

## **Arts SA Protocols for Working with Children in Art**

**Revised September 2010**

### ***Introduction***

Arts SA has developed a set of protocols to address the depiction of children in works, exhibitions and publications that are the recipients of government funding. These protocols are based on, and are consistent with, the *Protocols for working with children in art* developed and applied by the Australia Council for the Arts, and are intended to apply to grants administered by **Arts SA, Carclew Youth Arts and Country Arts SA**

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. 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.

### ***Statement of purpose and principle***

The South Australian Government is committed to upholding and promoting the rights of people to freedom in the practice of the arts, and to encouraging young people's and children's involvement in the arts, both as participants in the creative process and as members of an audience. However, underpinning this freedom in a civil society is the rule of law and the assumption that publicly funded activity must abide by the law. Certain laws that apply in South Australia impose a number of limits and constraints designed to protect children from exploitation and harm.

The following protocols have been designed 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<sup>1</sup>.

The protocols do not affect an applicant's eligibility to be considered for funding (although relevant applications will be expected to contain an indication of the applicant's agreement to abide by the protocols) and they have no impact on the peer assessment process. However, the expectations outlined in these protocols are the minimum standards for those seeking and receiving Arts SA ( or Country Arts SA) support, and as such may be expected to apply as minimum contractual obligations for those receiving Arts SA ( or Country Arts SA) support. That is, adherence to the relevant laws and to these protocols will be a condition of funding for projects supported by Arts SA.

**For the purposes of these protocols, references to a 'child' or 'children' are to be read as references to a person or persons under the age of 18 years.**

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<sup>1</sup> 'Creative works' include photography, painting, printmaking, performance, sculpture, written text, drawing and digital imagery.

## **Summary of obligations under these Protocols**

### *All applicants for Arts SA ( or Country Arts SA) funding*

1 If you plan to work with any child, you indicate your agreement to abide by these *Protocols* and any relevant laws and regulations that apply in South Australia.

- Note that these *Protocols* require you to have parental consent for employing children **under the age of 15** before you commence your work<sup>2</sup>.

### *All recipients of Arts SA ( or Country Arts SA) funding*

1. In signing your funding agreement you commit to complying with all relevant requirements imposed by law in relation to working with children, or with images of children, as well as getting the consents required by these *Protocols*.
  - Arts SA ( or Country Arts SA) may ask for a copy of required consents.
2. When you submit the acquittal report in accordance with your funding agreement, you will confirm that you complied with all relevant requirements imposed by law in relation to working with children, or with images of children, and with these *Protocols*.

### *Creation of a work of art*

3. If you are working with any child under the age of 15, Arts SA ( or Country Arts SA) requires that you have the consent of their parent(s) or guardian(s) before you commence the work.
  - Arts SA ( or Country Arts SA) does not require parental consent for images that include children who happened to be in a public space, where the children were not employed by the artist and where they took no directions from the artist in the creation of the image.
4. If you are working with any child and they are to be fully or partly naked, you must comply with relevant laws which prohibit the production, dissemination or exhibition of child pornography and indecent or offensive material. If the child is under the age of 15, you will also need to provide evidence of the consent 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 it is not a 'sexual, exploitative or abusive context'.

### *Exhibitions and performances*

5. If you are showing contemporary images involving a real child who is fully or partly naked, you must: comply with all relevant South Australian laws and regulations, give thoughtful consideration to the rights of the child, and take all

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<sup>2</sup> 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.

reasonable steps to satisfy yourself that the artist complied followed the laws and regulations in force where they worked when creating the image.

- If the work was created with Arts SA funding after 1 April 2010, ( or Country Arts SA after 1 January 2011) the artist would need to confirm that they followed these *Protocols* as well as the relevant laws, and the required consents were obtained.
6. If you have any concerns about the content of any images or artworks being exhibited Arts SA recommends that you have those images classified by the Classification Board prior to exhibition and follow any requirements the Board may impose. You may include costs related to classification in your project budget.
- Images documenting activity in a public space, where the children were not employed by the artist and they took no directions from the artist in the creation of the image, are excluded.

### *Distribution*

7. If you are distributing - by publication, in promotional material or through digital media – contemporary images involving a real child, you must: comply with all relevant South Australian laws and regulations, give thoughtful consideration to the rights of the child, and take all reasonable steps to satisfy yourself that the artist complied followed the laws and regulations in force where they worked when creating the image
- If you can't get that written statement from the artist, you will need to get consent from the parent(s) or guardian(s) – or from the 'child' if they have since turned 18 – to distribute the image.
  - If the work was created with Arts SA funding after 1 April 2010, ( or Country Arts SA after 1 January 2011) the artist would need to confirm that they followed these *Protocols* as well as the relevant laws.
  - Arts SA ( or Country Arts SA) does not require parental consent for distribution of images that include children who happened to be in a public space, where the children were not employed by the artist and where they took no direction from the artist in the creation of the image.
  - Organisations whose websites host images that are independently uploaded by artists or registered members will be required to have a web policy that complies with these *Protocols*.
8. If you are distributing – by publication, in promotional material or through digital media – any contemporary images involving a real child who is fully or partly naked, you will need to get the images classified by the Classification Board prior to publication. You may include costs related to classification in your project budget.
- Images of infants less than 1 year old are excluded.
  - Images documenting activity in a public space, where the children were not employed by the artist and they took no directions from the artist in the creation of the image, are also excluded.

## **Protocols**

### *Artists and arts organisations: the law and your practice*

If you employ 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.

If you are a resident of South Australia, or are creating, exhibiting, performing or distributing work in this state, it is essential that you understand the nature of the laws that affect you.

The Arts Law Centre of Australia is a community legal centre that provides advice to artists and arts organisations. It has developed a set of fact sheets entitled *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, including South Australia.

The fact sheets are available on the Arts Law website at [www.artslaw.com.au/LegalInformation/](http://www.artslaw.com.au/LegalInformation/) and via Arts SA's website at [www.arts.sa.gov.au](http://www.arts.sa.gov.au). Artists and arts organisations may also wish to seek independent legal advice.

All applicants for Arts SA (or Country Arts SA) funding are asked to indicate whether they intend to involve a person under the age of 18 in their 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 that apply in South Australia.

Applicants proposing to work interstate or overseas will need to consider the laws and regulations of any other state, territory or country in which they will work. They may need to seek independent legal advice about the laws in those locations.

These *Protocols* are intended to achieve the following outcomes in relation to each of the following three key stages, as discussed in further detail below:

1. *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
2. *Exhibition and performance*: Ensuring that artworks involving images of children have been produced and will be presented with due care and sensitivity

3. *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*

All recipients of Arts SA funding ( or Country Arts SA) will confirm through their funding agreements that they will abide by any applicable laws and regulations governing working with children as they apply in South Australia, including with respect to:

- the employment of children of compulsory education age
- the establishment and maintenance of child safe environments
- working conditions and occupational health and safety.

As a minimum standard for all funded applicants working with children, Arts SA ( or Country Arts SA) requires that the parent(s) or guardian(s) of every child under the age of 15 consents to their child being employed in the project, with or without financial compensation.

At the conclusion of their funded activity, grant recipients will be asked to confirm that they have complied with all applicable laws and with these *Protocols*, which would include securing any consents required for working with children. Grant recipients will agree to provide a copy of any required consents to Arts SA ( or Country Arts SA), if requested.

Arts SA ( or Country Arts SA) 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 employed by the artist and where they 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/](http://www.artslaw.com.au/LegalInformation/).

#### **Nudity**

While there is no South Australian law explicitly prohibiting a child from being employed fully or partly naked<sup>3</sup> for an arts project, artists must ensure that they comply with all laws relating to child pornography and indecent or offensive material.

In addition, Arts SA ( or Country Arts SA) 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
- they agree it is not a 'sexual, exploitative or abusive context'.

This confirmation will need to be provided to Arts SA ( or Country Arts SA) prior to commencing the work. Where the approved grant application proposed that artists would be working with children under the age of 15 who

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<sup>3</sup> 'Partly naked' is defined as including images of bare genitals, buttocks or female breasts

would be fully or partly naked, Arts SA ( or Country Arts SA) grant monies would not be paid until the required consents have been secured.

### *Exhibition and performance*

Artists and arts organisations exhibiting or presenting depictions of children who are fully or partly naked should refer to the laws governing indecent or offensive material and child pornography in South Australia.

In addition, Arts SA ( or Country Arts SA) funded exhibitors or presenters displaying contemporary images\_of a real child who is fully or partly naked are required to comply with all relevant South Australian laws and regulations, give thoughtful consideration to the rights of the child, and take all reasonable steps to satisfy themselves that the artist complied followed the laws and regulations in force where they worked when creating the image. If the work was created with Arts SA funding granted after 1 April 2010, (or Country Arts SA after 1 January 2011) the artist would need to state that these *Protocols* were followed and the required consents were obtained.

Where there are any concerns about the content of any images or artworks being exhibited Arts SA ( or Country Arts SA) recommends that the exhibitor or presenter have those images classified by the Classification Board prior to exhibition and follow any requirements the Board may impose. Costs relating to classification may be included in the project budget. Images documenting activity in a public space, where the children were not employed by the artist and they took no directions from the artist in the creation of the image, are excluded.

### *Distribution*

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.

Arts SA ( or Country Arts SA) funded artists and arts organisations distributing - by publication, in promotional material or through digital media – any contemporary images of a real child, will need to comply with all relevant South Australian laws and regulations, give thoughtful consideration to the rights of the child, and take all reasonable steps to satisfy yourself that the artist complied followed the laws and regulations in force where they worked when creating the image. If the work was created with Arts SA funding granted after 1 January 2010, (or Country Arts SA after 1 January 2011), the artist would need to state that these *Protocols* were followed and the required consents were obtained. The artist's statement would also need to confirm that the parent(s) or guardian(s) of the child gave permission for distribution of the image.

If the distributing artist or organisation cannot get an artist's statement, they will need permission from the parent(s) or guardian(s) – or from the 'child' if they have since turned 18 – to use the image.

Arts SA (or Country Arts SA) does not require artists or organisations to secure parental consent for distribution of images that include children who happened to be in a public space, where the children were not employed by the artist and where they took no directions from the artist in the creation of the image.

Where the material includes contemporary images of a real child depicted fully or partly naked, the images must be classified by the Classification Board prior to distribution of the material and any requirements it imposes must be followed. Costs relating to classification may be included in the project budget.

Images of infants less than one year old are excluded from this requirement. Images documenting activity in a public space, where the children were not employed by the artist and they took no directions from the artist in the creation of the image, are also excluded.

### *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 Centre's fact sheets for South Australia and may wish to seek legal advice.

### *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 is likely to be prohibited.

Some funded organisations host websites that support images independently uploaded by artists or registered members. These organisations should have a Web Policy or Code of Conduct 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 asked to add provisions in their Web Policy clarifying that by uploading images of children the artists or members warrant that:

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

### **Review**

Arts SA will monitor the implementation of these *Protocols* during the first year of implementation. The *Protocols* will be reviewed after the first 12 months in operation. The *Protocols* may also be amended from time to time to maintain their consistency with the Australia Council for the Arts' *Protocols for working with children in art*.

### ***Acknowledgements***

Arts SA ( or Country Arts SA) acknowledges the work of the Australia Council in the development of the original *Protocols for working with children in art*, and the Arts Law Centre of Australia in the research and publication of the fact sheets on the legal requirements that apply for artists and arts organisations.

### ***Further Information***

Arts Law Centre of Australia - [www.artslaw.com.au/LegalInformation/](http://www.artslaw.com.au/LegalInformation/)

*Children in the Creative Process: Information for Artists and Arts Organisations*

*Model Release Form*

*Street Photographers Rights*

Classification Board - [www.classification.gov.au](http://www.classification.gov.au)

### ***Disclaimer***

These *Protocols* are based on those originally 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.