



Agenda





Welcome and Acknowledgemen t of Country -Mike T



Overview of Agenda



Who is the ACAV committee?

Who is here tonight?



What is the ACAV all about -Mike Rockell



Key Current Activities

a. Legal situation and Parks Victoria

-Mark Wood

b. Climbing Management Plan

b. Founding Body -Mike R



Working with other Victorian climbing organisations

a. Clubs -Affiliating with ACAV -Hahn

Roundtable

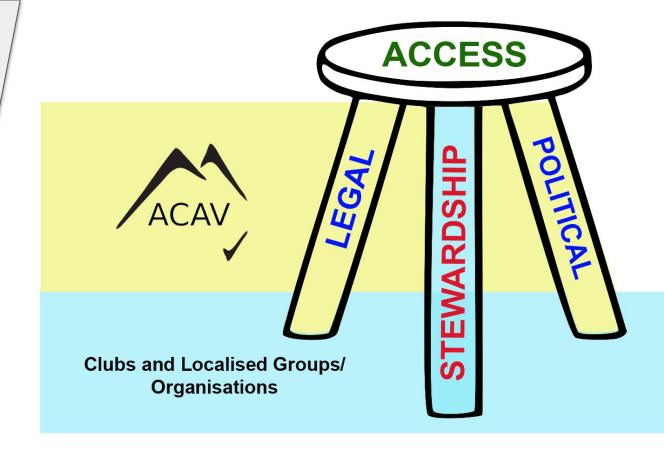


Roundtable Meetings

10 priority areas

•Pre-requisite questions Additions to

Access is a **Three** Legged **Stool**



American Access Fund Started in Early 1990's –National Body that works with local organisations

ACAV -Has both Legal and Political Dimensions

ACAV — the representative body for climbing access in Vic



2 Purposes

The purposes of the association are—

- To be the representative body for climbing access in Victoria.
- To accumulate monies obtained from membership fees and donations into a trust fund, (the 'access fund'), to be used for matters that affect rights to access climbing sites in Victoria.
- To ensure that the legislation, regulations, policy documents and other instruments which affect climbing are lawful and appropriate and are being correctly interpreted and applied by land managers.
- To work with land managers and governments at all levels to promote and support climbing and to help develop climbing related policy, regulations and other instruments.
- To work with climbers to form and maintain a strong climbing community and to support the transition into climbing for new climbers.
- To ensure the full recreational value of public lands managed under the Parks Victoria Act (2018), the National Parks Act (1975), the Conservation, Forest and Lands Act (1987), the Crown Land (Reserves) Act (1978), the Land Act (1975) and the Forests Act (1958) plus such public lands that are held in freehold by local governments is recognised and utilised.
- To work with Traditional Owners to communicate an understanding of Aboriginal Cultural Heritage to climbers, and to ensure that the requirements of the Aboriginal Heritage Act (2006) are being correctly interpreted and applied by land managers.

A Quick Review of the Recent Timeline:

concerns of rock climbing harming Aboriginal Art



	-4	-3	-2	-1	0	1	2	3	4	5	6	7
	Oct-	Nov-	Dec-	Jan-	Feb-	Mar-	Apr-	May-	Jun-	Jul-	Aug-	Sep-
	18	18	18	19	19	19	19	19	19	19	19	19
a	VCC/ CliffCare nnounces new route		SPA Bans with 8 focus sites announced			ACAV concept launched			ACAV becomes Incorporated society now with over 1400 members			Legal Letter sent to Parks Vic
3 RAP groups meeting with Parks and formally raising												

ACAQ 12 years ago; ACANSW forming, then ACA nationwide

Consulting with Parks Victoria:





Legal and Political Activities



Creating Pressure:

Legal Pressure

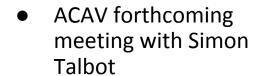
- Land Managers are forced to apply the law correctly
- Through litigation or the threat of litigation

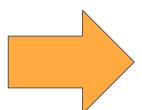
Political Pressure

- From Above
- Getting Land Managers to work with us

Early Outcomes:







What a positive outcome may look like





A Climbing Management Plan

- Incorporated into the Grampians Landscape
 Management Plan 2020
- Supported and Endorsed by the 3 RAP Groups
 Eastern Marr Aboriginal Corporation
 Gunditj Mirring Traditional Owner Aboriginal Corporation

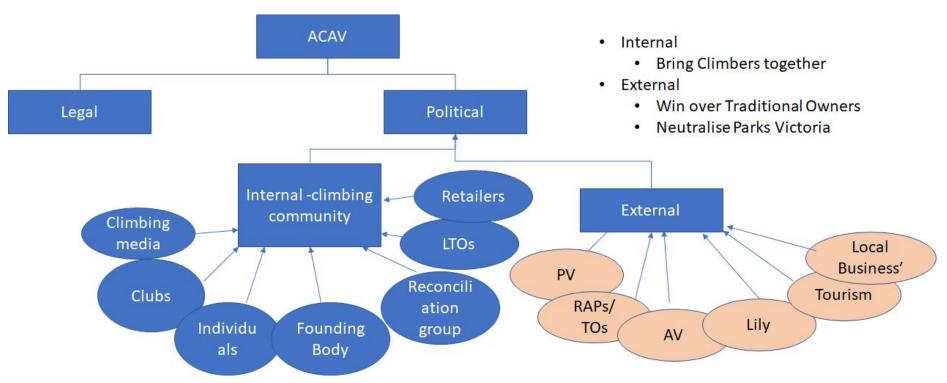
Barenji Gadjin Land Council
Supported by the greater climbing community

Removal of the Blanket Bans

- Replaced with sensible restrictions only where necessary
- The Bans don't roll onto Arapiles

Achieving this means getting stronger politically







Traditional Owner Update



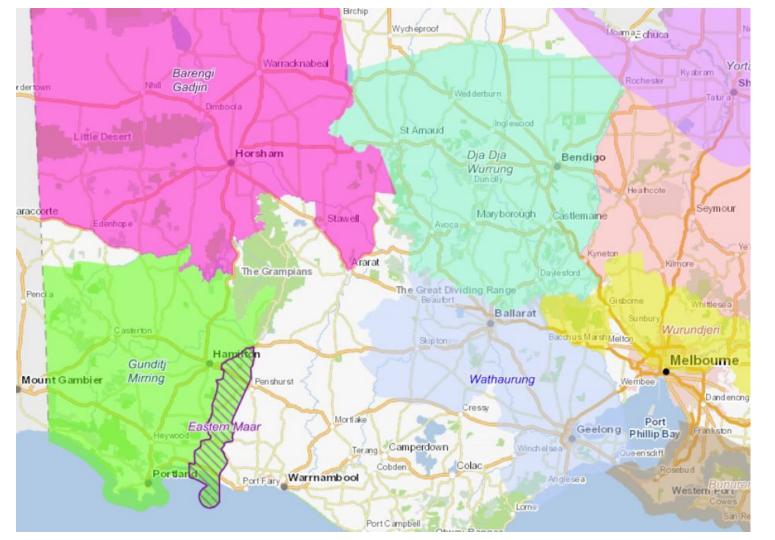
"Have you tried talking to the Traditional ACAV **Owners?**"

The Grampians does not have a recognised Registered Aboriginal Party (RAP).

There are three surrounding RAPs,

Aboriginal Victoria assumes responsibility for cultural heritage in the Grampians (in consultation with the RAPs).

Cultural heritage is heavily politicised.



The Three RAPs



- Barengi Gadjin (Horsham)
- Gunditj Mirring (Heywood)
- Eastern Maar (Warrnambool)

Eastern Maar and Gunditj Mirring appear to have a close alliance and they have some shared territory.

Barengi Gadjin is the RAP for Arapiles.

ACAV Liaison with Barengi Gadjin



- Dylan Clarke, Chairman
- Michael Stewart, CEO ACAV meeting in April
- Darren Griffin, Archaeologist well engaged
- Ron Marks, Elder well engaged

ACAV Liaison with Gunditj Mirring



Released under Freedom of Information Act 1982 by Parks Victoria

It is proposed that greater communication between the Traditional Owner group, Parks Victoria and the rock climbing organisations is required to address this matter holistically. This could be achieved by Parks Victoria facilitating a meeting between the Victoran Rock Climbing Association and the Traditional Owners to discuss how to address this matter. Further to this, the Traditional Owners for Gariwerd could be engaged to provide cultural awareness training to the rock climbing associations and to develop a protocols document in conjunction with the required stakeholders.

First Nations recomends Parks Victoria to restrict access of rock climbers to sites of significance and suggest that users of the area undertake their activity in other appropriate areas within Gariwerd.

If you would like to discuss this matter further, please do not hesitate to contact me directly on

Yours sincerely



Damein Bell CEO Latest FOI release

ACAV have reached out to Damein Bell, CEO

ACAV Liaison with Eastern Maar



 Chairman – Jason Mifsud former Aboriginal Victoria Director and architect of Victorian Treaty.

- Director John Clarke (regular ACAV contact)
- Rock climbing coordinator for Eastern Maar
- Former cultural heritage Ranger for Parks Victoria
- Involved in the 8 focus site bans
- Speaks for TOs in the Grampians
- Advocated for Summerday Valley bans in June 2019

Messaging to the RAPs



ACAV is campaigning to ensure that Parks Victoria does the work to protect culture, environment and recreation in harmony.

Banning climbing does not protect vulnerable locations from day visitors and feral animals. Over the last 50 years, climbers have been a positive force in looking after the Grampians.

We are asking Parks Victoria to implement climbing risk assessment procedures, environmental mitigation measures and a Victorian Climbing Management Plan.

We are prepared to take Parks Victoria to court to ensure that the Grampians National Park is properly protected for future generations.

ACAV is working to protect Cultural Heritage.



Starting Point



- There are three major supporting elements to the Climbing Bans in the Grampians National Park
- LEGISLATION (National Parks Act 1975; Parks Victoria Act 2018; Aboriginal Heritage Act 2006 etc)
- REGULATIONS (National Parks Regulations 2013)
- MANAGEMENT PLANS (2003 Management Plan)

Relationships



The hierarchy is the same:

LEGISLATION

REGULATIONS

MANAGEMENT PLANS

The Framework



Each of these has a part to play

 LEGISLATION - The Acts which determine the Legal overview - (Legislative Instrument)

REGULATIONS - One method of enabling the Act - (Legislative Instrument)

 MANAGEMENT PLANS - The plan for how to manage - (Administrative Guidance Document)

Role in Implementation - An Important Bit



Implementation to bring legal effect

- LEGISLATION □
- REGULATIONS □
- MANAGEMENT PLANS X

(Management plans are not a legal instrument but a 'wish list' that requires implementation under the Act or the Regulations)

Is Climbing Banned by the 2003 Grampians Management Plan?



Parks Victoria in their documentation keep referring to this point as truth.

The Answer:

FALSE - The Management Plan is not a legal Instrument. For climbing to be banned requires implementation by a legal instrument, in this case the *National Parks Regulations 2013* are the legal instrument being employed.



QUESTIONS?



Regulations - What??



• In the regulations there are parts that allow for the prohibition (banning) or regulation (controls) over activities.

These are called - 'Set-aside powers'

Set Aside powers are implemented under regulation 10 (r10) As follows:

Set-aside Powers (r10)



- 10 Determinations setting areas aside
- (1) If, under a set aside power, the **Secretary** is authorised to make a determination to set aside an area as an area in which an activity or conduct is permitted, required, restricted or prohibited, the Secretary may include in the determination any conditions subject to which the activity or conduct must or must not be carried out.
- (2) If, under a set aside power, the **Secretary** makes a determination setting aside an area as an area in which an activity or conduct is required, restricted or prohibited, the Secretary must erect or display signs or notices at or near the entrance to the area
- indicating—
- (a) the area that has been set aside under the determination; and
- (b) the nature of the determination; and
- (c) in the case of an activity or conduct that is required or restricted, the conditions subject to which that activity or conduct must be carried out.

What does this all mean?



The documentation that the ACAV have received notes that the Set-aside power used is *regulation 65*.

- R65
- Areas where sport or recreation prohibited
- (1) The Secretary by determination may set aside an area of a park as an area in which sport or similar recreational activities are prohibited.
- (2) Subject to regulation 67, a person must not engage in a sport or similar recreational activity in any area of a park set aside under subregulation (1).
- Penalty: 10 penalty units.



Ok, seems reasonable to me...

How it works



The decision to prohibit an activity has two elements:

• ADMINISTRATIVE - the determination (a decision)

PROCEDURAL - whacking signs in the ground

• The use of the word must means that both of these are required to implement the law, i.e. you cannot just decide to do it then not implement the requirements.

OK, the 8 focus sites have signs as does Summer Day Valley.



• The signs at the 8 focus sites appear to comply with r10

The signs in Summer Day Valley do not appear to comply.

There are no signs at most of the SPAs.

What advice does the ACAV have?



 ACAV has engaged senior counsel with a lot of experience in this area of administrative law and their advice is that regulation 65 (r65) has a word of limitation ... similar

 This is an important distinction as case law has determined that sport is an activity that is 'organized competition with a set of rules as to the conduct of the activity'

Recreational rock climbing is completely disorganised and has no rules.

How is this important?



The law is often different from your perception.

You may believe that rock climbing is a sport. Extensive 'case law' interpretation of legal statutes in a court of law - has specific
interpretations of terms tested in the court

 Basically, rock-climbing is a recreational activity and a recreational activity is not 'similar' to a sport.

But this is just a technicality ...



- When laws are drafted the language is very important and laws are technical by nature.
- 'Similar' is a word of limitation, i.e. limiting the application of the regulations.
- When you look at r66 the language used is different
- 66 Areas where sport or recreation restricted
- (1) The Secretary by determination may set aside an area of a park as an area in which sport or other recreational activities are restricted.
- (2) Subject to regulation 67, a person must not engage in a sport or a recreational activity in any area of a park subject to a determination under subregulation (1) in a manner that contravenes the determination.
- In this case the activity itself is not banned, but an aspect of the activity has restrictions applied

Can we climb in the SPAs?



- Until it is tested in the court of law the ACAV cannot advise that climbing in these locations is not prohibited.
- PV's Legal Manager John Stevens recently stated: "it is only at these 8 sites, where the signage is in place, that PV is currently undertaking enforcement activities pursuant to the Regulations."
 - As the climbing community begins to understand the weakness of PVs position in calling for these bans, it is inevitable that people will recommence climbing in the SPAs. Regardless of where you climb, SPA or non-SPA please tread lightly, always cooperate with Rangers and be respectful if approached.
- There is a lot of background work continuing, including further engagements with Parks Victoria for the benefit of the climbing community.

There is more...



 In addition to the interpretation of the law and the language used there are a number of other strings to the legal action. These are (as noted in our Lawyers letter):

• The 'Determination' is legally unreasonable, i.e. have other avenues been sought to address the issue, such as the option posed by the Gunditj Mirrin to arrange a meeting with climbers and Parks Victoria to avert this action; or are other less oppressive powers able to result in similar outcomes (e.g. r66 as above).

The 'Determination' is "disproportionate to the supposed mischief to be addressed".
 i.e. the punishment is too severe for the potential harm that is trying to be addressed.

What happens if the determination is overturned?



• There are a lot of possible scenarios, depending on the judgement

The ACAV cannot predict the final outcome.

• Vertical Life provided a good synopsis written by someone with a legal background, though this does not cover all potential scenarios.

Doing nothing out of fear of potential outcomes retains the status quo.
 Parks Victoria are not above the Law and need to comply with the Law.



QUESTIONS?



A Climbing Management Plan that is incorporated into the GLMP



Major Components of a CMP

- Risk Assessments
- Environmental
- Cultural Heritage
- Aboriginal Art
- Quarrying
- Managing and Minimising Impacts
- Tracks
- Chalk
- Bolts
- Litter
- Toilets

A Process for Developing a CMP

- Needs Expert Input
- Climbing Knowledge
- Environmental Knowledge
- Archaeological Knowledge
- Needs to be supported by PV
- Acceptance / Endorsement
- by 3 RAP groups

Working with Other Victorian Climbing Groups, Organisations & Businesses



Climbing Clubs:

Affiliation

Businesses:

- Sponsorship
- Supporting Partner

Founding Body/Federation:

- Support the concept
- United climbing community
- ACAV can assist as legal access arm





Expanding the Attendees

Add More Climbing Expertise

- Bouldering
- Licensed Tour Operators
- Guidebook Writers Guild
- Archaeological

Top 10 Priority Areas

- Pre-requisite Questions
- Considerations
- Types of climbing
- Range of grades
- Most popular
- Bouldering/Trad/Sport