Australian Climbing Association (Qld) Inc

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The Australian Climbing Association (Qld) Inc is not a climbing club, but the peak body for all recreational climbers in the state of Queensland, including both clubs and individuals.

Our mission is the promotion of recreational climbing through a focus on access issues.

We are the official point of contact between QPWS and the climbing community.

You can read our mission statement on our website. http://www.qldclimb.org.au/

Queensland Sport & Active Recreation Strategy 2019-2029

Submission to the Dept. of Housing & Public Works

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Access to suitable climbing destinations is the dominant barrier to the growth of the sport of rock climbing.

Problem

Whilst it is possible to build a football pitch for footballers, and a swimming pool for swimmers, it is not possible to build a "Glasshouse Mountains" for climbers. Sufficient natural resources do exist, but access to them is stymied by a public liability issue peculiar to the sport of rock climbing.

What a climbing recreation strategy needs to address

Either the *Civil Liability Act* (2003) (CLA) has to be amended to expressly protect all land owners or land managers, from claims of negligence that arise from the failure of rock climbing bolts installed by climbers

Or

Some other mechanism has to be found that shields individuals or bodies corporate, who provide not-for-profit access to a recreational climbing resource, from claims of negligence that might arise from the failure of rock climbing bolts installed by climbers.

Either option must not be inconsistent with fundamental legislative principles. In particular, the remedy must leave open options for an injured party to sue for damages should the failure of a rock climbing bolt (installed by climbers) result in severe harm.

For the avoidance of doubt, we do not seek to remove the duty of care from those climbers that install climbing fixtures such as bolts. This is as it should be. Climbers owe a duty of care to their fellows who rely on the infrastructure they have installed. It is the occupier of the land we wish to protect, and then only within the very narrow instance of climber-installed bolts.

Outdoor versus Indoor

The issue is peculiar to outdoor climbing. Of course, indoor climbing gyms can be built, and their burgeoning numbers speak to the popularity of the indoor version of the sport. However, where outdoor climbers are concerned, it should not be concluded that a crag is simply a gym without the convenience of a roof. Nothing could be further from the truth. The "wildness" of the cliff environment is vital to the outdoor climbing experience. With the "wildness" comes the need for self-reliance, judgement and competence. It is this "wildness" and empowerment that beckon the outdoor rock climber – and neither of these can be found in an indoor gym.

The transition of climbers from indoor to outdoor climbing is something that is very real, and is happening now. It is not an activity confined to a few edgy guys with a length of Bunning's rope, but is poised to become a mainstream sport. The novelty, and safety, of modern sport climbing has completely upended the traditional demographic of the climbing community. This is best illustrated by considering that one of Australia's best climbers is 14 year old Angie Scarth-Johnson. Whilst Angie competes on the international stage of indoor climbing, she is also an accomplished outdoor climber, tackling hard routes at Europe's premier crags. The degree of empowerment of our youth by such role models should not be underestimated. We are witnessing the birth of a new popular sport, one that has sufficient appeal to prise a significant number of our youth from X-Boxes and screens, and to get them started in a life of healthy outdoor exercise.

Accessing the Outdoors

The overwhelming barrier to permitting access lies with the burden of public liability that falls on the land manager or occupier of the land on which the crag is located. It is critical for law and policy makers to understand that this exposure (to civil liability risk) is peculiar to the sport, that it has its source in common law, and that it is not easily deflected by the dangerous recreational activity provisions of the *Civil Liability Act* 2003 (CLA). It is something that weighs heavily on any access decision regarding public or private estate alike.

The root of the problem is that modern recreational climbing is almost totally dependent on the placement of small rock anchors as the means of rendering the sport safe. Climbers place and maintain these anchors called 'bolts'. Should failure of such a fixture result in severe harm, then, the ways things currently stand, it is the land

manager that most likely will be the target for an action in negligence. Not surprisingly, this possibility casts a chill upon access discussions.

It is important to emphasise, that the obvious risks of rock climbing such as falling from height, being struck by a rock etc. are not under discussion here. These are indeed 'obvious' risks, and therefore adequately excluded from scope by the dangerous recreational provisions of the CLA. We have in mind just one risk, of the many that present in recreational climbing, and that is the failure of a climber-installed fixture.

The 'Freedom of the Hills'

To dismiss this phrase as being a pat cliché is to set up for failure in the management of a recreational climbing resource. It encapsulates the difference between an indoor climbing resource and an outdoor one. It explains why one can monetise an indoor facility but not an outdoor crag. The former provides an urban, commodified experience; the latter, one that is natural and immersive, and feels almost to be a birth-right.

Outdoor climbing is one of those 'freewheeling' recreations that are eviscerated by heavy-handed, top-down management. This characteristic eliminates many of the standard options a land manager might employ to shield himself from the burden of public liability. For example, climbers are very possessive about the bolted infrastructure and would not tolerate the land manager taking over the installation and maintenance of such to satisfy a perceived duty of care.

That 'freedom of the hills' also works against a common practice in more conformable sporting communities, where a land manager can demand visitors be members of some umbrella organisation that provides insurance for the group. Such a structured outdoor experience is an anathema to the climbing soul. Travel insurance for climbing abroad would be welcomed, insurance to climb at your own crag would be shunned. Furthermore, it doesn't really solve the problem of the liability that attaches to bolts. Whilst a person injured through failure of a climbing bolt will be able to claim on their insurance to the extent of their injury, it does nothing to shield the land occupier from a subsequent claim of negligence. The concerns of the occupier are narrowly focussed on such a liability. The problem is not one of insuring climbers, rather one of insuring land occupiers in a very specific context.

National Parks

The protected area estate of national and conservation parks contains substantial recreational climbing assets.

The *Nature Conservation Act* (1992) (NCA) makes clear that such parks should be managed to provide recreational opportunities on the condition that they are nature-based, and don't violate the cardinal principle of conservation. In this regard, recreational climbing is a good fit, and solid progress has been made in the development of some very successful crags at Glasshouse, Coolum and Mt French NPs.

The issue of bolting provided a substantial obstacle during early discussions with QPWS, but, with the development of an operating policy that pushes responsibility for 'best practice' back onto the climbing community, and with the community demonstrating that it has systems in place to promote best practice, the issue has been largely settled. It will always be the case that the State will be looked upon by those pursuing compensation as the insurer of last resort, and the one having the deepest

pockets, but, we would argue that negligence cases arising from bolt failure will be miniscule compared to those arising from the actions of everyday visitors to the park system, and the faint chance of such an event shouldn't form the basis for restricting the access rights of recreational climbers.

State Reserves

The system of State Reserves provides substantial climbing resources. In particular Kangaroo Point Cliffs are one of the most frequented crags in the State. The *Land Act* (1994) (LA) places a clear duty on the Trustee (normally the local government) to ensure the Community Purpose for which the reserve was dedicated is carried out. Given that this purpose is often "park and recreation", and given that climbing is a valid recreation, it is difficult for a local government to deny access to a reserve for the purpose of recreational climbing.

However, the reality is that local governments are very shy of the possible public liability exposure that comes with having a rock climbing crag on their patch. As much as the media-savvy appreciate the promotional power of rock climbing, no one wants to be the person that ushers a multi-million dollar negligence claim into the department.

Currently, a number of local governments are mired in ambivalence over how to manage recreational climbing on their patches. This is not some sort of reactionary reluctance on their part, but a genuine structural barrier that prevents them carrying out the process of good local governance. Declaring rock climbing a proscribed activity in the subordinate legislation of Local Law, as one council has done, is a fair indicator of the depth of the problem.

Local Government Freehold

Over recent years there has been a growing tendency for local governments to purchase parcels of land to add to their 'bushland' estate. Whilst the community principle behind such purchases is to be admired, such estates are normally held in fee simple, something which brings serious structural problems.

There is no legislative framework that enshrines public access to such lands and any recreational resources they may contain. The council executive, as a body corporate, can grant and deny access as they wish. If they do permit public access, then the management of the space is under Local Law, none of which provides adequate guidance for a 'wild' park.

Given that local governments are already struggling with the public liability dimension of recreational rock climbing, this sloppy way of holding public lands sets a precedent that has already had an adverse impact on the uptake of the sport at certain crags.

Unallocated State Land

There are a number of significant crags located on unallocated state land (USL) or Crown Land as it used to be known. The danger here is that there is nothing to guarantee such lands will not fall into private ownership.

Given that most cliff environments present substantial natural values worthy of conservation, then the clear course of action should be to take them into the protected area estate. The advantage of this course of action is that it places the resource within a successfully tried and tested administrative framework. The disadvantage is that adding small fragments to the protected area estate would disproportionately load an

already stretched QPWS budget.

One obvious solution to the problem is to use the existing provisions of the NCA to appoint a local climbing association as trustee. Climbers have a long history of good stewardship at the crags they frequent. However, such an action would shift the cost of public liability insurance onto the association, and, as has already been discussed, any attempt to transfer that cost to the climbers themselves would doom the project.

Private Land

Some decades ago, a number of high quality crags located on freehold land became popular as climbers made informal agreements for access with the landowners. However, over the ensuing years, one by one these closed in the face of the growing number of climbers, and the rise of a litigious culture.

Today, a significant proportion, perhaps the majority of recreational climbing resources, is to be found locked-up on private land. For most of these crags, there would be no major problem in securing a lease over the cliff face, and a limited access trail, thereby removing the landowner as target for a claim in negligence. However, once again, we are presented with the problem that any association working to provide access in this way would need to fund the public liability insurance.

Lessons from overseas jurisdictions

Queenslanders are not the first to have to grapple with this problem. The following extract from the Washington State Legislature illustrates exactly the point we are making.

Finding — 2003 c 16: "The legislature finds that some property owners in Washington are concerned about the possibility of liability arising when individuals are permitted to engage in potentially dangerous outdoor recreational activities, such as rock climbing. Although RCW 4.24.210 provides property owners with immunity from legal claims for any unintentional injuries suffered by certain individuals recreating on their land, the legislature finds that it is important to the promotion of rock climbing opportunities to specifically include rock climbing as one of the recreational activities that are included in RCW 4.24.210. By including rock climbing in RCW 4.24.210, the legislature intends merely to provide assurance to the owners of property suitable for this type of recreation, and does not intend to limit the application of RCW 4.24.210 to other types of recreation. ***By providing that a landowner shall not be liable for any unintentional injuries resulting from the condition or use of a fixed anchor used in rock climbing, the legislature recognizes that such fixed anchors are recreational equipment used by climbers for which a landowner has no duty of care****."*

While such legislation may be seen by some as narrowing the legal recourse available to a person suffering harm in Queensland, such a solution has parallels in existing Queensland legislation (refer the *NCA* (1992) s142 and the *Forestry Act* (1959) s96E). Further, those existing Queensland legislative solutions do not cast a blanket exclusion from civil liability for all potential defendants. Specifically, a person suffering harm from climbing bolt failure is (we understand) merely prevented from suing a very narrow range of land manager and its employees (e.g. QPWS and its officers). Therefore, we are optimistic that a legislative solution could be found.

Indeed, if the potential value of recreational rock climbing to Queenslanders is to be realised, **we ask that consultation between Queensland Outdoor Recreation Federation, the Minister for Sport, the Minister for Local Government, the office**

of the Attorney General, certain impacted regional councils and ACAQ be commenced at the earliest possible convenience. We have a submission specifically addressing the problem, legal issues and specific legislative remedies near completion.

Alternatives to legislative remedies

If a legislative remedy via the *CLA* (1992) cannot be found, **we ask that the State promote recreational rock climbing by underwriting the miniscule exposure to public liability that the bolted infrastructure brings**.

It is important to understand that when we assert that the risk of severe harm arising through bolt failure is miniscule, we can bring considerable engineering rigour to that assertion. An example of such an assessment can be found here. That side of the argument we can cover. What is more difficult is to see how to provide the mechanism by which land occupiers can be shielded without the introduction of specific legislation.