

PROTOCOLS FOR WORKING WITH CHILDREN IN ART

Revised May 2010

1. INTRODUCTION

The Australia Council for the Arts has developed these protocols to address the depiction of children in artworks, exhibitions and publications. The protocols recognise that a number of state and territory laws relating to employment and child pornography will apply to artists who present or distribute depictions of children. As these laws vary between Australian states and territories, these protocols have been developed to provide a minimum common national standard for artists and arts organisations whose artworks or projects involve children and who are seeking Australia Council funding.

There is a growing awareness in this country and internationally of the importance of having laws and protections to safeguard children from exploitation and harm, especially in relation to obscenity and pornography. At the same time, advances in technology through online and mobile media have opened the way for mass access to images and written material. There is the potential for this material to be distributed, intentionally or unintentionally, well beyond the original audience. It is in this context that the whole community, including artists and arts organisations, must consider their legal and ethical obligations regarding the safety of children.

The protocols came into effect on 1 January 2009 and were reviewed in early 2010. The review found that the protocols were generally well received and assist artists and organisations to understand their responsibilities, rights and obligations when working with children. Following the review, some amendments have been made to clarify the intent of the protocols and make it easier for people to understand their responsibilities and comply with the requirements.

2. STATEMENT OF PURPOSE AND PRINCIPLE

The Australia Council has a statutory role to uphold and promote the rights of people to freedom in the practice of the arts. Underpinning this freedom in a civil society is the assumption that publicly funded activity must abide by the law. Laws in most states and territories impose a number of limits and constraints designed to protect children from exploitation and harm.

The following protocols have been developed through consultation with the arts sector, government partners and members of the general community. They support the Australia Council's longstanding commitment to encouraging young people's and children's involvement in the arts, both as audience members and participants in the creative process. They are designed to help artists and arts organisations understand their legal obligations and to establish responsible steps for artists and arts organisations when they are involving children in the creation, exhibition or distribution of creative works¹.

The protocols have no impact upon the Australia Council's assessment of "artistic excellence", which is determined by an independent peer review process. The standards we set through these protocols are minimum contractual obligations for those applying for and receiving Australia Council support. Adherence to the relevant state and territory laws and to these protocols will be a condition of funding for projects supported by the Australia Council. We encourage artists and arts organisations working with children to contact us to discuss how the protocols might apply to them.

¹ *Creative works* includes photography, painting, printmaking, sculpture, text, performance, drawing and digital imagery.

3. SUMMARY OF PROTOCOLS

These protocols apply to artwork and projects funded by the Australia Council that include children under the age of 18. The protocols are described in full in Section 4, page 6.

A summary of the requirements of how these protocols apply to both Australia Council funding applicants and recipients are outlined below.

ALL APPLICANTS FOR AUSTRALIA COUNCIL FUNDING

If your project involves anyone under 18, you are required to indicate that you agree to abide by these protocols and any relevant laws and regulations in the state or territory where the artwork or project is carried out. You should also note that:

- you are required to obtain parental consent if your project or artwork involves working with a child under the age of 15²
- some states and territories require that you get special permits and police checks before working with children of certain ages
- parental consent is not required for images that include children who happened to be in a public space, and where the children were not engaged by the artist, and where they took no directions from the artist in the creation of the images or artwork³
- The protocols have no impact upon the Australia Council’s assessment of “artistic excellence” which is determined by an independent peer review process.

Artists can refer to the Arts Law Centre’s fact sheets, *Working with Children in the Creative Process: Information for Artists and Arts Organisations*, at www.artslaw.com.au/LegalInformation/ for further information on relevant laws and regulations.

ALL RECIPIENTS OF AUSTRALIA COUNCIL FUNDING

In signing your funding agreement, you commit to:

- getting any permits and permissions required by relevant state or territory law as well as the consents required by these protocols. The Australia Council may ask for a copy of required permits or consents;
- confirming that you did get all the consents, permits and permissions required by state or territory laws and by these protocols when you submit a grant report at the conclusion of your funded activity.

Specific requirements relating to individual project categories are set out below.

² While anyone under the age of 18 may be considered to be a child, the Australia Council has set *under 15* as the age limit for parental consent because it is the age limit most commonly specified in existing state and territory child employment laws. These laws will apply to any project you undertake that includes you working with a child, whether paid or unpaid.

³ Various bylaws and regulations may apply to the use of public spaces.

1) Creation of an artwork funded by the Australia Council

Working with anyone under the age of 15

If you work with anyone under the age of 15, the Australia Council requires that you have obtained the consent of their parent(s) or guardian(s) before you start the art work or project.

Working with anyone under the age of 15 who will be fully or partly naked

If your project involves working with anyone under the age of 15, and they are to be fully or partly naked, this may be prohibited by state law⁴. In addition to complying with any legal obligations, you will need to get, and send to us, evidence of the permission of the parent(s) or guardian(s) stating that you have explained the context for the work to the parent(s) or guardian(s) and the child and:

- they understand the nature and intended outcome of the work
- they commit to direct supervision of the child while the child is naked
- they agree the context is not ‘sexual, exploitative or abusive’.

2) Exhibitions and performances funded by the Australia Council

Contemporary⁵ images of fully or partly naked children

If your exhibition or performance includes contemporary images that depict a real child under the age of 18 who is fully or partly naked, then before that exhibition or performance, you must:

- comply with all relevant laws and regulations in the state or territory in which your exhibition or performance takes place.
- give thoughtful consideration regarding the rights of the child
- take all reasonable steps to satisfy yourself that the artist complied with the laws in force at the time the images were created such as seek written confirmation that they followed the laws and regulations in force at the time of creating the image.

At the end of the funded activity, the Australia Council may request evidence that you have followed this requirement.

If you have any concerns about the content of any images or artworks being exhibited, we strongly suggest you obtain a rating classification from the Classification Board and follow any requirements the Classification Board may impose. The Australia Council will assist you to apply for that rating by that Board at no cost.

4 Refer to Arts Law’s fact sheets: *Working with Children in the Creative Process: Information for Artists and Arts Organisations* at www.artslaw.com.au/LegalInformation/.

5 *Contemporary images of a real child* are images created in the previous 18 years representing the involvement of a person under the age of 18. Exhibition of the images can be through photographs, film and video, posters, digital projections, printmaking, sculpture.

3) Distribution –by publication, in promotional material or through digital media– funded by the Australia Council of images that depict a real child under the age of 18

Contemporary images of a real child under the age of 18

Before distribution of those images, you must:

- comply with all relevant laws and regulations in force at the time of distributing the image
- give thoughtful consideration regarding the rights of the child
- take all reasonable steps to satisfy yourself that the artist complied with the laws in force at the time the images were created; such as secure written confirmation that the artist followed the laws and regulations in force at the time of creating the image.

At the end of the funded activity, the Australia Council may request evidence that you have followed this requirement.

Contemporary images of fully or partly naked children

If an image to be distributed depicts a real child under the age of 18 who is fully or partly naked, you must:

- submit the images to be classified by the Classification Board prior to publication
- follow any requirements imposed by the Classification Board. The Australia Council will assist you to apply for rating by the Classification Board at no cost.
- Images of infants less than one year old are excluded from this requirement.

4) Websites of Australia Council funded organisations

Some Australia Council funded organisations host websites that support images independently uploaded by artists or registered members. These organisations are required to include compliance with these protocols in their web policy as outlined on page 9.

ROLE OF CLASSIFICATION BOARD⁶

If these protocols require you to obtain classification from the Classification Board, we will submit your application so that there is no cost to you. Please refer to the Guidelines in the following section.

⁶ The Classification Board is an independent statutory body which makes classification decisions about films, computer games and publications on a fee for service basis. It classifies content to advise the general public on viewing suitability; for example, the G, MA, PG and R ratings ascribed to films. The Classification Board will also classify images of artworks that are to be exhibited, presented or distributed by publication, in promotional material or through digital media.

4. PROTOCOLS FOR WORKING WITH CHILDREN IN ART

ARTISTS AND ARTS ORGANISATIONS: THE LAW AND YOUR PRACTICE

There is a growing awareness of the importance of having laws and protections to safeguard children from exploitation and harm, especially in relation to obscenity and pornography. Advances in technology through online and mobile media have opened the way for mass access to images and written material. There is the potential for images of a child to be exhibited and distributed, intentionally or unintentionally, well beyond the original audience. It is in this context that the whole community, including artists and arts organisations, must consider their legal and ethical obligations regarding the safety of children.

If you engage children in the course of your creative work, with or without payment to the children, or if you present or distribute depictions of children, there are five main areas of law that may be relevant:

1. laws concerning the employment of children
2. laws relating to child pornography and obscenity
3. classification and censorship laws
4. privacy laws and laws relating to the photography or filming of children
5. other laws that may affect an artist working with children, including court proceedings surveillance; public nuisance; use of an image; defamation; and trade practices.

Importantly, the laws vary across the states and territories. It is essential that you understand the nature of the laws that affect you.

Artists and arts organisations working with children, and applying or thinking of applying for Australia Council funding, are encouraged to contact us to discuss how the protocols might apply to them. The protocols have no impact upon the Australia Council's assessment of "artistic excellence", which is determined by an independent peer review process.

If you are an applicant for Australia Council funding you will be asked to indicate whether you intend to involve a person under the age of 18 in your activity. If you do intend to involve children in your activity, you will need to abide by these protocols and by the relevant laws and regulations of the state or territory in which you will work. If you are creating an artwork which involves working with children under the age of 15, the Australia Council also requires evidence of parental consent as 15 is the age limit most commonly specified in existing state and territory child employment laws. These laws will apply to any artwork you undertake with a child, whether paid or unpaid. Applicants should be aware that some states and territories require formal permits and police checks prior to the employment of children.

Applicants proposing to work overseas will need to consider the laws and regulations of the country or countries in which they will work. They may need to seek independent legal advice about the laws in those countries.

There are three critical issues we have considered in the development of these protocols:

- **Creation:** ensuring that the rights of children are protected throughout the artistic process, based on informed consent about the process and the intended outcome of the artwork.
- **Exhibition and performance:** ensuring that artworks depicting images of children have been produced and will be presented with due care and sensitivity.
- **Distribution:** protecting images of children from being exploited, including use of the images beyond the original context of the creative work.

CREATION OF A WORK OF ART FUNDED BY THE AUSTRALIA COUNCIL

All recipients of Australia Council funding will confirm by signing their funding agreements that they will abide by the laws and regulations governing child employment as they apply in the state or territory in which they create their artwork or undertake the project. This may require certain permits and formal permissions, depending on the state or territory and the age of the children involved.

As a minimum standard for all funded applicants working with children, the Australia Council requires that the parent(s) or guardian(s) of every child under the age of 15 consents to their child being involved in the project or artwork, with or without financial compensation⁷. While anyone under the age of 18 may be considered to be a child, the Australia Council has set ‘under 15’ as the age limit for parental consent because it is the age limit most commonly specified in existing state and territory child employment laws.

At the conclusion of their funded activity, grant recipients will be asked to confirm that they had the consents and permits required for working with children. Grant recipients will agree to provide a copy of any required consents and permits to the Australia Council, if requested. We recommend that you keep copies of these documents for future reference in case you also exhibit or distribute your work in future through an Australia Council funded project.

The Australia Council does not require parental consent for the creation of images that include children who happened to be in a public space, where the children were not engaged by the artist and took no directions from the artist in the creation of the image. Various bylaws and regulations may apply, however. Artists can refer to the Arts Law Centre’s fact sheet *Street Photographers Rights* at www.artslaw.com.au/LegalInformation/.

NUDITY

Artists and arts organisations should be aware that several states explicitly prohibit children of certain ages being employed while naked.

Where there is no state or territory law prohibiting the child from being employed fully or partly naked⁸ for an arts project, the Australia Council requires written confirmation from the parent(s) or guardian(s) of any child under the age of 15 that the artist has explained the context for the work to the parent(s) or guardian(s) and to the child, and:

- they understand the nature and intended outcome of the work;
- they commit to direct supervision of the child while the child is naked; and
- they agree it is not a ‘sexual, exploitative or abusive context’.

This confirmation will need to be provided to the Australia Council prior to commencing the work.

Where the approved grant application proposed that artists would be working with children who would be fully or partly naked, Australia Council grant monies will not be paid until the required consents have been secured.

⁷ For these protocols, a child is considered to be *employed* when he or she contributes to the work by carrying out tasks at the direction of the artist or their representative, regardless of whether the child is paid or provided another form of reward.

⁸ *Partly naked* is defined as including images of bare genitals, buttocks or female breasts.

EXHIBITIONS⁹ AND PERFORMANCES FUNDED BY THE AUSTRALIA COUNCIL

These protocols set no special requirements regarding the exhibition or presentation of depictions of children in general. In line with age limits defined within the National Classification Code, the Australia Council defines depictions of children as depictions of anyone under the age of 18. However, artists and arts organisations exhibiting or presenting depictions of children who are fully or partly naked should refer to the laws governing indecency, obscenity and child pornography in their state or territory¹⁰. These laws aim to safeguard children from exploitation and harm.

Contemporary images of fully or partly naked children

Australia Council funded exhibitors or presenters who are displaying contemporary images which depict a real child¹¹ who is fully or partly naked, are required to comply with all relevant laws and regulations in the state or territory in which the exhibition or performance takes place. You must also give thoughtful consideration regarding the rights of the child and take all reasonable steps to satisfy yourself that the artist complied with the laws in force at the time the images were created; this could include, for example, seeking written confirmation from the artist that they followed the laws and regulations in force at the time of creating the image and obtained any required permissions and consents.

At the end of the funded activity, the Australia Council may request evidence that you have followed this requirement.

If you have any doubts about the content of these images, we strongly suggest that you have the images classified by the Classification Board and comply with all Classification Board requirements prior to public presentation. The Australia Council will assist you in applying to the Classification Board without charge.

DISTRIBUTION

As with exhibition and performance, the Australia Council defines distribution of depictions of anyone under the age of 18 to be depictions of a child. Distribution of depictions of children includes visual material and text, published in printed form or through digital media. Given the ease with which images and written depictions can be distributed nationally and internationally, including in contexts not originally intended, obligations for those distributing depictions of children are greater than for exhibitors and presenters.

These protocols specifically cover three means of distribution: publication, promotion/marketing, and online or mobile media. Where an artist or organisation pursues multiple means of distribution for one activity, only one set of permissions is required if it mentions all the means of distribution to be pursued.

If you are an Australia Council funded artists and arts organisations distributing—by publication, in promotional material or through digital media—contemporary images of a real child under the age of 18, you must comply with all relevant laws and regulations in the state or territory in which you will distribute the image and give thoughtful consideration regarding the rights of the child. You must also take all reasonable steps to satisfy yourself that the artist complied with the laws in force at the time the images were created, such as seeking written confirmation from the artist that they followed the laws and regulations in force at the time of creating the image.

At the end of the funded activity, the Australia Council may request evidence that you have followed this requirement.

Where material to be distributed by an organisation funded by the Australia Council includes contemporary images of anyone under the age of 18 depicted fully or partly naked, the images must be classified by the Classification Board prior to distribution of the material and all Classification Board requirements must be followed. The Australia Council will assist artists to apply to the Classification Board without charge.

Images of infants less than one year old are excluded from this requirement.

⁹ Exhibition of the images can be through photographs, film and video, posters, digital projections, printmaking and sculpture.

¹⁰ Please note that some states laws refer to the depiction of anyone who is or who appears to be under a particular age.

WRITTEN DEPICTIONS

These protocols set no special requirements regarding the presentation or distribution of written depictions of children. However, artists and arts organisations are reminded that child pornography laws include prohibitions of text depicting a child in an indecent sexual context or manner. Publishers of text depictions of a child should refer to the Arts Law fact sheets for their state or territory and may wish to seek legal advice.

WEBSITES, ONLINE AND MOBILE MEDIA

Online and mobile media content is overseen by the Australian Communications and Media Authority (ACMA) under the Broadcasting Services Act 1992. As part of this responsibility, ACMA administers a mechanism where members of the Australian public can lodge complaints concerning online content that is, or may be, prohibited by law. ACMA is required to apply to the Classification Board for a formal classification decision where material is hosted in, or provided from, Australia and it is likely to be prohibited.

Some Australia Council funded organisations host websites that support images independently uploaded by artists or registered members. These organisations should have a web policy which prohibits the upload of material that violates the rights of others or is unlawful, defamatory or obscene, and which gives the organisation authority to remove material that violates those standards. These organisations are required to add provisions in their web policy clarifying that by uploading images of children under the age of 18, the artists or members warrant that:

- images were created in line with relevant state or territory laws and regulations in force at the time the image was created;
- parental consent was given for distribution of contemporary images of any child involved in making the work; and
- images of fully or partly naked children have been classified by the Classification Board.

CLASSIFICATION BOARD

In certain instances these protocols advise or require that the Australia Council funded artist or organisation have a copy of their artwork classified by the Classification Board. This section provides details of how to apply to the Classification Board.

Definition of images

There is no specific Classification Board category to classify art images. An image of an artwork will be classified within the publications category by the Classification Board. Moving images created by artists will be classified within the film category.

Timeframe

The time frame for having an image or series of images classified is 20 days (from the day after the application is received by the Classification Board). Applicants should allow additional time in order to complete the application form and submit it to the Australia Council.

Cost

There is no cost to an Australia Council funded artist or organisation if the application to the Classification Board is submitted by the Australia Council within the timeframe stated above. Urgent requests (5 days) will incur a \$400.00 fee.

How to submit your image

Static image: you are required to submit a photograph (printed on paper) of the work to be classified. Do not send original material and do not send a static image on a CD or DVD. For **publications, do not** submit the entire publication, ONLY copies of the images to be classified should be submitted (printed on paper).

Moving images: you are required to provide documentation (on DVD) of the part of the moving image artwork you wish to have classified, rather than the complete artwork.

Performance: provide documentation (on DVD) of the part of the performance you wish to have classified, rather than the complete performance.

Completing the form

The applicant is responsible for completing the relevant form and should seek advice from the Classification Board on how to do this (see contact details below).

You must indicate on the form that the application is being made in line with the Australia Council's *Working with Children in Art Protocols*.

On the form, the **Contact** is the applicant (Australia Council funded artist or organisation); the **Organisation** is the Australia Council for the Arts.

The Australia Council will sign the completed form in the Certification box.

Process

STEP 1 Download the appropriate form from the Classification Board website

(<http://www.classification.gov.au/Industry/>).

For static images use the Application for Classification of a Publication form.

For moving images use the Application for Classification of a Film not for Public Exhibition form.

You should note that the application forms are complex and will require Classification Board assistance to complete.

STEP 2 Call the Classification Board to discuss what you need to include on the application form. Inform the Classification Board that the Australia Council will be submitting the application on your behalf and that you are the contact person on the form.

STEP 3 Submit the completed, unsigned form and images to the Australia Council (contact details below).

Make sure you keep a copy.

The Australia Council will require a declaration that you have provided true and accurate information on the form (template available from the Australia Council).

STEP 4 The Australia Council will submit the form and images to the Classification Board within 24 hours, once the completed form, image/s and declaration have been received.

STEP 5 The Classification Board will liaise directly with you as applicant. You will receive your classification notice directly from the Classification Board.

ARTS LAW ADVISORY SERVICES

The Arts Law Centre of Australia is a community legal centre which provides advice to artists and arts organisations. It has developed a set of fact sheets entitled *Working with Children in the Creative Process: Information for Artists and Arts Organisations*. One of the fact sheets is an Australia-wide overview of relevant considerations and suggestions for artists working with children. There are separate fact sheets covering the relevant laws in each state and territory.

The fact sheets are available on the Arts Law website at www.artslaw.com.au/LegalInformation/ and via the Australia Council's website at www.australiacouncil.gov.au. Artists and arts organisations may also wish to seek independent legal advice.

The following information can also be obtained through the Arts Law website:

Model Release Form

<http://www.artslaw.com.au/samplecontracts/generalagreements/PhotoModelRelease.asp>

Street Photographers Rights

<http://www.artslaw.com.au/legalinformation/StreetPhotographersRights.asp>

REVIEW

The Australia Council will continue to monitor the implementation of these protocols.

CONTACT DETAILS FOR FURTHER INFORMATION

Australia Council for the Arts

Director, Visual Arts

Telephone: (02) 9215 9169 Free call: 1800226912

Classification Board - www.classification.gov.au

Senior Applications Officer, Classification Operations Branch

Attorney-General's Department

Telephone: (02) 9289 7100

Arts Law Centre of Australia - www.artslaw.com.au/LegalInformation/

Telephone: 1800 221 457

ACKNOWLEDGEMENTS

The Australia Council acknowledges the work of the Arts Law Centre of Australia in the research and publication of fact sheets to inform artists and arts organisations of their requirements under the law. We also acknowledge the support of the Classification Board in assisting Australia Council funded artists who seek to have their work classified.

The Australia Council acknowledges the valuable input of the many individuals and organisations who contributed to the debate on these issues and the development and review of the protocols.

DISCLAIMER

These protocols were developed by the Australia Council for the Arts. The protocols do not represent legal advice. If you have any queries about your obligations, you should seek your own independent legal advice.

5. GRANT APPLICATION AND AGREEMENT FORMS

This section provides examples of the clauses in the Australia Council grant application forms and funding agreement that relate to the funding of activities, artwork or images that involve children.

1. GRANT APPLICATION FORMS

Applicants are asked to select either of the following statements and certify that the information they provide on their application forms is correct.

Working with children: protocols

This activity is likely to involve personnel working with people under the age of 15 or the exhibition or distribution of depictions of children under the age of 18 years. I am/the organisation is aware of the special responsibilities and requirements as articulated in the Australia Council's protocols for working with children in art (available at [Protocols for Working With Children](#)), and agree to abide by those requirements. I declare that there are no circumstances or reasons that might preclude my/any employee or relevant personnel of the organisation working with/near young people aged under 15.

OR

The organisation and/or project to be funded under this application does not involve working with people age under 15 or the exhibition or distribution of depictions of children under the age of 18 years. However, if this changes during the course of the project, I/we will make myself/ourselves aware of the special responsibilities and legal requirements as articulated in the Australia Council's protocols for working with children in art and agree to abide by those requirements and inform the Australia Council immediately of this change.

2. FUNDING AGREEMENT CLAUSES

Artists and arts organisations signing funding agreements will be required to follow the conditions set out in the clauses below.

a) General condition for all contracts:

If any of the project activities involve:

i. engaging working with people under the age of 15 with or without financial compensation;

OR

ii. the exhibition or distribution of depictions of children under the age of 18 years,

then you must comply with the Australia Council's protocols for working with children in art, as well as any relevant laws as they exist in the state or territory in which you work. You may need to obtain permits and parental consents and give us copies of those consents if we ask for them.

b) Additional condition for funding agreements for those working with fully or partly naked children:

You have indicated in your funding proposal that you will be working with people under the age of 15 who will be naked or partly naked, with or without financial compensation. It is a condition of this funding agreement that prior to engaging those people in your project, you comply with all laws and regulations in the state or territory in which you are working and obtain all relevant permissions and consents. We may ask for evidence that you have complied with these protocols.

c) Additional condition for contracts including exhibition or distribution of images that depict children under the age of 18 years:

You have indicated in your funding proposal that your project will involve the exhibition or distribution of depictions of children under the age of 18 years, whether naked or partly naked. It is a condition of this funding agreement that you must comply with the Australia Council's protocols for working with children in art. You must also comply with any relevant laws as they exist in the state or territory in which you work. You may need to obtain permits and parental consents and give us copies of those consents when we ask for them.