

CHILDREN IN THE CREATIVE PROCESS: AUSTRALIAN CAPITAL TERRITORY

This information sheet must be read in conjunction with the general information sheet "[Children in the creative process: Australia](#)" since that explains how the various federal laws operate. This information sheet explains how the ACT specific laws relate to you as an artist working with children. It includes information about the employment of children, background checks, pornography and obscenity offences and the application of classification legislation in the ACT.

In the ACT, the Office for Children, Youth and Family Support in the Department of Community Services is responsible for children and their website is a useful source of additional information and links.

1. Child employment

The child employment provisions in the *Children and Young People Act 2008* (ACT) (***Children and Young People Act***) commenced in the ACT on 27 February 2009.

Are you employing a child?

Under the *Children and Young People Act*, a child is defined as a person who is under the age of 12 years. A young person is a person over 12 years, but not yet 18 years.

Under the *Children and Young People Act*, you are the employer of a child if you engage them under a written or unwritten contract for services, whether or not the child is paid, and whether or not your business is carried on for private profit.

When children and young people are employed, the employer must comply with applicable employment standards¹. Generally children under 15 years old may only be employed to perform light work. Light work is defined under the *Children and Young People Act* as work that "is not contrary to the best interests of a child or young person and is declared by regulation to

¹ *Children and Young People Act* s 792. *The Children and Young People (Employment) Standards, 2011 (No 1)* sets out the standards applicable to this employment.

be light work".² It is an offence to employ a child or young person under the age of 15 years, unless that work is light work.

Even for light work, children are permitted to only work for 10 hours or less per week, unless they are working in a "family business" or the proposed employer has given 7 days prior written notice to the "director general". If therefore you intend to employ a child or young person under 15 years old to work for more than 10 hours in a week you must write to the Chief Executive of the Department of Community Services (<http://www.communityservices.act.gov.au/>) at least 7 days before the employment commences.

Interference with health, well being or education

It is an offence to employ a child under 15 years old when they are required to be at school or if it interferes with their health, safety or personal or social development or compromises the ability of the young child to benefit from his or her education. Such interference may be the case, for example, where the hours of work make the child too tired to complete homework or concentrate at school.

In addition, the Chief Executive is empowered to issue in writing an employment prohibition notice if she or he believes on reasonable grounds that the employment is contrary to the child's best interests. Contravention of an employment prohibition notice after it has been issued is an offence. The Chief Executive can also state employment conditions which must be complied with, for example, stipulating conditions about adequate direct supervision of a young person or about appropriate induction and training. A failure to comply with such conditions is an offence.

Schooling issues

Under the *Education Act 2004* (ACT) it is an offence for a parent to allow a child who has not completed year 10 to be employed when they are supposed to be at school. A parent may apply to the Chief Executive of the Department of Education and Training (www.det.act.gov.au) for a certificate to exempt the child from school. However an exemption will only be issued if it is necessary or desirable having regard to the employment opportunity or it is in the best interests of the child.³ If you intend to employ a child during school hours it should be discussed with the parents and school principal.

2. Working with Vulnerable People (Background Checking) Act 2011

The *Working with Vulnerable People (Background Checking) Act 2011* (ACT) commence on 8 November 2012. This Act requires people who have contact with 'vulnerable people' while engaging in regulated activities and services to register with the Office of Regulatory Services (ORS) (<http://www.ors.act.gov.au>)⁴. In the meantime, organisations which require employees and/or volunteers to work with children or other vulnerable people may have their own policies in this regard.

² For more information about the standards, contact the Department (<http://www.communityservices.act.gov.au>).

³ *Education Act 2004* (ACT) s 12A.

⁴ For further information refer to the Working With Vulnerable People Facts Sheets on the ORS website (<http://www.ors.act.gov.au>) or contact the ORS by email to ors@act.gov.au or telephone on (02) 6207 3000.

You can apply to the Australian Federal Police (www.afp.gov.au) for a National Police Check if you are an ACT resident or if you are seeking employment with the Commonwealth Government.

3. Criminal Offences: Child Pornography

Under the *Crimes Act 1900* (ACT), it is an offence to use or offer or procure a child under 18 years old for the production of child pornography or for a pornographic performance.⁵ This is a strict liability offence.

Child pornography is defined as anything that is substantially for the sexual arousal or gratification of someone other than the child that represents:

1. the sexual parts of a child;
2. a child engaged in activity of a sexual nature; or
3. someone else engaged in sexual activity in the presence of a child.

Examples of activity of a sexual nature include real or simulated sexual activity or a striptease. "Represents" is defined to include depiction on film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else. It is also an offence to possess, publish or sell child pornography.

A pornographic performance is defined as a "performance by a child engaged in an activity of a sexual nature; or a performance by someone else engage in an activity of a sexual nature in the presence of a child; substantially for the sexual arousal or sexual gratification of someone other than the child".⁶

It is also an offence to trade in child pornography which involves a person producing, publishing, offering selling child pornography. The intentional possession of child pornography is also an offence. This is an absolute liability offence.

There are also provisions in the *Crimes Act* relating to the use of the internet to deprave young people. A person must not, by the use of electronic means (i.e. email, internet chat rooms, SMS messages and real time audio/video), suggest to a young person that the young person commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature. It is an offence, by the use of electronic means, to send or make available pornographic material to a young person.

4. Classification and Censorship

The classification rules and guidelines are Commonwealth legislative instruments. If you want to find out how something will be classified please read Arts Law's general fact sheets entitled "[Classification and Censorship](#)" and "[Children in the creative process: Australia](#)" for information about how the federal laws apply to classification and censorship.

⁵ *Crimes Act 1900* (ACT) s 64.

⁶ Id. s 65(5).

The amendments to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) that were made in 2014 are aimed at making the process of obtaining classification substantially easier and more affordable. Commencing 11 September 2014, films, computer games and publications will be able to be classified using simple, accessible, and low cost classification tools that have been approved by the Minister. For example, the International Age Rating Coalition (IARC) has been developing a tool which simplifies the classification process by which developers of digitally distributed games can obtain ratings. Game developers answer a questionnaire concerning their product's content. The responses generate a classification rating for a range of jurisdictions including the US, Europe and Australia in accordance with the standards of those jurisdictions which the developer can then rely on.

The states and territories are responsible for enforcing the classification rules. Enforcement of classification rules in the Australian Capital Territory is governed by the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT). Exhibiting in a public place or selling a film which has not been classified or has been classified as RC (Refused Classification) is prohibited in the ACT.⁷ Selling or delivering an unclassified publication which is required to be submitted for classification is an offence, as is selling or delivering a publication that has been classified RC (Refused Classification). This includes selling or delivering such material to a child.⁸

For information on how to apply for classification see the Australian Government Classification Board (www.classification.gov.au).

Exemptions for Events

The requirement to have films classified extends to any form of recording where a visual image can be produced, including slides. This would apply, for example, to a multi-media art work. An organisation running an event such as a film festival or exhibition can apply to have particular films exempted from classification. Conditions may be attached to the exemption.

An application should be made by the organisation to the Classification Board. The application must specify the event and include a synopsis of the film for which exemption is sought. In deciding whether to approve the exemption the following are relevant:

1. the purpose for which the organisation was formed;
2. the extent to which the organisation carries on activities of an educational, cultural or artistic nature;
3. the reputation of the organisation in relation to screening films and
4. the conditions for admission to the screening of films.⁹

Note that an organisation cannot apply for a blanket exemption as is possible in some states. The organisation must apply for an exemption for each individual film.¹⁰

⁷ *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT) s 7 and s 9.

⁸ *Id.* s 23.

⁹ *Id.* s 57.

¹⁰ *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995* (ACT) s 56(3).

5. Privacy

Note that while there is not yet any general right to privacy in Australia, there are laws which affect the recording or photography of children. In the Australian Capital Territory, these apply to the surveillance or stalking of another person. In addition, various municipal regulations may affect the photography or filming of people in parks or swimming in public, for example:

Surveillance Devices

The *Listening Devices Act 1992* (ACT) (***Listening Devices Act***) prohibits the use of a listening device to listen to or record a private conversation where the person is not a party to the conversation. This could include the sound recording facility of a film or video camera. The *Listening Devices Act* also restricts the communication or publication of information obtained through the use of a listening device without the consent of all the parties.

There is no specific prohibition on the use of optical surveillance devices. However if you entered a private house to use or install an optical surveillance device (such as a camera) you could be liable to be sued for trespass.

Stalking

While recording images of children in public may not be prohibited, the way in which the images are obtained may constitute an offence such as stalking. For example, it is an offence to stalk someone with intent to harass or cause fear or apprehension.¹¹ You are taken to intend to cause fear or apprehension if you are reckless about whether the conduct is likely to cause such fear or apprehension. A person will have stalked another person under the *Crimes Act* if, on at least 2 occasions, the person does one or more of the following:¹²

- follows or approaches the stalked person;
- loiters near, watches, approaches or enters a place where the stalked person resides, works or visits;
- keeps the stalked person under surveillance;
- interferes with property in the possession of the stalked person;
- gives or sends offensive material to the stalked person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the stalked person;
- telephones, sends electronic messages to or otherwise contacts the stalked person;
- sends electronic messages about the stalked person to anybody else;
- makes electronic messages about the stalked person available to anybody else;
- acts covertly in a way that could reasonably be expected to arouse apprehension or fear in the stalked person;
- engages in conduct amounting to intimidation, harassment or molestation of the stalked person.

¹¹ *Crimes Act 1900* (ACT) s 35(1).

¹² *Id.* s 35(2).

If you are taking images of children, you should be aware that they may easily become apprehensive or fearful. It is important to get permission from the child's parent or guardian and the child if appropriate so that no misunderstandings occur.

Municipal Laws

Generally, screening in the ACT is free but often requires a permit before engaging in activities such as filming or photography in public places or on government property. The permits vary between the different authorities. A flowchart of procedures that need to be followed can be found at Screen ACT at <http://www.screenact.com.au/pages/locations/permits.htm>.

For more information on restrictions on taking photographs in public also see the Arts Law's information sheet on "[Street Photographers Rights](#)".

You should ensure that you have the necessary permits in place before taking photographs or filming. Be aware that the application process can take weeks in some cases. Contact the relevant authority for information on how to apply and any costs are involved.

Need more help?

Contact Arts Law if you have questions about any of the topics discussed above

Telephone: (02) 9356 2566 or toll-free outside Sydney 1800 221 457

Also visit the [Arts Law website](#) for more articles and information sheets

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