

To: Prime Minister Malcolm Turnbull, Attorney General George Brandis, Minister for the Arts Mitch Fifield, Premiers of State Governments, media representatives, public and private agencies and stakeholders.

From: *Donald Richardson*, OAM, B.A., Dip.Art, T.Dip.Art, RSASA, and *Vesna Tenodi*, MA Archaeology, artist and writer, on behalf of Australian non-Aboriginal artists vilified by the Arts Law Centre

Sydney, 10/02/2016

Request for the Australian Government to intervene in the Arts Law Centre of Australia breach of moral rights of non-Aboriginal artists Benedikt Osváth and Gina Sinozich, and to instruct the Arts Law Centre to remove or change its offensive wording and lack of acknowledgement in its material, articles and publications – in all the instances where the wording is in breach of Australian Copyright Law

Also attached: Request to the Arts Law Centre of Australia, 2 October 2015; Aboriginal Violence Awareness Day 2015

Despite our repeated requests (Attachment A) the Arts Law Centre of Australia has not complied with current Australian law and is still breaching our and our artists moral rights.

The images of our “*Wanjina Watchers in the Whispering Stone*” sculpture are still published in some of the Arts Law Centre material without proper attribution, without mention of the artist’s name and without our artwork title. Furthermore, the images are often accompanied with highly offensive captions, false accusations and derogatory, slanderous and hate-inciting comments.

This ongoing breach denies us and our artists all of our moral rights, as due to us under Australian Copyright Law: 1. the right of attribution (naming the artist); 2. the right against false attribution; 3. the right of integrity against derogatory treatment of the work in a way that prejudices the reputation or honour of the creator.

1. Every picture published by the Arts Law Centre, showing our “Wanjina Watchers in the Whispering Stone” sculpture, should state its full and proper title “Wanjina Watchers in the Whispering Stone”, and the name of Benedikt Osváth, the artist who created it.
2. Every mention of any artwork in the “Wanjina Watchers” opus by Gina Sinozich should be accompanied by the painter’s name, instead of “painted by a non-indigenous artists”.
3. Every derogatory comment and tendentious, misleading statement such as “offensive sculpture”, “erected without permission”, “created by a non-Aboriginal artist”, should be removed, as it creates a false impression that Australian artists need Aboriginal permission and reinforces the misconception that Aborigines hold copyright over Pre-Aboriginal Australian cave art.

We have endured six years of offensive and defamatory treatment by the Arts Law Centre and the Blue Mountains Council staff. Their insulting, irresponsible statements and false accusations based on lies caused us so much damage that we are now determined to restore our reputation and reclaim our rights.

In response to our Complaint in October 2015, the Arts Law Centre amended some but not all of their offensive material. Encouraged by the Arts Law Centre blatantly breaching Australian law, other organisations and individuals forming part of the Aboriginal industry have picked it up, and republished the Arts Law Centre defamatory comments, false claims and unwarranted attacks on us and our artists. It is apparent that none of these organisations bothered to check the facts, or to show any

regard for the artists who had their art vandalised and their lives threatened by some of the Arts Law Centre “clients”.

We request for the Arts Law Centre to stop vilifying and stigmatising us and our artists, and to amend **all** of their offensive publications which are in breach of our and our artists moral rights, and which are still published on the Arts Law Centre website¹.

The common practice in cases of lack of attribution or derogatory treatment of artists in already published material is to attach a note with accurate information, clarification or retraction, and we request for the Arts Law Centre to comply with that practice.

The Arts Law Centre is continuously misleading and deceiving the Australian public with false claims that Australian artists – who choose to reference their art to Australian prehistoric rock art – must have Aboriginal “permission”. There is no such legal requirement.

Another dangerous false claim by the Arts Law is that ancient images created by a Pre-Aboriginal race, which are in the public domain, as well as stone-age styles and designs, “belong” to Aborigines. Needless to say such claims send some violent Aborigines into an uncontrollable rage when they see non-Aboriginal artists creating works inspired by Pre-Aboriginal Australian rock art or using any prehistoric style and design.

Apart from making false claims, the Arts Law Centre is also withholding factual information from the Australian public. We believe that withholding and suppressing vital information is a breach of Australian law.

People have a right to know the whole truth and should be free to form their own opinion. They have a right to know that no-one needs Aboriginal “permission” nor “authorisation” to create any art referenced to any image in the public domain. And they have a right to know that, apart from UN Article 31, constantly quoted by the Arts Law Centre, there is also UN Article 19, which should also be acknowledged (Attachment B).

In our opinion the Arts Law Centre is:

- deliberately making false claims which mislead and deceive the public, incite Aboriginal hate and encourage Aboriginal violence;
- deliberately slandering us and our artists in their defamatory articles;
- deliberately withholding essential information and hiding the basic facts, to create the misconception that some tribal lore trumps Australian law.

¹ Some of the Arts Law articles in breach of Copyright Law, starting with the latest published on 27/07/2015:

<http://www.artslaw.com.au/art-law/entry/protecting-the-wandjina/>

http://www.wipo.int/wipo_magazine/en/2011/06/article_0003.html

<http://www.artslaw.com.au/news/entry/arts-laws-submission-to-ip-australia-deling-with-indigenous-cultural-ip/>

<http://www.artslaw.com.au/news/entry/wandjina-sculpture/>

Arts Law Centre Annual Report 2011 Page 17:

http://www.artslaw.com.au/images/uploads/AR_report_2011_web.pdf

Arts Law Centre Annual Report 2010 Page 31:

http://www.artslaw.com.au/images/uploads/AnnualReport_2010_final.pdf

<http://www.abc.net.au/radionational/programs/lawreport/wading-into-the-wandjina-controversy/3032658>

Extreme ignorance leading to extreme violence

This war the Arts Law Centre is waging against “Wanjina Watchers” art and ModroGorje artists is quite absurd for a number of reasons. In our artworks we explore Pre-Aboriginal cave paintings showing anthropomorphic figures known as Bradshaw and Wanjina art, which were never created by Aborigines in the first place. Just the contrary, Aboriginal tribes kept destroying Bradshaw art, calling it “rubbish paintings” left by an earlier race. The tribes started repainting much more simple Wanjina figures, which they also claimed they never created and knew nothing about. Until recently, that is, when – with help by the Aboriginal industry – they started “inventing a culture that never existed”², for the purpose of land claims.

All knowledgeable Aboriginal informants who knew about prehistoric Australian cave art have died, the last one among them passed in 1997.

The Arts Law Centre keeps making false claims and quoting their “clients” who make false claims, such as that “Wanjina **never** has a mouth”. We kept quiet for a while, waiting for someone to tell those “elders” that their claims are factually incorrect, and stop them from further embarrassing themselves. But it seems that no-one among all the rock art experts, contract archaeologists and anthropologists who have been “researching rock art for decades”, was aware of that simple fact.

As a consequence, false claims have been mindlessly repeated by other Aborigines and the Aboriginal industry organisations, some of whom have **openly and publicly threatened that they will have us killed**.

Being a target of ongoing violence and vandalism, we finally decided to expose the Arts Law Centre and their clients’ ignorance, and showed some of the ancient images depicting Wanjina with a mouth. We expected the violence would stop. But the only result was that the Aboriginal industry received an order to change their story. So they did.

“Wanjina **never, ever** has a mouth” claims, as repeated in most publications produced by Aborigines and the Aboriginal industry until 2011, were suddenly changed to include different wording. All those “experts” who were authoritatively asserting claims that “Wanjina **never** has a mouth” and that if a mouth were included the Aboriginal universe would collapse, suddenly started claiming that “Wanjina sometimes has a mouth”, or “Wanjina occasionally has a mouth”. One of the “experts” in 2015 changed his earlier narrative to assert that “Wanjina images are depicted without a mouth, although on some more recent works on bark, boards, or canvas the mouth and teeth are indicated”.

This is, again, factually incorrect, as it is not only on “recent works”. But at least the same expert had the decency to finally acknowledge that: “Today all the informants familiar with the sites and their associated mythology have died”.

There are still quite a few facts that the Aboriginal industry does not want the public to know, because those facts might deprive them of their funding, could ruin Aboriginal privileged status, and would pose a threat to Aboriginal land claims.

Since they started their campaign against us in early 2010, the Arts Law Centre has caused us and our artists enough damage with their deliberate misrepresentation of the “Wanjina Watchers” artworks.

But they also caused irreparable damage to their Aboriginal clients – making them look quite ignorant of their own past and quite ridiculous in their inane claims.

They have done no favours to Aborigines by getting the “elders” and similarly misinformed individuals to keep signing those letters claiming that Wanjina “**never, never** has a mouth”, showing how little

² Emeritus Professor John Mulvaney, 2012 and 2013.

they know about the history of Wanjina and Bradshaw Pre-Aboriginal Australian cave art (link: [Request for Enquiry into Aboriginal Violence and corruption in Aboriginal Industry](#)).

Despite deliberate false claims by the Arts Law Centre, and the legal firms who joined their attacks and legally unfounded threats of legal action against us, the Office of Legal Services Commissioner (OLSC) failed to discipline them. In response to our complaints, the OLSC stated that the Arts Law Centre and other offending firms made those claims and intimidating threats because “they were acting in their clients’ interest and on their clients instructions”. [[Complaint to OLSC against the Arts Law Centre, Spruson and Ferguson and Simpson Lawyers](#)].

Some Australian lawyers followed this conduct by the Arts Law Centre in disbelief, and commented that the OLSC “made a mistake”, for a number of reasons.

Despite our requests for investigation into the conduct of the Arts Law Centre, the latter is still failing to do what they are funded to do – to protect *all* Australian artists from unfair attacks and unlawful censorship.

In the current ideological climate, this state of affairs is unlikely to change any time soon, despite some Aboriginal representatives calling for positive action and a new approach. For example, Noel Pearson succinctly stated it in his recent speech, while criticising the system, which in his words “can't discern excrement from clay”³. We fully agree and urge the Arts Law Centre and other organisations under the Aboriginal industry umbrella to stop producing and publishing their nonsense consisting of false claims, spurious accusations and personal opinions.

We regard taxpayer-funded organisations such as the Arts Law Centre as being part of the problem, to which we have been offering solutions. In response to the call by the Prime Minister, Malcolm Turnbull, for “introduction of disruptive thinking and innovation to indigenous affairs”⁴, we have developed a number of initiatives, as a model for the Government to consider (such as our “Reconciliate and heal the nation – let the forgiveness meet the sorry” initiative, as well as other art events within our DreamRaiser Project).

To paraphrase Archbishop Desmond Tutu: Forgiveness is liberating. True reconciliation is based on forgiveness, there is no future without forgiveness. Forgiveness is an imperative for healing the emotions of hatred and rage. As we said back in 2011, Aborigines need to organise Forgiveness Day, as a response to Sorry Day, and start participating in our society in a positive and constructive way.

We now demand a public apology from the Arts Law Centre, to us and our artists, as well as amendments to their published material which is in breach of Australian Copyright Law.

And we urge them to stop vilifying and stigmatising non-Aboriginal artists, and to stop making irresponsible and spurious claims, endangering the lives of non-Aboriginal Australians.

Kind regards,

Vesna Tenodi, email: ves@theplanet.net.au

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on behalf of ModroGorje artists, www.modrogorje.com

and Donald Richardson, ModroGorje art expert donaldar@ozemail.com.au

³ <http://www.abc.net.au/news/2016-01-29/indigenous-affairs-minister-responds-to-pearson-critique/7122904>

⁴ <http://www.theaustralian.com.au/national-affairs/indigenous/indigenous-drive-at-dead-end-warren-mundine-and-noel-pearson/news-story/7243c4af3457bd62df7d944c94ec2fca>

Attachment A

Repeated Request to the Arts Law Centre – 02 October 2015

Dear Ms Ayres,

we note that, despite our request, there is still a number of documents published on the Arts Law website, with the same breach of our and our artists rights.

The failure to acknowledge our artists, as well as constant repetition of false accusations and hate-inciting statements cannot be "accidental" in so many instances; this continuous slander of us and our artists, with derogatory, defamatory, offensive, misleading and deceptive comments and false representation of our *Wanjina Watchers* opus of art will no longer be tolerated.

Even though the Australian Competition and Consumer Commission (ACCC) has clearly advised you that no one needs your clients' permission nor authorisation to create any art referenced to any image in the public domain, you keep the offensive material on your website, and we have no choice but to take our struggle further.

We are determined to restore our and our artists' reputation and to protect the rights of non-aboriginal artists - the task that your organisation is funded for, but fails to do.

We regret to see that you were successful in causing this permanent division between aboriginal and non-aboriginal artists, and keep encouraging aboriginal hostility and unreasonable demands, instead of teaching your clients the basics of the Australian law and a few home truths about non-aboriginal artists' rights in our society.

Regards,
Vesna Tenodi

FINAL NOTICE to the Arts Law Centre – 01 October 2015: If this false attribution and offensive caption is not removed by the end of business hours today, Thursday 1 October 2015, we'll give instructions to our artists to start doing exactly the same thing. And to keep doing that until Arts Law removes all of their slandering comments made against ModroGorje gallery, its owners and its artists, and all the pictures showing our sculpture without its full title which is the *Wanjina Watchers in the Whispering Stone*, and proper attribution, with the name of its creator Benedikt Osváth.

In the same 2014 article there is another misleading and deceptive caption, failing to include the title and the sculptor's name, calling our sculpture "unauthorised Wandjina sculpture". Arts Law Yearly Reports of 2010 and 2011 also include offensive text and/or photo of our sculpture, without proper attribution, without its full title which is the *Wanjina Watchers in the Whispering Stone*, and the name of its creator Benedikt Osváth.

Arts Law was warned about their legal obligations a number of times. This is our last warning.

Note to the Reader: Our repeated complaints against the Arts Law Centre of Australia are focussed on their ongoing breach of our and our artists moral rights, which the Australian law defines as follows:

Moral rights entitle a creator to:

- the right of attribution (naming);
- the right against false attribution; and
- the right of integrity against derogatory treatment of the work in a way that prejudices the reputation or honour of the creator.

In the case of the *Wanjina Watchers* opus of artworks, the Arts Law Centre has been breaching all of those rights since 2010, as evidenced in Attachment 2, correspondence obtained under the Freedom of Information Act.

To: Prime Minister Malcolm Turnbull, Minister for the Arts Mitch Fifield, Premiers of State Governments, media representatives, public and private agencies and stakeholders

Sydney, 29/09/2015

Re: False attribution by the Arts Law Centre of the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth

Also attached: Request to the Federal Government for an Inquiry into Aboriginal violence against non-Aboriginal artists and into Corruption in the Aboriginal Industry

It has been brought to our attention that there is an article by the Arts Law Centre, currently published on their website:

<http://www.artslaw.com.au/case-studies/entry/some-of-the-people-we-have-helped/>

The article includes a photo of the *Wanjina Watchers in the Whispering Stone* sculpture and false attribution underneath, claiming that it is:

Collaborative painting by artists at Mowanjum Arts. Copyright Mowanjum Art and Culture Centre.

This is misleading and incorrect in a number of ways which again calls into question the competence of the Arts Law Centre, and the motivation behind these false claims.

The *Wanjina Watchers in the Whispering Stone* sculpture is an original artwork created by the Australian artist Benedikt Osváth for my DreamRaiser Project and our ModroGorje Gallery in Katoomba, in the Blue Mountains. The gallery was closed in 2011 due to Aboriginal violence

and vandalism. Benedikt Osváth repaired the sculpture in 2012. In 2014 the *Wanjina Watchers in the Whispering Stone* sculpture was moved overseas, to prevent further vandalism.

The *Wanjina Watchers* artwork has nothing to do with any aboriginal tribe. The sculpture is our original artwork, our copyright, and our private property.

We request an apology from the Arts Law Centre for this offensive breach of our moral rights, and immediate removal of their offensive false attribution.

We also request for the Arts Law Centre to be defunded, and for taxpayer money to be allocated to a new organisation, willing to protect non-indigenous artists rights.

We attach our *Request for an Inquiry into Aboriginal violence against non-Aboriginal artists, and into Corruption in the Aboriginal Industry*, originally sent to the Australian authorities in February 2015.

Photo of the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth, and the offensive caption as found on the Arts Law Centre website:



Collaborative painting by artists at Mowanjum Arts. Copyright Mowanjum Art and Culture Centre.

<http://www.artslaw.com.au/case-studies/entry/some-of-the-people-we-have-helped/>

In view of the false attribution by the Arts Law Centre, of the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth, as is currently published on their website, we

believe it is important that all Government Departments and agencies, especially those involved in arts and art-funding, be informed of the double standard, reverse racism and unacceptably biased conduct by the Arts Law Centre as well as other taxpayer-funded organisations.

This is just the last example of appalling actions by the Arts Law Centre. Their attacks and vilification of the ModroGorje artists has ensured that Gina Sinozich, Benedikt Osváth, Vesna Tenodi, as well as other Australian non-Aboriginal artists such as Cameron Hayes or Lucas Grogan, could never get any fair treatment in the current ideological climate.

Warning: this is a piece of art that the reader might find offensive



Most Australians would find it highly offensive. But since it was created by an Aboriginal artist, this offensive installation was displayed, with the artist Tony Albert receiving awards and public funding to further pursue this type of art. Where is the Arts Law now? Too busy censoring non-Aboriginal artists?

When a work of this nature is displayed by any Aboriginal artist, it is automatically praised, and nobody dares to say a word. When art by non-Aboriginal artists is displayed, no matter how true and beautiful and well-received by the public, if any Aborigine starts claiming to be offended the gallery gets bricks through the windows. And the artists get vilified by the Arts Law Centre.

When Aboriginal artists offend Australians, the Aboriginal industry applauds and rewards them. When non-Aboriginal artists such as Gina Sinozich and Benedikt Osváth create great works of art, the Aboriginal industry springs into action, to enforce censorship and to condone Aboriginal violence. All this despite the fact that the *Wanjina Watchers* artworks were praised by a number of art experts and curators, as well as hundreds of people who signed the petition in support of Gina and Ben.

In protest of this double standard, a group of Australian non-Aboriginal artists has decided to create an art installation with exactly the same text as in the picture above. It may be displayed in

front of Aboriginal taxpayer-funded agencies, and in front of the Arts Law office, as a part of an initiative to restore non-Aboriginal artists rights and to prevent the injustice that was suffered by Gina and Ben from happening again, to any other Australian artist.

There are, however, some positive steps such as an objective assessment by Nicolas Rothwell published in the Australian in May this year. His article, *Wilful Blindness Will no one criticise indigenous art?*, we see as a step in the right direction:

<http://www.theaustralian.com.au/arts/review/aboriginal-art-in-decline-as-critics-and-judges-hold-back/story-fn9n8gph-1227328653938>

Regards,

Vesna Tenodi

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on behalf of ModroGorje artists

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all correspondence also to be sent to: Donald Richardson <donaldar@ozemail.com.au>

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Aboriginal Violence Awareness Day – 10 December 2015
stand up and speak out
to end Aboriginal violence against Non-Aboriginal artists

Aboriginal violence is an umbrella term, and includes violence perpetrated by:

- real Aborigines,
- white people who pretend to be Aborigines, and
- individuals and organisations within the Aboriginal industry.

These three groups, together, perpetrate violence in all its forms, from physical violence and violent behaviour including vandalism, non-physical violence, threats of violence including death threats, to politically-driven organisational violence including censorship and ideological pressure.



Wanjina Watchers flowers installation, Wanjina paintings by Tony, Ruth, and Elizabeth Durack

Some artists mark this day by planting the Wanjina Watchers flowers. This initiative, started by Vesna Tenodi's DreamRaiser group in 2009, has become an annual event.

Vesna was nominated for the NSW Human Rights Award in 2013, and was a nominee for the Australian of the Year in 2014, for her efforts to stop Aboriginal violence against Non-Aboriginal artists.

Vesna and her artists Gina Sinozich and Benedikt Osváth have been terrorised by a group of violent Aborigines and the Aboriginal industry since 2009. These groups did not like the inconvenient truth as told by a brave Aboriginal elder Goomblar Wylo in Vesna's book *"Dreamtime Set in Stone – the Truth about Australian Aborigines"*, available on Amazon. They also attacked *Wanjina Watchers* masterpieces – paintings created by Gina Sinozich to illustrate Vesna's book, and the 8.5-ton *Wanjina Watchers in the Whispering Stone* sculpture created by Benedikt Osváth. These artworks were created as a tribute to Aboriginal tradition and to revive a forgotten spirituality, and were inspired by Wanjina and Bradshaw cave art, painted by Pre-Aboriginal races.

In response to these attacks, Vesna and her artists decided to expose the corruption in the taxpayer-funded Aboriginal industry, and call for systemic changes.

American artist Ruth, who visited Australia in 2010, realised that Aboriginal art today is devoid of spiritual content and stated that "Many of the Aboriginal artists are just now learning or re-learning the meaning of the images from the Dreamtime stories... after a long-term memory loss". Ruth is inviting fellow artists all over the world to "give themselves the freedom to create and to keep journeying courageously".

Aboriginal Violence Awareness Day is held on 10 December,
to coincide with International Human Rights Day

Article 19 of the Universal Declaration of Human Rights, which was adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948, reads as follows:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.