

## **Wandjina - Protecting Cultural Heritage through council planning laws**

By Arts Law Centre of Australia on 18th April 2011

In 2010, a gallery in the Blue Mountains in NSW erected a large sculpture featuring Wandjinas, the creation spirit sacred to the Worrora, Wunumbal and Ngarinyin Aboriginal tribes in Western Australia. Artists in the Black was contacted by both the people of the Katoomba area and Mowanjum Arts which represents artists from the three language groups who are the traditional custodians of the Wandjina law and sites of the Western Kimberley. The Dharug and Gundungurra Aboriginal people of the Blue Mountains area were mortified that this conduct was occurring on their traditional lands and felt embarrassed and responsible. All five groups were upset by the unauthorized and disrespectful appropriation of important cultural imagery. They contacted Artists in the Black.

**Although the sculpture was clearly a Wandjina, it did not appear to be a copy of any particular artwork by a known artist and therefore no complaint about infringement of copyright could be made.**

Copyright protects individual creators of artwork – this situation concerned rights regarded as traditional or communal rights to an aspect of Indigenous culture (also called Indigenous cultural intellectual property or ICIP). Artists in the Black has long been advocating for protection of ICIP but legislative reform is yet to occur.

### **We looked for another solution.**

The sculpture was positioned outside the gallery visible from the street and therefore required planning approval from the Blue Mountains Council. Together with the Environmental Defenders Office, Artists in the Black drafted submissions to Council in opposition to the application for development approval which had been lodged by the gallery. In October 2010, the Council rejected that part of the application which related to the sculpture stating:

*"the sculpture contains an interpretation of sacred Aboriginal images that is offensive, disturbing or distressful to some members of Aboriginal and non-Aboriginal communities, including local representatives of those communities, as evidenced in public submissions, and consequently has an adverse social impact and is not in the public interest..."*

This case highlights the current gaps in protection provided to Indigenous cultural and intellectual property (ICIP) under Australian laws. **It also illustrates how sometimes other laws can be used to protect cultural heritage.** Artists in the Black hopes that this case can be used to demonstrate the need for stronger legislation to protect ICIP.