

# Protocols for Working with Children in Art

## Introduction

Before you begin please note: where Arts SA is referred to in these Protocols, it should be read as Arts SA, Carclew and Country Arts SA.

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 and Country Arts SA<sup>1</sup>.

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>2</sup>.

The protocols do not affect an applicant's eligibility to be considered for funding (although relevant applications must indicate an agreement to abide by the protocols) and they have no impact on the peer assessment process. The protocols are the minimum standards for anyone seeking Arts SA support, and as such are considered to be minimum contractual obligations for our funding recipients. Adherence to the laws and to these protocols is a condition of funding for projects that we support.

**These protocols define a child as anyone under 18 years.**

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<sup>1</sup> Where Arts SA is referred to in these Protocols, it should be read as Arts SA, Carclew and Country Arts SA.

<sup>2</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 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>3</sup>.

### ***All recipients of Arts SA funding***

2. 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 may ask for a copy of required consents.
3. 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 (refer to page 4)***

4. If you are working with any child under the age of 15, Arts SA requires that you have the consent of their parent(s) or guardian(s) before you commence the work.
  - 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.
5. 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 (refer to page 6)***

6. 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 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, the artist would need to confirm that they followed these *Protocols* as well as the relevant laws, and the required consents were obtained.

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<sup>3</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.

7. 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 (refer to pages 6-7)***

8. 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, the artist would need to confirm that they followed these *Protocols* as well as the relevant laws.**
  - **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*.**
9. 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 funding will be 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 must agree through their funding agreements to abide by any applicable laws and regulations governing working with children 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 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 consent required for working with children. Grant recipients will agree to give us a copy of any required consents, if requested.

We do 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. Bylaws and regulations may apply. 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 no South Australian law explicitly prohibits a child from being employed fully or partly naked<sup>4</sup> for an arts project, artists must comply with all laws relating to child pornography and indecent or offensive material.

In addition, we require written confirmation from a parent or guardian of any child under the age of 15 that the artist has explained the context for the work to them 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 must be provided to Arts SA before any works begin. Until we have all the required consents, Arts SA won't pay grant monies on any approved applications that involve children younger than 15 being fully or partly naked.

### *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 funded exhibitors or presenters displaying contemporary images of a real child<sup>5</sup> 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 ensure that they followed the laws and regulations in force when creating the image. If the work was created with Arts SA funding granted after 1 April 2010, the artist would need to show that these *Protocols* were followed and consents were obtained.

Where there are any concerns about the content of any images or artworks being exhibited we recommend 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. Since images and written depictions can be distributed nationally and internationally, including in contexts not originally intended, greater obligations are enforced for those distributing depictions of children 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 providing it lists all the proposed means of distribution.

Arts SA funded artists and arts organisations distributing any contemporary images of a real child must comply with all relevant South Australian laws and regulations; give thoughtful consideration to the rights of the child; and ensure that they followed all laws and regulations in force when creating the image.

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<sup>4</sup> 'Partly naked' is defined as including images of bare genitals, buttocks or female breasts

<sup>5</sup> '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 could be through photographs, film and video, posters, digital projections, printmaking, sculpture.

If the work was created with Arts SA funding granted after 1 January 2010, the artist must confirm that the *Protocols* were followed and the required consents were obtained. The artist's statement must also confirm that a parent or guardian of the child gave permission to distribute the image.

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

We do 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 are excluded from this requirement.

### *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*. ACMA administers a mechanism where 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.

### **Implementation**

From 1 April 2010, grant applicants have had to indicate whether they plan to work with anyone under the age of 18. Applicants who do work with children must be aware of the special responsibilities and requirements spelt out in these *Protocols*. All grant recipients must comply with the *Protocols* as well as the relevant laws and regulations, and they must certify compliance as part of their Acquittal Reports. In certain cases evidence of compliance will be required before grant monies will be paid. Organisations receiving triennial funding will be sent a notice asking them to confirm their agreement to the obligations set out in these *Protocols* for the remainder of their funding period.

### **Acknowledgements**

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.