

# Australian artists face new censorship measures

By Gabriela Zabala-Notaras  
9 February 2009

The Australia Council for the Arts, the federal government's principal arts funding body and provider of over 1,700 grants to local artists and arts organisations each year, last month released a code of behaviour for artists, exhibitors and publishers depicting children in their work.

The measures constitute an attack on freedom of expression and set a precedent for arts funding across the board. Those who do not adhere to the new rules will not get government funding.

The code, formally known as *Protocols for Working with Children*, was developed after last year's hysterical campaign against internationally renowned local photographer Bill Henson.

In May 2008, New South Wales police shut down a Henson exhibition in Sydney, seizing photographs and threatening the photographer and gallery owners with child pornography charges. Several state-funded galleries were then directed to remove Henson photographs from public view.

This was followed by denunciations from sections of the media against the magazine *Art Monthly* for publishing an entirely innocent front-page photograph of a naked five-year-old girl. The publishers and the parents, who took the picture, artist/photographer Polixeni Papapetrou and Robert Nelson, an art critic for the *Age* newspaper, were accused of promoting child pornography.

Prime Minister Kevin Rudd publicly vilified Henson's work as "revolting" and told national television, referring to the *Art Monthly* cover, that he "couldn't stand this stuff". Similar comments were made by several state Labor leaders.

Despite the moral hysteria, the police charges of child pornography against Henson were abandoned and Australia's censorship body rejected any ban on his work or on the *Art Monthly* magazine. The Classification Board, in fact, ruled that Henson's exhibition was "not sexualised to any degree" and later gave the *Art Monthly* an unrestricted rating, making it available to anyone over 15 years.

Right-wing commentators and so-called child protection advocate, Hetty Johnson, responded with calls for law changes regarding the portrayal of children.

While Labor introduced no new legislation—state and federal laws already protect children from all forms of

exploitation—Peter Garrett, the federal government's arts minister, directed the Australia Council and Screen Australia to formulate a code of behaviour for artists working with children. The new protocols are the end result.

Under the guidelines, which came into effect on January 1, Australian artists will have to provide a declaration accompanying their work stating their compliance with existing state and federal laws when images of children under 18 are used in performances or exhibitions. Without such a declaration, artists will be required to have their images reviewed by Australia's censorship authority prior to any exhibition or distribution of their work.

Artists are also required to ensure that the context of the work is explained to the child and that the parents or guardians and the child understand the "nature and intended outcome of the work". The Australia Council does not specify how it would be possible for any artist to guarantee that others understand the intended outcome of his or her artwork.

## Artists' protests ignored

Prior to releasing the protocols, the Australia Council sought submissions as part of its "consultation process". Numbers of Australian artists and writers spoke out in the media and presented documents to the arts funding body opposing the planned protocols.

On October 8, Australian writer Frank Moorhouse told the *Age* newspaper that the planned protocols were "the most dangerous movement in the arts in my life time".

"Creating protocols is itself an infringement of freedom of the arts especially when they form part of the guidelines of the central, publicly funded, arts funding body. If the Australia Council wanted to protect and promote art, it would oppose this directive from government."

No artist, he added, especially in the digital age, could guarantee that images would not be used inappropriately or out of the original intended context. (See: "Writer protests new censorship measures—Frank Moorhouse speaks with WSWs")

Polixeni Papapetrou commented in the *Australian*: "The Australia Council has a new brief, to be a watchdog, in fact a quasi-legislator on behalf of children. It has been forced into the role by the commonwealth, which is historically

unprecedented. I would have thought that it is the role of parents to do this".

Legal experts and gallery curators made submissions not only describing the protocols as undemocratic but pointing out that they were "administratively unworkable for both artists and institutions", "impractical", "impossible" and "prohibitive".

These presentations were largely ignored and only minor changes made to the initial draft. Some of these included modifying parental consent obligations, reducing paperwork, and exempting cartoons, drawings or digital creations "made entirely from imagination" from the protocols. Only images of "real" children—i.e., those not imagined—are subject to the protocols.

The most repressive aspect of the guidelines is that they require retrospective documentation of compliance for images of nude or partly nude children taken over the last 18 years. This documentation will need to be reviewed by the Classification Board before such images can be exhibited. In other words, works such as Henson's, which until now have been exhibited nationally and internationally and have not broken any state or federal laws, will be required to undergo review by Australia's censorship body.

Aside from their anti-democratic character, the protocols present a multitude of almost impossible bureaucratic hoops through which artists and galleries will have to jump.

For example, prior to any future exhibition containing work produced by Henson in the last 18 years and featuring children, the photographer would be forced to track down the people involved, most of whom would be adults, and procure written confirmation of their own or their guardians' consent for work produced at the time. What happens if any of those portrayed are untraceable or have died? Does that mean that the artist's work cannot be exhibited or distributed?

Another contentious issue is that only depictions of real children will come under scrutiny, but not those images derived from "fantasy" or imagined. How is a viewer, editor, curator or censor to determine whether a painting or image is of a "real" child or an image conjured up by the artist, or an amalgam of several sources?

Another requirement that impinges on artistic spontaneity, a crucial element in the creative process, is the requirement for parental consent before a child is featured. Should an artist photograph their own child naked and then decide at a later point that the photograph has artistic merit, its exhibition or distribution could be prevented on the grounds that the artist had not sought a police check or signed a declaration of adherence to the protocols prior to taking the photo.

Robert Nelson commented on this conundrum in the *Age* on January 7 in an article entitled "We're being treated like suspected criminals".

"Every judge would be sympathetic to a spontaneous work done in good faith, and there was a sense that the law was on the artists' side. But now, artists ignoring the protocols will be

stymied," Nelson wrote.

"No gallery or magazine funded by the Australia Council will show the work unless full compliance can be guaranteed. Frozen out by the higher zones of the system, any work lacking full compliance is unlikely to appeal to commercial galleries either. Any spontaneous photograph is condemned to artistic exile if a child in it accepts direction from the photographer."

Kathy Keele, Australia Council's chief executive officer, writing in the December issue of the *International Federation of Arts Councils and Culture Agencies* claimed that the protocols would have "no impact on our assessment of artistic excellence measures" and were "voluntary".

While there is no law to enforce the Australia Council's guidelines, Keele's claims are an attempt to downplay the anti-democratic character of the new measures. Notwithstanding her effort to portray the measures as "voluntary" they establish a new government funding benchmark that can and will be used to intimidate and silence artists and suppress their work.

As from January 1, all applicants for grants from the Australia Council, which has an annual budget of over \$160 million, will have to certify that they are aware of and comply with the protocols. Applicants who refuse will be denied government funding.

These measures constitute a further serious erosion of the rights of artists, and they form part of an ongoing government assault on the democratic rights of the working class as a whole. Having failed to succeed in censoring Henson and others through the existing channels, the Rudd government, through the Arts Council, which it fully funds, is seeking to introduce supra-legal measures through the back door.

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