local community. The large state and federal institutions have access to their government legal services. A few institutions now have in-house lawyers and that is an excellent and recent development. In general, very few collecting organisations

have ready access to lawyers who are experienced in collections law or the collections environment. When I was a student, a lawyer told me that the need for specialisation was a deceit: "Just tell me the facts and I'll tell you the Law!" Those days, like that lawyer, are gone. The collections world is a very specialised environment in which very sector-specific legal issues arise. Yes, the issues are all tackled by the application of general legal principles but prudent legal problem-solving demands knowledge of the practices, standards, expectations and limitations of the sector. Still, I hope that this book will also be useful to your advisors so that they can work more effectively with you.

Remember, a lawyer's most lucrative client is the 'bush-lawyer'. The best client is an informed one who doesn't pretend that they know it all.

The purpose of this book is to give you information so that you can do what you do, better. Don't think of the Law as seeking to inhibit, restrict or forbid. Look at it as enabling. It is my hope that this book will provide you with knowledge and understanding as to the legal tools that you can bring to enhance your own performance and, in so doing, promote the public benefits that flow from vibrant and effective collections.

Shane Simpson
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