



27 November 2008

Ms Kathy Keele  
Chief Executive Officer  
Australia Council for the Arts  
PO Box 788  
Strawberry Hills NSW 2012  
By Email: [comms@australiacouncil.gov.au](mailto:comms@australiacouncil.gov.au)

Dear Ms Keele,

**Re: Protocols for working with children in art (Protocols)**

Thank you for the opportunity to comment on the Protocols. Please note that throughout this submission, 'artist' means 'artist or arts organisation'.

**About the Arts Law Centre of Australia (Arts Law)**

Arts Law was established in 1983 and is the national community legal centre for the arts in Australia.

Arts Law provides legal advice, publications, education and advocacy services each year to over 2500 Australian artists and arts organisations operating across the arts and entertainment industries.

**About our clients**

Many of our clients are engaged in various art forms involving children as subjects, students or co-authors. This engagement leads to an encouragement of enthusiasm in the arts for young artists. For many artists it generates their only source of income or is the only mechanism for which they are eligible for government funding.

Generally, our clients not only reside in metropolitan centres, but also contact us from regional, rural and remote parts of Australia, and from all Australian states and territories. Our client base is multi-cultural, and both Indigenous & non-Indigenous.

Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

The comments that we make in this submission are informed by our clients' profile, which is that they are:

- generally on low incomes/ with limited funds;
- new, emerging artists or established arts practitioners or arts organisations;

- significant number of Indigenous artists and art organisations;
- creators of their own material and users of other artist's work;
- operating arts businesses;
- operating in all arts sectors;
- working in both traditional and digital media;
- needing to be self-reliant in business;
- limited in their ability to enforce rights; and
- eager for accessible legal information, although they typically have limited legal education.

### **Our comments**

Arts Law has commented in detail on the protocols in previous discussions with Australia Council. As you are likely aware, Arts Law has prepared a number of legal information sheets entitled 'Children and the Creative Process' in an attempt to allow artists to better understand their legal obligations. These sheets are referred to throughout the Protocols. You will note from these the expanse of regulation to which artists are already subject on a local, state and federal level.

Our comments in relation to the Protocols are as follows:

#### **1. The Protocols are an unnecessary burden on artists and set a dangerous benchmark**

There are multitudes of pre-existing laws which operate in the interests of protecting children from harm. Arts Law supports the existence of these laws in the interests of child protection. It does not, however, support the Australia Council in its imposition of additional and unnecessary regulations as a precondition for limited funding. We urge the Australia Council to consider the potential ramifications of restricting Australian artists further.

We are very concerned that the Protocols will set a funding standard that other funding bodies will follow, leading to an increasingly restricted spectrum of funding options for artists.

#### **2. We would, in certain circumstances, support a protocol which simply requires artists to confirm that their work with children will comply with the requirements set out in the various laws at the time of their application for funding.**

We recognise that as the Australia Council is not in a position to police nor enforce compliance and that such an undertaking is to this extent arbitrary. We are opposed to the requirement relating to 'contemporary images'. Requiring that artists provide a written declaration that they have been compliant when creating the image could require that artists trace their steps back for up to 25 years of artistic work to assess whether they were compliant. Getting legal assistance in order to trace back for such an extended period of time is unlikely, and time consuming. This provision is particularly unjust. In addition it is likely impossible for Australia Council to assess the validity of a declaration, unless they trace back through the legislation in the same way.

### **3. The Protocols are unnecessarily restrictive and confusing**

There are a number of instances where the Protocols are unnecessarily restrictive and confusing. For example, page three states that "*If you are working with anyone under the age of 18, you agree to abide by the relevant child employment laws in your state and territory*". This means that in addition to giving an undertaking that the artist or arts organisation is compliant with the laws in their jurisdiction, that they are expected to comply with those laws until the 'child' is 18. Most child employment laws only apply to people under the age of 15 (see for example '*Child Employment Act 2003 (VIC)*'). This extension will further inhibit the work of artists and their ability to get funding when working with children, well beyond what the legislation requires or intends. Other parts of the protocols refer to children as being people under the age of 15 which is inconsistent with the initial age of 18 as mentioned on page 3.

### **4. The Protocols are impossible to police or enforce consistently**

Artists are already required by the law to comply with various pieces of relevant legislation. Many of the requisites to Australia Council funding in the Protocols are not legally required and unduly restrictive. They are likewise impossible to 'police' and therefore arbitrary. For example, "*if you are working with anyone under the age or 15 in any state or territory, you have to declare to the Australia Council that you have the permission of the parent(s) or guardian(s)*". It is not clear from this clause what form the declaration is intended to take, what 'working with children' actually means or what sorts of permissions are required. Another example is the requirement on page 7 that those awarded project grants provide evidence of their compliance. It is not stated what form such evidence is to take but is assumed by the writer that this means 'evidence of compliance with the Protocols'. Most of this 'compliance' takes the form of declarations made to the Australia Council by the artist about the Protocols in any event.

### **5. There are inadequate resources allocated to dealing with the Protocols**

The Protocols will put a greater strain on the already limited legal resources allocated to artists. Artists will need a greater level of legal assistance in ensuring that they are compliant with each and every law as it applies to their practice if they are to give the declarations described in the Protocols and are likely to turn to Arts Law for this assistance. We are currently not in a position to provide for this greater level of need which will arise if the Protocols are introduced. We would be interested in discussing provision that has been made for the increased need for assistance and advice that will result if the Protocols are introduced.

Yours sincerely



Suzanne Derry  
**Solicitor**

Per Robyn Ayres  
**Executive Director**

