



# **Independent Curators**

**A Guide for the  
Employment of  
Independent Curators**

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**Art Museums Association of Australia**

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## INTRODUCTION

Independent curatorial practice is a growing area of work in museums and galleries world-wide. It is long established in America, where ICI (Independent Curators Incorporated) has a staff of seven to manage touring exhibitions by independent curators utilized by more than 225 art museums, university art galleries, art centres and alternative spaces.

This guide aims to clarify issues for both curators and institutions in this area of work in Australia so that the advantages of this relationship can be encouraged, and likely pitfalls avoided.

There are many advantages to employing independent curators. The institution is able to attract a variety of ideas and skills beyond those of its permanent staff, who may be primarily involved in collection management. It can add a particular expertise. It can attract an injection of enthusiasm and energy. It can even be used as a way to add an extra pair of hands for one project, when a more lengthy commitment may be financially impossible. It can employ specialists who may not wish to be involved full time with the institution (for example, those who live elsewhere). It may enable the mounting of special events, with specialist staff, perhaps on a scale beyond its usual financial and organisational scope. Also the institution may be able to take risks with ideas or special projects outside its normal frame of reference.

Independent curators are free to work in areas of their own choice, covering various media or chronologies or ideas which an institutional job specification may inhibit. Also they can work for a variety of employers: from large museums to local government organisations to small artist-run spaces; in the city and the country; locally and internationally; with projects which are financially and organisationally well supported and with those which are more grass-root. Through this, their professional experience broadens; they make contact with a variety of different points of view and philosophical aims as well as increasing their practical knowledge. The practice also offers freedom from the bureaucratic work which takes so much of the time of the staff of an institution.

Independent curators are currently employed in most areas of art exhibitions: from large-scale Biennales, to major exhibitions for State Galleries, to touring exhibitions of regional galleries, to one-off shows for contemporary art spaces, to projects for special interest groups. Employment can be for periods of one month to over a year. Rates of payment can be in tens of thousands of dollars to a relatively small amount. And the expertise employed can be from a newly fledged curator to someone with very wide experience.

However, with a relatively new practice, as this is in Australia, many issues arise which need thought and clarification. What could be an ideal and mutually beneficial partnership can easily turn sour by the practical details of the

ement not identified and agreed upon at the beginning.

M.A.A. believes it is sensible to have a written contract. However, even if one party wants to have one, it is worth taking time to go through this booklet for each project undertaken, note the issues which will be pertinent (as well as those which may be). Discuss them, and gain consensus on whether they are pertinent, who is responsible, who does what, and when. Major issues, such as issues for approval of ideas, or for payment, or issues relating to the termination of the project, should be put in writing.

The guide refers to independent curatorial practice where the work is primarily the organisation of exhibitions and adjacent activities, such as publications, seminars and other public events. However the points discussed would also be useful to those working independently on other art institutional activities, like consultancies, policy, or collecting, or work on conferences, or special publications.

The guide discusses contracts and fees. Both have a central bearing on independent curatorial employment. However the spirit of the agreement is crucial to the work.

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*Commonwealth Government Guideline, Contracting for Consultancy Services, November 2011:* 'Establish a sound working relationship with the consultant to ensure trust, respect, open exchange of information and a shared sense of mission.'

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**The guide is divided into three major sections.**

The first is the likely process of a project undertaken by an independent curator and an institution. This is divided into three sections: preliminaries, development and implementation.

The next section covers issues such as changes, payment, copyright and moral rights.

The last section is a checklist of issues to consider including in a written contract.

## THE PROCESS

### A: PRELIMINARIES

#### The idea

Someone wants something to happen. The institution has an idea or need which it cannot satisfy from within its own resources. It advertises for or invites a curator to develop and implement the idea.

Or, an independent curator approaches an institution with an idea of their own which they want to develop and put into effect.

You agree the project could be mutually satisfactory.

#### The scale of the project

This is the most important consideration. The scale of the project will depend on:

- the nature of the idea
- the size of the institution
- the experience and expertise of the curator

which need to be kept in mind when working out:

- the overall budget
- the amount of time required
  - to develop the project
  - to implement the project
  - to finalise the project.

The scale of the project can change but if the original premise is clear to both parties, this process is more easily accommodated.

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#### Scale checklist:

Is it a big, medium or small exhibition in terms of organisation?

'Big' could include: a touring exhibition from a State gallery, or a major regional gallery; a theme of national or international importance; a big budget of say over \$100,000; a substantial catalogue, with at least one major or a number of lesser essays; commercial sponsorship.

'Medium' could include: a smaller show at a State gallery; a regional gallery tour to about three venues; a budget of around \$40-60,000; a catalogue with one essay.

'Small' could include: one venue at a regional gallery, CAC, or other venue e.g. a community space; a budget from as low as \$5,000 to \$15,000 (Note: exhibitions can of course be

text, the responsibilities of the curator and the institution should be discussed, and the fee involved. This is the time to negotiate and agree on all the issues, recorded in the contract. (Note: any engagement of a curator will be a contractual relationship - unless it is voluntary work - and as with any contract it can be oral or in writing. The M.A.A. recommends a written contract.)

## DEVELOPMENT

### Developing the idea

It is unlikely that the curator will have an idea already evolved and a finalised list of works even if the idea comes from them. If the idea is the institution's then it obviously needs a development period.

This development stage is often the least recognised and least adequately paid for (sometimes not at all) but, of course, is the most important. Ideally, this stage should see both parties working together, encouraging ideas and a mutual commitment to the project.

To acknowledge this, it might be appropriate for one contract covering the whole project to be split into two parts (one for development and one for implementation), or for there to be two contracts, one just for this part, and a second for the implementation stage.

The culmination of this development stage is approval of the exhibition idea by the institution's powers that be (an exhibitions committee, a Board, an internal sponsor), agreement from other venues, and/or approval from external sponsors (government or private).

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Curatorial work is based on ideas as well as knowledge of how to 'make' exhibitions. Selecting artists and works for an exhibition is only a small part of this.

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### Work to be done:

The curator should:

develop the idea to finished proposal stage: for example, writing a curatorial statement of about 300-400 words and a statement on why the exhibition is significant of about 100 words.

research (time spent in travel; time in libraries; talking to artists and/or lenders; investigating aspects or conditions applicable for touring works of art).

develop visual material (slides, photographs) and other documentation (like the artist's curriculum vitae) suitable for securing approvals.

liaise with institutional staff to develop the budget to a general costing stage; develop an idea of timing, including responses from likely touring partners, and ascertain the level of organisational help from the institution.

## IMPLEMENTATION

This starts with consideration of the budget, the resources available and to be allocated and of the outcome the project desired by both parties. Based on this, and the agreement to proceed, the next step is to clarify and itemise the responsibilities of both the institution and the curator.

### Responsibilities of the institution:

This list below should be read with the checklist on items to include in a contract (pp. 24-26). The basic expectation is to deal fairly and openly and most of the issues listed below flow from this.

The institution is expected to:

- \* provide a clear brief, with an outline of all expectations and constraints. This includes many issues to do with the exhibition concept, such as geographic or gender balance, or expectations of the budget or of organisational assistance, which could be outlined in a policy document and/or contract, which ever is applicable.
- \* stage the exhibition as agreed.
- \* be responsible for the funding and budgeting.
- \* be responsible for the care of the works and ensure professional conservation advice is sought, where appropriate.
- \* pay the curator's fees as agreed, within fourteen days of the receipt of the invoice.
- \* pay the artists' fees and expenses as agreed.
- \* provide the support as agreed, for example:
  - office space and usage of equipment
  - secretarial support (to an agreed amount)
  - expenses (for example postage, telephone, travel, to an agreed amount)
- \* acknowledge the curator's work fairly.
- \* not change the list of works without agreement.
- \* not change the catalogue text without agreement. (Note: it is in the institution's interests to have the curator proof the final catalogue text. Advice from the curator on design and/or choice of designers may be useful and appropriate.)
- \* promote the exhibition.
- \* organise the opening of the exhibition; liaise with the curator on choice of the speaker/s and liaise with the curator on the guest lists from curator, artists, lenders, helpers and sponsors.
- \* support the exhibition (both curator and artists/works of art) in the event of unfavourable response from the critics or public.
- \* send the curator copies of all reviews and documentation

## Responsibilities of the curator:

The usual ethical standards of all museum work should apply (see *CAMA Code of Ethics for Art, History & Science Museums*, handbook, 1985, as essential reading). The basic issues are:

• fair dealing (being aware of responsibilities vis-a-vis slander, libel, defamation and the rights of individuals),

• confidentiality,

• originality of material, and

• avoidance (and declaration if necessary) of any real or perceived conflict of interest. It would be a conflict of interest to include the curator's own or relatives' works, or work owned by the curator in publicly funded exhibitions, as well as to deal in art works or accept gifts.

There is the issue of providing the best work the curator can. The standard of work can be a condition of the contract, to be approved by the institution at each payment stage. If work is unacceptable in this process, the curator should be given the opportunity to rectify it within a certain time, and if not, the organisation can refuse to proceed and/or replace the curator after paying/receiving back appropriate fees (see p. 16 on Changes/Problems).

Listed below, in three sections a, b and c, are various practical duties which could be expected of an independent curator. The first two are usual curatorial functions. The third is more often defined as exhibition management. An institution may wish one person to do all of this work in which case the issue of responsibility comes in. The management of the project is done on behalf of the institution and has all the weight/recall of the institution with it. In other words, if an outside contractor (the curator) does this work, issues of legal status (including authority for expenditure decisions and for liability) arise (see p. 19 on contractors or employees).

## BASIC DUTIES

### The curator is expected to:

• provide the final idea in writing. This could be around 300 words, and usable by the organisation for all press, lecture, and introductory functions. This may have changed from the development stage. The amount of 'change' acceptable by the institution could be written into the contract; some contracts say more than a 'reasonable' change will be vetted by the institution, and if unacceptable could lead to termination of the project.

• provide the list of works, with agreements in principle from owners to lend (subject to clauses of formal loan agreements of the institution), which includes artist, title, date, medium, size, owner's credits, and insurance values.

The lender should be informed about the concept of the exhibition, other works suggested for show, and the type of catalogue, as well as the likely conditions of loan, for example, types of venues, length of loan, payment (if any) for the loan. (The *Code of Ethics Handbook*, Artworkers Union (NSW) 1989 'Curated Exhibitions' lists the range of information of importance to potential lenders to an exhibition which could be provided by the curator.)

The list of works could be subject to stipulations by the institution on the:

• expenses involved in selecting certain works (concordance with a budget could be an issue here);

• vulnerability of the work, for touring, display, crating, handling (there may be a stipulation that it be sturdy enough to travel without crating);

• preparation of the work (it may need to be provided with conservation work done and, in the case of works on paper for example, appropriately framed).

• provide a catalogue essay to an agreed number of words. (Note: while this is usually regarded as a basic duty a writer's fee is sometimes 'paid' for separately. The Australian Journalists' Association recommends a rate for freelance journalists based on 1000 words being written in 2½ days work by a senior journalist, plus 20% loading. In November 1990 this meant \$565 per 1000 words, an amount then indexed for inflation.)

• provide written advice on installation or special hanging methods, and provisional exhibition display advice.

• aid with promotional material and presentations to sponsors, within reason. (Note: if this duty becomes or is essential for the project's viability and the curator is the only one able or willing to do it, an accepted formula for payment for sponsorship raising is 10%-25% of the monies raised. This is, of course, a specialist job and should only be countenanced by a skilled practitioner. It is done on behalf of the institution which should be very careful how its name is used....)

• agree to be available for public events, especially for public relations needs.

### b. ADDITIONAL DUTIES

The curator can also provide:

• more detailed information, for example, addresses of lenders or artists; provenances of works; information on copyright ownership and fees (tied to the needs of the catalogue).

• advice on preparation of works, for example, on conservation, mounting, framing, or special crating needs.

• edited versions of the artists' curriculum vitae.

• label and wall text material.

• photographs for catalogue and promotional needs (it would be usual for the

a bibliography.

liaison on other essays for the catalogue, plus final editing and proofing of this publication.

material for posters and other displays.

preparation of educational needs.

aid on an exhibition tour manual.

further work on the sponsor's needs.

lecture/s on the exhibition; attendance at seminars and at openings at other venues.

a final report to the institution.

## EXHIBITION MANAGEMENT

### Prior to first opening

The curator could also:

prepare loan agreement forms (Note: these are the legal responsibility of the institution and should be signed by its authorised agent).

prepare the contracts between the lender and the institution (see Note above).

prepare contracts between the institution and the receiving venues (see Note above).

negotiate copyright (see Note above).

prepare and see the publication through the press.

prepare condition reports (including photography and inspection of the works by qualified person).

aid or develop more sponsorship proposals; and respond to the sponsor's needs.

produce educational material.

organise promotional work, for example, prepare the press release, the press function and service press organisations.

organise invitations, invitation lists, guest speakers and catering for the opening.

organise all activities, for example, group tours, seminars or lectures

in good condition; that handling is appropriate; that arrangements are being met by freight company and venues.

• aid in final report writing to the sponsors on behalf of the organisation.

Possible deadlines to note:

1. List of works
2. List of works requiring attention - framing, conservation, special hanging arrangements, crating
3. Loan agreements signed
4. catalogue material as applicable:
  - essay
  - essays or other material by others
  - negotiated
  - received
  - checked and edited
  - referred back to author
  - proofed
  - biographical data
  - artists' statements
  - acknowledgements/forewords
  - photographs
  - agreement on titles; captions
  - ISBN material
5. Copyright agreements with authors; artists; other owners of works or copyright.
6. Proposed layout of exhibition
7. Label requirements
8. Promotional copy (and photographs)

### ii) During first showing and possible tour

This is the exhibition work from the opening at the first venue to the return of the works to the lenders, and completion of final reports and, again, would normally be done by the institution. However sometimes both parties think it appropriate for the curator to do it. Even if the curator's work is finished, the institution's commitment to the project should be such that the same level of care towards the project will continue. It would be usual to nominate an institutional staff member to take on responsibility for the welfare of the exhibition.

a. Basic duties

### Additional duties

The curator could:

keep the artists/lenders advised of the reception of the exhibition; send them copies of press coverage.

set up and perhaps speak at forums, lectures or seminars.

assist with the interpretation of the exhibition to the general public, such as speaking to tour groups, educational groups, or at fund-raising functions for the institution.

assist with the return of the works to lenders, and with the acknowledgement of loans.

write, or help write, the report.

if the exhibition tours:

- 1) advise on the installation at the next venues;
- 2) attend openings (payment to cover expenses should come from the exhibition budget);
- 3) talk at seminars (payment for expenses as above);
- 4) advise on the welfare of the works;
- 5) check the works for the condition reports; and
- 6) check the works at the end of the tour.

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### Four important points to check:

- nomination of the contact person in the institution (so the curator knows who has authority within the institution to make decisions)
  - clarification of deadlines
  - clarification of number of meetings or reports of progress
  - clarification of right to spend money (often up to a certain amount for office expenses, or travel, with further money to be negotiated again)
- 

### Scale of fees for lectures:

Level 1: \$135.00 per hour: 'one off' specialised lecture given by a distinguished

### Scale of fees for Workshops:

Level 1: \$308.91 per day or \$55.71 per hour – where there is a major responsibility for tutorial sequence and where specialised skill and knowledge are required

Level 2: \$272.94 per day or \$39 per hour – as above but for someone with less experience

Level 3: \$233.96 per day or \$33.43 per hour – standard rate

Level 4: \$155.96 per day or \$22.28 per hour – demonstration only

Student Assistant \$11.39 per hour

Note: A day is considered to be 7 hours

All rates are subject to annual CPI rises

## CHANGES, PROBLEMS, DELAYS & CANCELLATION

Problems can occur at any moment with any art exhibition. However, because the independent curator and the institution often have not worked together before – and there is no onus on either to work together in the future – misunderstandings and difficulties of communication can occur more frequently than with an internal institutional project. Further, when both parties are working hard on a project with a deadline, ‘time’ for informal and formal negotiation often is not easy to obtain.

All sorts of things can go wrong. The idea may not be accepted at the end of the development stage. The concept can change beyond mutual agreement. The institution may want the idea to develop in a way unacceptable to the curator, and vice versa. The institution’s priorities may change: expected funding may not be forthcoming; the budget may expand beyond all ‘reason’; the curator may not be producing work of an acceptable standard and at acceptable rate; deadlines may not be met.

What can be done? The first thing to do is to try to negotiate. No-one likes a ‘lost’ project. Is there a way through the impasse? Are there other sources of money? Can a time limit be put on raising the extra funds? Can something be cut from the budget? Are there other changes acceptable to both parties? Does the curator have a good reason for any delay?

If changes, delays or even cancellation are necessary, then goodwill and a sense of fairness are probably needed to get through. The contract can include some stipulations on this, but it is doubtful if all eventualities can be codified. If in dispute it is incumbent on both parties to negotiate. If negotiation cannot resolve the problem, a mediator should be brought in immediately. Two basic thoughts are that the institution is probably in a better position to ‘pay’ for a lost project, and that the art world in Australia is small, and reputations for fairness, on both sides, are usually well-known.

These remarks therefore on some situations are not intended to be inclusive, but rather an indication of a general attitude. If changes (like reducing the exhibition), or delays are necessary, a reduced fee or even return of fee for work-not-yet-done, may be appropriate. If the organisation instigates this, compensation may be appropriate. If changes or delays are stipulated by the institution and deemed unacceptable by the curator, then discussion about the curator taking the exhibition elsewhere should be reasonable. If the curator is at fault, then the institution should give written notification of the breach, and give the curator a chance to remedy the situation. If the curator must cancel the exhibition, and has an

There should always be a clause in the contract about how to resolve difficulties. It is usual to suggest the two parties negotiate first and, if unsuccessful, then attempt mediation, with the use of a facilitator, prior to the appointment of an arbitrator or court action. The Arts Law Centre of Australia runs a mediation scheme Australia wide, for which a small fee is charged. This process can decide on all manner of things, from the ‘fairness’ of a certain procedure, to correct payment or compensation for work done or not done.

.....  
*Commonwealth Guidelines op.cit., Standard Contract, clause 19*

No liability for ‘Unavoidable Delays’ will apply if it was

- ‘caused by an act or event that is beyond the reasonable control of that other party;
  - continues for less than one month; and
  - was not reasonably foreseeable at the time this Contract was entered into.’
- .....

## PAYMENT

### FEES

Fees are linked to the issues of scale: the nature of the idea, the size of the institution, the expertise of the curator, the size of the budget and the amount of work required.

.....  
*Commonwealth Guideline ...for Consultancy Services* *ibid*, no.9 (based on selecting from tenders offered):

'How costs are used in the evaluation process should be determined case by case. For example the cost may be considered as one criterion and allocated a 'weighting' along with other criteria used.

'Another approach might involve ranking consultants on merit, and then negotiating on rates or on the time proposed to undertake particular work...'

### The Amount (a)

One base line on which to work, and from which to take the other issues into account, is that fees be set as a percentage of the exhibition budget, with the development stage fee a percentage of this.

An example of a 10% and 20% fee is:

Exhibition budget	Curator's total fee		Development Fee	
	10%	20%	33.3% of 10%	of 20%
\$ 5,000	\$500	\$1,000		
\$10,000	1,000	2,000	\$ 330	\$ 660
\$30,000	3,000	6,000	1,000	2,000
\$80,000	8,000	16,000	2,800	5,600
\$100,000	10,000	20,000	3,300	6,600
\$500,000 negotiable	50,000		18,000	

The A.M.A.A. recommends this system, with a sliding scale, beginning at 20% of the total exhibition budget for small budgets and reducing to 10% for large. Very large budgets would normally have the fee more easily negotiable. The percentage decrease takes into account the creative component of exhibition-making being

Exhibition budget:	Curator's fee:	
\$5,000	20%	(\$1,000)
\$10,000	20%	(\$2,000)
20,000	20%	(\$4,000)
30,000	20%	(\$6,000)
50,000	15%	(\$7,500)
70,000	15%	(\$9,500)
\$100,000	10%	(\$10,000)

This is a **guide**: There may be circumstances in which a lesser percentage is acceptable, for example, when a curator is in salaried employment elsewhere or when the institution *cannot* pay more (though this is a complex issue...). Equally a higher percentage may be acceptable, for example with a low budget exhibition which is nevertheless very complex to devise.

### The Amount (b)

A second method, and cross reference, on which to work out fees is on an hourly or weekly rate, based on an 'average' arts salary. This is an arguable amount. The Australia Council's 'average' annual salary for 1990 was \$35,000. A consultant's loading (for overheads or on-costs, like office expenses, recreation and sick leave, superannuation) of 20%-50%, depending on the length of the job and the facilities provided, should be added to this.

Some larger organisations prefer this method and can accommodate sometimes substantial payments within their budget. Of course the other issues (like experience) still need to be taken into account in determining the total fee.

### Fee for extended and extra work

The payment for the basic duties (a) (see p. 11) of a curator is the base (less the % for the development stage); payment for (b) (see p. 12) is negotiable (in some circumstances it could be included in the base and in others it could be extra); payment for (c) (see pp. 12-13) should be a further amount.

Sometimes, as a project proceeds, the workload of the curator expands (or, more rarely, reduces). It would be normal practice in this case to discuss renegotiating the fee. Most institutions would recognise this change and endeavour to increase the payment.

### Is the curator a contractor or an employee?

It is important to establish this difference for both parties. It clarifies the relationship and also has important implications for taxation, insurance and other responsibilities including authorisation to spend money on behalf of the institution.

x for the next financial year).

incorporation as a company means setting up a business with an identity of its own. This is more expensive than being a sole trader, with, for example, the company lodging annual returns to the Australian Securities Commission and paying Workcare. However, if the company makes enough money there may be useful tax advantages. Also business liability may be the liability of the company, not the individual.

If the curator is deemed to be an employee then PAYE tax must be taken out of their pay by the institution. The onus is on the institution to check and do this. Customary employer/employee arrangements would be followed.

The sole trader curator should maintain their own insurance on workers' compensation, public liability, and professional negligence. Usually an institution will request that the curator indemnifies it from all 'actions, claims, demands and costs' arising from carrying out the curator's duties under the contract. An employee will be covered for injury and illness by the employer.

Note: it may be worth checking this area with the Taxation Department, the Department of Labour, and, for curators, the Small Business Development Corporation (in Victoria – it will have a different name elsewhere).

.....  
*Commonwealth Guideline op.cit, Appendix B:*

#### EMPLOYER/EMPLOYEE RELATIONSHIPS

In an employment contract, or contract of service, the employer normally selects the employee, is responsible for payment of salary or wages, provides direction, controls the employee's method of doing work, manages the work place and supervises or dismisses the employee. From these managerial prerogatives arise legal obligations, including:

- Compensating the victim of an employee's mistakes (the damages an employee inflicts on others are a responsibility of the employer).
- Providing workers' compensation arrangements to compensate injured workers or work-related accidents or illnesses.
- Arranging PAYE income tax payments.

Should it be determined that a person who has supposedly been engaged on an independent basis is actually an employee, the person might be eligible for benefits such as compensation and long service leave, as well as have rights to union coverage and the benefits of industrial awards.'

.....  
ALSO: if the curator is paid by 'time' some Public Service guidelines indicate a case could be made for recreation and sick leave entitlements if the work is for more than 24 hours a week over a four day period.

.....  
AND VERY IMPORTANTLY: if the curator is an 'employee' they do not retain copyright of

#### Timing and proportion of payment of fees

Fees could be paid at agreed intervals, on receipt of an invoice from the curator, such as:

- a) at the signing of the contract or conditions of agreement by both parties.
- b) at the end of the development stage.
- c) at the beginning of the implementation stage.
- d) at the delivery of, and approval of, the list of works
- e) at the delivery of, and approval of, the catalogue material
- f) at the opening at the first venue.

and, if there is an on-going managerial or support function,

- g) at the return of the works to the lenders.

If the payment is divided into three, a normal schedule of payment could be thirds paid on signing of contract, at the beginning of the development stage, and at the opening at the first venue.

If the project is terminated at some point, and it is not at an easily identifiable point in the payment schedule, the curator should be entitled to payment for services rendered.

#### Expenses

It is usual to itemise these separately, and for the curator either to be given a discretionary amount or to pass on expenses at appropriate intervals, as they occur. These expenses may include telephone calls (noted with dates and time for interstate or overseas calls, or using the Telecom facility which does this), stationery, postage, fax, cables, couriers, printing and photocopying, hire of equipment, travel costs, secretarial work etc. If they include travel, secretarial work, or long-distance telephone calls, this budget line is likely to be quite high.

The institution may provide a petty cash float of around \$100 for the curator who maintains a log of expenditure and keeps receipts.

## COPYRIGHT AND MORAL RIGHTS

There is no copyright on an idea, including the idea of an exhibition.

However there is copyright of manuscript material. Unless otherwise specified, the contracted author or curator retains copyright of the material.

The rule for independent curatorship is that the curator owns the copyright of their manuscript material but the institution owns copyright of the actual publication. The publication can be reprinted by the institution, but the manuscript material cannot be reused elsewhere without the author's or curator's permission. If there is a considerable investment involved with the publication – in terms of research and writing time as well as printing costs – it may be worth discussing the issues of reprinting, even by the institution, and negotiate on royalties.

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*Commonwealth Guidelines op.cit. Appendix D.*

Intellectual property [or copyright] includes all patents, plant variety rights, trademarks, designs, circuit layouts, copyrights and confidential information arising from, and during the carrying out of a project, whether developed prior or in the course of the project... Intellectual property rights are wealth generating rights ...'

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Related to copyright are moral rights, but these refer to non-income producing issues. Shane Simpson in his book *The Artist and the Law* (The Law Book Company, 1982, pp. 174 ff), says a moral right 'has nothing to do with what is good and proper; it merely distinguishes these non-pecuniary rights from traditional property rights' and he notes the three main moral rights:

- i) the right of integrity: the protection of one's work from alteration, mutilation and distortion;
- ii) the right of disclosure: the right of the creator to determine when a work is complete and when it should be revealed to the public;
- iii) the right of attribution: the right to have one's name associated with one's work.'

The moral right of integrity applies to the exhibition itself (the curator's work) and in turn to the individual art pieces within the exhibition (the artist's work). The curator negotiates with the artist and the institution formalises the results of those negotiations in a contract.

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*Artworkers Union Code of Ethics op. cit., 4.8*

There is a (curatorial) responsibility to mediate and represent fairly artists used in an exhibition regarding catalogue representation and exhibition design. There is a further duty to mediate on behalf of the artist/s to the host institution.'

The right of the curator to produce the exhibition should not be clouded by unwarranted interference with their work once the preliminary guidelines have been outlined. Any policy matters, for example on gender balance, should be agreed first. Other reasonable restrictions on the choice of works could include safety, practical and financial issues, again made clear in the beginning. Also, fair dealing on the curator's part means 'sensitive' issues of, for example, defamation, should not come up. With potentially 'offensive' works central to the exhibition's concept, institutions can protect themselves (for example with warning signs) and normally would not interfere with curatorial decisions.

Editing of material cannot be done without the permission of the copyright holder, in this case the curator. If the copyright holder is not the author/curator it may be a moral right to get permission to edit the material.

The institution would normally know the style of the curator or author prior to the project and any major requests for change of both exhibition and manuscript material would be unlikely. The institution should only make changes with the curator's consent, which should not reasonably be withheld. If there is no agreement on changes to the manuscript, then it remains the property of the curator or author: the curator or author can refuse to have a changed version published and the institution can refuse to publish a piece unacceptable to it.

# CHECKLIST

ITEMS TO INCLUDE – OR CONSIDER INCLUDING – IN A (WRITTEN) CONTRACT

## Parties to the contract

A contract is between the curator and the institution. The name of the institution should be used, not the person responsible.

## The object of contract

The exhibition or project's name and description.

## The contact or responsible person within the institution

### Fair dealing

It may be worth both parties agreeing to support the project to the best of their ability; for both to communicate regularly on how the project is proceeding; for the curator to agree to provide original material of the highest possible standard; to avoid new conflicts of interest...

## The duties and responsibilities of the curator

'Responsibilities of the Curator' pp. 10-15. This section should include all the details with all the relevant deadlines. If the curator is undertaking exhibition management duties, the extent of their authority for decisions and expenditure should be stated.

## Timing

When the contract/s should be signed, by whom, and have it/them dated.

If there are two contracts, for the development and implementation stages, a date of approval of the implementation stage could be given. The contracts with lenders and other venues may also have stipulations about timing of signing, for example, at least six months before the opening date.

Within the implementation stage may be stipulated for reporting on satisfactory progress, approval of the standard of work, for any changes to the contract brief, and for any approval needed from the institution to proceed. This should include acceptance by the institution of manuscript material and agreement to publish it.

## The budget

The institution is responsible for the budget: for both raising and expending the money, even though the curator's advice would normally be sought in both areas. It may be unusual for the curator to be authorised to spend direct exhibition funds.

The institution may allow a certain amount of money for the curator's expenses of postage and travel, or to have these itemised and paid on invoice.

## 8. Fees

The amount and timing of payment of fees to the curator should be stated. The payment is usually made within fourteen days of receipt of an invoice.

There should be provision or acknowledgement of extra payments for:

- for work taking more time
- for new work
- for royalties on a (successful) catalogue, for example on reprinting.

## 9. Other institutional responsibilities

These should be articulated. All policy or practical requirements which may affect the curator's work need to be clearly stated.

To make the link with the curator and artist more meaningful a clause in the artist's contract about respecting the negotiations with the curator may be useful. In this case the agreements, for example, on installation, need to be carefully stated. The curator should make sure that all agreements between them and the artist/lender are articulated in the loan agreement, as it is this agreement between artist/lender and the institution which will be used in the case of a dispute.

Further issues include responsibility for

- contracts with the lenders, artists and other venues;
- publication of the catalogue;
- promotion;
- arranging the opening/s;
- arranging the display/installation.

The institution may also agree to provide organisational support.

## 10. Disagreement/termination

This section should include the agreement for both parties to use a mediation service.

## 11. Copyright

Copyright on the exhibition and the publication should be stated (see p. 22).

## 12. Moral rights

These probably should be outlined (see p. 22-23). They could include the details of how the curator is acknowledged (for example, on the spine/cover/coverpage of the publication, on publicity material, on the invitation, or not).

A clause could be included which gives the curator the right to approve the design of the catalogue and the installation. Certainly, the curator's advice on the design should be respected and the advice the curator gives on the installation will often reflect the desires of the artist, which is an additional onus to respect.

## 13. Insurance and liability

The responsibilities of both parties should be articulated. Most standard contracts have usable wording. If the curator is taking on organisational responsibility the usual liability clauses need to be amended.

## 14. Applicable law

Arts Law Centre of Australia, Sydney, has standard contracts which may be used when starting to draft a new one. It is necessary to use standard contracts and not other people's contracts with caution, however, as each project will have its own particular needs. Some funding bodies may have legal advisory services.

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### FURTHER READING

...y, Natasha *The Magic and the Money; A discussion paper on the artist/gallery relationship* Arts Law Centre of Australia, Sydney, 1989.

...n, Shane *The Visual Artist & The Law* The Law Book Company Limited, Sydney and Melbourne, 1982.

...n, Shane *Museums and Galleries; a practical legal guide* Redfern Legal Centre, Sydney, 1989.

...s and the Law. 5 audio cassettes and study notes, with reference materials on the visual arts. Topics include copyright, moral rights, companies code, tax, defamation and obscenity. These tapes are prepared by the Arts Law Centre of Australia and available from the Continuing Education Support Unit, Sydney, New South Wales, PO Box 1, Kensington, NSW 2033.

... Ethics for Art, History & Science Museums Council of Australian Museum, Sydney, 1985 (available through the A.M.A.A.).

... Ethics Handbook Artworkers Union (NSW), 1989.

...wealth Procurement Guideline; Contracting for Consultancy Services, Department of Administrative Services, Canberra, 1990.

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A.C. February 1991

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#### Letter from an independent curator, December 1990:

'Short and imprecise letters of intent in lieu of contracts, broken agreements, unfulfilled promises, reluctance to communicate or to clarify things in writing, downward renegotiation of projects, failure to define the project brief or the division of responsibilities, very poor fees, extensively delayed payments, and the stress induced by arguing these issues with the respective institutions: these are the kinds of things that make independent curatorship an extremely unattractive activity in Australia.'

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#### Letter from an independent curator, January 1991:

'I support strongly the use of freelance and independent curators – they can bring substantial expertise, new ideas and major overall benefits to organisations in being able to address work, ideas and projects consistently and critically across a range of institutions in a fashion that is very hard to do within any one organisation.'

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