

Protocols for working with children in art

Review 2010

Section 1: Protocols review timeframe and process

In January 2009 the Australia Council for the Arts released the protocols *for Working with Children in Art*.

The protocols set out the obligations of applicants and recipients of Australia Council funding when working with children, exhibiting images of children or distributing images of children.

The Council made a commitment to monitor the implementation and review the operation of the protocols after 12 months in operation. The Australia Council conducted this review during January and early February 2010. This review consisted of the following:

- An audit of the number of applications received and grants awarded to projects that involved working with children, exhibiting images of children or distributing images of children.
- A survey of arts organisations that receive triennial funding from the Australia Council about the implementation of the protocols.
- A survey of eleven individual artists about the implementation of the protocols.
- Consultation with state and territory arts agencies about the implementation of the protocols for artists and organisations in their jurisdictions.
- Consultation with key stakeholder organisations about the implementation of the protocols.
- Consultation with Australia Council staff on their experiences in administering the protocols through the grants programs.
- An open call for submissions to the review was posted on the Australia Council's website on 18 January 2010.

Feedback on the protocols from the various groups and individuals identified above is summarised in Section 2.

Section 2: Feedback received during the review

Australia Council

The Australia Council received 510 grant applications during the 12 month period which involved artists working with children, exhibiting images of children or distributing images of children under the age of 18. Of those, 96 were awarded grants. All recipients indicated in their funding agreement that they would work within the protocols. At the time of writing, none of these 96 projects had been acquitted so no further information is available about how or whether the protocols impacted these projects.

None of these grants involved the creation, exhibition or distribution of works involving fully or partly naked images of children. As no data was collected on the involvement of children in arts projects prior to the introduction of the protocols, we cannot compare 2009 figures with previous years.

Arts organisations funded by the Australia Council

The Australia Council's 178 triennially funded organisations were surveyed for this review. Of those, 48 responded. In general terms, the feedback indicated that the protocols contributed to an increased awareness and formalisation of processes for working with and supervising children. The responses also suggested a broad acceptance by arts organisations of the need to comply with legal and regulatory requirements when working with children.

Other significant findings from the respondents include:

- a significant majority reported an awareness of the protocols
- a significant majority reported the protocols had no impact on the creation of art
- a significant majority reported the protocols had no impact on the performance or exhibition of art
- a significant majority reported the protocols had no impact on the distribution of art
- just under half of organisations reported that the protocols had assisted them to protect children
- just over half reported that the protocols had not assisted in the protection of children due to the fact that they were either not working with children or already had processes in place to safeguard children.

Artists

Eleven visual artists were selected by the Australia Council's Director of Visual Arts to give feedback on the impact of the protocols. Each of these artists has worked with children through their arts practice and has a national profile. These artists also represent a diversity of cultures and age groups, and included both men and women.

The majority of these artists were aware of the protocols and understood their purpose. However, responses to protocols varied across this group of artists. Statements on the protocols included:

- The protocols assisted or will assist them in protecting the rights of children throughout the artistic process.
- They would protect the rights of children irrespective of whether the protocols were in place.
- The protocols would have no impact on their arts practice.
- The protocols made them less inclined to work with children in certain contexts.
- The protocols would potentially limit the distribution of some art works.

Arts Law Centre Australia¹

Arts Law hold the view that existing state, territory and federal laws are sufficient in establishing the responsibilities artists have when working with children. They argue the protocols create an unnecessary burden for artists and arts organisations and raise concerns of a “chilling effect” on the arts community due to the fact that artists and organisations are confused about the regulatory environment. Arts Law are concerned that the protocols set a benchmark for a greater level of regulation across the arts. In particular, Arts Law raise concerns about the protocols requirements for retrospective compliance which they argue are unworkable. Arts Law also note that the protocols place a further strain on the already limited legal resources allocated to the arts community.

Arts Law recommend the protocols be redrafted to require that recipients of Australia Council funding ensure they have complied with relevant laws and that any additional requirements presented by the protocols should be removed. As part of their submission, Arts Law provided cited instances where the protocols¹ have negatively impacted on the exhibition of work.

Australian Government Attorney General’s Department

The Attorney General’s Department suggested that the protocols should be amended to clarify that actual sculptures or live performance will not be classified by the Classification Board. However, the Classification Board can use a photograph of a sculpture and a recording of a live performance for classification of these respective works.

National Association of Visual Arts (NAVA)

Like Arts Law, NAVA holds the position that existing laws and regulations adequately address child protection issues. In addition to some of the issues raised by Arts Law, they also argue that the protocols add an unnecessary level of difficulty, cost and anxiety to artists with no benefit to the community or the welfare of children. NAVA provided a number of examples of artists’ concerns about the protocols. The majority of examples are of artists working independently of the Australia Council’s grants programs.

NAVA presented a number of recommendations for amendments to the protocols should they remain in place. These cover the retrospective nature of the protocols, definition issues, and limiting the administrative and financial cost of getting work classified through the Classification Board.

Open call for submissions

Two submissions were received by the Australia Council, which provided general comments about the representation of children in art.

Screen Australia

Screen Australia supports the continued operation of the protocols. They did not identify any impact of the protocols on the creation, exhibition and distribution of art works involving children. Given the inconsistencies of state legislation on these issues, Screen Australia welcomed this national initiative.

State and Territory Arts Agencies

Several agencies have either adopted the Australia Council’s protocols for their own grants programs or are in the process of developing protocols which are closely based on the protocols. In other instances, state agencies continue to use existing legislation and regulations relating to the employment of children and pornography.

¹ Arts Law were funded by the Australia Council to develop and publish fact sheets to accompany the *Protocols*.

In providing feedback to this review, state and territory arts agencies did not identify any impact the protocols have had on the creation, exhibition or distribution of art. One state agency commented that the protocols provided a useful framework for artists who receive government funding, but suggested additional wording to ensure the protocols do not dissuade artists from working with children and therefore do not become a bar to artistic excellence.

Section 3:

Findings and conclusions

FINDING 1

The protocols have achieved their purposes to “help artists and arts organisations understand their legal obligations and to establish responsible steps for artists when they are involving children in the creation, exhibition or distribution of creative works.”

Although many artists and arts organisations were already diligent in abiding by relevant laws, the protocols have raised a greater awareness about the importance of child protection issues. Feedback also indicates that in many instances, the protocols have led to the formalisation of processes for working with and supervising children.

Action taken

The protocols will be continued as a condition of funding from the Australia Council for projects involving children in the creation, exhibition or distribution of creative works.

FINDING 2:

There is some confusion about the detail of requirements included in the protocols and the extent to which the protocols apply to projects not funded by the Australia Council, particularly in the visual arts sector.

Arts Law, with funding from the Australia Council, has developed fact sheets which provide information for artists and arts organisations about the protocols, and relevant laws and regulations. These fact sheets are freely available via the Australia Council website.

However, anecdotal evidence suggests that there are some misunderstandings about the scope of the protocols, and their effect on projects not directly funded by the Australia Council. There were also concerns raised that the protocols create a “chilling effect”, stifling artistic expression.

Action taken

The Australia Council has undertaken the following to address this concern:

- amended and expanded the protocols to clarify where and how they apply to artists funded by the Council. Amendments also clarify that the protocols have no impact upon the Australia Council’s assessment of “artistic excellence” which is undertaken by independent review process.
- provided Australia Council contact point details in the protocols and will actively encourage artists to contact the Australia Council for advice about the protocols and working with children.

The Australia Council will also:

- include information on the protocols in the Australia Council’s regular Australia-wide sector information sessions
- provide advice and support to enable all artists and arts organisations to comply with the protocols and, in particular, for artists seeking Classification Board input.

Given their respective roles in the sector, both NAVA and Arts Law also have a key role to play in assisting artists and arts organisations to understand the rights of artists working with children and to advise and assist in the appropriate application of the protocols. Arts Law's *Working with Children in Art Fact Sheets* will continue to be a key resource and the currency of the detailed information included will be a valuable resource for artists and arts organisations.

FINDING 3:

The protocols require evidence of retrospective legal compliance or approval in particular instances. It has been noted that this documentation can be difficult to secure and that this difficulty may have resulted in images being withdrawn from exhibitions and publications.

Under the protocols, if arts organisations are showing contemporary images involving a child under the age of 18 who is fully or partly naked, they need to provide a written statement from the artist that they followed the laws and regulations in force where they worked when creating the image. Several respondents to this review have provided instances when this retrospective approval has been difficult to comply with. The available alternative option offered by the protocols, which involves having the images classified by the Classification Board, is argued to be expensive and time consuming.

Similarly, the protocols' require that the distribution of any images involving a child under the age of 18 needs a written statement from the artist that they followed the laws and regulations in force where they worked when creating the image. If this cannot be provided, the protocols require a written statement from the parent/guardian or the "child" (if they have since turned 18) that they give permission for the image to be distributed. Obtaining such evidence of retrospective legal compliance or parental approval can prove to be very difficult.

Action taken

The protocols requirements with respect to some images being exhibited and distributed have been modified.

- The protocols now require that Australia Council funded organisations exhibiting contemporary images of naked or semi naked children or distributing contemporary images of children who are not naked must:
 - comply with all relevant laws and regulations in the state or territory in which the project takes place;
 - give thoughtful consideration to the rights of the child; and
 - take all reasonable steps to satisfy themselves that the artist complied with relevant laws when creating the image.

At the end of the funded activity the Australia Council may request evidence that this requirement has been followed.

- With respect to the exhibition of contemporary images of naked or semi naked children, the Australia Council's protocols now suggest that if there are any concerns about the content of those images or artworks, the organisation obtain a rating classification from the Classification Board. The Australia Council will assist the organisation to apply for that rating by that Board at no cost.

The requirements of the protocols have not changed with respect to the creation of artwork or projects which involve working with children.

The protocols have not changed with respect to distribution of contemporary images of naked or semi naked children. Australia Council funded organisations or individuals distributing such images must have them classified by the Classification Board prior to publication.

FINDING 4:**There is an onerous financial and time cost in having work classified by the Classification Board.**

There is the potential for the costs and time associated with seeking classification from the Classification Board to be onerous for artists and arts organisations.

Action taken

Following discussions between the Australia Council and the Classification Board, procedures have been developed to enable Council-funded artists and organisations to apply to the Classification Board at no cost.

The protocols now include information for artists and organisations seeking Classification Board ratings with a view to minimising the difficulty in complying with the protocols. This includes information about the time required, processes and contact points in both the Classification Board and the Australia Council.

FINDING 5:**The Classification Board is not able to classify a live performance or a sculpture.**

The Classification Board cannot classify actual sculptures or live performances. However, they can classify photographs of sculptures and recordings of live performances.

Action taken

The protocols have been amended accordingly and indicate how images of sculptures and recordings of live performances can be considered by the Classification Board.

FINDING 6:**State laws and regulations that protect children from exploitation and harm remain inconsistent.**

The inconsistent laws across the country were a prime driver for the Australia Council's development of the protocols and continue to inform the requirements outlined in protocols.

Action taken

No action taken. The Australia Council anticipates that all jurisdictions will continue to discuss the implications of inconsistencies in existing Federal, State and Territory laws.

FINDING 7:**There is a need for ongoing data collection and review of the impact of the protocols.**

Twelve months is a short period to assess the degree to which the protocols have influenced artists and arts organisations. As no Australia Council grant made under *Protocol* conditions has yet been acquitted and no data on artists working with children was collected by the Australia Council before the protocols came into force, further monitoring of the impact of the protocols is necessary.

Action taken

The Australia Council will continue to monitor the number of artists working with children and the application of the protocols.