

THE SOCIAL IMPACT OF ABORIGINAL HATE IN CONTEMPORARY AUSTRALIAN SOCIETY - SILENCING THE VOICES OF REASON



**A SOCIAL, POLITICAL, AND ARCHAEOLOGICAL STUDY,
EXAMINING ART CENSORSHIP**

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FOREWORD

In their intention to engineer a way to censor the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth, the Blue Mountains City Council joined forces with the Arts Law Centre of Australia and successfully manipulated planning laws, using the heritage listing of the ModroGorje house as an excuse.

The conduct of the council staff (Brian Crane, Rodney Bles, Brad Moore, Kylie Fomiatti, and councillors Terri Hamilton, Mark Greenhill, Janet Mays and Daniel Myles), the council documents (obtained under the Freedom of Information Act), showing their corrupt behaviour, the analysis of the councillors' inflammatory, violence-inciting "debate", and the submissions with the objectors' irrational claims, are all detailed in Part 2 of the *Among the Hostiles – Meet the Locals* document and are not duplicated here.

This document contains some of the expert reports, letters and submissions that were ignored by the Blue Mountains City Council and the Arts Law Centre. Some documents, such as the ModroGorje petition and Wanjina Watchers feedback book, are left out for now, to protect the local supporters.

The most tragic thing in the *Wanjina Watchers* drama was the stubborn refusal of the objectors and the accusers to consider the core of this matter – the source and the intention driving the ModroGorje project. Karen Abidi, a Melbourne lawyer, outlined the core of the matter in her article in *The Fortnightly Review of IP & Media Law*, of July 2010:

Vesna Tenodi has described the intention of the sculpture as to recognise, celebrate and reinterpret Indigenous spirituality. She feels spiritually connected to the Wandjina and sees herself as having a right, and even spiritual permission and direction, to use the imagery. She said recently on ABC's *The Law Report* that artists should have the right to "explore and express the divine" and queries how anyone can "claim ownership over god, and wandjina are gods." Her view is that "any artist has the right to be inspired and influenced by any imagery and any idea they find important and can resonate with".

After two years of bullying and harassment, Ms Tenodi maintains that she acts out of love for Aboriginal people. While she is distressed by the experience, she has found a spark of reason amidst all the lunacy, in the conversations with several Aboriginal people in the Blue Mountains, who fully supported her – until they themselves were attacked.

Here are some of their thoughts, to help keep the reader in a positive frame of mind, knowing there is still a trace of sanity buried within the malicious and vindictive conduct of the accusers of the ModroGorje artists.

Graham King, Aboriginal elder, artist and performer, Blue Mountains:

My people have forgotten their ABC. A is for awareness, B is for balance, C is for connectedness. They are unaware of the spiritual world, so their lives are out of balance, and they have become disconnected from our tradition. That's why most of us, real Aboriginal people, refuse to mix with that mob who claims to represent Aboriginal people

in the mountains. When you look at them, individually, you can see that most of them are white people...

When we spoke last year, I told you that Aboriginal people are not violent, and that was the reason why we had such sad history, we never fought back, never took up arms.

Now that you are targeted with all that violence, and receiving death threats, I want to tell you, it's not coming from real Aboriginal people. We are not murderers.

But we have turned into toxic people, we seem to poison everything we touch. They are projecting all that poison onto you, but it just keeps coming back to them, and they have become even more toxic to themselves.

I used to be very proactive, but I've given up, it's hopeless...

Their hate has taken over, and they are blinded by their personalities. It is shame they cannot see how your sculpture can be good for Aboriginal people, a positive and constructive step.

But who was it standing there in front of your gallery, abusing you and your artists? People like me, or a bunch of white people pretending to be Aborigines?

Like that white bloke at the council, Brad Moore... And what is he doing? Reinventing the wheel? He is now going through the same steps that we've gone through twenty years ago. He doesn't seem to realise we have won all the rights. What does he want now, to drag us back to some state of rage and angry "activism" for the rights we've won long ago? Instead of working with you, he is attacking you. For what? For creating great art, promoting our culture? Too silly for words.

I can see where you are coming from. I know your intentions are good. I hope you'll get your gallery. I'd be happy to show my art there.

Bandalug, Aboriginal elder, artist and tourist guide, Blue Mountains

To me, it looks as if some thugs are deliberately trying to ruin the image of the real Aboriginal people, and depict us all as mindless savages. Who are your enemies? I bet it's some wanna-be white Aborigines. And Aboriginal people are missing out again, because those whitefellas push themselves forward and claim all the benefits. Just look who is representing the Aboriginal community in the mountains, and you'll see it's always some white blokes claiming to be Aboriginal.

That's why you have my full support. You said straight from the beginning that you and your artists are white people exploring Aboriginal tradition. Everybody knows that you don't need anyone's permission to do that. You are doing great things to promote our culture, but those whitefellas don't like it, they want to be in charge, like that madman ranting in front of your gallery, it's just their silly ego-trip.

I saw that maniac attacking you, he is a nasty piece of work, with his inflammatory rants, inciting so much hate... Ravings of one unhinged man can do a lot of damage... He is like a dog with a bone, cannot stop, lives in a permanent state of rage. He was doing the same thing to me last year, harassing me, trashing my property, trying to set my place on fire... Then, last December, he suddenly stopped. I soon realised why – he found a new target in you. I should thank you, because I was off the hook.

Many people in the mountains asked me for my opinion about the Wanjina Watchers sculpture. And I keep telling them to me it's fine, I say there is nothing wrong with it.

If someone doesn't like it, I say, then just don't look at it! It's as simple as that.

The council wasted all that money and energy to protect the interest of some guy sitting out there in the Kimberley. What does he have to do with us in the Blue Mountains? Is he now in charge of the mountains, telling us what to do?

I wonder how much money they spent on fighting your art. And who allowed them to do that?

Renae Eagles, Aboriginal business woman, Blue Mountains:

I am of Aboriginal descent and live in the lower Mountains. I think we need to step back and look at the big picture. The Wanjina Watchers has not been created to cause disharmony, but to bring us closer together and to help us understand the Aboriginal culture as a whole. The main street of Katoomba is covered with symbols of other cultures, such as the life-like sculpture of meditating Buddhist monk in the front window of a restaurant, and no-one is complaining about that expression of spirituality.

When we step back and look at who we have evolved to become, we can see that reacting to the creative expression of another by threatening their life because they are inspired by our culture – one can see that we haven't evolved at all.

I am a part-Aborigine and I am ashamed of what my people are doing to you and your artists. It seems that the Aboriginal community is still stuck in the lowest triad energy-field, and cannot make a leap to the fourth chakra and view the world from the heart-chakra energy field. While stuck within the lowest spiritual level, the level of basic instincts, they'll keep up this campaign of anger and hate. I would love to explain the attitudes in terms of quantum physics; explain to them the law of interconnectedness and the damage they are doing to themselves... But while they are so angry and emotional, there is no point in explaining, nothing gets through.

And they wouldn't understand anyway. The most important thing that would help Aborigines is education, as Goomblar said. For Aboriginal people to learn to read and write. How many of them are illiterate, 80%?

I support you one hundred percent and hope with your patient persistence you'll be able to gain support of all of my people. I wish my people would recognise the inspiration for the Wanjina Watchers sculpture came from the same Source as the Wanjina paintings in caves.

Debbie Young, Aboriginal woman, Blue Mountains

Society today should be looking for ways to create unity for the human race, not to encourage separation and division through skin colour, race or cultural differences.

Art is about breaking down barriers, extending borders and pushing boundaries, and Wanjina Watchers artwork offers a new perspective, opportunity to all of us to learn, to grow, and to connect with each other.

Let's open our hearts and minds to this free expression of universal spirituality. Our Aboriginal community in the Mountains should be proud that our sacred images have been honoured in Wanjina Watchers sculpture.

I keep telling to Aboriginal people in the Blue Mountains community: Please try to take a positive view of the *Wanjina Watchers in the Whispering Stone* artwork, instead of being so destructive. As a person of Aboriginal descent, I believe we should be supportive of the artists and welcome their interest in our culture.

And, Vesna, I read your book and I liked it. Everything Goomblar said is absolutely true! We all know that, but he was brave enough to say it.

I went to the Aboriginal Cultural Resource Centre in Katoomba and couldn't believe how much the staff there hates you. They are Government funded workers, but they behave like idiots. I asked them if any of them actually read your book. They said no, they would never read such a terrible book. I asked them how would they know if it's terrible or not. They said they were "told about it". That's how things work in our community, gossip and jealousy, people just accept opinion of someone spreading hate, without finding out anything for themselves. I tried to reason with them, and they attacked me and accused me of being "anti-aboriginal", for supporting your work.

But I'll keep supporting you, I am not afraid of their retribution.

L. P., Aboriginal artist, northern N.S.W.

There are three types of Aborigines in Australia today. The traditional ones, who live in remote communities, in poverty and misery, who had limited contact with white people. That brought them nothing but confusion, and they have been deteriorating into hopeless spots of pain.

Then, there are non-traditional ones, who moved to townships and big cities, and either got lost in the slums, drowning in alcohol and crime, or adapted and integrated into whitefella society, embracing new opportunities, getting education, even becoming businesspeople and role models for other Aborigines.

And then there is the third group, of these white people masquerading as Aborigines.

I have to apologise to you and your artists, for being so negative earlier this year. When I visited your gallery and listened to that angry, white Aboriginal man, I knew nothing about the issue. Back then, I was quick to jump to conclusions and thought there might be something inappropriate with your book or the artwork.

But I've done some research since, and realised those claims are ridiculous, and I agree, artistic freedom should not be stifled.

The other day, I heard someone criticising your book, and I voiced my opinion, telling them you are like a pioneer, breaking new grounds, shining light on most important issues, the core problems, and helping the Aboriginal people step into twenty-first century.

I think it's very courageous to tackle those issues head-on, and now you have my full support.

These opinions could have neutralised the disastrous consequences of Aboriginal hate poisoning the Blue Mountains. But these voices of reason were also ignored by the Blue Mountains City Council and the Arts Law Centre of Australia.

It is unfortunate that Australian intellectuals are becoming resigned to the current policy. As one of the leading Australian intellectuals said in his note to Ms Tenodi:

"... yours is a political battle against a foe with an almost infinite fund of malice and resources to back it up..."

Regardless of how hopeless the ModroGorje fight for artistic freedom might appear, there are people who realise that even if they might not win, they should keep trying. And there are people who appeal to the general public conscience, such as Father Bob Maguire in his final sermon, using the old phrase with a new point: "All it takes for evil to triumph is for good people to do nothing. And Aussies are experts in that!"

LEGAL PRACTITIONERS JOINT REPORT

IT'S SO HIP TO BE OFFENDED – AN APPEASEMENT STRATEGY THAT FEELS LIKE COMMUNISM, BUT IS MUCH, MUCH WORSE

The matter of the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth, *Wanjina Watchers* paintings by Gina Sinozich and *The Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know* by Vesna Tenodi is, as a whole, far too complex to be examined in its entirety in a short-report format.

It includes a number of issues. Here we are looking at the local government abuse of power and the unacceptable conduct of the Arts Law Centre of Australia, and how they worked together to destroy a group of Australian artists, in order to please some Aboriginal objectors.

It became clear that the objectors were only trying to protect their business interests, under the guise of 'sacredness', making a mockery of any notion that there is a guarantee of artistic freedom and freedom of speech for Australian citizens, which is adhered to by legal practitioners and public servants in the Australian liberal democracy.

When faced with death threats, the ModroGorje owners left the copies of all the documents and relevant material with several bodies for safekeeping. We had a chance to peruse the material, and here are some of our thoughts.

THE APPEASEMENT STRATEGY THAT BACKFIRED

This case was about a sculpture on a private property, in the front yard of a small private, non-commercial gallery. There are dozens of such small galleries and artist studios in the Blue Mountains, operating free of council harassment. But this case has much wider implications and dangerous, far-reaching consequences. It must be viewed in the context of other similar cases illustrating Aboriginal methods of harassment and violence against non-Aboriginal artists.

In this escalating drama, even lawyers eager to find some justification for the hysterical Aboriginal response to a work of art, realised that this is a clear-cut matter of the law being in favour of the ModroGorje artists. Objections were made on the grounds of some Aboriginal customary law, which can be exercised among Aboriginal tribes, but should not be used for the purpose of terrorizing non-Aboriginal artists.

The core of this matter is a spiritual one – Ms Tenodi is a medium, in contact with higher realms, and works with the *Those-Who-Know*, following their instructions. She developed a DreamRaiser project at their request, to revive the dying spirituality and make a meaningful step towards true reconciliation. Karen Abidi, a Melbourne lawyer, grasped that concept, and outlined it in her article in *The Fortnightly Review of IP & Media Law*, of July 2010:

“... Vesna Tenodi has described the intention of the sculpture as to recognise, celebrate and reinterpret Indigenous spirituality. She feels spiritually connected to the Wandjina and sees herself as having a right, and even spiritual permission and direction, to use the imagery. She said recently on ABC's *The Law Report* that artists should have the right to “explore and express the divine” and queries how anyone can

“claim ownership over god, and wandjina are gods.” Her view is that “any artist has the right to be inspired and influenced by any imagery and any idea they find important and can resonate with”.”

James d’Apice, a Sydney lawyer, was also clear in his article of October 2010 with this simple assessment:

“... The issue is clear. At the moment, white law does not recognise the rights claimed by Indigenous people and Ms Tenodi's legal argument holds. No one person owns the wandjina idea. No one person can own an idea. Nor is there an appropriate corporate body in whom the ownership right could or should reside.”

Had the matter of the Wanjina Watchers sculpture been handled by reasonable, clearheaded lawyers, it would have never escalated in the current hopeless stand-off.

Instead, it was handled by the Arts Law Centre of Australia, and their solicitor Delwyn Everard, who is described as a “specialist mediator”, but made no attempt to mediate or advise her clients to solve this matter in any way other than a legal action against Ms Tenodi.

In 2009, Ms Tenodi kept trying over six months to engage Aboriginal groups, extending her invitation for them to participate in her project, since it was developed for their benefit. After six months of silence, their only response was: “We’ll kill you!”

As evidenced, the Arts Law Centre’s Aboriginal clients first said that they “approached Ms Tenodi, with the help of the Arts Law Centre”. Then they said “she never called them”. Then they said that “yes she called, but we said no”. Then they said “no-one is allowed to discuss it except their top man”. And finally this “top man”, Donny Woolagoodja, when he visited ModroGorje Gallery, said “she wanted to talk but I went back to the main group and they didn’t want me to talk with her”.

Ms Tenodi said that she never received any communication from the Arts Law Centre, and the “main group” in that man’s story consisted of two local vandals.

When Woolagoodja said on the ABC program, “We can sell it, she can not”, it became clear to everyone that was a matter of Aborigines protecting their business interests.

This illustrates the difficulties that anyone who attempts to communicate with Aborigines faces today. They become entangled in a run-around, with no-one in the Aboriginal community taking responsibility. They face Aboriginal people that keep changing their story, with no consistency and no rational explanation for their constant state of rage, hiding behind a wall of lawyers.

MODROGORJE ARTISTS – THE FREEDOM GUARDIANS

ModroGorje gallery owners and their artists Gina Sinozich and Benedikt Osváth suffered terrible damage as a consequence of a corrupt local council, with its knee-jerk reaction to hysterical and legally unfounded Aboriginal complaints. The council kept fumbling through the process of engineering a way to destroy a work of art and gave their support to vandals, with their senior officer Brian Crane allowing their Aboriginal liaison officer Brad Moore to orchestrate a campaign of hate against the ModroGorje owners.

In response to his “invitation”, Aboriginal Land Councils and other Government-funded Aboriginal organisations from other parts of Australia started sending submissions with the same passages, as if they had all been given the same template to sign – and even threatening letters to the Blue Mountains City Council, ordering it to remove the sculpture or else.

The local council, like many other bodies in Australia today, adopted an appeasement strategy, and started falling over themselves to please Aborigines. The councillors started demonizing and disparaging ModroGorje owners, with Terri Hamilton saying “They are such stupid people, we don’t want people like that in our mountains.”

In response to comments like that, made in the council meeting on 12 October 2010, Ms Tenodi said she felt as if she stepped into a “*Deliverance*” movie, another planet, with narrow-minded, tunnel-vision, cliquish bureaucrats yielding to a few thugs, and with villagers scared out of their mind running for cover.

And they had good reason to be frightened. The same group of thugs started making rounds, threatening Katoomba locals with violence if they didn’t stop supporting Ms Tenodi.

One example is the Gem Shop at the top of Katoomba street, with the owner terrorised by two Aboriginal women, who kept embarrassing him in front of his customers, screaming that he must take down Aboriginal paintings he had on his walls.

“Why”, he asked, “I’ve been selling them for years.”

“Because we say so, you stupid German.”, one of them screamed.

To this racist remark, the owner said, “I am not German, I am French.”

The women went on abusing him, until he asked, “So if I don’t take them down, what are you going to do, kill me?”

“We don’t have to kill you”, was the reply, “We’ll just do the same to you as we did to that gallery on Lurline street”.

DON’T DARE FLYING THE AUSTRALIAN FLAG, YOU BLOODY RACIST

A week before the Australia Day celebrated on 26 January, left-wing extremists tried to inject even more hate to further divide Australian society. They declared every Australian flying the Australian flag a “racist”. People were outraged – which flag are Australians supposed to fly?

This type of accusations is endemic, and as silly as the response of the Arts Law Centre, to people objecting to their push for censorship of ModroGorje art. To them they responded:

“... under Australian law, freedom of expression is limited by other competing rights such as discrimination laws.”

Where is this going? If you paint an image that Aborigines dislike, you are accused of discrimination, if you fly Australian flag, you are a racist?

While other small business owners were giving in to Aboriginal campaigns of intimidation and threats, ModroGorje owners dug in their heels in and decided to fight for their freedom to create art.

In protest against council-enforced censorship, ModroGorje artists were running *Say No To Censorship* events throughout 2011, with the planting of 108 Wanjina Watchers Flowers. That event has now been scaled down to 71 flowers, since the thugs kept stealing the artwork.

Aboriginal bad behaviour is constantly excused by the local bureaucrats and small time politicians such as the Blue Mountains Deputy Mayor Mark Greenhill. To the pleas of the ModroGorje owners to stop the Aboriginal violence he said:

“I cannot speak against violence and vandalism, because I am in support of Aboriginal people.”.

So, in the Blue Mountains, violence and vandalism are condoned, even encouraged, when done by Aborigines.

IT'S SO HIP TO BE OFFENDED. AND VERY PROFITABLE.

Vesna Tenodi has ruffled the feathers of those who prefer to run with the pack. At the same time, she attracted support of free thinkers and free speech advocates. She keeps defending individual freedom. Much like Andrew Bolt, who is engaged in the same “war on stupidity”, fighting for free expression. When Bolt lost his case against Aborigines, his opponents were gloating. The same sentiment is echoed in Tenodi’s *Set in Sand* book. She is not upset over people criticising her work or discussing her controversial theories about Australian prehistory, seeing an open debate as a sign of healthy and open society. She is distressed with what was done to her and her artists, but is even more upset over the manner in which it was done. She said:

“Gina Sinozich and Benedikt Osváth were attacked in such a vulgar, primitive way, it made me sick. Gina had to leave her own exhibition opening at ModroGorje, when attacked by Aboriginal trespassers who abused and insulted her. Seeing her distress, the thugs were gloating, very proud of themselves for humiliating an 80 year old lady who created paintings to promote their tradition.”

It is hard to explain Aboriginal violent behaviour. For years and decades, there has been the same hysterical reaction to white artists who “upset” Aborigines. It is hard to explain rants by their lawyers, trying to make a case that the Aboriginal universe will collapse if someone upsets them with as much as putting a few dots together. And any reason is good enough to claim distress. In the recent past, artists and galleries were harassed for as much as using a cross-hatch pattern in their art or even for painting a landscape feature.

Attacks on ModroGorje echo the same behaviour as seen in a number of similar attacks. All it takes is one malicious, vindictive person, to start screaming they are “offended”, and there is a horde of lawyers scrambling to ease their pain. All it takes is one deranged person ranting in front of your shop, shouting abuse and lies, and that is enough to ruin your reputation or your business in a matter of weeks.

The recent case includes a Greek couple running a small yeeros shop in Sydney. They called it “Traditional Yeeros”. A small group of local hooligans started harassing them, demanding for the name of the shop to be changed.

The hooligans claimed they were offended and distressed, because the word ‘traditional’ can be used only in relation to Aboriginal people. They screamed that the owners of the yeeros shop were deliberately offending Aboriginal people. They vandalised the shop-front and threatened to kill the owners, in line with Aboriginal payback law.

The owners changed their business name, leaving out the word ‘traditional’.

The Greek couple, like many others when faced with Aboriginal violence, yielded to bullies, in order to be able to run a business and have their lives back.

Who is to blame for that culture of fear? The thugs? The people yielding to thugs? The powerless police? Or the system which tolerates it? Bureaucrats don’t allow an open discussion. A Sydney talk-back radio tried to open a discussion about the *Wanjina Watchers* drama on three occasions. The debate was abruptly shut down every time. Aboriginal bad behaviour is a taboo topic, the media is not allowed to touch it.

Ms Tenodi and her artists are deeply offended and distressed by two years of violence. But their hurt doesn’t count, they are not Aborigines. There clearly is a double standard in place here.

It is hard to explain why Australian society allowed such malice and vindictiveness as shown against ModroGorje artists by local council staff. They stretched the appeasement strategy to an absurd extreme, not realising that it is not possible to appease people who choose to be offended all the time. Every attempt to pacify the thugs results in more violence and further irrational demands.

And who benefits from the censorship of the *Wanjina Watchers* artwork? How can vilifying ModroGorje artists benefit Aboriginal people? Malicious attacks tarnished the artists reputation and ruined the gallery owner’s lives. They have been humiliated, falsely accused, offended and distressed – but since they are not Aborigines, nobody is rushing to cuddle them and ask them “What can we do to make it better.”

RESPECT IS A TWO-WAY STREET – AND IT HAS TO BE EARNED

As Goomblar Wylo explained in the *Dreamtime Set in Stone* book, Aboriginal people keep demanding respect, by punching the air with a fist and making threats, instead of earning respect by embracing the basic values of Australian society. Such as going to school and getting a job, taking responsibility for their condition.

And they keep demanding respect by bullying people into compliance, for no reason other than to show that they can. They demand respect but show no respect in return. They scream against racism and discrimination, while they keep discriminating and making racist comments about anyone who “upsets” them.

Ms Tenodi said, “When they started screaming at us, in the streets of Katoomba, embarrassing us in front of our neighbours and colleagues, chanting ‘You stupid migrants go

back to your country', I was so frustrated that I thought my head would explode. How do you stop these thugs? How do you respond to their vulgar insults?"

The same frustration and sense of powerlessness in the face of such mindless evil has been experienced by a number of Australian artist attacked by Aborigines, some of which are a matter of public record.

Aborigines want to be acknowledged as the First People. Yes, they migrated to the Australian continent in the distant past. But what about the second, and the third and the fourth people who migrated over the last two hundred years and built the Australian society. Why do the English and Italian and Greek and Croatian communities, or any other group of immigrants, not insist on being acknowledged in the Australian Constitution, as people who built the modern society. Why are those communities not handed-out large chunks of land, in acknowledgement of their work and sweat and tears over the last 200 years. Why can all their democratic rights now be stolen away, to the extent that they can no longer use the word 'Australian' or fly the Australian flag without being attacked for being "racists".

IS THERE ANY FREEDOM LEFT IN AUSTRALIA?

Now that Australia prepares to hold a referendum on the Constitutional changes, the *Wanjina Watchers* case is an important warning to all, showing how power can be grossly abused by people unable to understand that with power comes responsibility.

Would the proposed Constitutional changes mean even more empowerment for the irresponsible, angry and violent segments of the community?

Would an attempt to eradicate racism give special privileges to one minority only, and allow them to exercise racist behaviour and discriminate against everyone else, overcompensating for past injustice?

Would it be wise to call Aboriginal people the First People? Or would that be misused again?

Would such changes mean that Ms Tenodi could be sued for her theory of Australian highly advanced, pre-aboriginal races, which were the Indigenous, or autochthonous, population on Australian soil at the time when, 50,000 years ago, the primitive tribes of the ancestors of today's Aborigines migrated to the Australian continent?

Would the proposed empowerment, if enshrined in the Australian Constitution, lead to further intellectual and scientific dishonesty and to archaeologists being forced to tread the line of political correctness? Would the history books have to be rewritten to delete the fact that Aboriginal culture is an old stone age culture of nomadic hunters and gatherers?

Too many questions need to be answered before any further steps are taken. And most of all, the voices in opposition must be allowed to be heard, and all concerns must be addressed.

The ModroGorje case should serve as a warning of what the proposed changes might further encourage.

FEELS LIKE COMMUNISM, BUT IS MUCH, MUCH WORSE

The original pleas of Aboriginal people for equity and equal opportunities were justified. And the Australian Government and Australian people responded well, with large areas of land being given to Aborigines, and billions of dollars each year to improve their condition.

But to go overboard and make such dangerous mistakes as to start censoring works of art, as the Arts Law Centre and the Blue Mountains City Council advocate, is a case of discrimination against non-Aboriginal people.

By overcompensating for the mistakes of the past, and injustice done to Aborigines 200 years ago, the system is now encouraging injustice towards non-Aboriginal Australians.

The Constitutional changes might appear to be a good idea, but it requires much more balanced, objective debate before any of the proposed changes should be considered. So far, it seems to have been only a one-sided push for adopting the proposed amendments, with no voice of dissent and no argument to the contrary allowed or considered. The Australian people might be railroaded into agreeing to something without being aware it has a potential to remove their right to speak freely and strip them of any freedom they believe is guaranteed.

To include the vague notion of “Aboriginal advancement” would open yet another Pandora’s box of Aboriginal demands. At the moment, we see how some violent elements in the Aboriginal community keep abusing the notions of “offence” and “distress” and “sacredness” to justify their bad behaviour.

The notion of “advancement” can be misused in a similar manner. Currently, as soon as Aborigines scream “discrimination” and “racism”, they have hundreds of lawyers scrambling to represent them. The fear of being accused of discrimination – and the legal costs of having to defend oneself against such accusations – is paralysing Australian society today. It appears that only Aborigines can discriminate against anyone, and make racist insults with no consequences.

Social Justice Commissioner Mick Gooda in his *2011 Social Justice Report* pointed out that there are much more immediate and pressing problems to be solved before even more power should be sought for the Aboriginal minority. Violence, and sweeping it under the carpet, is one of those problems.

In his report, he says words to the effect:

... We need to start a conversation about lateral violence in our communities and the ways that we, as Aboriginal and Torres Strait Islander peoples, can create the foundations for strong relationships with each other...

... Lateral violence, also known as horizontal violence or intra-racial conflict, plays in our families and communities through behaviours such as gossiping, jealousy, bullying, shaming, family feuding, and physical violence...

... We need to talk openly about the damage that lateral violence does in our communities... This might be seen as further contributing to negative stereotypes of our peoples.... But the risk of not doing anything about lateral violence is much greater.

Well said. This brilliant insight should be widened to include Aboriginal violence against non-aboriginal people, and should be discussed openly before any constitutional change is considered.

Wesley Aird, Indigenous Employment Consultant, in January 2012 was examining Aboriginal resistance to the Government efforts to help them integrate, and urging Aboriginal people to take responsibility for their condition, by saying:

... The onus should be on Aboriginal people to send their children to school and find employment on the same terms and conditions as other Australians...

... You've got to have both a carrot and a stick and all we're seeing here is a carrot and that doesn't work.

In response to Aboriginal violent attacks on the Prime Minister and the Opposition Leader on Australia Day, 26 January 2012, Mr Gooda said:

"An aggressive, divisive and frightening protest such as this has no place in debates about the affairs of Aboriginal and Torres Strait Islander peoples or in any circumstances... We must not give in to aggressive and disrespectful actions..."

ABORIGINAL DISADVANTAGES ARE THEIR OWN DOING

Don't shoot us, we are only quoting that great Aboriginal leader, Noel Pearson.

For more than 20 years now, Noel Pearson has been one of the strongest critics of Aboriginal attitude which he called a "sit-down money", trying to inspire them to send their children to school, to learn to read and write as a matter of priority. He recently said that Aboriginal culture is dying, and the priority should be to save what little has been left, before it disappears beyond retrieval, rather than wasting time and energy on things of secondary importance, such as changing the Australian Constitution.

These are only some examples of current policy criticism. It has become clear that the Aboriginal minority is being given all the rights, with no responsibilities attached. In Australian mainstream society, people understand the concept of personal responsibility, but for Aboriginal people there are no consequences for bad behaviour.

They want equality by demanding more rights. With rights come responsibilities. By refusing to accept any responsibility and to actively participate in Australian society, Aboriginal people have become the only minority in the Australian multicultural society that has all the privileges and none of the responsibilities as embraced by other community groups.

In our opinion, the violence against ModroGorje owners and artists must be addressed. They were publically insulted and humiliated, threatened and abused, slandered and vilified, and Aboriginal thugs – witnessed by hundreds of locals – were never brought to justice.

At the moment, Aboriginal people are not required to meet any terms and conditions before being given powers and special privileges. All they need to do is to promise that they will one day do something, such as in a current case, when they lodged a land claim for land in the metropolitan Sydney area, with a grand promise to "generate jobs in 20 years' time".

Rather than relying on promises which, in the past, were never fulfilled, the time has come to assess whether Aboriginal minority can prove they can embrace the Australian values, and are willing to be a part of Australian society, using the given privileges in a responsible way.

The promises that they will do something constructive and positive in the future are no longer plausible. Not after so many failed programs and so many billions of dollars wasted. An indication of how Aborigines are unable to fulfill reasonable expectations can be found in the Blue Mountains City Council Aboriginal Protocol Guide. It lists their bad behaviour with the advice to the majority to accept and tolerate such behaviour, because that's "their culture".

DECADES OF LIES EXPOSED

Rather than being bullied into compliance, ModroGorje artists became the Freedom Guardians, running their own protest campaign against censorship. Their initiatives are attracting artists from all over the world, who are joining the fight for free speech in Australia.

Ms Tenodi has lost her gallery and her future in the Blue Mountains, but is the moral winner in this miscarriage of justice.

For the first time in the history of Aboriginal harassment of non-aboriginal artists, which has been going on ever since Margaret Preston in the 1930's, it has been made clear that the Aboriginal complaints of this kind are based on false premises.

The truth came out: There is no copyright on prehistoric imagery and there is no ownership of ideas. And everybody has the right to create and to sell their work, be it done in Aboriginal style, or Cubist style, or Impressionist style, or ModroGorje style.

In response to the hordes of bureaucrats and lawyers who came after her with incredible accusations, Ms Tenodi refuses to comment, quoting Oscar Wilde instead:

"When you look around, you wonder whether the world is run by smart people who are having us on, or by imbeciles who really mean it".

The Arts Law Centre is unhappy with their failure to prove any wrongdoing, and keeps complaining about "inadequacies" of Australian law. They cannot believe that ACCC and Fair Trading refused to drag Ms Tenodi through the courts on their say-so. And they are furious.

This "stupid migrant woman" – as her Aboriginal critics kept yelling at her in the streets of Katoomba – made them all look like fools. Because, in the simple question of whether there is a copyright on prehistoric cave art, they were all wrong, and she was right. Ouch!

From the European perspective, the controversy over a work of art in Australia seems quite juvenile, and the current political regime appears to be paralysed, taking the path of least resistance, in line with its long-standing appeasement strategy, hand-outs tactic and, as Noel Pearson perfectly named it, sit-down money.

By DONALD RICHARDSON OAM, BA, Dip.Art, T.Dip.Art, RSASA

EXPERT WITNESS REPORT

Re: Blue Mountains City Council – Development Application No. X/525/2010, 71 Lurline Street, Katoomba.

I have been asked to provide an expert witness's report to the effect that the sculpture, *The Wanjina Watchers in the Whispering Stone*, located at the above address, is **a work of art.**

I have read the Code of Conduct and agree to be bound by it.

1. *The Wanjina Watchers in the Whispering Stone* as a work of art

1.1 Formally

First, it is imperative that **the Court notes** that **the term *art*** is commonly used in two main – but quite different – ways, only one of which is valid and relevant to the present discussion:

i. Colloquially, as **an honorific** – as in when referring to a sportsperson's performance and in expressions like 'the state of the art' (used in relation to anything *except* art itself), or 'the art of war', or to refer to high quality functional objects like buildings, vehicles, and religious representations (e.g., when the Opera House is called 'art'). The latter are all instances of *design*, not art – because the operator has not had the freedom of self-expression that constitutes *art* in the way we have used the term in the modern western world since the 19th century.

I will not be using the term in this – irrelevant – sense.

ii. To refer to **works of creative individual self-expression** – e.g., those by Pablo Picasso, Henri Matisse, Russell Drysdale and other acknowledged artists. It is in this sense that I use the term to describe and discuss *Wanjina Watchers in the Whispering Stone*.

I have no hesitation in asserting that Ben Osvath's *Wanjina Watchers in the Whispering Stone* is a work of art.

Reason for my opinion: It is a three-dimensional, non-functional object carved from a block of sandstone and painted. As such, it is, in principle, as much a sculpture (i.e., a work of art) as is a stone figure carved by universally-acclaimed British sculptor, Henry Moore (1898 – 1986), and countless other recognised sculptors. Its subject-matter is irrelevant to its being a work of art. That some people may not 'like' it is also irrelevant: many people absolutely hate Henry Moore's sculptures, but they are universally accepted as art and are found in many art-museums across the world.

My understanding is that works of art are not covered by any provision of NSW planning legislation.

1.2 Content

The content or subject of *Wanjina Watchers in the Whispering Stone* makes reference to the wanjina images that are found painted on certain rocks in the Kimberley area of Western Australia, but it does so for a specific and legitimate reason and it goes much further than simply 'copying' those images. Physically, the area of the surface devoted to this reference is far from the major portion of the total area.

The person who commissioned the sculpture, Ms Vesna Tenodi, did so by reason of belief in a personal spiritual communication with the wanjina – the outcome of ‘two years of personal Dreamtime’¹ – a position as valid as that of any individual, of whatever race or religious belief (including Aborigines), who believes he/she has such spiritual communications. The iconography of the sculpture is intended to bring about reconciliation between Aboriginal and Western cultures – a socially responsible aim and one that deserves complete official support.

Note: Sculptor, Ben Osváth, has taken the ancient wanjina image and creatively reinterpreted it. This is certainly *art* in the modern Western sense of that term. But, the problem is that many Aborigines have a different sense of ‘art’ from that accepted by the Western art world. Whereas, in Western culture, artists are special people, all initiated Aborigines are ‘artists’ to the extent that they are required to reproduce a restricted range of imagery that is exclusive to their particular tradition. Free self-expression is forbidden; in fact, if applied, it is punishable.

The difference between these attitudes to ‘art’ is of very significant proportions such that the Court is unlikely to reconcile it. It is expressed mutely in the form of the authoritative *McCulloch’s Encyclopedia of Australian Art* (Melbourne, 2006): the two main sections of this book are entitled, respectively ‘Australian Art and Artists’ and ‘Aboriginal Art and Artists’ – which strongly suggests that the two are worlds apart.

There will inevitably be disagreements about the worth of any particular work of art, but this is an inherent aspect of what art is about – as it is with our democratic political culture. And fruitful discussion of both can only be carried on by democratic means, not by intimidation or violence.

Similarly, any comment on the subject-matter or theme of a sculpture is irrelevant unless it can be shown to be treasonous, obscene or otherwise illegal. Even if it can be established that this sculpture is plagiarism would not deny that it is a work of art.

It may be relevant to note that the wanjina figures that are found on rocks in the Kimberley area of Western Australia are *paintings*, not *sculptures*.

2. The irrationality of the objectors

Another matter of terminology that I believe the Court must acknowledge is the difference between the terms *law* and *lore*, which – due to the fact that they are homonyms – many people conflate. In Aboriginal culture there is no such thing as statute *law* (due to the fact that it never developed writing). But it does have *lore* – orally-transmitted stories that purport to establish historic clan ownership of geographic features and the visual symbols that relate to them – hence, the inherent relationship, in Aboriginal culture, between place and symbol. Aboriginal lore is largely creation myths – the equivalent in Western culture of folklore, mythology and the stories of the Old Testament, which few today regard as factual.

In relation to visual expression, Aboriginal artists have to respect their lore (in fact, they can be severely punished for not doing so), but Western artists are not bound to respect the lore of *any* culture. However, this does not prevent many Aborigines regarding their lore as having the force of enacted law, and they are entitled to do so – but not to insist that white artists do the same. Notwithstanding this, in the last 50 years or so numerous artists who identify as Aboriginal have appropriated Western art media, symbols, styles, subjects or forms. The first

¹ Vesna Tenodi, *Dreamtime Set In Stone* (Sydney, 2010), p.124.

to do so was the Aranda painter, **Albert Namatjira** (1902-59). He became famous in his lifetime for his watercolours on paper in the style of English/white Australian painters. Others include:

Lin Onus (1948-96), who used Western imagery and styles in his painting and sculptures.

Aboriginal photographer, **Destiny Deacon** (b.1957), appropriates Western children's dolls in her works. And another photographer, **Darren Siwes** (b.1968), represents churches and other Western features in his works.

Writer and illustrator, **Sally Morgan** (b.1951), used Western styles in both her writing and book illustrations.

Fiona Foley (b.1964), in some of her photographs, uses the imagery of the Ku Klux Klan.

Bronwyn Bancroft (b.1958) freely appropriates Western imagery and styles, using photography, techniques and colour-scheme that have no reference to any Aboriginal style.

Tracey Moffatt (b.1960) has appropriated history and genre painting, the cheongsam and B-grade American films.

Aboriginal women artists in Central Australia have appropriated the Indonesian art of **batik**.

Gordon Bennett (b.1955) freely appropriates Western imagery in his works – as does **Dinni Kunoth Kemarre** (in his sculptures of AFL footballers).

Richard Bell (b.1953) commonly appropriates the styles of the modern New York School of painters, in particular Roy Lichtenstein and Jackson Pollock, in his pictures. The title of his painting *White Girls Can't Hump*, offended many.

Gordon Hookey (b.1961) and **Vernon Ah Kee** (b.1967) both appropriate from Western popular imagery.

Hamahl-Djordon King, who won the CAL Victorian Indigenous Art Award in 2010 with *Attack of the 50-foot Black Gin*, appropriated American comic-book imagery in that work.

To have done this, all these artists have adopted the Western definition of art as the personal self-expression of an individual – i.e., their acts show that they do not hold the same views as those of the objectors.

No one has objected to any of this. In fact, the art world generally has reacted very positively.

This challenges the logic of those who have objected to the use of the wanjina image on the sculpture under discussion. If it is acceptable for the Aboriginal artists mentioned to appropriate Western art styles, imagery and media, how can it be not acceptable for Western artists to be inspired by Aboriginal imagery? It is certainly incumbent on white Australians to respect the lore of the indigenes but, on the other hand, it is incumbent on Aborigines to respect the law of white Australia.

It is irrational to insist on one law for Aborigines and another for Westerners, and unacceptable.

Finally, indigenous people frequently disagree on what their lore says in a particular case – due to its having been transmitted only orally. Therefore, the Court would be unwise to rely on the evidence or statement of any single Aborigine or group of Aborigines on this matter.

3. The 'copyright' issue

The Court has received legal opinion that no Aboriginal imagery is covered by copyright. In

fact, there is no copyright on any religious symbol from any culture in the world, including the Christian. The Ku Klux Klan have appropriated the Christian cross with impunity for generations, as did Andres Serrano in his photograph, *Piss Christ* – a crucifix immersed in urine. As distasteful as we may see these examples, neither has generated proscription. And the Yin-and-Yang and the Mandala have featured in Tim Johnson's collaborative paintings with Aboriginal artists – and no one has ever objected.

Finally, if it should be considered that this sculpture has breached Aboriginal 'copyright' so, too, have those contemporary Aborigines – many of whom have no connection with the Kimberley area – who have reproduced the wanjina image in their works of art.

The fact is that the imagery no more belongs exclusively to any Aboriginal community than the image of the Virgin Mary or Christ does to the cathedral.

4. The wanjina

When the wanjina representations were first recorded by archaeologists, they noted that the contemporary Aborigines in the region did not know who made them, and there is a strong possibility that the image was invented by an earlier race that was not the contemporary Aboriginal. There is even a theory – that has never been disproved – that the images were made by aliens from outer space.² An authoritative anthropological opinion³ has it that the image does not represent a face at all, but male genitals inside a vagina.

Anyhow, because the originator/s of the image is/are lost in antiquity, it is unreasonable to claim that any contemporary group has 'copyright' on it. It seems that contemporary Aborigines in the Kimberley area have appropriated this imagery for their own purposes.

A few famous white Australian artists have been influenced by Aboriginal imagery in the past, among them Russell Drysdale and Margaret Preston. This was done with respect for the other culture and in recognition of what it can offer to the West. It is said that imitation is the sincerest form of flattery. Ms Tenodi has made it clear in her book, *Dreamtime Set in Stone*, that she respects and honours Aboriginal culture.

5. The City of Blue Mountains Council's duty

The City of Blue Mountains public art policy states that it is 'a guiding, decision-making framework' for art that is placed on Council-owned or -used properties. Thus, the policy has no jurisdiction over works on private property, such as this sculpture. However, it also states that 'Council is committed to maintaining and conserving public art work. It is also committed to ensuring the integrity of public art work is maintained and that the moral rights of the artists are upheld as well as meeting its legal obligations to the work, including copyright and licenses' and that 'public art becomes the "public face" of achievement for residents and visitors, reflecting the area's vitality, balance and aspirations.'

And, it adds, 'In keeping with partnerships and on-going dialogue with the community, Council will ensure that appropriate interpretation of work produced accompanies the work on site or on the Council Website or at convenient locations, such as libraries, community centres and Tourist Information Centres.'

² Although this is unlikely, it being based solely on its resemblance to Earth space-helmets and there is no indication that supposed aliens would ever need to wear such helmets.

³ R.L.Hiatt, *Arguments about Aborigines: Australia and the Evolution of Social Anthropology* (Cambridge University Press, 1996, p.115).

A further aim is ‘Engaging the community to work collaboratively and responsibly with others to produce work for the public realm.’

In view of the above sentiments, I would have thought that the Council would have no option but to support this project.

But it has ordered the removal of the subject sculpture under S.80 (4) or S.79(c) (e) – public interest – of the Environmental Planning and Assessment Act 1979. I would like to state that, if any part of the Council’s position is the result of fear that, if the sculpture remains in its present location, certain lawless or law-breaking people will cause any sort of destructive behavior, tumult or fracas, it would be well advised to consider that a serious matter of principle is involved. There are more groups in the community that wish to change our laws by illegitimate means, including violence, than the group of alleged (or claimed) Aboriginal heritage that has objected to the sculpture. These include not only ‘bikies’ but – perhaps more cogently – certain Muslims who wish to introduce Sharia law into Australia. If the Council fails to defend law-abiding citizens from such predations by groups that refuse to accept our laws, it will have to bear the longer-term social and political consequences. It would be wise to take a principled stand now.

The broader public interest issue will not end with the decision about *Wanjina Watchers in the Whispering Stone*, whatever that may be.

I hope that the Court will recognize that this case is a microcosm of a broader national issue concerning the freedom of a journalist to express his lawful ideas that is being contested in another court. If we allow bullies to coerce law-abiding citizens, we will soon descend into barbarity.

As Edmund Burke said, ‘All that is necessary for evil to triumph is that good men (and women) do nothing.’

Specific comments on the Council’s Recommendations

1. *Application No. X/525/2010 for a change of use of part of the premises to an art gallery and associated sculpture garden on L 1 DP 210908, 71 Lurline Street, Katoomba be determined pursuant to S.80(4) of the Environmental Planning and Assessment Act 1979 by partial approval of the application subject to conditions shown in Attachment 1 to this report, but excluding that part of the development specified in 2 below; and*

2. *That the existing large sandstone sculpture (also referred to as ‘damaged stone’), which fronts Lurline Street, be excluded from the consent and refused for the following reasons:*

a) that 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, and

Many minority groups are offended by various things in the built, social and natural environment, so it is invalid to argue from the receipt of some objections that our culture should be changed. Many find that poker-machines and alcohol have ‘an adverse social impact’ and ‘are not in the public interest’, but we do not prohibit them.

Feelings of offence and distress are psychological states and can only be accepted in legal rulings after the strictest examination to obviate mischievous interference in the course of making sound planning decisions. Councils in this country have no role in the censorship of art.

It is a long stretch from ‘a few objectors’ to ‘not in the public interest’. Rather, it is not in the public interest to cow down to a few bullies.

b) that due to its size, limited setback and site orientation, the sculpture has high visual prominence as viewed from the a primary tourist route in the Blue Mountains, and would therefore be experienced by people in the locality (including those not making a personal choice to visit the site or the art gallery) who may find the sculpture offensive to their cultural values, and

This applies equally to many buildings and a lot of signage. And there is no knowing how many visitors might find the sculpture *pleasing and uplifting*, rather than the reverse.

This ruling gives more – and undue – weight to objectors than to the support for the sculpture. (Note: it is unwise to decide between such expressions of opinion on numerical grounds: it is a matter of mature and advised judgment, not popular vote.)

c) the sculpture makes no reference nor has relevance to the historic use of the place as a residence or its landscape setting, having regard to its status as a local heritage item, and in this way does not contribute to the strengthening of the landscape character and visual setting along significant tourist routes, as required by development in the Village – Tourist zone under Blue Mountains Local Environmental Plan 2005.

Why should the sculpture have reference or relevance to the residence or its setting? The same can be said about any sculpture in anyone’s garden. In this country we have freedom of choice about what we put in our gardens.

And the council’s/government’s electricity poles are in this class too, as are many other elements in the landscape, including some residents’ motor vehicles and most signage.

In summary, the onus is on the council to provide further rational justification for its order.

By Dr. Sc. Alka Domic Kunic

Hrvatska akademija znanosti i umjetnosti – Croatian Academy of Sciences and Arts
Odsjek za arheologiju – Department of Archaeology, Zagreb, Republic of Croatia

EXPERT OPINION LETTER

Re: *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth in the context of archaeology and the archaeological component used in the sculpture iconography (DA No. X/525/2010, 71 Lurline St, Katoomba, Blue Mountains, Australia)

I provide this letter in my professional capacity of an archaeologist with the Croatian Academy of Sciences and Arts, as support documentation for Vesna Tenodi's case regarding the *Wanjina Watchers in the Whispering Stone* artwork and the application of the Australian prehistoric imagery in the sculpture.

I am not clear as to what is the connection between archaeology and contemporary art that the Blue Mountains City Council is attempting to make.

It would be far more logical to engage a sociologist or social psychologist, to examine the social dynamics and reasons behind Aboriginal behaviour today. It would be more logical to engage an art expert, since this matter revolves around a work of art.

But I agreed to look at this matter and examine it objectively, within the scope of my professional expertise, experience and research. This means I am analysing it from the archaeological point of view, and also offering my personal opinion of the artwork both within as well as independently of its archeologically-referenced components/context. I am also relying on my knowledge of pagan cultures, as gathered during compiling my research paper entitled "Prophecies, Omens and Dreams – Superstition of the Emperors of the Julio-Claudian Dynasty"¹, which included study of pagan beliefs and concepts in Roman Empire.

I am not clear as to which law is the ModroGorje Gallery accused of breaching in its opus of art referenced to prehistoric Australian imagery, as the material available states the artists rights are in this case disputed due to subjective opposition with no legal grounds². This was again confirmed by Arts Law Centre, in article that asserts the artistic freedom of white artists in using prehistoric iconography³.

I write this letter of opinion in a reader-friendly style, to make it accessible and clear to an intelligent lay person, avoiding technical terminology and jargon that would be suitable for a research paper read by fellow archaeologists. I am going to make the following five points:

- clarification of terms and background
- archaeological context – Australian prehistory within the world prehistory
- science, art and politics
- *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth
- conclusion

¹ Published in 'Opuscula Archaeologica', vol. 23-24, Zagreb 1999-2000

² Karen Abidi IP news www.fortnightlyreview.info/2010/07/29/non-indigenous-artists-producing-indigenous-art---the-wandjina-sculpture-scandal/

³ Robyn Ayres www.artslaw.com.au/articles/entry/the-wandjina-case-demonstrates-the-lack-of-protection-for-indigenous-cultur/

CLARIFICATION OF TERMS AND BACKGROUND

Archaeology: (from Greek ἀρχαιολογία, *archaiologia* – ἀρχαῖος, *arkhaĩos*, "ancient"; and -λογία, *-logiā*, "study"), is the study of human society, primarily through the recovery and analysis of the material culture and environmental data which they have left behind, which includes artefacts, architecture, biofacts and cultural landscapes (the archaeological record). There are many definitions of what archeology is. The simplest one is that it is "the study of everything ancient". Archaeology does not belong to exact sciences, especially when prehistory is concerned. Hypothesis, theories and speculations often remain unproven for decades. Prehistoric archaeology is defined as the reconstruction of mankind's most distant past before the invention of writing. It is marked by absence of written evidence. The study, analysis and conclusions are based on material remnants which are often impossible to date accurately. Archaeology, as an interdisciplinary science, is overlapping with paleontology (which precedes the period examined by archaeologists) and history (which runs in parallel from the discovery of writing to middle ages) and is closely associated with anthropology, ethnology and ethnography.

Alternative archaeology or fringe archaeology: refers to interpretations of the past from outside of the academic archaeological community. The alternative archaeology interpretations involve the use of archaeological data to construct theories about the past that often radically differ from those of mainstream academic archaeology. Academic archaeologists⁴ are increasingly in favour of collaborating with alternative archaeologists. Fringe archaeology can appeal to intelligent and imaginative independent thinkers⁵, who make a breakthrough in archaeology for the very reason that they are unrestrained by academic demands.

Anthropology: is the study of humanity. It has origins in the natural sciences, the humanities, and the social sciences. The term "anthropology" is from the Greek *anthrōpos* (ἄνθρωπος), "human being", and *-logia* (-λογία), "discourse" or "study" In simple terms, anthropology is the scientific study of the origin, the behaviour, and the physical, social, and cultural development or evolution of humans.

Ethnology (from the Greek *ἔθνος*, *ethnos* meaning "people, nation, race") is the branch of anthropology that compares and analyses the origins, distribution, technology, religion, language, and social structure of the ethnic, racial, and/or national divisions of humanity.

Ethnography: (from Greek *ἔθνος* *ethnos* = "folk/people" and *γράφω* *grapho* = "to write") is a scientific research strategy often used in the field of social sciences, particularly in anthropology, also known as part of historical science that studies people, ethnic groups and other ethnic formations, their ethnogenesis, composition, resettlement, characteristics, as well as their material and spiritual culture. Ethnologists take the research compiled by ethnographers, and use it to compare and contrast different cultures.

Race: Standard racial classifications is based on genetics and genealogical line or a lineage. It provides vital information when establishing the migration of the ancestral human populations

⁴ Such as Cornelius Holtorf, who believed that critics of alternative archaeologies were too "opinionated and patronizing" towards alternative theories, and proposed inclusiveness, highlighting archaeoastronomy as an example of value of alternative archaeology; archaeoastronomy was once seen as a core component of fringe archaeological interpretations before being adopted by mainstream academics. He came to the conclusion that a constructive dialogue should be opened up between academic and alternative archaeologists.

⁵ Heinrich Schliemann: a German businessman and archaeologist, and an advocate of the historical reality of places mentioned in the works of Homer. Schliemann was an archaeological excavator who discovered Troy, along with the Mycenaean sites Mycenae and Tiryns. His starting point was the idea that Homer's Iliad and Virgil's Aeneid reflect actual historical events.

and their paths of dispersion throughout the world/continents. Racial and genetical/genealogical characteristics are essential tool when differentiating prehistoric migratory groups. Today, there are groups such as Australian Aborigines with mixed ancestry, who self-identify their race on the cultural/political rather than genetic basis.

To avoid entering the ongoing controversies and political implications of definition of what constitutes a race, and its political implications, connotations and cultural dependence, I apply the term race as is commonly defined and used for standard scientific purposes, meaning:

- (a) a local geographic or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics.
- (b) a genealogical line; a lineage⁶.

I understand that Vesna Tenodi in her work is making a distinction between the Aboriginal race (as in the above definition), and the white Aboriginal self-identification, a term denoting individuals without genetic markers, whose self-identification is politically driven and/or culturally dependant, but does not rely on genetics or meet genealogical requirements. I understand that her work is referenced to Aboriginal race in antiquity and concentrated on distant past only.

Art: Art is a self-expression that has no utilitarian purpose. Art is defined as "the use of skill and imagination in the creation of aesthetic objects that can be shared with others." By this definition of the term art, artistic works have existed for almost as long as humankind, from early pre-historic art to contemporary art.

Animism and Folklore: Folklore is the beliefs, stories and traditions of ancient or primitive people which interpret their everyday world, environment and their existence in a natural way. Folklore can cover a great many ideas, stories, myths and superstitions throughout time and across the globe but generally are regarded as quaint or naïve tales from a far simpler way of life than that of sophisticated modern culture.

Included in the great realms of folklore is the world of animism. Very basically animism is the belief that all things animate and inanimate have a spirit of their own and that there is no boundary between the physical world and the spiritual world.

Within a culture today, animism in its purest form is a sign of a profound primitiveness, which we find only in remote tribes in the Amazon, Africa and Australia.

For primitive tribal people the world of animism and spirits is not a belief system, it is an experiential understanding of life itself and predates any religion which may exist in any culture today.

⁶ The notion of race is nearly as problematic from a scientific point of view as it is from a social one. European anthropologists of the 17th and 18th centuries proposed various systems of racial classifications based on such observable characteristics as skin colour, hair type, body proportions, and skull measurements, essentially codifying the perceived differences among broad geographic populations of humans. The traditional terms for these populations – *Caucasoid* (or *Caucasian*), *Mongoloid*, *Negroid*, and in some systems *Australoid* – are now controversial in both technical and nontechnical usage, and in some cases they may well be considered offensive. Some cultural anthropologists now attempt to interpret 'race' to be more a social or mental construct, rather than an objective biological fact.

I am familiar with Vesna Tenodi's work and theories. As far back as in the early '80s she developed a strong interest in spirituality of prehistoric men. She explored those interests in her Honours and Masters Degree Thesis, with full support of her thesis mentor Dr Prof Stojan Dimitrijevic⁷, one of the greatest prehistorians and experts in the field of European prehistory, who encouraged those interests and provided guidance. It should be noted that at that time such interests in spiritual and religious aspects and implications of prehistoric art and artifacts were frowned upon by the regime of the time.

I know that Vesna Tenodi has an original and unique take on prehistory, which in part does not conform to academic framework, and can thus be deemed as belonging to what is popularly known as a fringe or alternative archaeology. This does not make it any less or more important than conventional archaeology. It indicates a fresh, open-minded approach and out-on-the-limb thinking, as was acknowledged in CAS Newsletter with the review of her "*Dreamtime Set in Stone*" book⁸. It should be noted that some of the greatest discoveries and important breakthroughs in archaeology were made by enthusiasts unrestricted by academic requirements, such as Heinrich Schliemann, who discovered Troy, following what was deemed to be 'just stories' by Homer, without factual basis.

I understand that the current issue is about the application of Australian prehistoric rock art and its imagery in the *Wanjina Watchers in the Whispering Stone* sculpture and *Wanjina Watchers* paintings by Gina Sinozich. I understand that the Wanjina paintings are found in the caves in the Kimberley region of Western Australian, but I am also aware that Wanjina-like imagery, paintings and carvings are found in prehistoric cultures – under different names – throughout the world, including Neolithic cultures in Mediterranean Basin and Central Europe. I understand that Vesna Tenodi is exploring these parallels in her "*Dreamtime Set in Sand*", Part 2 of the DreamRaiser Trilogy, comparing myths, fables and fairytales as found in a number of traditions, with Aboriginal Dreamtime.

ARCHAEOLOGICAL CONTEXT – AUSTRALIAN PREHISTORY WITHIN THE WORLD PREHISTORY

The accepted theory today is that the Australian continent was populated by Aborigines about 40 – 70 thousand years ago. However, there is increasingly plausible theory that Australian continent at that time was already populated by autochthonous people predating the arrival of three (or trihybrid) influxes of tribes migrating from south-east Africa and south Asia.

The theory of prehistoric culture predating Aborigines finds support in evidence such as in extensive megalithic stone alignments and other astronomical structures, which suggests the former presence in Australia of a highly advanced civilization of unknown origin. These structures include standing stones weighing 20 tons and carved stone heads.

The current hypothesis proposes migration which was achieved during the closing stages of the Pleistocene, when sea levels were much lower than they are today. Repeated episodes of extended glaciation during the Pleistocene epoch, resulted in decreases of sea levels by more

⁷ Dr Stojan Dimitrijevic
www.google.com.au/webhp#q=stojan+dimitrijevic+prehistory&hl=en&biw=1084&bih=793&prmd=i vnsob&ei=rZejTbHjC4S2vwOL-uCHBQ&start=10&sa=N&fp=db619950cd895833

⁸ Society of Archaeology Canberra Newsletter page 7 www.cas.asn.au/newsletters/CAS-Old-News-Nov-2009.pdf

than 100 metres in Australasia, and the continental coastline extended much further out into the Timor Sea, so that Australia and New Guinea formed a single landmass, connected by an extensive land bridge⁹.

It is unknown how many populations settled in Australia prior to European colonisation. Both “tri-hybrid” colonisation of Australia and single-origin hypotheses have received extensive discussion; however, both theories have become politicised, with the assumption of a single origin tied in to ethnic uniformity and advocated by Aboriginal activists for political aims. There is little objective data to settle the issue one way or the other.

There are several points in prehistory that are often referred to as ‘Neolithic revolution’. The first revolution or step-up onto the next level of civilisation was the change from hunter-gatherer culture of wandering tribes to the establishment of settlements, either temporary or permanent, that provide archaeologists with more comprehensive evidence of the daily life of prehistoric men and is accompanied with development of agriculture and more comprehensive material associated with a sedentary community, with upsurge of craftsmanship such as ceramics, household items, jewelry and architecture. Another major step is the invention of writing.

Prehistorians know that the evolution did not follow the same linear time-line and parallel pattern throughout the world. Through the Paleolithic, Neolithic, iron, bronze and copper age, while on some continents there were the cultures living the most primitive and rudimentary lifestyle of transient hunter-gatherer groups, in other parts of the world we find the ancient cultures of that same period with highly developed and organised urban society, complex cities, and sophisticated architecture some of which remain unexplained to this day – as found in Egypt, Easter Islands, or South American architecture in a number of archaeological sites – and creating artworks of impressive beauty and still unexplained meaning (such as the Maya, the Inca and the Aztecs).

There are the remnants of intriguing and mysterious cultures – some of which seem to have appeared and abruptly disappeared with no hint of their origin or apparent reason for their demise – who have reached inexplicable sophistication and a degree of engineering skills that cannot be replicated, matched or even explained today. This includes sites in Mesopotamia, Egypt, China, and the megalithic prehistoric sites such as found in England and Easter Islands.

It is scientifically accepted theory that the prehistoric period in Australia includes:

- (a) pre-Aboriginal period of the autochthonous people¹⁰
- (b) Aboriginal period traced back to 40-70 thousand years BC¹¹.

It is accepted theory that the Aboriginal prehistoric culture – much like other remote and isolated cultures such as found in Papua New Guinea, Amazon region and North America –

⁹ The sharing of animal and plant species between Australia-New Guinea and nearby Indonesian islands is another consequence of the early land bridges, which closed when sea levels rose with the end of the last glacial period. The sea level stabilised to near its present levels about 6000 years ago, flooding the land bridge between Australia and New Guinea.

¹⁰ This is confirmed in Aboriginal oral tradition, especially in regards to Bradshaw and Wanjin groups of cave paintings, to which Aboriginal informants claimed and the researchers noted that those images were there when they arrived, and they do not know who created them.

¹¹ This is supported by archaeological evidence of the rudimentary flake stone tools and rock carvings.

belongs to old stone age or Paleolithic cultures of nomadic hunter-gatherers, and had an unchanged continuity from its migration to Australia 40-70 thousand years ago until the arrival of European settlers.

It is well known fact that there is the simultaneous existence of races on different levels of civilisation, and within the same country such as in Australia, where we found both the stone age culture and space age civilisation existing in parallel. History is not always a matter of clear-cut or successive dates, and ages such as Paleolithic and Neolithic ended at different points in time, or in some pockets of the world can still be found today.

The Australian Aborigines, for instance, ended their Old Stone Age culture (Paleolithic period) around 1870 A.D. Research confirms that the Australian Aborigines were among the least developed of primitive peoples. When Europeans first arrived to that continent, the natives knew nothing of agriculture, of pottery or of houses, moving around or living in cave shelters like any other Old Stone Age culture¹². This fact was of great interest to archaeologists in 19th and 20th century, as it provided direct insight and enabled them to observe first-hand the lifestyle of stone-age people. The first settlers have found tribes living a stone-age lifestyle, using the Paleolithic and Neolithic tools and implements.

In Australian prehistory, there is little evidence of settlement development and it is evident that the culture found by the colonisers had not made the transition from hunter-gatherer to sedentary lifestyle, had not developed building skills nor invented metals, pottery or writing.

Since the Australian prehistoric races belonging to the Aboriginal time never developed written language and permanent settlements, there is little material evidence that would inform a researcher of their daily life. The available archaeological material consists predominantly of implements of dressed and flaked stone and bone tools, and rudimentary engravings and carvings on the rocks and cave walls. In contrast to prehistoric cultures in Europe, pottery and ceramics were not developed. Pottery, like the metalwork, is one of the skills which can develop once the culture makes a shift towards more organised settlements and sedentary lifestyle, and is associated with further forms of artistic expression such as increasingly elaborate ornaments, decorations and design in pottery and metalwork, as found in prehistoric cultures with more than one level of evolution.

The paintings and carvings as found throughout Australia belong to two distinct levels of skill, implying two vastly different periods – pre-Aboriginal and Aboriginal.

Bradshaw, Wanjina, X-ray and Mimi imagery apparently belong to a tradition that is still unexplained, and Aboriginal informants over the last two centuries were unable to shed any light, claiming they found those images when they arrived, and later on started repainting or tracing them. Over time, the tribes adopted some of the cave iconography, incorporating it into their myths¹³. Therefore it is fair to say that the Australian rock art can do little to inform us of the meaning behind the iconography and symbols used, as the Aboriginal informants were unable to provide any explanation¹⁴. As recorded by the first researchers¹⁵, the descendents of Aboriginal people who migrated to the Australian continent in the distant past have been claiming since the first contact with European settlers to have no knowledge of the cave paintings origins.

¹² Bernard S. Myers

¹³ Grahame Walsh

¹⁴ Andreas Lommel

¹⁵ George Grey

A number of documented sources, from the first European colonisers to contemporary experts, confirm¹⁶ that those first Aboriginal arrivals found the paintings and carvings when they first migrated to the Australian continent, did not know who created them or why. The informants offered a number of theories, the main one being that the Wanjinās are celestial beings who created the world and upon completing the task impressed themselves into the stone, as a reminder of their sojourn on Earth¹⁷. Another favoured fable is that those invisible spirits were dwelling in the invisible levels of existence, the higher ethereal realms or deeper levels of sea and earth, and decided to “emerge from the stone” and show themselves in symbols and pictographs.

When we take away the art that Aboriginal tribes could not explain but claimed it was created by an earlier race unknown to them, the Australian prehistoric era and prehistoric material includes flake stone and stone artifacts and tools similar to Paleolithic sites throughout Europe and Africa, in support of still suspect ‘out-of-Africa’ mankind origins¹⁸ and branching of homo sapiens.

SCIENCE, ART AND POLITICS

I understand that *Wanjina Watchers in the Whispering Stone* controversy revolves around Vesna Tenodi’s book “*Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know*” and the illustrations by Gina Sinozich, inspired by Australian prehistoric cave art, The *Wanjina Watchers* sculpture by Benedikt Osváth is inspired by the same ideas and iconography as explored in the book.

To my knowledge, there is no legal basis, in any of the democratic countries, to prohibit any researcher, writer or artist, to use any of the available prehistoric imagery, iconography, pictographs, ornamental styles or mythology from any part of the world, including Australia, as those are all in public domain.

In my opinion, the objections to non-Aboriginal artists using Aboriginal styles or symbols are irrational for two reasons:

- (a) Imagery that inspired the *Wanjina Watchers* sculpture was not created by Aboriginal people, by their own admission
- (b) the same iconography, symbols, images and styles are found in prehistoric sites in Africa, Asia, North and South America, and Europe, and are markers of the ancients in a number of different cultures belonging to the same epoch.

The repetition of the same patterns as found in ancient cultures throughout the world is very useful and informative to archaeological research, as it might help in following and establishing paths of migration.

This lead me to conclusion that the controversy over *Wanjina Watchers in the Whispering Stone* sculpture is fuelled by the current political climate in Australian society.

The Blue Mountains City Council decision to censor art seems to be politically motivated, rather than based on any scientific or legal grounds.

In my opinion, this is an issue of artistic expression and personal beliefs, and the dubious decision to censor a work of art is driven by politics. I am familiar with the concept of politics dictating art and science, and with the methods of enforcement of such politics – it was a standard practice in socialist and communist states throughout Europe, before the fall of those

¹⁶ Ian Crawford / Andreas Lommel

¹⁷ Margo Neale, December 2010

¹⁸ Louis Leakey

regimes. That applies to Croatia while it was a part of communist Yugoslavia, where Biblical studies were excluded from archaeological studies, to the point that the major discoveries such as the Dead Sea Scrolls were seen as a threat to the regime and excluded from encyclopaedias and textbooks. Any reference to spirituality or religion in prehistoric times was 'strongly discouraged', by the enforcers of mandatory atheism of that regime.

In this particular case, the former regime ideological projections disallowed for any objective interpretation of migratory paths of the ancients, and Croatian identity was tailored to suit the political correctness. Following Croatia's independence, the identity of its people is currently being redefined, and the same material is being read and reinterpreted in an entirely new way, free of the regime-dictated and government imposed political constraints.

In stifling regimes, researchers and artists are often either willing or forced to follow the prescribed government policy and tailor their theories to suit the regime.

It seems that current Australian policy is directing this debate about white artists using prehistoric symbols, pushing it to the absurd extreme of dictating what the artists and scientists are allowed to do, paint, think and say.

For this reason, it seems that only international archaeologists can provide an objective, unbiased and scientifically valid comment.

I understand the plea of today's Aborigines and their disadvantaged position after injustice they suffered in the past. But the understanding of their needs and sensitivities should not force researchers and artists to alter or twist their work just to please the overly emotional objectors who can find no valid or rational reason to object.

In my opinion, an archaeologist, or scientist in any field, as well as any artist, should not have their vision or ideas obscured or dictated by politics of the day.

WANJINA WATCHERS IN THE WHISPERING STONE

I analysed each of the four sides of the *Wanjina Watchers in the Whispering Stone* sculpture and my findings are as follows:

- (a) this is an original interpretation of the imagery as found in Australian prehistoric rock art
- (b) apart from images that have a parallel in the rock art paintings, there is a wealth of symbols and icons belonging to other cultural traditions and have more reference to Egyptian, Greek, and Central European spiritual traditions than to Australian prehistory, and I read it is a work depicting comparative mythology (crosses, sky-bodies, pyramids).
- (c) the elements used in the bas-relief also include contemporary symbols and materials (ceramic tiles, crystal beads, modern palette).
- (d) the method of painted bas-relief is referenced to Mesopotamia, Sumer, Egypt and Persia, rather than anything found in Australian prehistoric art. The custom of painting the elaborate bas-relief was developed by Neolithic cultures in highly-evolved society and used mostly on temples, oracles and other sacred structures.
- (e) if not for its title which includes Aboriginal term of mythological being (Wanjina), it would be impossible for a casual observer to guess what the artwork might represent. That can only be interpreted by the artwork creators Vesna Tenodi and Benedikt Osváth.

CONCLUSION

In the *Wanjina Watchers in the Whispering Stone* sculpture I can not find any reference to today's Aboriginal people. Imagery is drawing inspiration from Australian pre-Aboriginal prehistoric cave paintings, as well as from archaeological material such as sculptures and pottery in cultures of Vinca, Lepenski Vir, African Sahara region, and ancient architecture in Mediterranean Basin.

If viewed independently of its title, this artwork can be interpreted in the context of any of those traditions.

Therefore, this is not a question to be solved by an archaeologist, or anthropologist, or ethnologist. Or by a lawyer, a bureaucrat or a politician. It is a question of modern contemporary Australian art and the rights of the white artists in politically driven society. Any archaeological explanation of prehistory or treatise on the bas-relief and its reference to prehistoric cultures can offer no solution to that debate.

From the archaeological point of view, there is no reason why Vesna Tenodi, Benedikt Osváth, Gina Sinozich or any other artist for that matter should not create art using any prehistoric imagery they find inspiring. The archaeological sites and their artistic components, as found in both most remote and/or obscure places as well as the most famous ones such as Altamira and Lescaux which are included into the world heritage list, are in the public domain. This means that any imagery, symbols and iconography as found in any age, ranging from the Paleolithic period through medieval time and recent history are unrestricted in any way, be those the cave paintings, pottery design, mosaic patterns, and can be freely applied in all their aspects including their names, such as Amon-Ra, Zeus, Osiris, Isis, Quetzalcoatl, and Wanjina.

The ancient art, as well as more recent art, and artistic ideas, can not and should not be subject to 'copyright' nor can be 'owned' by any person or nation. It belongs to the world heritage, and any artist has the right to find inspiration in any of those images, regardless of their origin.

The initial accusations that the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth and *Wanjina Watchers* paintings by Gina Sinozich were in breach of copyright and intellectual property laws have been proven to be incorrect.

In my opinion, the notion of politics dictating scientific research and artistic expression, and the policy of forcing researchers to be dishonest and artists to live in fear of vandalism should be rejected by contemporary Australian researchers and artists.

To demonstrate respect for Australian values, in view of the objections being irrational as well as legally, morally, and scientifically unjustifiable, any attempt at censorship of the *Wanjina Watchers in the Whispering Stone* should be condemned and rejected. The call for censorship of art flies in the face of democratic values that Australian society claims to cherish.

Benedikt Osváth's *Wanjina Watchers in the Whispering Stone* sculpture

A Convenient Target: How politics got intertwined with art

By Dr. Ali White

“Has anything changed since then, since the ‘70s, in the last 30 or 40 years, has anything improved?” I asked Goomblar.

“Nah.”

“At least in the last year, since Sorry Day?”

“No. That meant nothing, doesn’t mean anything” (Tenodi, 2010: 33-34).

Art in all its forms has always had a role in standing against oppression. In Africa, Miriam Makeba, Wole Soyinka, Fela Kuti and Hugh Masekela all contributed to the struggle against colonial rule. Ngugi Wa Thiong’o continued this fight, criticism of the leadership of Jomo Kenyatta, Kenya’s first black leader after colonialism, showing that Kenyatta’s misleadership was symptomatic of a neo-colonialist black elite by the colonialists.

In Iraq, Wafa’a Bilal began creating political abstract art as a student in Baghdad during Saddam Hussein’s rule. When he began to fear for his life, Wafa’a fled his homeland and ended up in a refugee camp in Saudi Arabia. Rather than losing hope, Wafa’a continued painting, turning tents into canvases. In China, the art of Ai Weiwei (艾未未) is a powerful critic of China’s oppressive regime.

In all lands, at all times, art in its many forms has found a way to speak up against the suppression of the human spirit and the attempt to annihilate entire peoples. It can often survive great tyranny. Thus: ‘the totalitarian mind is more vulnerable than we think ... a single moment of beauty can pierce through decades of ideological brainwashing’ (Scalia, 2011). But art can only withstand the utter self-denial of the human spirit with tremendous difficulty. Elizabeth Scalia comments: ‘Art only dies when the human spirit has been subjugated and trampled on, and submission has become a second-nature’ (Scalia, 2011).

In Australia, Namatjira (1902-1959) was an internationally renowned artist who lived under racist local laws making him an illegal alien on his own land. He was refused a grazing licence in 1949-50 and prevented in 1951 from building a house on land he bought at Alice Springs. The Aboriginal writer Woorama explains:

Upon his death, his estate (including all his paintings, worth millions) was seized by the government. It was sold to an American millionaire. In the following decade, when all Aborigines were granted citizenship, his family was left penniless. Today, his children are still denied compensation for the loss of their rightful inheritance (Woorama, 2007).

What lies behind such heartlessness? The key to understanding this is to grasp Australia’s origins – and enduring dominant identity – as a white colonial settler enclave.

A racist colonial settler enclave

Founded as an outpost of the British Empire, the land that was to become Australia has always based itself on barely disguised racism. The Australian colonies were settled as a very British enclave in the southern hemisphere, nurtured on theories decreeing 'the inferiority of non-Caucasians' (Rose, 1983: 168). It did not take long for this exclusivist attitude to manifest itself in practice. There was opposition to Chinese immigration in New South Wales in the 1870s, as well as Bills imposing a poll tax on Chinese immigrants and restricting the number who might be brought in on any ship. Acts to restrict immigration were passed in most of the colonies and subsequently extended to cover other 'coloured' races, after agreement was reached at an Intercolonial Conference in 1896. One of the first decisions of the first Australian parliament after Federation was to adopt the *Immigration Restriction Act 1901*, which enshrined the White Australia Policy. As its name implies, the aim of this policy was to restrict any form of non-white immigration to this country. Australia's first Prime Minister, Sir Edmund Barton lauded the *Immigration Restriction Act*, as 'a handsome new year's gift for a new nation' (cited in Day, 2001).

Aboriginals are estimated to have numbered anything from about three hundred thousand to a million or even more in 1788. Yet by 1901 it is estimated that there were only 93,000, shrinking to 72,000 by 1921. It was assumed in 1901 that the remainder of Aboriginals would simply die out. By 1912, all Aboriginals of mixed descent were moved from Aboriginal reserves by the state, with the goal of 'breeding out' their Aboriginality. As Governor Gipps predicted, Aborigines would 'ere long cease to be numbered amongst the Races of the Earth'. Many were simply massacred. One settler asserted 'that there was no more harm in shooting a native, than in shooting a dog (Reynolds, 2003: 91).

This was not accidental, but perfectly 'logical' from the viewpoint of the colonisers and how they understood their own material interests. This was the time when the European nations colonised parts of Africa and South-East Asia in order to control trade, to exclude each other from new markets and sources of raw materials and to enable them to invest capital raised through their own lands' industrialisation.

White settlement in Australia was thus framed by notions of racial superiority – that is, by white racism. It occurred during the epoch of colonialism – the phase in capitalist development in which developing capitalist economies established colonies in pre-capitalist states, against the will of indigenous populations. The colonisers established control over the raw materials and workforce of the colonial territory, and often imposed cultural, religious and linguistic structures on the conquered population – which were supposed to be superior to those of the 'ignorant savages' being imposed upon. The West used the evolution theories of Charles Darwin to rationalise this inhuman behaviour, arguing that 'nature' placed white people were at the top of the animal kingdom, with the historical and moral task of dominating non-European indigenous populations. Oxford University Press's *A Dictionary of Geography* admits:

European colonizers tended to construct the identities of colonized peoples and lands as other: undeveloped, primitive, and immature; as homogeneous objects, rather than sources of knowledge. The colonizer, too, was represented – as having a duty which entailed both financial and emotional cost (and for many these costs were very real) (Mayhew, 2009: 88).

The dehumanising toxin of ‘assimilation’

In Australia, the white man dominated firstly by genocidal violence that is only now being spoken about. Then it was the turn of the preachers and government bureaucrats and policemen to apply the dehumanising toxin of ‘assimilation’. This was the brutal logic of ‘assimilation’. An ‘assimilated’ person, as the great thinker Ali Shari’ati explains, comes to hate his own, natural and God-given personality and identity. He:

forgets his own background, national character and culture or, if he remembers them at all, recalls them with contempt. Obsessively, and with no reservation, he denies himself in order to transform his identity. Hoping to attain the distinctions, and the grandeur, which he sees in another, the assimilator attempts to rid himself of perceived shameful associations with his original society and culture (Shari’ati, 2011).

Wherever they went, says Shari’ati, white men ‘created a people who do not know their own culture, but still are ready to despise it.’ A colonised (i.e., ‘assimilated’) Muslim, for instance, may know ‘nothing about Islam but say[s] bad things about it’:

They cannot understand a simple poem but criticize it with poorly chosen words. They do not understand their history but are ready to condemn it. On the other hand, without reservation they admire all that is imported from Europe. Consequently, a being was created who, first became alienated from his religion, culture, history and background, and then came to despise them. He was convinced he was inferior to the European. And when such a belief took root in him, he tried and wished to refute himself, to sever his connections with all the objects attached to him and somehow make himself like a European, who was not despised and looked down upon, and at least be able to say, “Thank God I am not an Easterner since I modernized myself sufficiently to reach the level of a European.”

And while the non-European is happy with the idea that he has been modernized, the European capitalist and bourgeois laugh at their success in converting him into a consumer of their surplus production (Shari’ati, 2011).

Speaking at a Council of Native American chiefs in 1805, in Vincennes, Indiana, the great warrior Red Jacket addressed a missionary who was also present:

There was a time when our forefathers owned this great island. Their seats extended from the rising to the setting sun. The Great Spirit had made it for the use of Indians. He had created the buffalo, the deer, and other animals for food. He had made the bear and the beaver. Their skins served us for clothing. He had scattered them over the country and taught us how to take them. He had caused the earth to produce corn for bread. All this He had done for His red children because He loved them. If we had some disputes about our hunting-ground they were generally settled without the shedding of much blood (Copeland, *et al*, 1999: 266).

Then, Red Jacket told the white missionary, ‘an evil day came upon us. Your forefathers crossed the great water and landed on this island’. The colonists found ‘friends and not enemies’ in the indigenous inhabitants, but the white colonists waged war against them:

Indians were hired to fight against Indians, and many of our people were destroyed. They also brought strong liquor among us. It was strong and powerful, and has slain thousands (Copeland, *et al*, 1999: 267).

‘You have got our country, but are not satisfied’, added Red Jacket with great dignity: ‘you want to force your religion upon us’ (Copeland, *et al*, 1999: 267).

In the Americas, in Africa, in Asia, so too in Australia. By 1912, as already mentioned above, children were literally stolen from Aboriginal families and handed over to Christian missions, in a government scheme was in force to frankly ‘breed out’ their Aboriginality. In the process, many Aboriginals were subjected to systematic sexual, physical and emotional abuse (Tenodi, 2010: 25-28). Alcohol was used against Aboriginal communities in the same way it was against Native Americans – and with the same devastating religious, cultural and social effects. Everything possible was done to break the spirit and bodies of this noble people.

The genocide of Australia’s indigenous population continues today; the only difference from previously is that now it is meticulously documented. A report for the Parliament of Australia (2000) states:

A 1991 study estimated that twenty per cent of Aboriginal children aged two or younger were malnourished. Twelve per cent exhibited wasting and three per cent stunting of growth. Five per cent of the surveyed children were afflicted by both problems.³⁷ Similarly, a 1993 study reported twenty-two per cent of children suffering from malnutrition.

‘Between 13 and 22 per cent of Indigenous Northern Territory children under five years’, the report continues, ‘were clinically underweight’. Northern Territory Aboriginal children under five simply do not have access to sufficient nutritional food:

Inadequate access to enough of the right food groups has contributed to the thirty-nine per cent of Indigenous school children with iron deficient anaemia. The incidence of iron deficiency and anaemia has been reported in some locations at higher levels. One Kimberley region study found seventy-two per cent of Aboriginal children under five years, and seventy-nine per cent of children aged five to fourteen were anaemic. The National Aboriginal Community Controlled Health Organisation submission reported that one third of Aboriginal people living in rural areas were concerned about having insufficient food (Parliament of Australia, 2000).

Indeed, the genocide starts even before Aboriginals are born, the report found:

Indigenous babies are more than twice as likely to be of low birthweight which is commonly attributed to the health status of the mother. It has been reported that there is growing evidence that malnutrition during infancy can be linked to adult diseases such as diabetes and end stage renal disease. Malnutrition in children effects [*sic*] their learning abilities and consequently limits their academic potential.

Malnourished children tend to be often tired, have low concentration levels and are prone to other illnesses. Poor nutrition is a contributing factor to the high absentee rates of Indigenous children. In addition, research has shown that the incidence of malnutrition on children under two years of age has a long-term impact on their brain

development and academic potential. This once again highlights the importance of effective and early health care to education (Parliament of Australia, 2000).

A study of 157 Aboriginal children aged less than two years in 1990/1991 found that:

wasting (an indicator of malnutrition) was found to be significantly associated with microcephaly (small head circumference). The authors recommended that there be an emphasis on improved nutrition during pregnancy, lactation and infancy. These periods were seen as critical for the healthy brain development of children, ***with long-term consequences for intelligence and cognitive functioning*** [emphasis in original] (Parliament of Australia, 2000)

‘Contributing factors to malnutrition’, the report blandly stated, are that ‘Malnutrition has been consistently linked to poverty’ (Parliament of Australia, 2000).

From intervention to ‘sorry’

With time, the white politicians and bureaucrats have only used more sophisticated methods. The methods have remained the same. Thus, former Liberal Prime Minister John Howard used a Government report (*Little Children are Sacred*) as a pretext for imposing Government control over Aboriginal communities: ‘the army, police and business managers into Aboriginal communities in the Northern Territory’ (Pilger, 2008). Howard’s skewed reading of this report accusing virtually every Aboriginal man in remote communities of being a paedophile. Howard knew he was on safe ground doing this, for he was appealing to prejudices that all white people in this land have been schooled in.

This time, however, there was the added lure of uranium:

The Northern Territory is where Aboriginal people have had comprehensive land rights longer than anywhere else, granted almost by accident 30 years ago. The Howard government set about clawing them back. The territory contains extraordinary mineral wealth, including huge deposits of uranium on Aboriginal land. The number of companies licensed to explore for uranium has doubled to 80. Kellogg Brown & Root, a subsidiary of the American giant Halliburton, built the railway from Adelaide to Darwin, which runs adjacent to Olympic Dam, the world’s largest low-grade uranium mine. Last year, the Howard government appropriated Aboriginal land near Tennant Creek, where it intends to store the radioactive waste. “The land-grab of Aboriginal tribal land has nothing to do with child sexual abuse, says the internationally acclaimed Australian scientist and activist Helen Caldicott, but all to do with open slather uranium mining and converting the Northern Territory to a global nuclear dump (Pilger, 2008).

Howard’s successor, Labor’s Kevin Rudd, continued this so-called ‘intervention’ – as has his own successor, Julia Gillard. As if to cover his tracks, PM Rudd supposedly ‘apologised’ to the Aboriginal people on 13 February 2008. The *Sydney Morning Herald* accurately described the apology as a:

piece of political wreckage that the Rudd government has moved quickly to clear away ... in a way that responds to some of its own supporters’ emotional needs, yet changes nothing. It is a shrewd manoeuvre (Pilger, 2008).

A new stolen generation is being created as children are taken from their families under the guise of concern about substance abuse and domestic violence. Indigenous people still face overt racial discrimination from employers and daily harassment from police. A large number of communities experience a devastating lack of permanent housing, access to clean drinking water and electricity (Wood, 2006). Pilger adds:

Like the conquest of the Native Americans, the decimation of Aboriginal Australia laid the foundation of Australia's empire. The land was taken and many of its people were removed and impoverished or wiped out. For their descendants, untouched by the tsunami of sentimentality that accompanied Rudd's apology, little has changed. In the Northern Territory's great expanse known as Utopia, people live without sanitation, running water, rubbish collection, decent housing and decent health. This is typical. In the community of Mulga Bore, the water fountains in the Aboriginal school have run dry and the only water left is contaminated (Pilger, 2008).

The median age at death of Aboriginals has not improved since the mid-Nineties, widening the gap between Indigenous and non-Indigenous ages at death to a massive 26 years. Infant mortality is three times that of the general population (Wood, 2006).

Truth set in stone

As a deeply spiritual archaeologist, social justice advocate and community worker, Vesna Tenodi gradually became aware of the cruel fate of Australia's Aboriginal peoples. That is not to say that she analyses their situation in precisely the same terms as the present writer, although she undoubtedly agrees that Aboriginals have been viciously oppressed. Indeed, she writes:

Dead and dying, that's what they are. Plucked out from their homes, uprooted, displaced, forbidden to live according to their customary law for so long that they can no longer remember what the law was. Too late now, even the most resilient cannot be transplanted into our modern society's poisoned soil (Tenodi, 2010: 118).

Having reached this conclusion, Vesna Tenodi did not respond by launching a political campaign; she reacted thoughtfully and (within her own religious framework) spiritually, by launching her DreamRaisers project. This initiative aims to raise awareness about the decline of spirituality in the world and help people reconnect with important concepts and universal laws, as understood by Vesna Tenodi, who believes deeply that the Wanjina spirits speak to her spiritually as well. She is convinced that non-Aboriginals have much to learn from Aboriginal culture, traditions, values and spirituality:

an Aborigine in each of us is the heart of our mind, the deepest, most ancient, most original, most genuine – and the most estranged part of our own being. The AbOriginal in each one of us is the part of our being we understand the least, neglect the most, sometimes ridicule and often abuse, ignoring its rights and denying its existence (Tenodi, 2010: 5).

As part of her DreamRaisers project, Vesna Tenodi commissioned a sculpture entitled, *Wanjina Watchers in the Whispering Stone*. To three Aboriginal groups in the Kimberley, Wanjinas (Wandjinas) are creation spirits central to their belief systems and cultural practices

– although the authorship of these paintings has long been disputed, with Aboriginal people stating that they did not paint the prehistoric Wanjina images in the caves in the north-western Australia, and do not know who did. Aboriginal in the Kimberly they have a number of legends of their origins. The sculpture *Wanjina Watchers in the Whispering Stone* currently stands in front of the ModroGorje Gallery in Katoomba, owned by Vesna Tenodi and her husband Damir. For six months she tried to contact Wanjina people at Mowanjum Artists of the Kimberley, before she unveiled the sculpture. Her detractors now admit (*Law Report*, 29 June 2010) that they refused to speak with her.

The stone has been vandalised by persons unknown. Then, on 12 October 2010 the Blue Mountains City Council ordered Vesna Tenodi to remove the sculpted stone, since it allegedly ‘contains an interpretation of sacred Aboriginal images that is offensive, disturbing or distressful to some members of Aboriginal and non-Aboriginal communities’ (Blue Mountains Council Minutes, 12 October 2010).

The sculpture represents reconciliation and is a celebration of Aboriginal spirituality. Although, as shown earlier, Vesna believes that Aboriginals have been culturally dispossessed, nevertheless: ‘We are at a point where Aboriginal culture has all but disappeared, but what we can and should do is look more closely and observe the shadow’ (Tenodi, 2010: 118). Every Aborigine she sees, Vesna adds, ‘casts a shadow, a faint outline of their glorious, gentle, spiritual past’. At no time, it is important to add, have either Vesna or the sculptor Benedikt Osváth ever claimed to be indigenous Australians themselves.

Vesna’s detractors, who apparently claim to speak for all members of the Wanjina people, assert:

Vesna’s gallery is full of fake Aboriginal Art. She has upset many of the local Blue Mountains Aboriginal Community and along with Gina Sinozich and Ben Osvath have managed to offend an Aboriginal Community 3000 kilometres away as well! (Modrogorje, 2011)

Behind this statement is the notion that only members of a given group have the right to portray its spiritual or cultural images. Certainly, there may well be an argument that no-one should be permitted to maliciously denigrate the icons of a spiritual, cultural or ethnic group – although this is a law rarely used. On the other hand, artists have always insisted on the right to use all images, in order to carry out their social role: Norman Rosenthal, Director of the Royal Academy of Arts, London, says it well: ‘Artists must continue the conquest of new territory and new taboos’ (Rosenthal, 1997: 8-11).

Another artistic commentator, Jonathon Green (2008) remarks:

The populist authoritarianism that is the downside of political correctness means that anyone, sometimes it seems like everyone, can proclaim their grief and have it acknowledged. The victim culture, every sufferer grasping for their own Holocaust, ensures that anyone who feels offended can call for moderation, for dilution, and in the end, as is all too often the case, for censorship. And censorship, that by-product of fear – stemming as it does not from some positive agenda, but from the desire to escape our own terrors and superstitions by imposing them on others – must surely be resisted (Jonathon Green, 2008).

This is indeed what appears to have happened in the case under discussion. From their actions, it seems that Vesna Tenodi and her colleagues in the DreamRaisers project have been motivated only by highly spiritual and altruistic motives. One may accept the spiritual values inherent in this project, but it surely unthinkable for anyone to arrogate those images only to themselves. There can be no 'copyright'; on religious or spiritual images – otherwise the doors of Australia's courts will be open to endless mischief and injustice. This is clear when one considers another religious image: the cross. Thus, the (Roman) Catholic Church considers itself to be the true and universal Christian Church – and it should be free to advocate and teach this. The Anglicans (at least their High Church) regard themselves as true Catholics. But so too do the Apostolic Catholic Church, the Liberal Catholic Church, the Holy Apostolic Catholic Assyrian Church of the East, Arian Catholics and countless others. All of these 'true Christians' use the cross as their symbol. And then there the even more numerous Protestant churches, who also take the cross as their icon. Some secular organisations, most notably the Red Cross and the Melbourne AFL club St. Kilda utilise the cross as a symbol. What would happen if any one of these churches or organisations took action to claim that they had the sole right to use this symbol? To even pose this question is to observe how ridiculous such a notion is.

The proposal that only one group of people have the right to utilise a given symbol is quite obviously neither logical nor just. Yet precisely such a suggestion is put forward by Vesna Tenodi's detractors, who assert that only persons from their small group have the right to use the Wanjina image. Vesna Tenodi perceptively observation of the hypocrisy inherent in how governments handle their relations with Aboriginals also explains the hypocrisy inherent in how certain public officials have responded to this small group:

After centuries of callous denial of any past cruelties ever taking place and the Government's refusal to hear the Aborigines' pleas, today's Government has suddenly found the courage to acknowledge the wrongdoing, and its Aboriginal policy is treated as the most delicate matter. Government officials are bending over backwards to appear sensitive and appreciative of a culture they've done their best to obliterate. They handle Aborigines with kid gloves, and glorify the culture that no longer exists, go overboard with showing false reverence for something that is no longer here (Tenodi, 2010: 118).

The truth is that Vesna Tenodi and her small group of philosophers and artists are a convenient target. In the shameful tradition of official interactions with Aboriginals, the Blue Mountains City Council apparently feels it can ignore reality and censor her right to display art, on the pretense that the Council is upholding 'sacred Aboriginal images' that it has never previously gone on record to either acknowledge, let alone understand.

While the Blue Mountains City Council insists on fiddling while Rome burns, and despite all the outpouring of politically correct speeches since 2008, the cultural and physical genocide of Aborigines continues. In the Kimberley alone, one study has found that seventy-two per cent of Aboriginal children under five years, and seventy-nine per cent of children aged five to fourteen were anaemic, due to inadequate diets. Since the Blue Mountains City Council has declared itself to be the 'protector' of what it asserts are Kimberley Aborigines' sacred images, perhaps the esteemed councilors will follow-through with a campaign of political and legal action to address their slow death through starvation and disease?

References

Australian Dictionary of Biography (2006) 'Namatjira, Albert (Elea) (1902-1959)', at the following URL: <http://adbonline.anu.edu.au/biogs/A150530b.htm>.

Blue Mountains Council Minutes (2 October 2010) at the following URL: <http://www.bmcc.nsw.gov.au/yourcouncil/councilmeetings/2010meetings/12october2010>.

Censorship (2010) in *Quotations about Censorship*, at the following URL: <http://www.quote garden.com/censorship.html>

Copeland, Lewis; Lamm, Lawrence W. & McKenna Stephen J. (1999) *The World's Greatest Speeches*, Fourth enlarged edition, Mineola, New York, Dover Publications.

Day, David (5 December 2001) 'A Political Whitewash', in *The Age* newspaper.

Green, Jonathon (2008) 'Did You Say 'Offensive?'' at the following URL: <http://www.eons.com/groups/topic/1016867-Did-You-Say-Offensive->.

Law Report, (29 June 2010) ABC Radio National, at the following URL: <http://www.abc.net.au/rn/lawreport/stories/2010/2939168.htm>.

Mayhew, Susan (2009) *A Dictionary of Geography*, Oxford, Oxford University Press, Fourth Edition

Modrogorje (2011) at the following URL: <http://www.modrogorje.net/>.

Parliament of Australia (2000) *Katu Kalpa - Report on the inquiry into the effectiveness of education and training programs for Indigenous Australians*, Canberra, at the following URL: http://www.apph.gov.au/senate/committee/eet_ctte/completed_inquiries/1999-02/indiged/report/.

Pilger, John (2008) *Australia's Hidden Empire*, at the following URL: <http://www.johnpilger.com/articles/australias-hidden-empire>

Redmond, Anthony (2002) "'Alien Abductions", Kimberley Aboriginal Rock-Paintings, and the Speculation about Human Origins: On Some Investments in Cultural Tourism in the Northern Kimberley', in *Australian Aboriginal Studies* journal, Vol. 2: 54-64.

Reynolds, Henry (2003) "Terra Nullius Reborn", in Robert Manne (ed.), *Whitewash: On Keith Windschuttle's Fabrication of Aboriginal History*, Melbourne, Black Inc.

Rose, Peter I. (1983) *Mainstream & Margins*, New Jersey, Transaction.

Rosenthal, Norman (1997) 'The Blood Must Continue to Flow', in the companion book to the *Sensation* exhibition pp. 8-11: Rosenthal, Norman *et al.* (1997) *Sensation: Young British Artists from the Saatchi Collection*, London, Thames and Hudson.

Scalia, Elizabeth (2011) 'Why Tyranny Fears Art', at the following URL:

<http://www.patheos.com/community/the anchoress/2011/02/04/why-tyranny-fears-art/>.

Shari'ati, Ali (2011) *Reflections of Humanity*, at the following URL:

http://www.iranchamber.com/personalities/ashariati/works/reflections_of_humanity.php.

Tenodi, Vesna (2010) *Dreamtime Set in Stone*, Arncliffe, The Anan Press.

Wood, Katie (2006) 'Why Aboriginal Australia lives in poverty', at the following URL:

http://www.sa.org.au/index.php?option=com_k2&view=item&id=5469:why-aboriginal-australia-lives-in-poverty&tmpl=component&print=1

Woorama (2007) 'Namatjira: An Australian Aboriginal Artist's Life of Oppression and Injustice', at the following URL:

<http://www.suite101.com/content/namatjira-a8419>.

FREEDOM OF EXPRESSION IN CONTEMPORARY AUSTRALIA – RELATIVE TO HOW MUCH YOU CAN GET OF IT

By Dr Jim Saleam

The affair of the *Wanjina Watchers in the Whispering Stone* sculpture has become a national sensation. And rightly so – because freedom of expression has been assailed in an integrated way in circumstances where historical truth itself is under siege.

The *Wanjina Watchers* sculpture was created by Sydney artist and art teacher Benedikt Osváth and is his original and unique interpretation of universal mythological symbols.

I have participated in some struggles which have extended by compelling the creation of small autonomous zones of free thinking, the limits of freedom of speech and action in Australia. These struggles exposed and resisted those efforts of certain so-called democratic Australians to restrict some movements of dissent and opinion. This participation was second nature to me as an activist moving in a political culture which would react against the opinion to which I adhered. As a result of the vehemence of the anti-democrats, I realised long ago that freedom was not a given in Australia, but something that had to be endlessly renegotiated.

It came as a pleasure to play a different role – as a participant in someone else's struggle, to learn via a new case about bravery in the face of thuggery and to understand how censorship was again exposed and combated.

The fight by the artists of the ModroGorje Wellness and Art Centre in Katoomba (now closed due to vandalism and threats of violence) to ensure their freedom of artistic expression is a vital one, not only because their freedom is our freedom, but because of the identity of their antagonists – a group of local so-called Aboriginal persons who claim to act in the defence of the cultural interests of tribal people and then, all of those of any race who would exploit the contention to arrive at a false political result.

Pretending they represented the interests of people of the Worrora,, Ngarinyin and Wunumbal tribes of Western Australia, the local lumpen pseudo Aboriginal group has drawn in the tribes and consequently the usual bevy of white lawyers and white bureaucrats at the Blue Mountains City Council, to declaim that the ModroGorje artists may not make representations of otherwise sacred images and have no right to interpret for themselves *the certainly non-Aboriginal cave paintings and symbols – the 'Wanjinas'*.

The demand for censorship by the local council was upheld by the Land and Environment Court on appeal, and was crafted in a way that cultural and community sensitivities (sic) were worked into logic of a planning law. Yet, at no point was the truth about the Wanjinas decided – nor the freedom of the artist to create – judged as the core issue.

It was a corrupt finding which imposed a censorship regimen in the name of a (ostensibly negative) community consultation.

Of course, any matter of culture and tradition deserves respect. However, one would imagine that genuine Aboriginal groups would act in a way to ensure that the prehistory of the

Australian continent was the subject of the widest knowledge and deepest regard, where any discussion of Aboriginal lore by others would also be respected.

Not so. The case has now become a matter of deceit.

One disturbing thing in this case is that art has been the subject of racial sanction and it has been held that a member of the white race may not represent (note: not copy) in an artistic production a symbol sacred to Aborigines. Artistic license in Australia does not preclude an Aborigine painting in the European style and in particular in the Australian style, but it seems to work in the opposite direction. Why?

I have a view that freedom in Australia is actually a very fragile thing. Most Australians take for granted that there is freedom of speech, thought, assembly and expression. In fact, they are deluded. The freedoms may exist in words – until such time as someone tries to exercise more than their right to be heard over some petty issue of local interest or in an inane debate about public transport or funding. If the matter is *fundamental* to regime politics – look out!

The ModroGorje artists rubbed the raw nerve and paid a price. They met the great beast of Australian unfreedom

No Freedom Here

In 1923, that famed novelist, D.H. Lawrence, visited Australia and stumbled across a *secret army*. This army was designed to suppress the freedom to strike, the freedom to assemble, the freedom to organise in labour unions. If one did these things, these supposed patriots would suggest one was a communist. Lawrence came to know too much and was asked – politely – to leave Australia or suffer the physical consequences. He wrote of this secret army in his novel *Kangaroo*. Some lines haunt me still:

“Out of the silver paradisiacal freedom untamed evil winds could come, cold like a stone hatchet murdering you. The freedom, like everything else, has two sides to it. Something like a heavy reptilian hostility came off the somber land ... It was as if the silvery freedom suddenly turned and showed the scaly back of the reptile – and the horrible jaws.”

There was a pattern, something ‘integrated’, in this early 1920’s terror. It was connected to the state. It had an intellectual rationale with good citizens being conceived as those who upheld established beliefs, that there was a right to suppress heretical belief and that delegitimising the bad person was the preparation for their marginalisation from polite discourse, with violence the ultimate sanction if he persisted.

It should not be thought this secret army was alone. Quite the contrary: a plethora of such groups could be documented until 1952. Definitely, Australia has a secret history of violence and delegitimation and marginalisation against unfavoured opinions. As a historian and political activist, I have looked at auxiliary violence groups after that date. I have identified several and traced them. They push different ideologies and have different targets, but they all move in similar ways and have even evolved new methods. I believe such groups exist today in contemporary Australia, but that’s a story for another time. Low level community based ‘terror’ might be more appropriate to the current discussion. It too can be very effective if it is linked up in a subterranean way with some group in the ranks of the ‘dominant opinion’ caste.

I have always considered that artistic freedom was not exempt from the Australian unfreedom. It was so when communists tried to use art as propaganda after the Second World

War, infiltrating everything from literature clubs to theatre; the Australian arts too were purged through its local political police. Culture wars and art struggles are the norm in Australia.

But I do think the form of the terror has changed a little – it is now more subtle. There are – naturally – the thugs who damage property in the night, who tell the victim that they can send young kids to trash the house with impunity and who can threaten dire harm.

However, the more powerful agents of the terror are the lawyers and the courts who assert the limits of freedom and who cause newspapers and other media to ritually denounce the real victims.

The ModroGorje artists were led by Vesna Tenodi and unsurprisingly she found herself defamed in many ways. That is the method. People are meant to shun the target, join in the denunciation and profit by it. Battle lines are drawn and the good and the righteous are on one side and the bad and the foolish on the other.

The simple claim of a group of artists to interpret their country becomes second place to the twisted cult of the noble and sovereign savage.

First People / Last People

Anything that discusses an Aboriginal question involves a rush to judgment against the supposed transgressor, the person critical of *anything* Aboriginal.

Right now there is a debate going on in our country, an urgent one over its very cultural and demographic future. This debate is polluted by a lot of noisy and overstated moral gibberish about the dispossession of the Aboriginal races during colonisation (something which in one sense certainly occurred and can hardly be denied), a factor which supposedly *obliterates* the entirety of Australian history and delegitimises the Australian state; indeed, just as we Europeans accepted we had a right to settle this land, so it is now held this people has no right to object to its re-colonisation, that any actual sins of commission against Aborigines *allows sin to be committed against it*. Therein lies the evil and the trick. Do Aborigines see it? Do they know what this game is? When they scream against the European colonisers, do they not suspect they are being set up?

In the new parlance – *and Aborigines have not yet grasped the terrible consequences inherent in the term* – they are being called Australia's "First Peoples".

Of course, if there are first peoples, then there are later peoples and – *last peoples*.

Whatever rights Aborigines thought they had, they suddenly lost them in the fog. As part of the de-legitimation of the present state, the very necessary precondition for re-colonisation by the mass of labour imported by the globalists, any real or unreal Aboriginal claims, resentments, assertions, rancours, hatreds and myths, are cynically employed as propaganda to stymie resistance – a resistance that might serve the higher Aboriginal interest. If Australia is re-colonised, then *what will happen to Aborigines?* Those who purvey the new future are silent. As they show in the current case, they prefer to use a few thugs and some misguided folk to win their games.

Even more significant to the very definition of Australia, the ModroGorje artists have also hit upon an awkward historical truth via this *affair of the Wanjina Watchers*. If the Aborigines

say they did not paint the original Wanjinās in caves, and if archaeological evidence suggests that the area in which the Wanjinās were located, was populated by pre-Aboriginal culture back in the ages which predate Aboriginal settlement, *then to whom do the Wanjinās belong?* Certainly, they are the subject of Aboriginal lore, but they *belong to the land itself* and can be adopted as motif and myth by others of good will.

Further, if this settlement takes this continent's anthropological history back into far more mysterious ages than some wish to give it, then what can be said of at least some assertions made by Aborigines *as to their absolute right to legend of the land* as part of an Australian cultural formation?

If the truth is told, then where goes the convenient industry of 'white guilt'?

Even better, does *not the affair of the Wanjina Watchers* suggest something about the nativisation of a culture to its soil? Perhaps Aborigines should be more than pleased with that, with the notion that the white colonisers (sic) have taken Australia into their hearts, something which might better than liberal white lawyers and the rest with their court-room falsehoods that offer something to Aborigines recolonisation would take away – and bring a sense of fairness and justice to Aborigines of good will?

Continuous Struggle

The current struggle of the ModroGorje artists can and will be won in the great arena of public opinion where all matters of right are ultimately decided.

The ModroGorje artists are driven by their ideals, conscience and courage that comes out of certainty that we are doing the right thing. But they now have to create around themselves an autonomous zone of freedom where resistance to censors and filtering of the history can flourish. From this base area, their persistence in quest for the truth will grow.

Given their unwavering faith, I savour their final victory. Perhaps it will flow-on into a great Australian stream that will see unfreedom removed from this land.

By DONALD RICHARDSON OAM, BA, Dip.Art, T.Dip.Art, RSASA

SHOOTING THE MESSENGER:

WHY WE SHOULD ALL GET INVOLVED

IN THE WANJINA WATCHERS IN THE WHISPERING STONE CASE

In January 2010, the sculpture, *Wanjina Watchers in the Whispering Stone*, by Benedikt Osváth, was unveiled in the front grounds of ModroGorje House, in Katoomba, NSW. ModroGorje House is an art gallery and wellness centre owned by Ms Vesna Tenodi and her husband.

Ms Tenodi, an archaeologist and psychic medium, commissioned the sculpture to materialise the communications she receives from the *Those-Who-Know* (also known as the Wandjina¹) and her intention – as expressed in her 2010 book, *Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know*, to bring about a true reconciliation between the Aboriginal and white elements of Australian culture in a peaceful, constructive and mutually respectful way.²

But, this sculpture was objected to by a small group of local Aborigines who maintained that Ms Tenodi and/or Mr Osvath breached Aboriginal ‘copyright’, ‘intellectual property law’ and traditional ‘law’ in that they did not obtain permission to use the imagery from the Aborigines of the Kimberley region of Western Australia – where the ancient Wandjina rock-painted representations are located. In reply, Ms Tenodi maintains that the spiritual authority she, herself, receives from the Wandjina entitled her to proceed without permission from anyone, given that there is no proof of any connection between the Wandjina representations and any contemporary Aboriginal group – including those who live in, or come from, the same Kimberley locality (see below). Not surprisingly, this does not wash with the objectors,³ who continued vociferous demonstrations against the sculpture (which was severely and repeatedly vandalised by a person or persons unknown) with the result that – to keep the peace – the Blue Mountains City Council, using its planning authority, this year ordered Ms Tenodi to remove the sculpture.

A prime example of shooting the messenger, to be sure!

Readers may have heard the ABC Radio National Law Report programme on 29th June, 2010, and seen a recent episode of Andrew Bolt’s TV programme, both of which discussed this issue.

Ms Tenodi appealed against this order in the NSW Land and Environment Court. The case was heard on 20th June, 2011, and Commissioner Annelise Tuor ruled in favour

¹ This is the usually spelling of the word. It can also be spelt ‘Wonjina’.

² While some might find Ms Tenodi’s claim of spiritual communication from a divine being hard to believe, it has to be recognised that many people have such intuitions and there is no law against it unless it involves fraud or exploitation (and there is no evidence of this in this case). Also, as Ms Tenodi suggests in her book, her experience is not different from that of many Aborigines who pronounce their intimations from what many call ‘The Dreaming’.

³ Although, initially, the sculpture was generally welcomed by local Aborigines, many of whom – as a result of subsequent events – have since fallen silent on the issue.

of the council. And, because Ms Tenodi cannot afford to appeal the judgment, the sculpture has to be removed.

But there is a number of implications of this case, and the judgment, which apply – and will continue to apply – in a much wider context, and for a long time to come, and, therefore, call for wide discussion.

First, it is, at least, most unusual for a council to use its planning authority to condemn a work of art. In this case the Blue Mountains Council deemed that, as the sculpture was sited within the Village Tourist Zone, it being on the route tourists travel to view the Three Sisters lookout at Echo Point, and on a heritage-listed property, it was not ‘an exempt or complying development’ under the relevant state legislation. Then, as the commissioner’s report states, even though all parties agreed that the sculpture is a work of art, ‘[T]he key issue between the parties is whether the sculpture has an unacceptable social impact.’ Thus, the commissioner’s judgment has established a precedent that must set the alarm bells ringing in the ears of artists all over the country. From now on, any council can censor a work of art on the vague grounds of ‘unacceptable social impact.’ This is not even a power governments have in Australia, so the judgment is a matter the responsible Minister must consider.

On the positive side, however, this does give to a council that has the courage to use it, the power to abolish graffiti (if it should consider the social impact unacceptable, of course).

Next, it is a mistaken and misinformed view held by many Aborigines that various groups of their race hold ‘copyright’ on certain symbols, patterns or painting styles. Among these are the dotting that is endemic and – seemingly – obligatory in acrylic paintings from the Western Desert. Another is the Wandjina image. The objectors were very insistent about this until they received – and accepted – legal opinion that, in this country at least, there is no copyright on any religious symbol from any religion. This includes even Jesus Christ and the crucifix. Neither Andres Serrano’s infamous photograph, *Piss Christ* (a crucifix immersed in urine), nor the Ku Klux Klan’s burning cross – however offensive they may appear – is illegal.

It is to be hoped that we will hear no more of Aboriginal ‘copyright’ of imagery and – in fact – the council decided not to raise it in the court case.

I have involved myself in this case because it involves very important matters of principle. First, in relation to differing interpretations and understandings of what *art* and *law* are in the Aboriginal and the Western/white/European⁴ traditions. These issues have been around for some years but – unfortunately – have never been resolved. And the failure to resolve them has led to the problem becoming more and more entrenched and the discussion more and more acrimonious. These matters of principle have a much wider relevance than their application in this case because what both cultures – the indigenous and the W/w/E – know as ‘art’ and ‘law’ are central to both. Unfortunately, this was not considered by the court. This may have been

⁴ To be abbreviated to ‘W/w/E’ in what follows as shorthand to encompass the various terms that are used by Aborigines in this context.

because it is a planning court. But, if it had been considered, a different – more positive – outcome may have eventuated.

The lack of resolution of this situation has engendered a sense of frustration in the minds of many Aboriginal people, who – in consequence – have resorted to bullying and threats of violence⁵ to the extent that their opponents usually withdraw for the sake of keeping the peace. This is what seems to have happened with the Blue Mountains Council in this case. But the situation can no longer be tolerated in a civilised community, and Ms Tenodi is to be lauded for her determination not to be cowed by intimidation and bullying (although – unfortunately – the same cannot be said for the council).

The problem relates to the principle of Aboriginal rights and cultural/intellectual property within the law of the land. The main protagonists are Aboriginal individuals and groups who wish to establish that they have unique cultural and intellectual hegemony over certain visual symbols and imagery. Resolution of the different attitudes is impeded by the fact that neither party seems to properly understand or respect the values of the other; also – more often than not – the different attitudes are poorly expressed, or expressed as non-negotiable ultimatums. It is to be noted that the W/w/E culture is as much at fault in this as is the Aboriginal. There is mutual misunderstanding and – more than this – a degree of unwillingness to admit misunderstanding on both sides. This discussion is presented in the hope that this intolerable situation can be remedied.

LAW AND LORE

Firstly, the problem hinges on a difference – apparently not understood by many people – between the two terms *law* and *lore*. In Aboriginal culture, due to the fact that it never developed writing, there is no such thing as the common or statute *law* of the W/w/E culture. But it does have *lore* – orally-transmitted stories that purport to establish historic clan ownership of geographic features and the visual symbols that relate to them – hence, the inherent relationship, in Aboriginal culture, between place and symbol. Unfortunately, due to the fact that the two words are homonyms, many people conflate the two concepts, resulting in argument at cross-purposes. This is speciousness and must be recognised as such by all.

Aboriginal lore is largely creation myths. It is the equivalent in W/w/E culture of folklore and the parables of the Old Testament, which few today regard as factual. Like Aboriginal ‘stories’, they may have had their origin in historical fact, but – due to oral transmission – have become stylised and expressed in a number of different, not always consistent, ways.

Aboriginal culture has only *lore* – which has no legal sanction in the w/w/E culture.⁶ However, this does not prevent many Aborigines regarding their lore as having the force of *law*. On the other hand, W/w/E culture – based, as it is, on generations of

⁵ As exemplified in several of the articles in the ‘Blak on Blak’ edition of *Artlink* (30, 1, 2010) (and see the quotation below).

⁶ Neither does Western lore have this sanction, of course.

English legal argument and statutes – has *law* as well as *lore*. Clearly, the two are quite different kettles of fish and, so, must be recognised as such.

In relation to visual expression, Aboriginal artists have to respect the canons of their lore (in fact, they can be severely punished for not doing so), but artists of the W/w/E culture are not bound to respect the lore of *any* culture.

ART

And there is a very significant difference between what the two cultures see as the essential characteristics of *art*. Although this dates only from about the end of the eighteenth century, *art* in the western world is the free self-expression of the individual artist. Artists in the W/w/E culture are somewhat special people. On the other hand, in traditional Aboriginal culture, most adults are ‘artists’ in that their initiation entitles – or requires – them to reproduce a restricted range of images that are exclusive to their particular tradition. This attitude persists in many urbanised Aborigines. Free self-expression is forbidden; if applied, it can even be punished.

So, there is an irreconcilable difference between the two cultures’ understanding of what *art* is. A mute acceptance of this fact is that McCulloch’s *New Encyclopaedia of Australian Art* (2006) has two major sections – ‘Australian Art and Artists’ and ‘Aboriginal Art and Artists’. This is a factor that must be recognised in any discussion of ‘art’ in the two cultures, but – unfortunately – it rarely is.

However, in recent years, many Aborigines have aspired to be artists in the W/w/E sense, or – at least – in some hybrid of the two traditions. The first to do so was the Aranda painter, **Albert Namatjira** (1902-59). He became famous in his lifetime for his watercolours on paper in the style of W/w/E Australian painters. Others include:

Lin Onus (1948-96), who used W/w/E imagery and styles in his painting and sculptures.

Aboriginal photographer, **Destiny Deacon** (b.1957), who appropriates Western children’s dolls in her works. And another photographer, **Darren Siwes** (b.1968), represents typical Western structures in his works.

Writer and illustrator, **Sally Morgan** (b.1951), used W/w/E styles in both her writing and book illustrations.

Fiona Foley (b.1964), in some of her photographs, uses the imagery of the Ku Klux Klan.

Bronwyn Bancroft (b.1958) freely appropriates Western imagery and styles, using photography, techniques and colour-schemes that have no reference to any Aboriginal style.

Tracey Moffatt (b.1960) has appropriated history and genre painting, the cheongsam and B-grade American films.

Aboriginal women artists in Central Australia have appropriated the Indonesian art of **batik**.

Gordon Bennett (b.1955) freely appropriates Western imagery in his works – as does **Dinni Kunoth Kemarre** (in his sculptures of AFL footballers).

Richard Bell (b.1953) commonly appropriates the styles of the modern New York School of W/w/E painters, in particular Roy Lichtenstein and Jackson Pollock, in his pictures. (And the title of his painting, *White Girls Can’t Hump*, offended many.)

Gordon Hookey (b.1961) and **Vernon Ah Kee** (b.1967) both appropriate from Western popular imagery.

Hamahl-Djordon King, who won the Copyright Agency Limited Victorian Indigenous Art Award in 2010 with *Attack of the 50-foot Black Gin*, appropriated American comic-book imagery in that work.

Further, W/w/E Australian artist, Tim Johnson (b.1947), in his collaborative paintings with Aboriginal artists commonly incorporates the Yin-and-Yang and the Mandala symbols – and no one has ever objected. And, now we read⁷ that Aboriginal artists, Jimmy Pike and the late John Bulunbulun, a painter from Maningrida, have been collaborating with Chinese artist, Zhou Xiaoping, for many years.

To have taken this approach, all these Aboriginal artists have adopted the W/w/E definition of art as the personal self-expression of an individual. No one has ever objected to this; in fact, the art world generally has reacted very positively. And there have been calls for these artists' works to be treated critically in the same way – and by the same criteria – as W/w/E works. That this has rarely, if ever, happened is not unrelated to the attitudes revealed in the present discussion.

An additional complication is the fact that – due to there being no written record of Aboriginal lore – one can receive quite different rulings even from different responsible elders of the one group of Aborigines on what may or may not be represented in a work of art. This is a much more sensitive issue than that between 'men's business' and 'women's business' and can extend to the proscription of what – to Western eyes – is no more than a painted squiggle. I know of many instances of curators or writers whose efforts to support Aboriginal culture have been frustrated by divisive inconsistencies of this sort.

All this challenges the logic of those who have objected to the use of the Wandjina image as an inspiration for the sculpture under discussion. If it is acceptable for Aboriginal artists to appropriate Western art styles, imagery and media, how can it be not acceptable for W/w/E artists to work with Aboriginal imagery? It is irrational to insist on one law for Aborigines and another for Westerners.

Historically, a few W/w/E Australian artists have appropriated Aboriginal imagery, among them Sydney Nolan and Margaret Preston. This was done with respect for the other culture and in recognition of what it can offer to the W/w/E. Ms Tenodi has made it clear in *Dreamtime Set in Stone* that she genuinely respects and honours Aboriginal culture, as those artists did.

THE WANDJINA

When the Wandjina images were first recorded by archaeologists a century or so ago, they noted that the contemporary Aborigines in the region did not know who made them, and there is a strong possibility that the image was invented by an earlier race that was not the contemporary Aboriginal. The same applies to the 'Bradshaw figures' from the same region. There is even a theory – that has never been disproved – that

⁷ *The Australian*, 21st July, 2011.

the Wandjina images were made by aliens from outer space.⁸ But, the most authoritative opinion is that of Harvard anthropologist, L R Hiatt⁹, that the imagery is not a face at all but a schematic representation of male genitalia inside the female.

If it should be considered that Mr Osváth's sculpture has breached Aboriginal 'copyright', so, too, have those contemporary Aborigines – many of whom have no connection with the Kimberley area – who have reproduced the Wandjina image in their works of art. The fact is that the imagery no more belongs exclusively to any contemporary Aboriginal community than the image of Christ does to the cathedral.

COMMENTS ON THE COURT CASE AND JUDGMENT

As indicated above, Commissioner Tuor found in favour of the Blue Mountains Council, but there are many aspects of her judgment that require further discussion.

First, the court process required that each party appoint an expert witness and that these must meet prior to the hearing and provide a joint report that clearly indicates the points on which they agreed and those on which they disagreed. While Ms Tenodi's art expert provided his opinion several weeks before the date of the hearing, that for the Council provided his only on the Friday before the Monday hearing – in full knowledge that Ms Tenodi's expert was travelling from Mexico over that weekend in order to attend the hearing – making it impossible for a joint conference to be held and joint report written. However, regardless, the Council supplied to the Court a 'Joint Conference Report' which only included its expert's opinion. Thus, the Commissioner's report notes that 'The applicant [Ms Tenodi] did not provide expert evidence to contradict the evidence of [the Council's expert witness] with respect to the offence that is being caused by the sculpture, and therefore the social impact.'

Why she took this attitude, instead of taking the Council to task, and – perhaps – adjourning the hearing until such time as the experts could meet and provide a true joint report is not explained in her report. But, it has to be said that the Council's action was less than ethical and most probably prejudiced the outcome in its favour.

In fact, however, Ms Tenodi's art expert – in his individual report to the court – argued very lucidly that there is no evidence that Kimberley Aborigines have any valid historical connection with the Wandjina imagery and that the opinions of the objectors were illogical and unsubstantiated, and show lack of understanding of what art really is and does. Incidentally, this opinion concurs with an internal Council planning document that specifically states that giving or refusing planning approval for this work of art should *not* include 'community attitudes to the sculpture.' The commissioner's report gives no indication that she had read either of these documents.

This expert's report also pointed out that it is illogical to have one law for Aborigines and a different one for the rest of society.

⁸ Although this is unlikely, it being based solely on the image's resemblance to Earth space-helmets and there is no evidence that supposed aliens would ever need to wear such helmets.

⁹ In his *Arguments About Aborigines: Australia and the Evolution of Social Anthropology* (Cambridge University Press, 1996, p.115).

Actually, by failing to examine fully the implications of the sculpture being a work of art, the Commissioner missed a number of significant points – in addition to allowing future censorship of works of art by councils, as mentioned above.

By alleging¹⁰ that all parties agreed that the sculpture ‘depicts “Wandjina images”’ she permitted herself to skate over and ignore the opinion of Ms Tenodi’s art expert that, although the work *refers* to the image, it goes much further than mere imitation or plagiarism. The imagery in the sculpture has mouths, bodies and other attributes not present in the Kimberley rock-paintings, and this is an integral part of the work and its intended message. Mr Osváth creatively *recreated* the imagery as is appropriate in a work of art.

The report of Ms Tenodi’s art expert also pointed out that it is far from abnormal, world-wide, that works of public art are accepted without vociferous protests. This applies as much to Michelangelo’s famous figure of *David*, which was placed in the centre of Florence in 1504, to Henry Moore’s *Reclining Figure* in front of the Art Gallery of NSW. In all such cases the judgments are in the realm of aesthetics, not planning, and made by experts in the field, not council planners – a fact that is tacitly recognised by the planning laws.

The Commissioner went on to examine the Council’s contention that, regardless of the sculpture being a work of art, it ‘has an unacceptable social impact.’ Thus, she took the extremely odd course of proceeded to give full weight to the ‘art’ arguments of the Council while ignoring those of Ms Tenodi. She listened at length to the subjective and emotional pleas of witnesses for the Council who insisted that the sculpture was an offence to Aboriginal sensitivities due to the fact that it had been made without due permission of the ‘owners’ of the imagery, which is foreign to the Blue Mountains and, so, an embarrassment to local Aborigines. Her report contains nearly three pages of evidence for the Council’s position but only a few lines of evidence from Ms Tenodi’s expert witness.

It is much to be regretted that, in taking this course the Commissioner established an entirely new precedent for the New South Wales planning laws: henceforward works of art are subject to planning approval and decision state-wide, even for shires – like the Blue Mountains – that have a policy that supports the creation of public art.

THE ROLE OF THE ARTS LAW CENTRE

Unfortunately, it is necessary to call into question the role the Arts Law Centre of Australia played in this issue. It intervened in the case not – as would reasonably be expected – with disinterested support for freedom of expression in art according to the law of the land,¹¹ but to further its campaign to secure greater legal protection for Aboriginal intellectual property. While this may be laudable in principle, in pursuit of

¹⁰ #12 in her report.

¹¹ The Arts Law Centre of Australia, according to its website, is the national community legal centre for the arts. Its vision is to foster a society that promotes justice for artists and values their creative contribution. Its major funding source is the Australia Council for the Arts.

it, it took the position that Kimberley Aborigines are the traditional custodians of the Wandjina – in spite of there being no objective evidence of this.¹² Further – it accused the gallery of a ‘public expression of racial, cultural and religious intolerance’ without providing any rational argument for its position.

Clearly, the Arts Law Centre lawyers failed to understand the explanation given of the sculpture as *a work of art* rather than a plagiarisation of the Wandjina.

THE CITY OF BLUE MOUNTAINS COUNCIL’S DUTY

It is ironic, given what has happened to *Wanjina Watchers in the Whispering Stone*, to realise that Blue Mountains Council actually has an excellent public art policy. This states that ‘Council is committed to maintaining and conserving public art work. It is also committed to ensuring the integrity of public art work is maintained and that the moral rights of the artists are upheld as well as meeting its legal obligations to the work, including copyright and licences.’ ‘Public art becomes the “public face” of achievement for residents and visitors, reflecting the area’s vitality, balance and aspirations,’ it says. And, it adds, ‘In keeping with partnerships and on-going dialogue with the community, Council will ensure that appropriate interpretation of work produced accompanies the work on site or on the Council Website or at convenient locations, such as libraries, community centres and Tourist Information Centres.’ A further aim is ‘Engaging the community to work collaboratively and responsibly with others to produce work for the public realm.’

While this policy is ‘a guiding, decision-making framework’ only for art that is placed on Council-owned or -used properties and – thus – has no jurisdiction over works on private property, such as this sculpture, one would have thought that the Council would have no option but to support the project.

But, more than this, the council’s insistence – which was upheld by the Court – that any future sculpture intended for erection on the property must first of all obtain a planning clearance is nothing less than the censorship of a totalitarian government. Of course, the planning provisions make no mention of works of art, so this order is in terms of ‘the impact of each sculpture on the heritage significance of the item.’¹³

LAWLESSNESS AND INTIMIDATION

It is to be hoped that, if any part of the Council’s position on this sculpture is the result of fear that, if it remained in its location, certain lawless or law-breaking people would cause any sort of destructive behavior, tumult or fracas, it should recognise that a serious matter of principle is involved. There are other groups in the community that wish to change our laws by illegitimate means, including violence. These include not only ‘bikies’ but – perhaps more cogently – certain Muslims who wish to introduce Sharia law into Australia. If the Council fails to defend law-abiding citizens from such predations by groups that refuse to accept our laws, it will have to bear the longer-term social and political consequences.

¹² In its media Release of 20th June, 2011.

¹³ #21 in the commissioner’s report.

Ms Tenodi has been threatened with violence and, even, death, by local Aborigines for her stance. And – what may be considerably worse, if that is possible – a letter written to the Blue Mountains Council by an Aboriginal legal group includes the words: ‘Fail to remove this insulting travesty and bmcc [Blue Mountains City Council] will stand permanently condemned by Aboriginal people across Australia’ and adds the not-too-veiled threat ‘I note your website photo of customer service staff.’ It is not surprising that the Council buckled and sought refuge in the heritage clauses of its planning provisions.

But, we should note that this case is only a microcosm of a broader national issue. One can only regret the aggressive and intimidatory language used in some of the articles written by Aboriginal writers in the national journal, *Artlink*, mentioned above – ‘Blak on Blak’ – which was edited by an Aboriginal writer. Included is an article on the ‘proppaNOW’ collective of Aboriginal artists, which ends with the sentence: ‘They are cultural terrorists of a new order. As a unit, they are highly trained, focused and on a mission. And they know where you live.’ This sort of behaviour can no longer be tolerated in our society. If we allow bullies to coerce law-abiding citizens, we will soon descend into barbarity.

I am so concerned about this issue that I have become directly involved in spite of there being a real possibility that this could result in a threat to my personal safety and property and to that of my family.

Ms Tenodi and her artists are also very aware of the clear danger they are in, but they deserve the support of every citizen in their struggle to preserve the civil rights of us all.

As Benedikt Osváth commented on the damage caused to *Wanjina Watchers in the Whispering Stone* said:

‘We create, they destroy. But we will keep creating no matter what.’

In closing, I remind the reader of the line attributed to Edmund Burke:

‘All that it takes for evil to triumph is for good men to do nothing.’

LETTERS TO THE ARTS LAW CENTRE OF AUSTRALIA

STOP SUPPORTING THE THUGS, PROTECT THE ARTISTS' RIGHTS

In January 2010 some local Aborigines in Katoomba started threatening that they would destroy ModroGorje art, claiming they had the full support of the Blue Mountains City Council Aboriginal worker Brad Moore and knew how to “push the council’s buttons” and make them jump any way Aborigines want them to jump. In response to those threats, ModroGorje owners ran a petition signing initiative.

Over three days, close to 400 local residents of Katoomba signed the petition. This included most of the ModroGorje Gallery immediate neighbours and businesses, as well as the staff and management of the RSL club and restaurant across the road from the gallery. They all expressed their full support for the *Wanjina Watchers in the Whispering Stone* sculpture by Benedikt Osváth and for the ModroGorje artists’ right to create art without censorship by local bureaucrats and politicians.

At the same time, a number of local residents as well as tourists entered their comments in the *Wanjina Watchers* feedback book, writing down their thoughts of admiration and support for Benedikt Osváth and Gina Sinozich art.

Their opinion was, again, ignored by the Arts Law Centre.

The supporters of the ModroGorje artists decided to keep voicing their opinion, in the defence of artistic freedom.

Here are some of the objections that they sent to the Arts Law Centre of Australia, a Government funded organisation which should have protected ModroGorje artists rights, but chose to run a campaign against them instead.

Some of these letters were also copied to ModroGorje gallery. Some are included here, to illustrate the strength of opposition to art censorship in Australia. Some show dismay at this miscarriage of justice. Some criticize the Arts Law staff for their biased attitude, unfair treatment of non-aboriginal artists, and false claims.

Even though their claims were ultimately proven to be untrue and legally unfounded, some saw it as a green light for bad behaviour and violence against ModroGorje artists.

To protect the ModroGorje supporters from becoming a target of intimidation and violence, their letters are published here without the authors details.

They date from June 2011 to January 2012.

Needless to say, there was no reasonable, coherent response from the Arts Law Centre.

Instead of addressing the concerns expressed by people in Australia and overseas, the Arts Law Centre decided to publish more of the same misleading and slanderous comments, in the WIPO magazine in December 2011.

ModroGorje artists sent their response to the article in the WIPO magazine in January 2012.

To: Arts Law Centre of Australia
Re: Censored Wanjina Watchers in the Whispering Stone Sculpture

Dear Arts Law,

After 31 years of praising your work, you have lost me and other artists for good. The one sided and over-protective stand you have shown in support of the removal of a sculpture in the Blue Mountains that you feel “upsets” a handful of people has made Arts Law a joke.

Artist have the right to create “one offs” (i.e. Mona Lisa) especially works that are not for sale and are part of a process or discussion or, as in this case, have a deep Spiritual connection.

The so-called “Aboriginal image” that is suggested to have been copied is another joke, these forms are universal and cross over many different cultures even older than our Australian Aboriginal art form.

I have a great love and respect for Aboriginal people and their artistic / environmental / cultural interplay that is fully connected to Australia. However, this overreaction over a stone sculpture that does not even copy any direct art work or artist and has its main connection by the usage of a name alone, is undermining and damaging for all parties.

I was given my personal Aboriginal totem back in the 80’s, my Mimi has always been with me. If I one day choose to create a work 4 meters high made in glass, celebrating my love and respect for my Mimi, I will be doing just that – without any other artist or non-artist telling me otherwise.

The reaction to this outcome will be that there will be hundreds of new art forms being created 2D and 3D instead of just one.

To: Arts Law Centre of Australia

I fully support the rights of any artist in Australia to explore any idea including primitive art work.

As I have made clear to you before in a previous letter, you have now made one artwork the subject of hundreds of artworks.

Arts Law Centre may need to rethink its left-wing politically correct stand point, and stop supporting reverse discrimination of artists in Australia no matter what race they are.

Dear Arts Law Centre of Australia,

I believe that all people in Australia are guaranteed, among other rights, the protection and equality as one of the basic values, and have the right to be protected from discrimination and racism.

Having spent time in Australia, I remember it fondly as a modern, liberal country of happy, good people.

Therefore, I can hardly believe what I read on the web about what’s going on in Australia now. How is it possible that the Arts Law Centre can discriminate against white artists? And that you can censor their art? How is it possible that you are not protecting artworks by Gina Sinozich and Benedikt Osváth from vandalism, but even encourage the vandals?

How is it possible that your staff can be so unfair to those white artists? And who authorised you to discriminate against them? Have you forgotten the legal profession ethics? There must

be some institutions in Australia which should look into your behaviour and examine your actions.

Who among you is usurping the right to deny Ben and Gina their artistic freedom? Who has the right to dictate how people can design their own front yard? And what fool can claim to be “provoked” by a work of art? And why?

Well, dear lawyers, where are you going and what do you think you’ll achieve? Are you trying to take the free, happy Australian people back to the dark ages, people with grim faces living in fear of some stone-age retribution, their “payback law” of violence and revenge, as supported by you?

Art is art regardless of how it is made, with dots or without them, regardless where it originates from, and regardless of where the artists find inspiration for their artworks. Art and the freedom of expression must be guaranteed to all, do you need that basic human right explained to you?

I hope you’ll reconsider what you are doing and try to open a dialogue among artists, as should be your role. Instead of uniting them, and helping them to create, you seem determined to keep pitching them against each other, bringing shame onto your profession and the country you represent.

To: Robin Ayres, Arts Law Centre of Australia

Recently I have become aware of freedom of expression issues arising from the Wanjina Watchers controversy in the Blue Mountains.

I need not repeat to you what is involved.

In my view, the stance taken by the Arts Law Centre is one which derides the freedom of the artist to express himself as he wishes.

That freedom cannot be circumscribed by any claim made by any group – even an Aboriginal one – to the ownership of images. In the present case, no claim was made by the ModroGorje Wanjina Watchers artists that their art was copyist in tone; rather it was always seen as representational. There is further – no ownership over spiritual ideas. For what it is worth, the Australian Constitution has been interpreted to enthrone religious freedom.

I believe Aboriginal groups are being misled by self-interested lobbies and advocates to be critical of the ModroGorje artists. It is my intention to counsel them accordingly.

Any form of self-censorship and then enforced censorship will assuredly become the basis for further restrictions imposed by other lobbies and advocates. Further, the harassment and property damage crimes directed at the ModroGorje artists has a moral basis (sic) in the line taken by the Arts Law Centre.

I suggest you think again.

To the Arts Law Centre:

Both the taxpayer’s funded Arts Law Centre of Australia and their, also taxpayer funded, Aboriginal clients, should once and for all get it into their collective head that there is no copyright on prehistoric cave art and no-one needs their clients permission to paint.

Instead, the Arts Law should use all that money to run education program and help Aborigines understand some of the basic values in modern democratic society, and to teach them to show some respect for other people's rights.

Dear Arts Law,

having read the complaint about Wanjina Watchers in the Whispering Stone sculpture removal, we want you to know that our organisation is circulating that document to organisations and artists all over the world, to inform them that the Arts Law Centre of Australia, which is apparently supposed to protect the artists' rights, is harassing artists, accusing them of all sorts of nonsense.

If Gina Sinozich and Benedikt Osváth and other ModroGorje Artists' works are offensive to some people, so what! There is so many works of art that some people find offensive and dislike it, and no-one in their right mind would think of removing those to please a few objectors.

Your advocacy for censorship will also be forwarded to legal experts, to see what is going on in Australia.

Besides, you are doing Aboriginal people great disservice, encouraging them to antagonise everyone who loves them and wants to help them, as ModroGorje artists obviously do.

To whom it may concern,

seeing your statements in regards to Wanjina Watchers sculpture by Benedikt Osváth, I find your accusations and your bias quite incredible.

I find it hard to believe that in Australia someone can come up with such a ridiculous idea of trying to forbid artists to paint ancient themes. As an artist in Croatia, I haven't realised until now how lucky we are to be able to paint and sculpt without fear of your malicious accusations and calls for censorship

I also feel sorry for Aboriginal people, who allowed you to lead them down that path of ridiculous claims. Instead of being thrilled that other artists are showing interest in those ancient cave themes, they are obviously only protecting their business interests, as was clear by listening their "we can sell it, but she can not" statement on the ABC website.

As a consequence of your inexcusable conduct, we'll keep encouraging all artists to keep using Aboriginal themes in their art, and selling it, exercising their democratic right to protest – until you admit what a great injustice you have done to ModroGorje artists, and to every white artist in Australia.

To whom it may concern,

I am having difficulty in understanding why Benedikt Osváth and his work The Wanjina Watchers in the Whispering Stone has received no support from the Arts Law Centre. I feel Ben's reputation has suffered as a result of this lack of support.

Ben as an artist was inspired by the stone and created a personal tribute of an image that he has nothing but respect for. It seems his motives have been called into question and as I say I feel he has suffered because of this and your lack of support.

I understand that Wanjinias are an important part of aboriginal spirituality but like any other spiritual or religious being or symbol surely they belong to all of us and to no one. I also cannot understand how a tribute can be disrespectful in any way.

Yet the vandalism to the stone screams violence and disrespect aimed not only at the artwork but the artist and even the subject itself. I feel an opportunity for discussion and understanding was missed in this situation when the sculpture was simply ordered to be removed, a move that the Arts Law Centre supported. Without discussion we learn or gain nothing.

I believe that the fear of accusation of discrimination is as dangerous as discrimination itself. I have to wonder does this fear contribute in any way to your lack of support for an artist who has done nothing wrong.

What has happened to Ben's right to express himself freely, has this been totally ignored?

Once again I must say I am at a loss to understand this whole situation and hope that someone can help me in that regard.

Dear Arts Law Centre,

I have been following your articles in support of art censorship. As a lawyer, I find it appalling that you should use such unethical and irrational arguments to ban Wanjinia Watchers sculpture by Benedikt Osváth.

To destroy reputation and careers of great artists such as Benedikt Osváth and Gina Sinozich, and ruin people's lives because someone claims to be "hurt and distressed" is quite pathetic. I am trying to imagine if someone had a hysterical reaction to an artist's interpretation of Jesus Christ, would you call for removal with any of those claims you listed in your objection?

I cannot find any record of any precedent of anyone ever claiming that cave art belongs to someone and that any artist must ask for a "permission" before picking up a brush.

I also cannot find any parallel to Aboriginal claims, but if they can do it perhaps other groups in Australia should start doing it too, for example the Muslims should start insisting on removal of all the naked artworks because that offends their modesty and is against their tradition and customs.

I also find your articles very unprofessional and deliberately misleading, comparing ModroGorje artists' original artworks with cases where there was a breach of copyright such as that carpet case. And I find your calls for work to be destroyed quite barbaric.

To the Arts Law Centre,

I am an artist in Europe and I am horrified with your push for censorship in Australia. Until now, I haven't even realised how lucky we are to be able to paint and sculpt without fear of malicious accusations and calls for censorship from immoral people like you.

Dear Arts Law Centre,

I am a lawyer specialised in International Law, also a tai chi practitioner, fully aware of the enormous contribution that Shifu Damir Tenodi and his wife Vesna have made in the areas of culture and spirituality.

I and my colleagues sent them our unreserved support, and expressed our admiration for their DreamRaiser project aiming to revive aboriginal spirituality. Their art, and the songs as found in their SongLines opus, carry wonderful vibrations and great, positive energy.

I decided to proactively engage others to also offer their full support to ModroGorje artists, as I strongly believe, both as a lawyer and as a human being, that you are wrong. Both the justice and logic are on their side.

But it seems that Australian legal system ignores the international standards.

Which law in Australia gives the indigenous communities rights to ownership and copyright on prehistoric cave art? Has any such claim been incorporated into the current Australian law?

In my opinion, any such claim, in front of any objective court, would be thrown out.

But, as we all know, the judges and their advisors are not independent and rational professionals, who judge on the basis of legal principles, but often just passively follow the politically-prescribed agenda.

Even though in this case, by what can be found on the Land and Environment Court website, the Wanjina Watchers case against the Blue Mountains City Council decision to censor art, was not heard in front of a judge at all.

Instead, it was run by a commissioner who is not legally trained person at all, but holds a degree in Architecture. Furthermore, the commissioner decided to ignore the evidence provided by the ModroGorje owners and their experts, but in her decision gave preference to comments made by some extremely suspicious local characters. The mind boggles.

If anyone in this saga has done damage to aboriginal people, it's the Arts Law Centre and the Blue Mountains City Council, with claims that someone's art endangers aboriginal heritage and their cultural identity.

Guided by your false logic, the Chinese should sue all of us, every tai chi practitioner on earth, for "stealing their culture".

Is anyone in Australia really buying into your nonsense?

Dear Arts Law Centre,

shame on you for harassing white artists to please your "clients". Your bias is disgusting. It is incredible that in Australia someone can come up with such an idea to try to forbid artists to paint ancient themes.

We, European artists, will keep producing and selling "forbidden art" in protest of your censorship and in support of Australian artists.

You claim to be protecting Aboriginal people? It seems like you are doing your best to make them look stupid, primitive and incapable of adopting any of the civilised society values.

Dear Arts Law,

what you are doing is actually a reverse racism.

Gina Sinozich and Benedikt Osváth created beautiful art acknowledging Aboriginal mythology, and the Arts Law Centre turned it into a farce.

You made Aboriginal people look really bad, like a bunch of malicious creatures, united in hate, with only one passion – passion for revenge.

To the Arts Law Centre,

this is my protest against your reaction to the Wanjina Watchers sculpture.

I visited your website, and it seems you are a government funded organisation which is supposed to protect artistic freedom and artists' legal rights, correct?

I believed that in Australia, the same as in every democratic country in the world, artists are free to be inspired and paint whatever they want without getting your "permission" first, or anyone's permission for that matter, either some tribe's or some local council's.

To us here in Europe all that drama over Wanjina Watchers sculpture and Gina Sinozich paintings seem surreal, and Aboriginal "hurt" quite bizarre, but when we consider it the true motives become quite clear and can be summed up as political correctness gone mad.

To whom it may concern,

on behalf of our creative group I want to express our protest for the Arts Law Centre role in Wanjina Watchers in the Whispering Stone censorship.

Gina Sinozich and Benedikt Osváth created magnificent art acknowledging Aboriginal culture in such a loving way, and Arts Law had to step in and ruin it for Aboriginal people – they will have to suffer consequences of your actions, because no artist will ever want to deal with them after seeing what they have done to Gina, Ben, and Vesna.

But our group, as well as artists all over Europe, will keep creating Wanjina art, until you realise what a silly mistake you have made and what damage that has caused to Aboriginal people.

Dear Arts Law Centre,

reading your articles, I was horrified with your intention to deny the basic human rights to artists such as Gina Sinozich, Benedikt Osváth and Vesna Tenodi.

Artists' rights are guaranteed to all artists in modern, democratic countries. I cannot but see that you have been manipulated by some individuals protecting their business interests, and in turn are trying to manipulate the public.

In my opinion, you are not helping the aborigines at all. As I can see, aboriginal people have lost the support of artists in free countries, thanks to you.

Dear Arts Law Centre,

I was quite surprised with your actions to enforce art censorship in Australia.

What gives you the right to dictate art and so maliciously attack Benedikt Osváth and Gina Sinozich?

Throughout the history, and throughout the world, artists are seen as exceptional people, visionaries, free thinkers, and the conscience of society.

Judging by the Wanjina Watchers case, it seems there is no conscience left in Australia.

There is no justification of your conduct, and I'll do my best to inform as many people as possible, and government bodies in Australia, of your shameful misuse of taxpayer's money.

Dear Arts Law Centre,

your censorial mindset, and denying artists right to freedom of expression, shows the absurdity to which you stretched this political correctness crap.

What you are doing is actually a crime against art. It is also an attack on basic human rights of non-aboriginal artists.

The most ridiculous thing in your colossal mistake and error of judgement, is that you are eager to support the right of those fake aborigines, who seem to keep multiplying at an exponential rate. Which is understandable, with all those privileges and billions of dollars of funding, no wonder everybody wants to be an aborigine. No-one else seems to be having any rights left.

It's quite funny to see you scrambling to "help" a handful of Aborigines protecting their business, turning them into a generator of hate and divisive, destructive force in Australian society. Great job, congrats!

And a friendly reminder: true artists were always prepared to suffer for their art and fight for their artistic freedom. No-one has ever succeeded to censor a human creativity, at least not for long. Like those other who tried to shut people up, your censorious mindset and self-righteous, arrogant attitude will be seen as just a shameful blimp in Australia history books.

To the Arts Law Centre,

Are you really trying to forbid artists to paint the prehistoric themes or are you just pulling our leg?

Are you really trying to obtain some ownership of ideas for your Aboriginal clients, and copyright over cave paintings they never created?

All over the world we find paintings and designs much older than Aboriginal cave art, and now Aborigines are trying to appropriate it, like no-one ever put few dots together, it belongs to them?

Seriously, I think you are just a bunch of weasles, giving in to Aborigines who make a real art of one thing only – the art of milking white guilt.

As for their contemporary art – there is no inspiration or any trace of spirituality left in that mechanical repetitive patterns. That's my opinion and I do have the right to say it.

To Arts Law Centre,

I was sad to see that Benedikt Osváth masterpiece was so savagely damaged.

It was even worse to see the Arts Law supporting the vandalism, instead of protecting the artists' rights.

I thought the calls for destruction of politically incorrect art – as you seem to push for – is a thing of the past, belongs to the dark ages, but perhaps Australia has to go through that phase now.

You are forgetting that these days it is no longer possible to run things your – and your Aboriginal clients way, in that parochial, narrow-minded mindset.

Today, we have a niftily little thing called the Internet. Perhaps it would be a good idea for you to advise your clients that in this day and age information is instantly spread all over the world, and they cannot hide their true motives any longer.

Despite your impressive list of hundreds of lawyers and supporters and judges and patrons, you are not fit to perform public service, and are not deserving of taxpayer's money.

You have made an irreparable damage to true artists, and the injustice to Gina and Ben will have long-term consequences that you, with your tunnel-vision, cannot even imagine.

Dear Arts Law Centre,

I request for you to reconsider your actions and examine the damage you have done to Gina Sinozich, Benedikt Osváth and Vesna Tenodi.

You condemn those artist and their art, in favour of a few tribes protecting their business interests and commercially-orientated groups which are not competent to assess art and certainly not entitled to destroy other people's artworks.

You have done terrible damage to Australian artists, as well as to the aboriginal community you claim to protect.

To the Arts Law Centre

with your campaign against Gina Sinozich and Benedikt Osváth, you are making a mockery of Australian democracy.

Who appointed you to decide who is allowed to be inspired by prehistoric cave painting and who is not?

Who gave you the right to claim your clients have the monopoly on Australian prehistoric art?

What you are doing is comical, but also dangerous, with non-aboriginal artists being persecuted as if you are living in the darkest of the dark ages.

But I see you only as puppets of someone higher than you. Who is pulling your strings? And to what end?

Perhaps I should follow the money, to see who benefits from your shameful tactics.

To the Arts Law Centre of Australia

having read about the Wanjina Watchers in the Whispering Stone case, I came to conclusion that the sculpture displayed at ModroGorje Gallery owned by Ms Vesna Tenodi and Mr Damir Tenodi is an original work of art.

It is not made in the manner that some indigenous tribes reproduce it. Benedikt Osváth's artwork includes a Wanjina with a mouth, and design is shaped according to the artist's imagination, and as such is a modern, contemporary artwork, a new approach to a mythological idea.

The key issue as I see it is who is allowing you to campaign against the artist and to ban his artistic expression, with a feeble/flimsy argument it concerns a spirit from another culture?

And who appointed you to judge a work of art, or a deeply spiritual work as the Wanjina Watchers is? Or to judge whether the artwork is done in a "respectful" manner?

Respect is a two-way street, and your clients should learn to show some respect before demanding respect and threatening to kill every artist who in their mind does not show enough respect.

Arts Law Centre of Australia is qualified to comment on art? On spirituality? Since when?

Dear Arts Law Centre,

I am a European lawyer, with experience in International Law. I spent time in Washington DC, USA, working on a topic of human rights protection in international conflicts and treatment of war detainees.

I also have experience in civil law, including property law and urban planning law.

Based on my knowledge and experience, I feel competent to state that there is no country in the world that would allow any type of copyright on prehistoric cave art.

If you were to succeed in introducing any such law in Australia, which I am sure could never happen, the legal system couldn't be that crazy over there, it would be unimaginable breach of personal freedom and human rights of Australian citizens.

Within its legal system, every country includes protection of its people's human rights, and those rights might be restricted only in case they might endanger public safety or a similar justifiable, rational reason.

To see you pushing this case to absurd extreme, with claims your clients are "offended", you in effect want to enforce a will of some angry, vindictive minority, onto the whole of society.

It seems to be the white-guilt syndrome showing through, making you over-eager to the degree of forgetting your responsibilities.

Your attempts to dictate what people can display in their own front yard makes you look not like rational professionals, but hysterical bleeding hearts, who are so blinded with rage against an artist "upsetting" your client that you can no longer see the damage you are doing to Australian people.

What saddens me the most is the fact that Aboriginal people are no longer able to recognise true love, as shown in ModroGorje lovely artworks.

To whom it may concern

I have written a few times now about the actions of the Arts Law Centre in relation to the item below.

Your one sides overly politically correct stand against the Whispering Stone Sculpture has damaged your organisation beyond repair. Not one of my fellow creative colleagues believe that the action and views expressed by the Arts Law Centre have been constructive for the Australian Art movement.

The attached information is being passed around Australia showing just how bias Arts Law Centre has become.

Hopefully you will go the same path as Craft Australia, having all your funding removed thus bringing your time to an end.

More importantly, a full review of your actions and statements should be conducted before the hopeful closing of the Arts law centre so any other replacement organisations do not fall into the same error of judgement.

The Director, Arts Law Centre

Re: article, 'Safeguarding Cultural Heritage', December, 2011

I wish to object in the strongest terms to the completely specious and self-serving nature of Delwyn Everard's characterisation of the *Wanjina in the Whispering Stone* sculpture in Katoomba. I do not wish to discuss the quality of the sculpture because it is irrelevant to matters of principle regarding its status as a work of art and to Ms Everard's role as an officer of the Arts Law Centre, whose duty it is to support all Australian artists – of any ethnicity – equally.

Clearly she has not read or understood the purpose of the sculpture as explained in Vesna Tenodi's book, *Dreamtime set in Stone*. The sculpture does not – and does not intend to – represent 'crudely drawn representations of Aboriginal spirit figures.' Instead, after validly 'quoting' these images, it adds further imagery with an intent that is clearly outlined in the book – but which your officers, apparently, wilfully ignore. (And it should have been acknowledged that the term 'crude' has often been applied to the original images themselves.)

And the statement: 'The spirit figures depicted on the sculpture are Wandjina, a fact confirmed by the work's title "Wandjina Watchers in the Whispering Stone" is – given the above – a *non-sequitur*. The sculpture's subject is not wandjina *per se*, but 'wanjina watchers'. Not a very subtle difference, really, but one which your officers so obtusely persist in not noticing. The very addition of mouths is germane to this and should be a matter of discussion, not condemnation.

The fact that the sculpture was situated 'on the verge of ... Australia's World Heritage-listed Blue Mountains area' is entirely irrelevant and nothing less than specious, and a blatant attempt to garner sympathy for your case from ecologically-aware – and otherwise uncommitted – members of the public.

No one disputes that the imagery is a matter of deep spiritual significance to the Wandjina-Wunggurr people, but it is disputable that the sculpture is a 'blatant disregard of indigenous culture.' It could be argued that it is, in fact, the very reverse!

The article is correct in stating that the matter 'discusses the challenges aboriginal communities face in protecting their cultural heritage,' but taking a biased, partisan attitude is unworthy of a government-funded legal office. In my opinion, your duty is to sponsor intelligent discussion of the issue. It is possible of resolution, as my own submission to the Land and Environment Court indicated. But it requires discussion in good faith, not sledging.

I look forward to your consideration of this – and your response.

I would also like your comments on the letter written by an Aboriginal legal organisation to Blue Mountains Council on the matter of the sculpture specifically threatening members of its counter staff.

(Clearly, it is your duty as an officer of a body funded by public money to print this letter in your next edition.)

Safeguarding Cultural Heritage - The Case of the Sacred Wandjina

December 2011

Delwyn Everard, Senior Solicitor at the Arts Law Centre of Australia discusses the challenges aboriginal communities face in protecting their cultural heritage.

About two meters tall and covered with crudely drawn representations of Aboriginal spirit figures, it sits on the verge of a property in Katoomba in Australia's World Heritage-listed Blue Mountains area. Local Aboriginal residents are disturbed by its presence. Over 4,000 kilometers away in Western Australia, the Worrora, Wunumbal and Ngarinyin Aboriginal nations are distressed and angry at its ongoing public display. Katoomba's nonindigenous community is divided over whether it is art or sacrilege.

The source of this controversy is a work of art created by a nonindigenous artist, on commission for a nonindigenous gallery and business, which has been outspoken in its criticism of Australia's Aboriginal people. The spirit figures depicted on the sculpture are Wandjina, a fact confirmed by the work's title "Wandjina Watchers in the Whispering Stone".



Kimberley elder Donny Woolagoodja and local Darug man Chris Tobin in front of the Katoomba sculpture by a nonindigenous artist which is at the heart of the controversy (Photo: Reinier Van de Ruit).

The Worrora, Wunumbal and Ngarinyin Aboriginal people of the remote Kimberley region have been painting Wandjina images for many thousands of years, at sacred rock sites and in caves, on dance totems and bark, and now on canvas and paper. The Wandjina is their supreme creator, the maker of the earth and all upon it. They are recognized as the only Aboriginal nations entitled to depict the Wandjina, a right respected by all other Aboriginal groups. That explains the discomfort of the Blue Mountains Darug people, who respect the cultural totems and laws of the Kimberley nations and are themselves shamed by this blatant disregard of indigenous culture occurring on their traditional lands. Anthropologist and Emeritus Professor Valda Blundell observes:

"Depicting Wandjina is a significant way in which Wandjina-Wunggurr people enact their identity as a distinct Aboriginal society and convey this identity to other Aboriginal societies as well as the non-Aboriginal world."

The execution and public display of the Katoomba sculpture has not been authorized by Wandjina-Wunggurr people. Such an unauthorized portrayal of the Wandjina undermines the

very foundation of their society in that it constitutes an attack on the specificity and integrity of their identity and the legitimacy of their cultural and religious beliefs. As an unauthorized depiction of Wandjina, it destabilizes the natural balance of their life-world which is only ensured when their laws and cultural protocols are followed."[1](#)

The legal issues are complex. The copyright law protecting contemporary individual creative expressions is unhelpful. It treats artwork by an artist who died more than 70 years ago as residing in the public domain and freely available for reproduction. The unknown artists responsible for the ancient and extraordinary rock art of the Kimberleys are long gone. The images on the Katoomba sculpture are not infringing copies of particular artworks by known artists. Rather they are instantly recognizable depictions (albeit distorted and lacking the elegance and power of genuine Wandjina) of the sacred spiritual imagery of a community within which the artist, and those who commissioned him, have no authority. This is an unauthorized misappropriation of an indigenous community's traditional culture and knowledge or indigenous cultural intellectual property (ICIP).

Article 31 of the Declaration on the Rights of Indigenous Peoples (DRIP)[2](#), adopted by the General Assembly of the United Nations in 2007, reads as follows:

"1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights."



Artwork by Worrora artist Donny Woolagoodja
(Photo: Mowanjum).

While Australia declared its formal support for the Declaration in April 2009, it has since proven difficult to identify how Australian law protects the cultural rights involved. In 2010, when the Mowanjum Artists Spirit of the Wandjina Aboriginal Corporation (representing Worrora, Wunumbal and Ngarinyin artists) first approached the Arts Law Centre of Australia for assistance, it could not identify an obvious remedy. It was not only the sculpture that

concerned Mowanjum. The gallery had also held an exhibition of paintings of Wandjina by nonindigenous artist Gina Sinozich entitled "Wandjina by Gina". As with the sculpture, many of the paintings showed Wandjina imagery incorporating mouths. This is particularly offensive to the traditional Aboriginal custodians. Wandjina are regarded as too powerful to be depicted with mouths as their power descends to Earth through the line seen as a nose. Gallery owner Vesna Tenodi had also published a book that was illustrated with the Sinozich images and espoused a thesis that the Australian indigenous peoples were a dying race suffering from spiritual atrophy³. That thesis, the book and the images were also promoted on the gallery's website⁴.

Australia's Trade Practices Act 1974⁵ prohibits misleading and deceptive conduct in the course of trade and commerce. Previously, it had been used to prosecute gallery owners selling art and artefacts purporting to be Australian Aboriginal art but which had, in fact, been created by nonindigenous artists⁶. The Arts Law Centre assisted Mowanjum in submitting a complaint to the Australian Competition and Consumer Commission (ACCC), the statutory body responsible for investigating breaches of the Act, on the basis that the exhibition of Wandjina paintings, the prominent public display of the sculpture outside the gallery, the statements and images on the gallery's website and the accompanying book all amounted to potentially misleading and deceptive conduct that was in breach of the Trade Practices Act, in that it falsely suggested an association with or license by one or more of the three Aboriginal nations and/or Mowanjum. Mowanjum argued that "such activities and the associated misrepresentations would be likely to confuse, mislead or deceive not only a substantial number of members of our organization (and its respective groups) but numerous other Aboriginal groups and others well familiar with our values and history, including non-Aboriginal people interested in our culture and the acquisition of genuine Wandjina artworks."⁷ The response was brief and disappointing. The ACCC determined that it "was unable to conclude that Ms. Tenodi has represented that she has permission to use the imagery, in circumstances where she may not need that permission."



Aboriginal artist Gordon Barung painting Coi Oi Wandjinas & Ungud and his completed work (Photo: Joanna Wilkie, Mowanjum Art & Culture Centre).

The next step was to complain directly to the gallery owners. It was, however, becoming difficult to assert that the public would be confused or misled into thinking that these Wandjina images were sanctioned by the traditional custodians, as the controversy was receiving considerable media attention, making it very clear that Aboriginal groups were bitterly opposed to the gallery's actions⁸. While this focused attention on the dispute, it was a double-edged sword. Indeed, by now Ms. Tenodi's website carried numerous statements to the effect that she did not need permission from the traditional custodians, because she herself was in direct communication with the Wandjina spirits who supported her actions:

"I have the right to do what I do, as given to me by the Those-who-Know, whom you also call Wandjinas ... I do not speak for Aboriginal people. I speak for Wandjinas, to the Aboriginal people."

With neither copyright law nor trade practice law providing any relief, help emerged from a surprising quarter. It seemed the sculpture required development approval from the local government body. That process required the Blue Mountains City Council to consider, among other matters, the social impact of the sculpture's public display on the property verge. Fifteen submissions opposing the grant of development approval for the site of the sculpture were filed, including by the Arts Law Centre in its own name and by the Environmental Defenders Office on behalf of both Mowanjumb and the Kimberley Aboriginal Law and Culture Centre. The Council's decision to exclude the sculpture from its grant of approval stated that:

"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"⁹.



The hoarding placed around the sculpture is being removed after the decision of the Land and Environment Court. The graffiti reflects the intensity of local feeling generated by the issue. (Photo: Reinier Van de Ruit)

In February 2011, Mr. and Mrs. Tenodi appealed that decision to the Land and Environment Court. At the hearing, the Arts Law Centre argued that because the sculpture had been created and displayed in breach of the traditional laws of the Wandjina custodians and in defiance of the wishes of local traditional owners, its display in Katoomba was a public expression of racial, cultural and religious intolerance and, as such, had a substantial adverse social impact. Powerful and eloquent submissions were made by Gordon Smith Junior, a Ngarinyin man who travelled from the Kimberley region to represent his people and voice their concerns. On June 21, 2011, the Court upheld the Blue Mountains City Council's decision. The result is that the sculpture must be removed.

Ms. Tenodi has criticized the decision and the Arts Law Centre's role as an attack on freedom of artistic expression. The Arts Law Centre is a strong proponent of freedom of artistic and cultural expression and has lobbied against artistic censorship and stricter classification laws. However, fundamental freedoms are validated by rational limits which recognize that a balance must be sought where pursuit of one freedom is at the cost of another. For example, legitimate constraints are placed on freedom of expression by the laws of defamation, criminal laws relating to child pornography and laws concerning racial vilification. In our

view, freedom of artistic expression should not be used to justify an indefensible misappropriation and denigration of indigenous culture.

This case highlights the difficulties Aboriginal communities face in upholding their cultural interests, and the challenges of translating political will into practical reality. Limited protection of ICIP is already available as an incident of existing laws – such as where the misuse of ICIP involves misleading conduct in trade or commerce, or copyright infringement. While there is as yet no express legislative protection for ICIP, the importance of protecting and preserving indigenous culture is a vital element of two of the government's current policy initiatives. As part of Australia's commitment to engage proactively with its human rights agenda, a National Human Rights Action Plan is currently being developed that expressly acknowledges the "important international principles" established by DRIP¹⁰. Equally encouraging is the government's recently released Discussion Paper on the development of a new National Cultural Policy for Australia, which sets as its first goal "to ensure that what the government supports – and how this support is provided – reflects the diversity of a 21st century Australia, and protects and supports indigenous culture."¹¹ Well said.

1 Submission of Valda Blundell to the Land and Environment Court, April 27, 2011 (Blundell submission)

2 <http://www.un.org/esa/socdev/unpfii/en/drip.html>

3 Tenodi, *Dreamtime Set in Stone: The Truth about Australian Aborigines*, Anan Press, 2010, page 116

4 <http://www.modrogorge.com>

5 Now the Australian Consumer Law.

6 *Australian Competition and Consumer Commission v Nooravi*, [2008] FCA 2021

7 Letter from Mowanjum to the ACCC dated May 10, 2010

8 For example, <http://www.abc.net.au/rn/lawreport/stories/2010/2939168.htm>

9 Record of Blue Mountains City Council Meeting, October 12, 2010, page 30

10 Consultation Draft Baseline Study for Australia's National Human Rights Action Plan, June 2011, page 20

11 National Cultural Policy Discussion Paper, Department of the Prime Minister and Cabinet, 2011, page 14

ModroGorje artists' response to the article by **Delwyn Everard**, senior solicitor at the Arts Law Centre of Australia, published in WIPO (World Intellectual Property Organisation, Geneva, Switzerland) magazine, December 2011.

Safeguarding Artistic Freedom – the Wanjina Watchers in the Whispering Stone

In order to provide an accurate and unbiased picture, and help the reader to make up his or her own mind, we need to clarify several points that were either deliberately left out or misrepresented by Delwyn Everard. Her biased rhetoric is intended to obtain sympathy from an uninformed readership, and to mislead the public into believing that Aboriginal demands in Australia are legally justifiable and morally acceptable.

1. The *Wanjina Watchers in the Whispering Stone* sculpture is artwork by Australian artist and art teacher Benedikt Osváth. It is the artist's right to be identified and acknowledged as the creator of the artwork.



Archaeologist and ModroGorje Gallery owner Vesna Tenodi and artist Benedikt Osváth in front of Benedikt's artwork "Wanjina Watchers in the Whispering Stone"

2. The gallery owner, Vesna Tenodi, has a Master's Degree in Archaeology, and her book *Dreamtime Set in Stone – the Truth about Australian Aborigines, as requested by the Those-Who-Know* would be assessed by any objective person who read it as a tribute to Aboriginal culture. It is illustrated with *Wanjinas by Gina* paintings by renown Australian artist Gina Sinozich, and is referenced to pre-Aboriginal prehistoric Australian cave art¹.
3. The book is Part 1 of the trilogy that Ms Tenodi produced in collaboration with Aboriginal elder Goomblar Wylo. It was well established that there is no breach of copyright. It is interesting that Mr Wylo predicted the attacks:

"I tell them if you want to educate the white folk, you can do it through entertainment, you don't need to come down on them with all that anger, punching the air with your fist, accusing them over what happened 200 years ago, demanding respect. They'll respect us once we start respecting ourselves, and living on welfare is not really a show of self-respect... Just wait and see, they'll come down on you too, just for talking to me. You'll be a target for both Aboriginal people and whitefellas here in the Mountains. My mob will say I have no right to talk, as I'm not a Darug man. My mob will say you have no right to write about Aboriginal people, as you are not one of us. Your mob will say you have no right to do it just like this, with the two of us talking, you have to set up a reference group,

get an advisory committee, consult a thousand different people and make sure everybody is happy with what you are saying. With this political correctness crap, they'll tell you you must follow some procedure and ask you to have a hundred people telling you what to do, demanding you only say bland things so no-one will get upset, they'll drive you mad.”¹

And Mr Wylo was right. Both he and Ms Tenodi were viciously attacked. He soon crumbled under pressure. She refused to be intimidated. But, to his credit, Mr Wylo never denied what he told her during their collaboration, when his intention was to tell the truth in order to help his people with constructive criticism³.



Vesna Tenodi and Goomblar Wylo in conversations for the “Dreamtime Set in Stone” trilogy

4. Delwyn Everard statements about “unauthorised portrayal and misappropriation of imagery without consultation and permission by its traditional owners” is incorrect in all its implications. Artists do not need to consult or seek permission nor authorisation by anyone to use any image in the public domain. There is no ownership of these images, while intellectual property law does not apply to ideas. This was made clear in an article by Sydney lawyer James D’Apice⁴:

“The issue is clear. At the moment, white law does not recognise the rights claimed by Indigenous people and Ms Tenodi’s legal argument holds. No one person owns the wandjina idea. No one person can own an idea. Nor is there an appropriate corporate body in whom the ownership right could or should reside. And even if those stumbling blocks were overcome, the copyright protection would be finite: seventy years. The issue is similar for any moral rights action an Indigenous person may contemplate. Without an author/creator to point to – a party in whom the moral rights can reside – any action for breach of moral rights must fail.”

5. Delwyn Everard works for the Arts Law Centre of Australia, which is a Government funded body. Ms Everard keeps arguing that some traditional Aboriginal lore should take precedence over current Australian law. Her irresponsible statements are seen as encouragement to a violent segments of Aboriginal community. It should be said that the Aborigines are free to impose their traditional customs and “cultural protocols” onto each other, but should not be encouraged to enforce those practices onto mainstream society, with violent methods.
6. The *Wanjina Watchers in the Whispering Stone* sculpture was repeatedly vandalised, ModroGorje Gallery repeatedly damaged, and Ms Tenodi and her artists were attacked and bullied in the most vulgar way, by a small group of violent Aborigines. This group kept making all sorts of threats including death threats, invoking some stone-age

custom and claiming to act on orders from the Kimberley “elder”. In response to council’s intention to remove the sculpture, over one weekend close to 400 local residents signed Ms Tenodi’s petition to keep the sculpture in place and entered their thoughts into the feedback book, supporting the artwork. Their opinion was completely ignored. The harassment and violence went on. ModroGorje artists have been terrorised for almost 2 years.

7. In Ms Everard article, the caption under the photo of the gallery owner removing the box placed in protest of art censorship – which was also vandalised – reads: “The graffiti reflects the intensity of local feeling generated by the issue”. That statement is incorrect. The graffiti shows that people with no self-control were trespassing and vandalising privately owned artwork. Their conduct is chronicled on the gallery website⁵.
8. Ms Everard states that “The next step was to complain directly to the gallery owners...” and explains why that was not done. Talking with the gallery owner should have been the first step. Instead, Ms Tenodi was antagonised by being reported for some imaginary breach of non-existent law. As Ms Everard admits, those bodies confirmed there is no wrongdoing on the gallery’s part. And yet, Ms Tenodi was never approached by any intelligent person capable of conducting a rational, reasonable conversation. To her invitation to Aborigines to participate in her DreamRaiser project, since it was developed for their benefit, the Aboriginal response was: “We’ll kill you!”.
9. Such violent tactics are nothing new. Ms Tenodi chronicled the violence she was targeted with in the Blue Mountains, as well as the Aboriginal harassment of non-aboriginal artists in recent years in Australia as told by a number of Australian artists, and is calling for violence to stop.
10. Ms Tenodi, in November 2011, sent her complaint⁶ to Australian Departments, including the Minister for the Arts Simon Crean, and agencies which provide funding to the Arts Law Centre and to their client Mowanjum Corporation. Mowanjum Aboriginal Corporation receives large amounts in Government funding, and has built a \$4.5 million centre, selling Wanjina inspired artworks. It is incredible that such a well-funded organisation should go into such a frenzy over a group of independent artists within Ms Tenodi’s DreamRaiser project. It is obvious they are protecting their business interests and seeking a monopoly on Australian prehistoric cave art. If there were an issue of sacred and secret images, as they tried to present it, they would not have turned it into a commercial business.
11. In December 2011 Minister for the Arts Simon Crean ordered a review of the Australia Council for the Arts, which is the main funding body of the Arts Law Centre. It is expected that this review, the first since the 1980s, will establish that the Arts Law Centre is unfit to receive public funding, for extreme bias, for breaching non-indigenous artists human rights and ignoring their right to freedom of expression. It is expected to also look into misleading statements which deceive the Australian public into believing that some Aboriginal traditional lore should trump current Australian law.

12. It should be noted that since the 1990s, Australian goodwill and support for Aboriginal people has resulted in considerable land being given to Aborigines, as well as \$ 3.5 billion dollars a year that the Australian taxpayer is providing to alleviate Aboriginal disadvantage. Few could have foreseen that organisations such as the Australia Council for the Arts and the Arts Law Centre of Australia would misuse taxpayer's money to make increasingly ludicrous demands on behalf of Aborigines.
13. Ms Everard admits that the Arts Law Centre reported Ms Tenodi to a number of bodies, in an example of breach of privacy, and a malicious attempt to intimidate her, accusing her of some illegal activity. They seem unable to admit they made a mistake, and are doing Aboriginal people no favours by excusing and condoning violence. The group of vandals harassing ModroGorje artists kept quoting the Arts Law Centre and Blue Mountains City Council, seeing those as approving of their bad behaviour which is in line with their "customary payback law".
14. Ms Everard and the Arts Law Centre, when unable to make a legal case, resort to putting down artistic work, slandering artists, venturing into an area where they have no expertise. Whether Ms Everard personally likes the *Wanjina Watchers in the Whispering Stone* artwork by Benedikt Osváth is irrelevant. She is entitled to her opinion that those are "crudely drawn" and "lacking the elegance of genuine Wanjina", even though those statements show she knows little about art. Wanjina images have a number of attributes, but "elegance" is not one of them.
15. Ms Everard also quotes from the *Dreamtime Set in Stone* that "Australian indigenous peoples were a dying race suffering from spiritual atrophy". This opinion has been held by a number of historians and philosophers all over the world. Ms Tenodi describes today's Aborigines as embittered people with hate in their heart and revenge on their mind, an assessment supported by her own experience as well as the experience of people she interviewed for Part 2 of her trilogy. So far, Aboriginal people showed no evidence to the contrary. And Ms Tenodi is entitled to express her opinion.
16. The Aboriginal Mowanjum Corporation and the Arts Law Centre claim that a Wanjina incorporating a mouth is particularly offensive and that Wanjina never, never, absolutely never, has a mouth. This repeated assertion shows ignorance and an inability to carry out the basic research. Ms Tenodi refuted those claims in her new book *Dreamtime Set in Sand*, with ample evidence to the contrary.
17. Even after repeated advice that she is mistaken, Ms Everard continues to slander and vilify ModroGorje artists. Her biased attitude and her false accusations put the artists' lives in danger. Any further violent attacks by Aboriginal objectors would be seen as a consequence of such accusations, which are both irresponsible and false. She and the Arts Law Centre keep making assertions based on false logic, comparing cases that can not be compared, just to confuse the public. To mention "child pornography" or the "carpet case" – where there was a clear breach of copyright – is clearly misleading. It is not surprising that the ModroGorje artists are upset. They are determined, now more than ever, to keep raising public awareness of these unacceptable practices against non-Aboriginal artists.

18. Ms Everard has the right to advocate for law reform that would be more to her liking. She does not have the right to do this in an irresponsible manner, damaging people who are doing nothing wrong. There are other sculptures within minutes of the ModroGorje Gallery, over which Aborigines went into a frenzy, because they show naked Aborigines with their penises exposed and were enraged that tourists have been taking “inappropriate” photographs groping and fondling those statues. They have been demanding those statues removal for several years now. Ms Everard is welcome to advocate for her Aboriginal clients by helping them to enforce the removal of those “pornographic” sculptures. Unfortunately, she seems to be intent instead on harping on the ModroGorje artists, since they are much more convenient target for her criticism than those rich people who installed the Echo Point and Scenic World groups of sculptures.



Offensive sculptures at Echo Point and Scenic World, Katoomba

For her part, Ms Tenodi is pressing on with her work, attracting an increasing number of artists in Australia and overseas, who are adding their voice in protest against censorship. Her methods might be unconventional, and her theories about highly advanced civilisations developed by pre-Aboriginal races in Australia might seem controversial, but in Australian democracy she should be afforded the right to have her opinion and is fully entitled to publish her theories and her artists’ works, free of harassment and attacks by biased lawyers. Instead, they should be encouraging discussion of the matter.

Ms Tenodi possesses an in-depth knowledge of both Australian prehistory and the current political climate in Australia. She has successfully exposed the Arts Law Centre claims as false and misleading. She has been attacked by what she described as totalitarian tactics, as were previously used only by communist regimes. She had her reputation damaged, her motives questioned, her integrity attacked and her life ruined. She and her artists are offended and distressed. They are also furious that their supporters were silenced with Aboriginal threats of violence, and that political correctness allowed the local council and the Arts Law Centre to manipulate planning law to enforce censorship.

Ms Tenodi has been pushed, and is now pushing back, showing that after years of Aboriginal harassment she and her artists do have the courage and determination to stand up to their accusers and critics and to fight for their democratic rights.

The *Wanjina Watchers in the Whispering Stone* sculpture is now in Sydney, and Benedikt Osváth has repaired the damage the vandals caused to his artwork.

Ms Tenodi says that her artists succeeded in making it clear to everyone that there is no copyright on ancient or even recent works of art. Those are all in the public domain. So the truth came out, showing what injustice Australian artists had to suffer. She and her artists are now creating a body of work dedicated to Australian artists past and present, such as Margaret Preston, Elisabeth Durack, Imants Tillers, Russel Emerson, Michael Galovich, Robert Johnson, and every other artist harassed, vilified and bullied by Aborigines and their lawyers.

Ms. Tenodi's supporters are raising their voice in criticism of the Arts Law Centre for its hypocrisy, for failing to place any rational limits on Aboriginal demands, for infringing on the non-Aboriginal artists' fundamental freedom to create art and for trying to enforce Aboriginal lore at the cost of the rights of non-Aboriginal artists.

The goodwill and patience of Australian mainstream society may be wearing thin, and sympathy for Aboriginal people is evaporating. The Arts Law Centre should recognise that they are doing their clients no favours by making false claims, infringing on other people's democratic rights.

Australian multicultural society consists of 270 different nationalities, who are all Australian, and their rights should be protected and supported, rather than fanning the fire of anger by Aborigines, who refuse to be called Australians and keep demanding special privileges and rights without accepting any of the responsibilities as embraced by the other 98 percent of Australian society. They appear to be unwilling to adopt any of fundamental values, such as the equality and fairness for all.

Aboriginal people who screamed vulgarities, in public, into the faces of ModroGorje owners and their artists, saying: "You stupid migrants, go back to your country", are doing themselves no favours either. Australian society was built by migrants, and insulting them is certainly not helping to improve the image of Aboriginal people.

¹ <http://modrogorje.com/hall.html>

² <http://modrogorje.com/goomblar.html>

³ Tenodi: "Dreamtime Set in Stone: The Truth about Australian Aborigines, as requested by the Those-Who-Know", Anan Press, 2010, page 106

⁴ James D'Apice: "Copyright law: a brief sketch", July 2010
<http://modrogorje.com/images/JamesOnCopyright.pdf>

⁵ <http://www.modrogorje.com>

⁶ <http://modrogorje.com/images/Request&AttachmentsOctober2011a.pdf>