

18 July 2022

Attn: Dr Mark Norman
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Parks Victoria
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From: Mike Tomkins
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Dear Dr Norman,

Re: Grampians cultural heritage protection strategies are not compliant with the ATSIHPA 1984 and the AHA 2006

As I am sure you are aware, in your capacity as Chief Conservation Scientist, it is your responsibility to demonstrate “Evidence-Based Park Management”, as required under the Parks Victoria [Statement of Obligations](#) to the Minister for Environment. We understand that it is also your scientific responsibility to catalogue artefacts, to identify artefact damage and to mitigate risk of harm to artefacts.

9.3.2 Parks Victoria must employ adequate senior scientific staff, including a Chief Conservation Scientist, to support evidence-based park management and decision making.

The Minister for the Environment relies upon your diligence in this matter to ensure that she upholds her oath to the people of Victoria and to the Crown.

It appears that scientific rigour may have been somewhat lacking over recent rock climbing closures, resulting in both a loss of recreational amenity and an unlawful failure to protect cultural heritage under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHPA)* and the *Aboriginal Heritage Act 2006 (AHA)*.

We understand that First Peoples-State Relations (formerly Aboriginal Victoria) assigns cultural heritage value to artefacts that have been identified by Parks Victoria and its contractors.

With this in mind, we request that you provide justification for your decision-making as follows:

Q1: How was it scientifically determined that historic quarry sites must be protected from climbers but not from tourist vandalism, feral animal damage and bushfires?



Photo shows major rock spalling at Mt Stapylton after the 2014 Grampians bushfires. Large areas of surface rock have been lost, revealing white patches of underlying rock structure.



Detail of rock spalling (white exposed rock) caused by fire

Q2: Are any further protections planned for the hundreds of quarry sites, or will you proceed at risk of harm from tourist vandalism, feral animal damage and bushfires?

To our knowledge, there is no scientific evidence to show how rock breakages in hard sandstone at ground level (scattered rock chippings and scars within a rock face) can be harmed by climbers but are deemed to be at acceptable risk of harm when directly accessed, touched and stepped upon by walkers and tourists.

Q3: Do you propose the same, minimal protection for cultural art sites in the region?



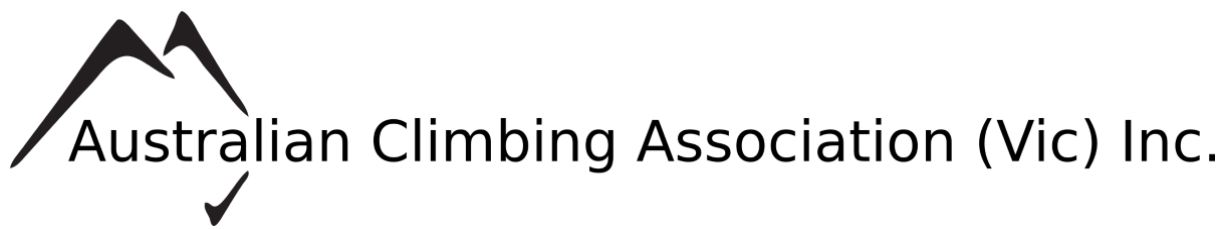
Tourist vandalism, Hollow Mountain, Grampians

Q4: Are you confident that your protection strategies are fully compliant with the ATSIHPA 1984 and the AHA 2006?

Q5: How have you managed any contradictions between the ATSIHPA 1984 and the AHA 2006?

We contend that your present cultural heritage protection strategies are not compliant with the ATSIHPA 1984 and the AHA 2006. Please consider this letter as notice, confirming that, under AHA 2006 Division 1: 27 (1) you are now aware that your omission to act accordingly is likely to cause irreparable harm to cultural heritage artefacts.

Please refer to Appendix 1 for background information in relation to our concerns.



Across an estate the size of the Grampians, we suggest that it is negligent to attempt to protect the vast number of quarry sites and art sites by merely excluding climbers and boulderers. Due to limited resources, the much smaller number of significant art sites will then remain unprotected from tourist vandalism, feral animal damage and bushfires.

We believe that there are far better ways to manage bouldering and climbing in the Grampians. ACAV remains available to assist in the implementation of the [Victorian Climbing Management Guidelines](#).

We look forward to your considered responses to these queries.

Kind Regards,

Mike Tomkins
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Appendix 1

1.1 Relevant clauses: *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 and The Aboriginal Heritage Act 2006*

What heritage does the Act protect?

The ATSIHP Act can protect areas and objects that are of particular significance to Aboriginal people in accordance with Aboriginal tradition. The expression 'of particular significance' etc. was modelled on the definition of the term 'sacred site' in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).⁴

The ATSIHP Act **does not protect all forms of Indigenous heritage**. For example, the Act does not protect:

- areas and objects whose heritage significance is due to their archaeological, scientific or historical interest, such as areas of past Aboriginal occupation, traditionally made tools, or old records
- rock art or contemporary art that has no particular significance in Aboriginal tradition
- natural heritage (including wildlife or biodiversity)
- intangible heritage (such as intellectual property and language).

Hundreds of rock surveys by Parks Victoria have identified large numbers of historic "quarry sites" at ground level across Gariwerd. It has been determined by Parks Victoria (with advice from First Peoples-State Relations) that:

- the surveyed quarry sites have high cultural heritage value



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- these quarry sites must be protected from climbers and boulderers but access by tourists is somehow acceptable

We are unaware of any research indicating that rock scars in hard sandstone are at risk from activities such as climbing. These scars are prevalent wherever there is hard rock at ground level in this region, with tens of thousands of examples occurring.

If these sites must be protected from the actions of climbers, how can Parks Victoria fail to protect these sites from other, more onerous risks such as tourist vandalism, feral animal damage and bushfires? To fail to mitigate these significant threats places Parks Victoria at risk of harming cultural heritage through their omission to act under the terms of the *Aboriginal Heritage Act 2006*.

27 Harming Aboriginal cultural heritage unlawful

(1) A person is guilty of an offence if—

- (a) the person by an act or omission harms Aboriginal cultural heritage; and
- (b) at the time of the act or omission the person knew that the act or omission was likely to harm Aboriginal cultural heritage.

AHA 2006 Division 1: 27 (1)

Such protection by total exclusion is not currently afforded under the Grampians Gariwerd Landscape Management Plan as walkers and tourists are free to walk among the rocks at hundreds of locations that have been closed to rock climbers and boulderers. Climbers and boulderers are painfully aware of an increase in tourist graffiti and vandalism at these locations since the climbing bans have been in place as only day-visitors now frequent these locations.

1.2 Parks Victoria CEO Statements at a Public Accounts and Estimates Inquiry, 12 November 2021

On 12th November 2021, Matthew Jackson, Parks Victoria CEO, made several statements of relevance concerning rock climbing and scientific matters at a [Public Accounts and Estimates Inquiry \(Pages 31/32\)](#) under questioning by Mrs Beverley McArthur, Member of the Victorian Legislative Council for Western Victoria Region:

Mrs McARTHUR: But could I go now to perhaps Mr Jackson, the Chief Executive of Parks Victoria. Mr Jackson, am I right in noting that Parks Victoria's corporate plan for the period in question requires that the organisation, quote, 'support evidence-based park management and decision-making', would that be correct?

Mr JACKSON: Thanks for the question, Mrs McArthur. Where possible, yes.

Mrs McARTHUR: Great. And therefore do you share my concern then about the Victorian Auditor-General's recent criticism of parks in his report on Managing Conflicts of Interest in Procurement, this document? This report notes that parks repeatedly broke its own procurement rules in employing without due tendering process a single expert. Contracts were split to avoid rules, exemptions sought after the consultant had begun work and the claim made that there is no other expert qualified to make these assessments. Would you agree with the Auditor-General?



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Mr JACKSON: Firstly, to put the context in, the procurement report from the Auditor-General was focusing on procurement from 2016 to 2020. I note that the report for the procurement you are talking about is into the Grampians-Gariwerd landscape management plan for rock art.

Mrs McARTHUR: Correct.

Mr JACKSON: Can I just go straight to my statement that I did include in VAGO's report, which I am sure you have made available. At point 1.3 VAGO concluded: nothing came to their attention to indicate self-interest unduly influenced the procurement processes they reviewed. The first thing to note in that response is that, one, the staff involved in that had no decision-making and/or decisions in the closing of rock climbing and/or the plan's procurement processes.

Mrs McARTHUR: So you reject the assertion that there was a personal relationship between the expert employed and the contract manager, as demonstrated in the VAGO report?

Mr JACKSON: No. What the VAGO report has said is there is no self-interest that influenced the outcomes. The outcome of a perceived conflict of interest could have been noted better in the report. We have acknowledged that in the Auditor's report. We have since retrained over 1000 staff in our organisation in perceived conflict of interest—noting that the reports found that those decisions, again carried forward, were not, from either the consultant or the employee, used in any decision-making. So yes, we acknowledge that we found the three Auditor-General's reports as active and correct, and we have reviewed those.

Mrs McARTHUR: So have you commissioned a review of that advice provided?

Mr JACKSON: No. My public statement, which I will refer to, says, on the grounds, that, again, there was no induced self-interest found by the employee in the decisions with that contractor. We also stand by the decision that that individual has over 40 years of expertise in mapping cultural heritage assets in the Grampians landscape, supported by Traditional Owners. So we stand by the decision that was the right process.

Mrs McARTHUR: So you will continue to not put those sorts of consultancies out to tender?

Mr JACKSON: No. If it was a different landscape approach across the estate or a different skill set, then we would follow the normal probity processes and procurement processes. So on that occasion, again, we will not need to review. My statement is quite clearly that the Auditor-General found no self-interest in the procurement, other than a perceived conflict of interest. We have addressed that, and we have no grounds to say that the report, which has no recommendations on closures and/or methods moving forward, other than identifying Traditional Owner assets in the landscape—so there is no need to have those reviewed.

Mrs McARTHUR: So you totally reject the criticism that Mr Gunn has been criticised in the past for mistaking tourist graffiti and vandalism for climbing impacts and on occasion even mistaking natural geology for climbers chalk, and given the catalogue of errors revealed in VAGO in procuring this expert advice you now do not intend to take any further action? You are going to continue as usual?

Mr JACKSON: What I will put on the statement is again that that report done by Mr Gunn has none of the findings or recommendations or anything to do with prior or future decisions other than identifying tangible assets within the Grampians area. So on those grounds we do not believe anybody of experience in that area—so there is no reason to change that report. I do note that, however, the perception that some chalk and/or other impacts on rock climbing or other bushwalking in the Grampians is subjective, and we have acknowledged that.

These statements attempt to clarify the position of Parks Victoria over aspects of artefact and cultural heritage protection and associated decision-making. These statements claim that Parks Victoria survey



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staff and contractors merely identified artefacts and did not make any key decisions to restrict access for climbers and boulderers.

1.3 Observations on Artefacts, Cultural Heritage and Park Management Decision Making

We note the following significant issues:

1. Mr Jackson has stated that the Parks Victoria staff member involved (Mr Goodes) *“had no decision-making and/or decisions in the closing of rock climbing”*. However it is our understanding that Mr Goodes was a co-author with a contractor (Mr Gunn) of a prior report entitled [ROCK ART AND ROCK CLIMBING: AN ESCALATING CONFLICT](#)
2. Mr Jackson states that the contractor (Mr Gunn) has *“40 years of expertise in mapping cultural heritage assets”*, yet Mr Jackson later claims that *“Mr Gunn has none of the findings or recommendations or anything to do with prior or future decisions other than identifying tangible assets within the Grampians area”*. Was Mr Gunn contracted to merely identify artefacts or was he also commissioned to assign cultural heritage value to the artefacts and to make recommendations? Mr Gunn’s earlier report linked above, would suggest that his professional views are firmly against climbing, despite the relationship between artefacts and cultural heritage being disconnected under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.
3. Mr Jackson goes on to say that the report in question *“has no recommendations on closures and/or methods moving forward, other than identifying Traditional Owner assets in the landscape”*. This statement is inconsistent with the strong anti-climbing opinions expressed by Mr Goodes and Mr Gunn, in their earlier report linked above.

From the evidence put forward by Mr Jackson to the Public Accounts and Estimates Inquiry, it is clear that neither Mr Goodes or Mr Gunn were made responsible for cultural heritage value judgements and recommendations over cultural heritage protection, despite their well-established antipathy towards climbing.

We understand that all formal decision-making responsibility for the restriction of climbers lies with the Parks Victoria Chief Conservation Scientist under value-judgement advice from First Peoples-State Relations (formerly Aboriginal Victoria).