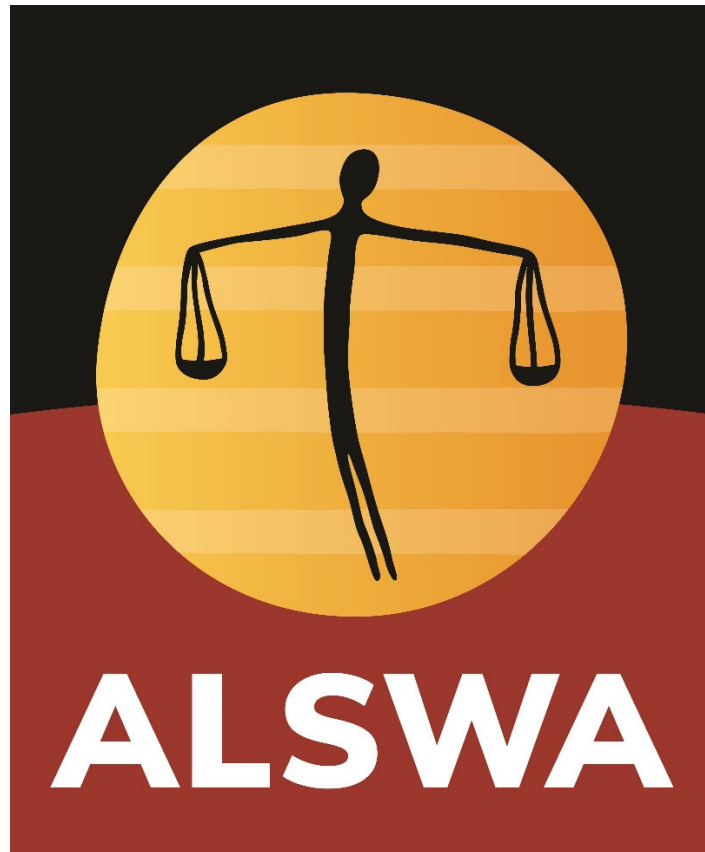


Aboriginal Legal Service of Western Australia Limited



Submission to the Review of the *Firearms Act 2024 (WA)* by the Legislation Committee of the Legislative Council

18 July 2025

The Aboriginal Legal Service of Western Australia Limited acknowledges the Traditional Custodians of the land on which we all live and work, and pay our respects to their Elders past, present and emerging. We acknowledge and respect the continuing culture and contributions that our First Nations Peoples make to the life of this state and country.

Table of Contents

About the Aboriginal Legal Service of Western Australia Ltd	3
Terms of Reference.....	4
Scope and structure of ALSWA's submission	5
Introduction	5
The importance of cultural participation	5
The significance of firearms in the modern practice of traditional cultural hunting ..	7
The lack of consideration in the <i>Firearms Act 2024</i> (WA) for Aboriginal cultural hunting	8
Requirement for genuine reason for licence for firearm	8
Requirement for approved land for hunting	9
Issues with disqualifying offences provisions	11
Issues with calculating disqualifying periods	12
Issues with lack of discretion.....	12
The discriminatory and disproportionate impact of the disqualifying provisions	15
Alternative safeguards to disqualifying provisions.....	17
Review and expiry issues	18
The lack of opportunity for submissions in relation to decisions to cancel or refuse to renew licences.....	19
Relevant legislative provisions	20
Police are cancelling licences pursuant to section 192(1)(b) and skipping the section 194 process	21
Police may not be seeking requests for submissions under section 194	22
The operation of subsection 194(3) of the 2024 Act is unduly burdensome on licence holders	24
Aside from the fit and proper purpose ground, the 2024 Act does not require the licensee to be afforded an opportunity to respond to any allegations and make submissions as part of the cancellation process.	26
Access to justice issues	28
The troubling expansive regulation-making powers given to the Commissioner	29
Implementation issues – new standards.....	31

About the Aboriginal Legal Service of Western Australia Ltd

ALSWA is a community-based organisation which was established in 1973. ALSWA aims to empower Aboriginal and Torres Strait Islander people and advance their interests and aspirations through a comprehensive range of legal and support services throughout Western Australia. ALSWA aims to:

- Deliver a comprehensive range of culturally matched and quality legal services to Aboriginal people throughout Western Australia;
- Provide leadership which contributes to participation, empowerment and recognition of Aboriginal people as the First Peoples of Australia;
- Ensure that government and Aboriginal people address the underlying issues that contribute to disadvantage for Aboriginal people on all social indicators, and implement the relevant recommendations from the Royal Commission into Aboriginal Deaths in Custody; and
- Create a positive and culturally matched work environment by implementing efficient and effective practices and administration throughout ALSWA.

ALSWA uses the law and legal system to bring about social justice for Aboriginal people as a whole. ALSWA develops and uses strategies in areas of legal advice, legal representation, legal education, legal research, policy development and law reform, as well as providing a number of important support services.

ALSWA is governed by a Board of Directors who are all Aboriginal. ALSWA is company limited by guarantee registered with the Australian Securities and Investment Commission and a public benevolent institution registered with the Australian Charities and Not-for-Profits Commission.

ALSWA provides legal advice and representation to Aboriginal people in a wide range of practice areas including criminal law, family law, child protection, civil law and human rights law. Our legal services are available throughout Western Australia via 11 regional and remote offices and one head office in Perth. ALSWA also provides a number of additional services to support clients, including the Custody Notification Service, the Custody Wellbeing Service, the Bail Support Service and Prison In-Reach Program, the Work and Development Permit Service, the Youth Engagement Program and the Old Ways New Ways program.

Terms of Reference

On 28 May 2025, the *Firearms Act 2024* (WA) was referred to the Standing Committee on Legislation for review. The Terms of Reference for the Committee are:

(1) That the Standing Committee on Legislation is directed to inquire into and report on the *Firearms Act 2024* (WA), which received Royal Assent on 27 June 2024, including any provisions that have not yet come into operation.

(2) Without limiting the scope of the Committee's inquiry, the Committee is to:

(a) particularly focus its consideration on those provisions of the Act that were passed by the Legislative Council after time for consideration of the originating Bill in Committee of the Whole had lapsed pursuant to Standing Order 125A;

(b) review the operation, effectiveness and implementation of those Parts of the Act, including any subsidiary legislation, that have come into operation at the time that the inquiry is commenced; and

(c) report on:

- (i) problems that have emerged from the implementation and operation of the legislation;
- (ii) whether all provisions are consistent with Fundamental Legislative Principles;
- (iii) recommended amendments that will ensure the legislation's workability and effectiveness; and
- (iv) any other relevant matter.

Scope and structure of ALSWA's submission

This submission is informed by ALSWA's experience in assisting Aboriginal and Torres Strait Islander people throughout the state of Western Australia. As such, these submissions will not address every issue in the Terms of Reference but are limited to those that relate to our clients' experiences or our experiences representing clients.

In particular, these submissions will address:

- the importance of firearms as a modern means for traditional cultural hunting;
- the lack of consideration in the *Firearms Act 2024* (WA) for Aboriginal cultural hunting, particularly with respect to the 'genuine reason' standard and land permissions;
- concerns regarding the new disqualifying offences and the lack of discretion;
- expiry issues when a decision relating to a licence is on review in the State Administrative Tribunal ('SAT');
- the lack of an opportunity to respond or make submissions in relation to decisions relating to firearms licences; and
- the troublingly expansive regulation-making powers granted to the Commissioner of Police in the *Firearms Act 2024* (WA).

Any reference in this submission to Aboriginal people should be taken as a reference to Aboriginal and Torres Strait Islander people.

Introduction

The importance of cultural participation

In ALSWA's submissions to the WA Law Reform Commission's ('LRCWA') Review of the *Firearms Act 1973* (WA), we expressed concern that the Act impacted negatively on the cultural participation of Aboriginal people.¹ These concerns are not alleviated by the new Act, and if anything, ALSWA is deeply concerned that the *Firearms Act 2024* (WA) ('the 2024 Act')

¹ For further information, those submissions can be found on ALSWA's website here: https://www.als.org.au/wp-content/uploads/2016/10/ALSWA_Submission_to_the_Review_of_the_Firearms_Act.pdf.

further disadvantages Aboriginal people of Western Australia, by limiting the ability of the Aboriginal people to participate in traditional customary activities.

‘Culture’ is central to an Aboriginal person’s identity, defining who they are, what they value and what is important to them.² The practice of hunting is an important cultural practice for Aboriginal people and is often used as a cultural knowledge sharing opportunity for Elders to impart these practices onto young people in their communities. In its review of the *Firearms Act 1973* (WA) (‘the 1973 Act’), the LRCWA recognised that Aboriginal customary law covered an Aboriginal person’s rights and responsibilities to one another, and to the land and its resources; it is this practice that is understood to be ‘constantly, evolving and adapting’.³ The rights of Indigenous peoples to maintain, control, protect, and develop their cultural heritage, including traditional knowledge and practices, are acknowledged in the United Nations Declaration on the Rights of Indigenous People.⁴

Colonisation significantly impacted the ability for Aboriginal people to engage in cultural practices and caused a significant loss of cultural knowledge. It goes without saying that maintaining cultural practices in Aboriginal communities should be a priority.

ALSWA does not dispute that firearm regulation is crucial to ensure that firearms are used only in a safe manner. However, regulation should not perpetuate further damage to Aboriginal cultural practices. We commented in our submissions to the LRCWA that the 1973 Act ‘provided no guidance as to how Aboriginal people seeking licences in order to engage in traditional hunting can do so in the first place’.⁵ In ALSWA’s view, this is still the case in the 2024 Act. As we discuss further below, the 2024 Act has also introduced a number of unduly burdensome and restrictive provisions which further impinge on the ability of Aboriginal people to undertake traditional cultural hunting practices. We submit that the Legislation Committee should, in its review, consider the particular perspective of Aboriginal people and the use of firearms in Aboriginal cultural hunting.

² Bugmy Bar Book Committee (eds), *Cultural Dispossession and Cultural Resilience: Aboriginal and Torres Strait Islander Peoples Experiences of Colonising Practices* Bugmy Bar Book (April 2025) at [37].

³ Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Final Report (September 2006) 71 (‘LRCWA Final Report into Aboriginal Customary Laws’).

⁴ Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, UN Doc A/RES/61/295 (2007) Articles 31, 34.

⁵ ALSWA, *Submission in response to the Law Reform Commission of Western Australia’s Discussion Paper on the Review of the Firearms Act 1973 (WA)* (25 January 2016) accessed at < https://www.als.org.au/wp-content/uploads/2016/10/ALSWA_Submission_to_the_Review_of_the_Firearms_Act.pdf>.

The significance of firearms in the modern practice of traditional cultural hunting

‘First they took our spears, now they take my gun’ (ALSWA client, Elder in his community, 2025)

Historically, there has been contention surrounding Aboriginal people’s use of modernised methods (such as the use of vehicles, and firearms) for their ‘traditional hunting’. In ALSWA’s submission, the Legislation Committee should not be distracted by these contentions and instead apply the position that firearms are significant today in the practice of traditional cultural hunting to the review of the 2024 Act.

As a result of colonisation, many Aboriginal communities experienced the significant loss of cultural knowledge about use and manufacturing of traditional methods.⁶ Some communities were displaced from their traditional lands as a result of forced resettlement.⁷ European contact undermined Aboriginal laws, society, culture and religion and continues to do so.⁸

Today, firearms are a key instrument for engaging in many forms of cultural hunting. There are some Aboriginal people who still employ traditional methods, but more often than not, Aboriginal people have moved to use more ‘efficient contemporary tools such as firearms, nylon fishing lines, nets, boats and vehicles.’⁹

It is ALSWA’s understanding that many Aboriginal people (in the remote, regional and metropolitan areas of Perth) often rely on their sustainable traditional food sources (mostly kangaroo) in order to survive. Firearms are often used to seek traditional food, as well as for vermin control on land holdings, especially in regional and remote areas.

In the LRCWA review of the 1973 Act, the Commission noted that when determining what ‘traditional hunting’ is, that the purpose of the activity be considered rather than the methods that are employed.¹⁰ They had previously commented during the Aboriginal Customary Laws Review that ‘[in the context of colonisation] *to insist on the exercise of Aboriginal harvesting rights only by use of traditional methods means to effectively deny Aboriginal people their customary rights to harvest natural food resources.*’¹¹ In ALSWA’s view, the Legislative

⁶ LRCWA, *Review of the Firearms Act 1973 (WA)*, Discussion Paper (October 2015) 189.

⁷ Australian Law Reform Commission, ‘Impacts of Settlement on Aboriginal People’ in *Recognition of Aboriginal Customary Laws* Report 31, Final Report (18 August 2010) [29].

⁸ Australian Law Reform Commission, ‘Impacts of Settlement on Aboriginal People’ in *Recognition of Aboriginal Customary Laws* Report 31, Final Report (18 August 2010) [29].

⁹ LRCWA, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Discussion Paper (December 2005) 370.

¹⁰ Law Reform Commission of Western Australia, *Review of the Firearms Act 1973 (WA)*, Project 105 Final Report (October 2016) 68 at [9.16] (‘LRCWA Firearms Act Review’).

¹¹ LRCWA, *Aboriginal Customary Laws: The interaction of Western Australian law with Aboriginal law and culture*, Discussion Paper (December 2005) 370.

Committee should adopt a similar perspective as the LRCWA when considering the significance of firearms for Aboriginal communities.

The lack of consideration in the *Firearms Act 2024 (WA)* for Aboriginal cultural hunting

Requirement for genuine reason for licence for firearm

Both the 1973 Act and the 2024 Act provide that a firearm licence cannot be granted unless the Commissioner is satisfied the person has a '*genuine reason*'.¹²

Whilst the 1973 Act provided a minor clarifying provision at s 11A(2), about what constituted a 'genuine reason', this provision no longer forms a part of the 2024 Act. The 2024 Act provides no clear and separate section identifying what is considered a '*genuine reason*'.

In its review of the 1973 Act, the LRCWA recommended that any amendment to that Act "*should set out the genuine reasons under clear, separate sections for each genuine reason*" and that any Regulations should "*set out the evidence that is to be submitted to demonstrate the genuine reason*".¹³ Similarly, Recommendation 74 of the LRCWA's Final Report suggested that there should be a separate genuine reason being 'Aboriginal traditional hunting'.¹⁴

ALSWA notes that despite the LRCWA's robust recommendations, the 2024 Act failed to provide any definition of what satisfies a '*genuine reason*' for a firearm licence. In fact, it has been left to the Commissioner of Police to determine what a genuine reason is through the regulations.¹⁵

Neither the *Firearms Act 2024 (WA)* and *Firearms Regulations 2024 (WA)* provide specific reference to Aboriginal traditional hunting as a genuine reason for requiring a firearms licence. As regulations are yet to be made prescribing a genuine reason for hunting licences, a person applying for a licence to hunt is left in the dark as to what the Commissioner will consider is a 'genuine reason' for holding a licence.

¹² *Firearms Act 2024 (WA)* s 21(1) ('2024 Act').

¹³ LRCWA Firearms Act Review, 166, Recommendation 65.

¹⁴ LRCWA Firearms Act Review, 72.

¹⁵ 2024 Act, s 21(2).

Requirement for approved land for hunting

Under the 1973 Act, it was sufficient for an applicant/holder of a firearm licence to provide a letter from a land owner – referred to as a ‘property letters’.¹⁶ These property letters involved a land owner providing written evidence that the person has permission to hunt or shoot on their property. The statutory right to hunt and a Certificate of Aboriginality were ordinarily considered to be sufficient to meet the permission requirements.¹⁷

In the Second Reading of the Firearms Bill 2024, Minister Papalia indicated that these ‘property letters’ were exploited¹⁸ and further noted that there were almost 90,000 firearm licences issued in WA.¹⁹ In order to address this exploitation, the 2024 Act introduced a multi-step approach, involving:

- land owners registering property for hunting licences;²⁰
- the land being approved by the Commissioner of Police, as suitable for hunting to take place;²¹ and
- the landowner providing written approval for hunting to take place on the approved property.²²

Further to this, the Commissioner may also ‘cap’ the number of written approvals a land owner can grant for the approved property, among other suitability considerations.²³

ALSWA are concerned that the new approach, including the approval and capping powers afforded to the Commissioner of Police, could restrict the land access and cultural rights afforded by other schemes.

It is well established that Aboriginal people have certain legal rights and entitlements to conduct traditional customary activities, which generally includes the right to hunt.²⁴

¹⁶ *Firearms Act 1973* (WA) s 11A(2)(c) (‘1973 Act’).

¹⁷ See for example, South West Aboriginal Land and Sea Council, *Noongar Hunting Rights* (Web Page, no date) accessed at <<https://www.noongar.org.au/hunting-rights>> on 14 July 2025.

¹⁸ Western Australia, *Parliamentary Debates*, Legislative Assembly, 21 February 2024, Second Reading Speech Firearms Bill 2024 (Paul Papalia, Minister for Police) 1 (‘Second Reading Speech’).

¹⁹ Second Reading Speech, 5.

²⁰ 2024 Act, s 38.

²¹ 2024 Act, s 40.

²² 2024 Act, s 39(2).

²³ 2024 Act, s 40.

²⁴ LRCWA, *Review of the Firearms Act 1973* (WA), Discussion Paper (October 2015), 189.

These important bundles of legal rights which Aboriginal people have to hunt are derived from both native title rights (be it exclusive or non-exclusive) and a statutory right under s 104 of the *Land Administration Act 1997* (WA).²⁵ Similarly, both the *Biodiversity Conservation Act* (WA)²⁶ and *Conservation and Land Management Act 1984* (WA)²⁷ provide specific exemptions/defences relating to the taking or disturbing of flora and fauna by Aboriginal people for Aboriginal customary purposes.²⁸ These provisions are based on the understanding that Aboriginal people hold an unique position with respect to land access for cultural purposes.

It is appreciated that these rights to hunt in a traditional manner do not afford the right to obtain and hold a firearm licence for the purpose of hunting. However, neither the 1973 Act or the 2024 Act have specifically provided for the use of firearms by Aboriginal people for the purpose (genuine reason/s) of traditional hunting. In theory, the powers afforded to the Commissioner of Police to define the meaning of genuine reason, to approve (or refuse) land permissions, and to cap land permissions on a specific piece of land could restrict the use of firearms for cultural hunting unnecessarily at the expense of cultural rights afforded by other schemes.

In ALSWA's submissions to the LRCWA Firearm Act review, we suggested that where someone has nominated (if possible) traditional or cultural hunting as their reason for the licence, in lieu of a 'property' letter they should be able to provide evidence of:

- Membership of registered or determined native title claim over an area; or
- Their identity as an Aboriginal person wishing to engage in traditional hunting in accordance with the Acts cited above.²⁹

In ALSWA's view, that proposal remains a suitable model for regulating firearms access that works alongside, rather than undermines, traditional hunting rights. It is crucial that the 2024

²⁵ *Land Administration Act 1997* (WA) s 104, 'Aboriginal persons may at all times enter upon unenclosed land and unimproved parts of the land under a pastoral lease to seek their sustenance in their accustomed manner.'

²⁶ *Biodiversity Conservation Act 1950* (WA) Division 3, ss 181 – 186.

²⁷ *Conservation and Land Management Act 1984* (WA) s 103A(3).

²⁸ Defined in *Biodiversity Conservation Act 1950* (WA) s 181 and *Conservation and Land Management Act 1984* (WA) s 103A(1): Aboriginal customary purpose means — (a) preparing or consuming food customarily eaten by Aboriginal persons; or (b) preparing or using medicine customarily used by Aboriginal persons; or (c) engaging in artistic, ceremonial or other cultural activities customarily engaged in by Aboriginal persons; or (d) engaging in activities incidental to a purpose stated in paragraph (a), (b) or (c).

²⁹ ALSWA, *Submission in response to the Law Reform Commission of Western Australia's Discussion Paper on the Review of the Firearms Act 1973* (WA) (25 January 2016) 5 accessed at <https://www.als.org.au/wp-content/uploads/2016/10/ALSWA_Submission_to_the_Review_of_the_Firearms_Act.pdf>.

Act does not further diminish the rights of Traditional Owners under Native Title or other legislative schemes affording cultural rights to Aboriginal people.

Issues with disqualifying offences provisions

The 2024 Act introduces a suite of provisions related to ‘disqualifying offences’, ‘disqualifying orders’, ‘disqualifying people’ and ‘disqualifying periods’. In summary, if a person has a conviction for a disqualifying offence, a disqualifying order or is a disqualified person, then they will not be able to obtain a firearms licence for a ‘disqualifying period’ of time. The 2024 Act does not give the Commissioner of Police any discretion in relation to this decision-making.

‘Disqualifying offences’ include:

- (a) serious offences as defined in the *Criminal Investigation Act 2006* s 128(1);
- (b) an offence under the law of another Australian jurisdiction that substantially corresponds to an offence referred to in paragraph (a).³⁰

The regulations may also prescribe:

- That an offence under the 2024 Act is a disqualifying offence.³¹ The Commissioner of Police has already prescribed the offences under ss 236, 239, 241, 243, 245(1), 247(1), 250, 252, 254(1), 256 or 300(1) and (2) of the 2024 Act as disqualifying offences.³²
- An offence under the *Weapons Act 1999* is a disqualifying offence.³³ The Commissioner of Police has prescribed the offences under ss 6A(1) and (2), 6B(1) and (2) and 7(1) and (2) as disqualifying offences.³⁴
- An offence under *The Criminal Code* is a disqualifying offence.³⁵ The Commissioner of Police has already prescribed the offences under ss 74, 186(1), 191(1), 192(1), 305(3), 338E(1) and (2) and 407 as disqualifying offences.³⁶

³⁰ 2024 Act, s 5(a) and (b).

³¹ 2024 Act, s 5(c).

³² *Firearms Regulations 2024* (WA), r 4(a) (‘2024 Regulations’).

³³ 2024 Act, s 5(d).

³⁴ 2024 Regulations, r 4(b).

³⁵ 2024 Act, s 5(e).

³⁶ 2024 Regulations, r 4(c).

- An offence under the *Misuse of Drugs Act 1981* is a disqualifying offence.³⁷ The Commissioner of Police has already prescribed offences under ss 8Q(1) and (2) as disqualifying offences.³⁸

Disqualifying orders include violence restraining orders, family violence restraining orders, conduct agreements, orders of the same effect made under a corresponding law, or an order of a kind that is prescribed by the regulations as a disqualifying order.³⁹

A disqualified person is a person who is either subject to disqualifying orders, charged with disqualifying proceedings, have a finding of guilt for a disqualifying offence during the disqualifying period prescribed by the regulations, or are a member of a disqualifying organisation.⁴⁰

The Commissioner of Police has been granted a regulation-making power to determine the disqualifying period for disqualifying orders, offences and organisations.⁴¹

Issues with calculating disqualifying periods

The disqualifying period for disqualifying offences is calculated by adding any term of imprisonment imposed for the offence and the maximum period of imprisonment that could have been imposed on the person.⁴² If a person was convicted of a disqualifying offence but was not sentenced to imprisonment, they would still be disqualified from holding a firearms licence for the length of the maximum period of imprisonment. In contrast, the disqualifying period is 5 years for both disqualifying orders⁴³ and membership of disqualifying organisations.⁴⁴ In ALSWA's view, the disqualifying period for disqualified offences is therefore likely to be much higher.

Issues with lack of discretion

The disqualifying period is calculated by reference to the maximum sentence available.⁴⁵ This, in combination with the fact that a finding of guilt for one of the above offences, classifies

³⁷ 2024 Act, s 5(f).

³⁸ 2024 Regulations, r 4(d).

³⁹ 2024 Act, s 5.

⁴⁰ 2024 Act, s 9(1).

⁴¹ 2024 Act, s 9(1)(b), (d) and (f).

⁴² 2024 Regulations, r 5(3)(b).

⁴³ Beginning on the date the order is made if it is an order under the *Criminal Law (Mental Impairment) Act 2023* (WA). Otherwise beginning on the day on which the order ceases to be in force: 2024 Regulations, r 6(2).

⁴⁴ 2024 Regulations, r 7.

⁴⁵ 2024 Regulations, r 5(3)(b).

someone automatically as a disqualified person. This means that there is no discretion available to the Commissioner of Police or the SAT on review. Even if a person is sentenced at the lowest level available, and the circumstances of their offending are much less serious than those that would attract the maximum sentence, they will be disqualified. A person will also be disqualified on the basis of the conviction even if:

- they only received a minor penalty for the offending;
- they have reformed and completely rehabilitated their life since the commission of the offence, but the disqualifying period is still running;
- there were significant mitigating factors in the sentencing for the offence;
- it was the person's only conviction;
- they have regret and remorse in respect of the offence; or
- the conviction is not a violent offence, or serious breach of the Act.⁴⁶

The following case studies demonstrate the injustice of such rigid provisions.

CASE STUDY: Z

ALSWA assisted a client, Z, whose firearms licence was revoked on the basis that he had been convicted of the offence of 'possession of cannabis with intent to sell and supply' pursuant to s 6(1) of the *Misuse of Drugs Act 2006* (WA). Z had been sentenced summarily by a regional Magistrates Court pursuant to ss 9(1)(a) and 34(2)(b) and received a fine of \$500. The offending had occurred at a time when Z was experiencing unemployment and financial stress because of flooding damage in his remote community. He had needed money to provide for his family and was ultimately found in possession of a very small amount of cannabis.

Z had one other conviction on his record for possessing alcohol in a dry community ten years prior. He had held his firearms licence without any issues for approximately 8 years.

Z is a Gooniyandi man. He lives in a small community of approximately 15 people. English is not his first language. He does not have a computer, and the nearest grocery store is a 1.5 hour drive away. He instructed us that hunting is a culturally significant practice to him, his family,

⁴⁶ ALSWA distinguish between violent offences and serious offences under the Act in particular here for two reasons. Firstly, SAT decisions in relation to the 1973 Act considered these types of offences in particular as relevant to the 'fit and proper person' test, and the interests of public safety. See for example *Wilson and Commissioner of Police* [2010] WASAT 120 and *Fletcher and Commissioner of Police* [2011] WASAT 210. Secondly, it is ALSWA's understanding from the 2024 Act's purposes and the Minister for Police's Second Reading Speech that the Act intends to prevent the use of firearms for criminal purposes and in family violence.

and his community. When he held a firearms licence, his hunting was the main form of food for his family. He also provided for members of the community from his hunting when there were funerals, families were in mourning, or someone was unwell. Z had also been taking his young daughter out hunting to teach her cultural practices.

At the time that Z received notice of the revocation of his licence in January 2025, (during the transition from the 1973 Act to the 2024 Act) he had obtained reliable employment and the circumstances that existed at the time of his offending had entirely resolved. He deeply regretted his offence.

However, under the *Misuse of Drugs Act 2006* (WA), the maximum sentence available for possession with intent to sell or supply is 10 years imprisonment, which makes it a 'serious offence' and therefore a disqualifying offence under the 2024 Act. Under the disqualifying provisions it is irrelevant that, being sentenced in a court of summary jurisdiction, Z could only receive a fine of \$5000 or four years' imprisonment, and in fact eventually only received a fine of \$500.⁴⁷ It is also irrelevant that Z received only a fine, that he deeply regretted the offence, that there was negligible chance of him reoffending, or that there would be a significant impact on his community as a result of him losing his licence.

As a result of his licence being revoked, ALSWA's client will be unable to obtain a firearms licence again until at least January 2035. He and his family have had to entirely rearrange their way of living. This is very distressing to the client.

CASE STUDY: Y

ALSWA spoke with an Elder in the Kimberley regions who is also a disqualified person under the 2024 Act. Y is a Yawuru man. He and his family have a large block of land on which they farm. They also practice in cultural hunting. In recent years, this client held a legal prescription for medical cannabis. During a period of financial stress, the client was unable to afford his prescription for a month or two and sourced cannabis locally. He was found in possession of a cannabis plant and convicted of an offence under the *Misuse of Drugs Act 2006* (WA) and received a spent conviction. Spent convictions are expressly included in the 2024 Act as findings of guilt.⁴⁸

Similar to ALSWA's other client, this Elder is now disqualified for a period of 10 years. Y cannot hold a licence and it is irrelevant to the Commissioner of Police that this client is a significant person in the community, that he received a spent conviction, and that it is crucial that he is able to hunt via firearms. Y previously used the guns on his agricultural lands to kill feral

⁴⁷ Although Regulation 5(6) of the Firearms Regulations 2024 was not relevant to Client's Z circumstances as he was a disqualified person by reason of having committed a 'serious offence', it is worth noting that the Regulation expressly states that a reference to the maximum period of imprisonment is a reference to a maximum period of imprisonment that could have been imposed on the person if the offence had not been dealt with summarily.

⁴⁸ 2024 Act, s 11(3).

animals. He also went hunting traditionally with his grandchildren and other young relatives to teach them about culture and traditional food. He told us that this was crucial for the continuity of his people's culture.

CASE STUDY: X

As an 18-year-old, X committed an aggravated burglary while heavily intoxicated. The offence did not involve violence. The offence was committed during a period of acute emotional upheaval; a few days before the offence his father had committed suicide.

X had a very minor criminal record prior to committing the aggravated burglary.

X was not arrested at the time of the offence but was charged following a DNA match several years later.

X was sentenced nearly 5 years after the commission of the burglary and received a community-based order. The order has been completed without any issues.

In between the commission of the offence and the sentence, X had successfully completed Year 12, was a very highly regarded alumni of Clontarf College, was playing football with a WAFL team, was working full time and earning in excess of \$100,000 per year, had married and was the father of a young child, and had built his own home and was servicing a mortgage of nearly \$400,000. This was on the back of a disrupted and disadvantaged childhood marred by domestic violence, substance abuse and unstable housing. Multiple references attesting to X's good character from Clontarf College, his football club, his employer, and his partner were tendered at the sentencing hearing.

X had held a firearms licence and had owned several firearms without incident prior to the commission of the aggravated burglary. The firearms were used to go hunting with family on X's traditional country.

However, the aggravated burglary disqualified X from holding a firearm's licence and he was forced to surrender his firearms.

By any measure, at the time his firearm's licence was disqualified, ALSWA's client had completely rehabilitated himself and was a model citizen. He posed no threat to the community by holding a firearm's licence and owning firearms. The inability to go hunting on his country using firearms has been a cause of ongoing and deep distress to X.

There is no evidence ALSWA is aware of that would suggest any of these clients present a danger to the community such that they should be disqualified from holding a licence.

The discriminatory and disproportionate impact of the disqualifying provisions

It is ALSWA's view that these provisions will have a disproportionately unfair impact on Aboriginal people and their ability to engage in cultural hunting practices. It is well-known that

there is an overrepresentation of Aboriginal people in WA's criminal justice system. The Royal Commission into Aboriginal Deaths in Custody found that there are many factors including historical factors, that cause Aboriginal people to be over-represented.⁴⁹ The 'single significant contributing factor', they found, is the disadvantaged and unequal position of Aboriginal people in society.⁵⁰ Aboriginal people are disadvantaged socially, economically and culturally,⁵¹ for example:

- Aboriginal children are more likely to be in out of home care than non-Aboriginal children;⁵²
- Aboriginal people experience a higher rate of mental health issues than non-Aboriginal people, and use some mental health services at higher rates than non-Aboriginal people;⁵³
- Aboriginal people have experienced much higher rates of homelessness, and have been overrepresented among clients seeking homelessness and social housing services than non-Aboriginal people;⁵⁴
- Aboriginal people are over-represented in being recipients of certain types of income support such as Youth Allowance, Parenting Payment Single, and Jobseeker Payment.⁵⁵

It is understandable that the firearms reform is to focus on ensuring the safe use of firearms. However, it is ALSWA's view that the disqualifying offences are an inappropriate mechanism for doing so. If the concern is to ensure that firearms are not used for criminal purposes, there are other means of achieving this that will have a less disproportionate impact on Aboriginal communities. In ALSWA's submission, the focus should be on whether it is a danger to the community for the applicant to hold a licence, rather than whether they have criminal convictions.

⁴⁹ Royal Commission into Aboriginal Deaths in Custody, National Report, Volume 2 (1991), 1.

⁵⁰ Royal Commission into Aboriginal Deaths in Custody, National Report, Volume 1 (1991), 15.

⁵¹ Royal Commission into Aboriginal Deaths in Custody, National Report, Volume 1 (1991), 15.

⁵² Productivity Commission, Closing the Gap dashboard, table CtG12A.1, accessed at [Aboriginal and Torres Strait Islander children are not overrepresented in the child protection system - Dashboard | Closing the Gap Information Repository - Productivity Commission](#) on 14 July 2025.

⁵³ Australian Institute of Health and Welfare & National Indigenous Australians Agency, [Measure 3.10 Access to mental health services, AIHW, Australian Government](#), (2024) accessed on 14 July 2025.

⁵⁴ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness* (2019), v.

⁵⁵ Australian Institute of Health and Welfare & National Indigenous Australians Agency, [Income and finance of First Nations people](#) (2023) accessed on 14 July 2025.

Alternative safeguards to disqualifying provisions

While ALSWA appreciates the need to prevent the use of firearms in criminal behaviour, the new provisions go much further, and removing any discretion punishes vulnerable people who have made mistakes but are suitable and safe to own a firearm. There is no discretion afforded to the Commissioner or the Tribunal on review in these circumstances. Some of these offences could include very minor criminal damage convictions,⁵⁶ and drug convictions.⁵⁷

In contrast, the 1973 Act listed offence convictions that would give the Commissioner a sufficient ground for forming an opinion that a person is not a fit and proper person to hold a firearms licence.⁵⁸ This was restricted to:

- (a) convictions for offences involving assault with a weapon;
- (b) convictions for offences involving violence;
- (c) convictions for offences against the 1973 Act; or
- (d) a violence restraining order was made.⁵⁹

The Commissioner was also empowered to take into account a history or tendency towards violent behaviour.⁶⁰ There is also an additional safeguard in that courts are able to make orders disqualifying or suspending a person from holding a firearms licence pursuant to s 106 of the *Sentencing Act 1995* (WA).

The LRCWA did not propose disqualifying offences in its review of the 1973 Act and recommendations for a new Act. However, it did recommend that certain specific offences (serious sexual offences and serious drug offences) be added to the then-s 11(3).⁶¹

In ALSWA's view, the *Sentencing Act 1995* (WA) powers and s 11(3) of the 1973 Act could have sufficiently addressed any concerns relating to the use of firearms for criminal offending. Additional offences could have been added to s 11(3) in the new Act. This approach would have ensured some discretion is retained and would have avoided circumstances which result in barring people from licences on the basis of very minor or irrelevant offences. The test

⁵⁶ See Criminal Code s 444(1)(b) where the maximum sentence available for a conviction is 10 years.

⁵⁷ See for example *Misuse of Drugs Act 2006* (WA), s 34(2)(b).

⁵⁸ 1973 Act, s 11(3)(a).

⁵⁹ 1973 Act, s 11(3)(a).

⁶⁰ 1973 Act, s 11(2).

⁶¹ LRCWA Firearms Act Review, Recommendation 48.

should focus on danger to the community rather than the existence of convictions on a criminal record.

Review and expiry issues

ALSWA has also identified a number of issues in relation to the practical implications of the cancellation process under the 2024 Act.

In certain circumstances a person whose licence has been cancelled has the right to have that decision reviewed by applying to the SAT. However, it may be the case that the person's firearm's licence would ordinarily be due for renewal (had it not been cancelled) whilst they are still pursuing the review process, which may take several months or years. This means the person's firearm licence might expire whilst they are still contesting the validity of the cancellation decision. In ALSWA's experience there are a lack of clear options available to people who face this issue. In particular:

1. By reason of the 2024 Act, every person with a licence from the 1973 Act has to make a new application for a firearms licence when their transitional authority expires, rather than simply pay a renewal fee. As such, if the Commissioner of Police serves a cancellation notice on a licence holder before they have made an application for a new licence, there will be practically no benefit to the person reviewing the Commissioner's decision. This is because, even if they were successful on review, they would still need to apply for a new licence.
2. If the Commissioner of Police cancels a licence made under the 2024 Act close in time to the date of the licence's expiry, the only option available for the licensee to maintain their licence is to have the application heard before 3 months after the expiry date. It is ALSWA's understanding that the SAT proceedings rarely resolve within that period. If the matter is not heard in that period, then even if the person were successful on review, they would no longer have a valid licence. They are unable to apply to renew their licence while it is cancelled. The only apparent workaround available is if (1) SAT refers the matter back to the Commissioner and the Commissioner reconsiders their decision,⁶² or (2) the Commissioner consents to reinstate the licence and the parties consent to discontinue the proceedings.⁶³ In relation to (1), if the Commissioner

⁶² *State Administrative Tribunal Act 2004* (WA) ('SAT Act'), s 31.

⁶³ Pursuant to SAT Act, s 56.

cancels the licence again, then the person will be in the same position but with less time for their application to be heard before the expiry.

Issue number 2 is not new. Previous decisions like *Middlecoat*⁶⁴ and *Tonkin*⁶⁵ demonstrate that this was a problem with the 1973 Act. In ALSWA's view, the Act should provide the SAT with a power to temporarily renew a licence until the application for review is decided, or some other clear mechanism needs to be added to the Act to resolve these timing issues. That way, a person whose licence has been cancelled by the Commissioner, could retain their rights to review. The following case studies illustrate some of these timing issues.

CASE STUDY: W

ALSWA's client W has experienced this problem. In 2025, the Commissioner for Police cancelled W's firearm licence. W applied to SAT to review this decision. With the expiry of his transitional authority approaching within a month, W had to adjourn the current proceedings to apply for a new licence. W had to apply for a new licence under the 2024 Act before the issue with the cancellation (which he says was incorrect) could be heard. While W will be able to apply to the SAT for review if the Commissioner of Police refuses their application for a new licence, he will be applying with a recent cancellation on his record.

CASE STUDY: Z

Z, referred to above, experienced a similar problem. The Commissioner of Police revoked his licence two months before it was due to expire (under the 1973 Act). Z considered that the revocation decision was wrong, and that he was a fit and proper person and suitable to hold a licence under the 1973 Act. He applied to SAT to review this decision. The transition provisions of the 2024 Act then came into effect. Z was unable to renew his licence because it was revoked, and so, even if he was successful in the review, he still needed to apply for a new licence. By reason of the 2024 Act he was a disqualified person and would not be able to obtain a new licence.

The lack of opportunity for submissions in relation to decisions to cancel or refuse to renew licences

It is critical for administrative decision-making that procedural fairness and opportunities to respond are afforded to individuals whose rights will be affected. ALSWA considers that there are significant deficiencies in the 2024 Act in relation to procedural fairness. In addition, it appears as though the limited procedural fairness requirements provided for in the Act are not always being complied with in practice.

⁶⁴ *Middlecoat* [2011] WASAT 152.

⁶⁵ *Tonkin* [2010] WASAT 181; *Tonkin* [2011] WASAT 24.

Relevant legislative provisions

Section 192 of the 2024 Act creates a mandatory requirement on the Commissioner to cancel or refuse to renew a firearm authority. The Commissioner is required to cancel or refuse to renew a firearm authority if they are of the view that it is not desirable in the interests of public safety, the holder is not a fit and proper person to hold the authority, the holder is a disqualified person, the relevant manager in the body corporate is a prohibited person or disqualified person, or cancellation is required under another law.

Section 193(1) of the 2024 Act provides a discretionary power to the Commissioner to cancel or refuse to renew a firearm authority on several grounds including if the Commissioner is satisfied that the firearm authority was obtained by fraud or deception, or the holder of the firearm authority has contravened a provision of the Act. Section 193(2) permits the Commissioner to make regulations adding additional grounds upon which to cancel or refuse to renew an authority. Section 194(1) requires the Commissioner to request a licence holder to make submissions if the Commissioner is of the opinion that the holder of a firearm authority may not be a fit and proper person. The request for submissions must be:

- in writing;⁶⁶
- specify the manner in which and the time the person has to send submissions;⁶⁷
- give the person at least 28 days to provide submissions;⁶⁸
- specify the reasons why the Commissioner is of the opinion that the person may not be a fit and proper person;⁶⁹ and
- state that a failure to make a submission as requested can result in the cancellation of or refusal to renew the firearm authority.⁷⁰

Although it is somewhat unclear, on ALSWA's reading, ss 192 and 194 are to be read together, such that if the Commissioner proposes to make a mandatory cancellation decision on the grounds that a person is not fit and proper under s 192(1), they must first seek submissions on this point from the licensee under s 194.

⁶⁶ 2024 Act, s 194(2)(a).

⁶⁷ 2024 Act, s 194(2)(b).

⁶⁸ 2024 Act, s 194(2)(b).

⁶⁹ 2024 Act, s 194(2)(c).

⁷⁰ 2024 Act, s 194(2)(d).

Aside from s 194, which only relates to decisions as to whether a person is fit or proper, the Commissioner is not otherwise required to seek submissions in relation to a cancellation decision.

ALSWA is deeply concerned by these provisions and has identified the following issues which will be discussed in more detail below:

1. In most of the matters ALSWA have seen, police have cancelled licences because the person is not a fit and proper person without affording them with an opportunity to make submissions as required under s 194.
2. When a licence is suspended on the basis that a person may not be fit and proper under s 194(1), the Commissioner is required to seek submissions from that person. ALSWA have heard that this may not be occurring.
3. The requirements in relation to s 194(3) are unduly burdensome.
4. Aside from the fit and proper purpose ground, the Act does not require the licensee to be afforded an opportunity to respond to the allegations and make submissions as part of the cancellation process, depriving licence holders of procedural fairness.

Police are cancelling licences pursuant to section 192(1)(b) and skipping the section 194 process

Several clients have contacted ALSWA seeking assistance having received a notice of cancellation (or revocation under the 1973 Act during the transition period) pursuant to s 195(1) of the 2024 Act. For most of those clients, the notice of cancellation has said that the Commissioner is of the opinion that it is not desirable in the interests of public safety, and that the person is not a fit and proper person, and so they are cancelling the licence. Both of these matters are mandatory grounds for cancellation pursuant to s 192(1). The letter has also stated that if the client is aggrieved, they can appeal to the SAT within 28 days. These letters are served on the clients as police take away their licences. It is normally the first time that they have heard that their licence is being cancelled. They have not been offered an opportunity to make any submissions and are told to apply to the SAT for review.

It is clear in these matters that Police have not gone through the s 194 process where, once a person is identified as someone who *may not* be a fit and proper person, the Commissioner must afford them an opportunity to make submissions. Instead, it seems that the Commissioner is 'automatically' considering and deciding that a person is not fit and proper.

CASE STUDY: W

W, referred to above, is a Noongar man who lives in a regional community and uses his firearms for cultural hunting. He is the carer for three of his grandchildren and is semi-retired but works occasionally as a civil contractor. W likes to take his children and grandchildren hunting as a way to teach them about their culture. This is particularly important to W, because he is a member of the Stolen Generations and grew up on a Mission. W leads a group in his community who are focused on restoring the Mission to make it a place where people can learn about their culture.

W was charged and convicted of incorrect storage of firearms after an isolated incident in which his grandchildren, who had friends over, obtained the keys to the firearm cabinet, took out the firearms (unloaded as the ammunition was stored separately) and posted photos on social media with the guns.

W received a notice of cancellation in the mail. It said that the Commissioner was of the opinion that it was not desirable in the interests of public safety, and that the client was not a fit and proper person. It referred to the inadequate storage, and alleged that a 'potential burglary' had occurred. This was a reference to the incident with the client's grandchildren.

W was not afforded an opportunity to write to the Commissioner to remedy the misunderstanding of the offence, or to argue that he was in fact a fit and proper person. The only option available to W was to appeal the decision to the SAT.

Similarly, ALSWA's clients Z, Y, T, and S, all received cancellation notices on the grounds (among others) that they were not fit and proper. For each of them, it was the first correspondence they had received, and they had not been requested to make a submission in relation to the fit and proper purpose ground. Even though other grounds may have existed for cancelling the licence, it is unclear from the letters the Commissioner of Police sends how much weight is being put on different individual grounds. We consider it is contrary to the purpose and spirit of s 194 to fail to engage in the submissions process.

Police may not be seeking requests for submissions under section 194

As discussed above, s 194 requires the Commissioner to request submissions from a licence holder if the Commissioner is of the opinion that they may not be a fit and proper person. ALSWA is concerned that this process is not occurring, following the experiences of one of our clients, V:

CASE STUDY: V

V lives in a remote town in the Kimberley region. He used his firearms to hunt meat for food for himself and for his family, as well as for pet food. Hunting is of cultural significance to this client.

In March 2025, police attended V's property during the night proposing to search his property for a firearm/s following a family and domestic violence incident involving his son, who lived in a town 4 hours away. Police entered and searched V's home and located his firearm. Police seized V's firearm telling him that he was 'not fit' to hold a firearm authority because of the incident and because V shared a home address with his son. He was told the reason for this was because his son had told police that he 'knew how to get a gun' following the alleged family violence incident in the son's town. V was not involved in the incident with his son and informed police that his son uses his address only for his mail and does not reside there. Police seized V's firearm and informed him he would receive further paperwork in relation to the removal of his firearm. V followed up with police on at least one occasion and was told he would just have to wait for the further paperwork.

On behalf of V, ALSWA contacted local police and were informed that V's firearm authority had been seized and suspended based on a 'fitness to hold application' made by police immediately following the incident involving V's son. ALSWA subsequently contacted Licensing Services (Firearms), based in Perth, who confirmed the suspension and informed ALSWA that V's authority would remain suspended until the application was assessed and a decision was made as to whether the client was fit to hold a firearm authority. Licensing Services informed ALSWA that V would be contacted to provide comment before a decision was made.

ALSWA's client was not contacted and did not receive any paperwork in relation to the decision made to suspend his authority, including any formal written reasons or information about his rights to review. In late May 2025, V received a notice of cancellation of his firearm authority, which included reasons relating to the original suspension but did not specifically state that his licence had been suspended. Contrary to s 194, V was not afforded an opportunity to provide submissions in relation to this decision.

It is also worth noting that police did not comply with their service requirements and never provided a notice in writing to V that his licence had been suspended, contrary to s 203(2).

It was important that V was afforded an opportunity to make submissions about the suspension on the grounds that he was not fit and proper, given that he was concerned that this was not a correct decision.

The above case study also illustrates some issues with the initial approach police took to attending V's property. Relevantly, s 346(1) empowers police officers to seize a firearm:

- (a) If the police officer is satisfied that the person is a disqualified person;
- (b) If the police officer reasonably suspects that the firearm is being used in contravention of a condition of a firearm authority;

- (c) If the police officer reasonably suspects that possession of the firearm may result in harm being suffered by any person or may result in a threat to public safety;
- (d) If the police officer is of the opinion that the person is not at the time a fit and proper person to be in possession of the firearm or related thing.

A police officer may enter and search any vehicle or place for a firearm for the purposes of a seizure under s 346.⁷¹ However, a police officer may only enter and search a place without a warrant⁷² if the officer reasonably suspects that:

- (a) There is an immediate threat of harm to a person; and
- (b) The delay that would be involved in obtaining a warrant would be likely to increase the risk or extent of that harm.⁷³

In ALSWA's view, it is unclear how police formed the reasonable suspicion required by s 347(4) to enter V's house and seize the firearm without a warrant. If police reasonably thought the V's son would drive 4 hours to collect the firearms and another 4 hours back to his town to use them to hurt someone, then surely that would have been enough for police to arrest V's son. However, if police thought that V's son did not genuinely intend to hurt anyone or to travel to the community then they would not have had a reasonable suspicion that there was either an immediate risk of harm and as such the power to seize the firearms pursuant to s 347(4).

The operation of subsection 194(3) of the 2024 Act is unduly burdensome on licence holders

As discussed above, subsections 194(1) and (2) require the Commissioner, if they are of the opinion that a holder of a firearm authority may not be a fit and proper person, to request the holder to make a submission in writing, giving the holder at least 28 days to respond.

Section 194(3) states:

If a request under this section is not complied with, the Commissioner has sufficient grounds for forming the opinion that the person is not a fit and proper person to hold a firearm authority.

⁷¹ 2024 Act, s 347(1).

⁷² 2024 Act, s 347(3).

⁷³ 2024 Act, s 347(4).

In ALSWA's view, this provision puts too much weight on the failure of a person to engage in a formal submissions process.

Such a provision is deaf to the realities of many of ALSWA's clients who are impacted by this legislation including that:

- as far as we are aware, there is little practical guidance available to people about how to engage in the submissions process (for example, whether they need to make submissions in writing or there is someone they can speak with to make verbal submissions);
- they may speak little English, let alone be able to read and write in English;
- they may not have access to a computer and the nearest post office may be hundreds of kilometres away;
- they may be of low education and uncomfortable providing written submissions responding to the Commissioner's reasons; and
- they may not be able to access advocacy or legal services which could assist them in making submissions.

It is relevant to note that the legislation does not prescribe any steps or processes the Commissioner must take to support their initial opinion that a person is not fit and proper, other than requesting relevant criminal records. We consider that the way this provision is structured effectively permits the Commissioner to determine that a person is not a fit and proper person without taking any further steps to verify allegations against them or the proposed reasons for cancelling their licence. In ALSWA's experience, and as illustrated by the case studies in this submission, it appears as though the initial opinions in relation to whether a person may not be fit and proper can be based purely on some allegation or information that has not been fully investigated or verified.

If the client does not provide written submissions when requested, there will be no further consideration of why they may be a fit and proper person or as to the validity of the allegation.

Aside from the fit and proper purpose ground, the 2024 Act does not require the licensee to be afforded an opportunity to respond to any allegations and make submissions as part of the cancellation process.

The process in s 194 examined above is required only for the 'fit and proper person' ground. As such, for mandatory and discretionary cancellations made relying upon other grounds, the 2024 Act does not require the Commissioner to seek a response from the holder before making the cancellation. This is highly concerning to ALSWA for a number of reasons:

- Licensing Services are currently dealing with a large volume of licenses, and it is likely that they have neither the resourcing nor the time to consider each matter thoroughly;
- It appears that in practice, licences are being cancelled based on unverified allegations and proper investigations are not being carried out;
- it is ALSWA's understanding that regional police stations often apply to Licensing Services to cancel the licensees' licence. In some regional communities the relationship between the Aboriginal community and police is tense; and
- police are making their decisions without any consideration as to the cultural importance of hunting for the particular person, any positive factors relating to who they are, or their role in the community that may relate to being a fit and proper person or otherwise be in their favour; and
- It means the licence holder's only recourse to challenge the allegations in a cancellation notice is to apply to have the decision reviewed by the SAT, which is not an accessible process for many people, particularly those living in remote and regional areas.

In ALSWA's view there are other grounds in the 2024 Act for which the Commissioner should be required to seek submissions before making their decision. For example:

- *Disqualifying offences, orders or organisations*: While these are mandatory grounds for refusal, we consider that it is important that the Commissioner seeks submissions in case a record is wrong and the person has not been convicted of the offence, is not bound by the order or is not a member of the disqualifying organisation.
- *Cancellation on the basis of the public safety ground (s 192(1)(a))*: This is a mandatory ground for cancellation or refusal and we anticipate public safety concerns will often

overlap in some circumstances with factors that would be relevant to the 'fit and proper person' test. Both enquiries also involve the consideration of multiple factors and potential competing arguments as to what constitutes a public safety concern or who will be a fit and proper person. Despite their similarity the Commissioner is not required to seek submissions in relation to the public safety ground.

- *Grounds relating to discretionary cancellation (s 193)*: The very nature of a decision made under s 193 is that it is discretionary – the Commissioner could choose either way. In those circumstances, it is particularly relevant that the applicant or licensee may be able to make submissions to try and persuade the Commissioner. For example, the Commissioner may form the view that a firearm authority may have been obtained by fraud but the licensee is of the view that there was accidentally incorrect information was given to the Commissioner or the authority was otherwise obtained without fraud. They should be able to make submissions in those circumstances.

We provide the following case studies to demonstrate the importance of receiving input from the firearms authority holder. In each of these case studies, police had not charged any of the following clients with any offences and yet applied to cancel their firearms licences on the basis of these allegations.

CASE STUDY: T

T lives in a remote community in the Kimberley region. He has been working as a ranger for 10 years and uses a firearm lawfully as part of his role at work. T also held his own personal firearm licence so that he could hunt with friends and family and participate in cultural activities.

At the end of 2024 and beginning of 2025, T and his partner were experiencing significant stress. They were living in a 3-bedroom house with Client T's family-in-law. There were approximately 20 people living in the house. T and his partner shared a room with their young daughter. T is on the Department of Communities' list for a home in a nearby community and expects that his family will have their own home shortly.

At the end of last year, T had an argument with his partner and an incident occurred in which police became involved. T was served with a 72-hour police order and his firearms were seized temporarily. Police did not charge T with any offences from the incident.

In early 2025, T was involved in another incident with his partner. T was served with another police order and his firearms were seized temporarily. Police did not charge T with any offences from the incident.

Several months later, T received notice that his firearms licence was cancelled. The letter cited serious allegations from T's partner relating to the above incidents. T instructed ALSWA that

the allegations as recorded on the notice of cancellation were significantly different from what had actually happened. There was no reference in the notice to T's significant contributions as a ranger to the community.

CASE STUDY: S

S has held a firearms licence for approximately 30 years. His licence had been revoked (1973 Act) once, ten years ago, but he had successfully appealed that decision to SAT. He lives in a remote community in the Kimberley region on his traditional country and uses his firearms to hunt. He is an Elder in his community. When he was younger, S ran a tourism company in his community, teaching tourists about his culture.

In May 2025 police served S with a cancellation on the grounds that he is not a fit and proper person. The notice referred to 7 alleged family violence incidents and firearms offence convictions. ALSWA's client instructed that he had not been charged with any offences, other than a firearms offence in 2015. He instructed that this offence was the subject of his first revocation and the subsequent successful appeal to SAT. S instructed that it felt to him that his licence had been cancelled for the same reason as in 2015.

The decision papers from police only referred to two recent incidents:

1. A one sentence rumour from S's partner stating that he was exchanging drugs for sexual behaviour from minors. Next to the allegation it said 'insufficient evidence'.
2. A callout seeking assistance from police for an incident between S and his partner. The notes indicate that all were calm when police arrived and that S's partner was identified as the aggressor in the incident. It was also noted that the couple were at the time, staying in a community, hours away from their home where the firearms were securely stored.

Access to justice issues

As already noted above, as a result of language, cultural, resource and physical, distance-based barriers, many of ALSWA's clients will struggle to engage in a submissions process unless it is accessible and there are appropriate support services available to assist. This is even more so the case for clients seeking review at SAT. Despite the fact that SAT is a less formal jurisdiction, many of ALSWA's clients will face a power imbalance on review. In addition, the many procedural and legal steps and challenges to making an application mean that a person is often better assisted by a lawyer, but will likely be unable to access legal assistance due to geographical or financial barriers or a lack of capacity to seek out that assistance. In contrast, the Commissioner of the Police has access to lawyers who are familiar with the legislation and jurisdiction and have better resources than an unrepresented Aboriginal applicant.

As discussed above, the regulation of firearms is closely connected to modern-day access to cultural hunting. There needs to be some consideration given to providing the necessary tools so that Aboriginal people may make written submissions and apply to SAT with legal representation for review of the decision. In ALSWA's view, a lack of well-funded resources specifically for Aboriginal people interacting with this scheme will result in a significant cohort of Aboriginal people unrepresented as their access to cultural hunting is curtailed.

The troubling expansive regulation-making powers given to the Commissioner

The 2024 Act's catalyst was the Government's desire to implement the LRCWA's review.⁷⁴ In its 2017 review, the LRCWA recommended that the new Act needed better clarity.⁷⁵ In particular, the LRCWA specified that there should be better clarity in relation to administration and licensing process, law enforcement, police powers and offences.⁷⁶ Ironically and in stark contrast, the 2024 Act gives extensive, broad, undefined regulation-making powers to the Commissioner of Police in relation to many crucial parts of the legislation. In fact, it has been observed that the new Act grants police approximately 117 specific and 1 general regulation making powers, compared to only 47 specific regulation making powers in the 1973 Act.⁷⁷ If anything, the 2024 Act has become more complex and unclear.

The extent of the regulation-making powers coupled with a lack of guidance confining those powers has in effect given substantial law-making power for the regulation of firearms to the Commissioner of Police. This is deeply concerning and arguably exceeds the role of an executive arm of government.

These powers are particularly concerning in so far as the Commissioner of Police has been given the power to regulate matters that could alter a person's ability to hold a licence beyond the standards set by the legislation, and apply to matters for which Commissioner of Police and SAT have no discretion, or there is no opportunity for submissions. Strong law-making powers coupled with reduced oversight provisions are an alarming combination.

For example, the Commissioner of Police is empowered by the 2024 Act to make regulations for additional offences to be classified as disqualifying offences. As discussed above, there is currently no discretion in respect of disqualifying offences. The Commissioner of Police has

⁷⁴ Second Reading Speech.

⁷⁵ Recommendation 2.

⁷⁶ Recommendation 2.

⁷⁷ Sami Abbas, *Western Australia's Proposed Firearms Legislation: Balancing Public Safety and Parliamentary Oversight* (Web Page, 25 July 2024) accessed at <<https://www.cdlawyers.com.au/post/western-australia-s-proposed-firearms-legislation-balancing-public-safety-and-parliamentary-oversig>> on 11 July 2025.

already exercised this power to extend the disqualifying offence provisions. For example, the Commissioner of Police recently added Regulation 4(d) which makes an offence of selling or supplying a psychoactive drug under s 8Q(1) of the *Misuse of Drugs Act 2006* (WA) a disqualifying offence. The offence carries a maximum term of imprisonment of 4 years or a fine of \$48,000. If a person is convicted of the offence of supply of a psychoactive drug and receives a fine of \$400 because it is a minor offence, they will be a disqualified person for a period of 4 years. There is no discretion afforded to the Commissioner of Police or SAT in this process.

Similarly, the disqualifying period and its calculations are created by the regulations.

The 2024 Act also empowers the Commissioner of Police to make regulations with respect to several offences. The Commissioner is often given the power in the regulations to provide the details of an offence. For example:

- the Commissioner is empowered to regulate the amount of money required for a person to be charged with an offence under s 218;⁷⁸
- the Commissioner can regulate exceptions to the offences in Part 6 Division 1 of the Act;⁷⁹
- it is an offence not to comply with the requirements for commercial firearm transport activity,⁸⁰ likewise for commercial firearm warehousing.⁸¹ The Commissioner can regulate what those requirements are;⁸²
- it is an offence to not inform the Commissioner that a member of a club is not a fit and proper person to fold a firearm within the required time and manner.⁸³ The Commissioner is to regulate the required time and manner;⁸⁴
- section 390(1) provides that a person must not advertise a firearm or related thing for sale under the authority of a Trade Licence unless it includes the particulars required by this section. The penalty for breaching this section is a fine of \$5000. The

⁷⁸ 2024 Act, s 218(1).

⁷⁹ 2024 Act, s 294.

⁸⁰ 2024 Act, s 315(2).

⁸¹ 2024 Act, s 316(2).

⁸² 2024 Act, ss 315(3) and 316(3).

⁸³ 2024 Act, s 357(3).

⁸⁴ 2024 Act, s 357(3).

advertisement must include the licence number, business name, and any particulars prescribed by the regulations.⁸⁵

Similarly, and as discussed above, the 2024 Act requires a person to have a genuine reason for holding a licence.⁸⁶ However, the matters of which the Commissioner must be satisfied in order to be of the opinion that a person genuinely intends that a firearm will be possessed for a purpose to be authorised by a licence are to be regulated by the Commissioner of Police.⁸⁷

Lastly, the Commissioner of Police is also permitted to make regulations to restrict the grant of a firearm authority.⁸⁸ The 2024 Act also permits the regulations to prescribe other mandatory or discretionary grounds for refusing the grant of a firearm authority.⁸⁹ In ALSWA's view, such a provision gives the Commissioner of Police to power to restrict even further who may have a firearms authority on unrestricted grounds. Such a power should only be reserved for Parliament, and its inclusion in the 2024 Act is a deeply concerning example of the extensive powers granted to the Commissioner of Police.

In ALSWA's view these above matters should not fall within the Commissioner's regulation - making powers.

In the context where such significant regulation-making powers are afforded to police, Henry VIII clauses should be avoided. If the Commissioner of Police is empowered to define and expand upon key sections of the Act, they should not also be able to walk back the effect of specific legislative provisions, as Henry VIII clauses permit. With those powers, the Commissioner could, in theory, change the entire focus of the Act without the provisions substantively passing through Parliament for debate. Yet, Henry VIII clauses currently feature regularly in the 2024 Act. In ALSWA's view, the Committee should consider closely how much regulation-making power is granted to the Commissioner of Police and whether it goes beyond the role of an executive arm of government.

Implementation issues – new standards

ALSWA has heard that applications for firearm authorities can only be done on the computer and require 100 points of identification. It is ALSWA's experience that many of our clients, particularly in regional and remote areas (where hunting with a firearm is common):

⁸⁵ 2024 Act, s 390(2).

⁸⁶ 2024 Act, s 21(1).

⁸⁷ 2024 Act, s 21(2).

⁸⁸ 2024 Act, s 142(1).

⁸⁹ 2024 Act, s 142(2).

- do not have access to a computer;
- have low-level reading literacy; and
- do not have multiple forms of identification.

During the debate of the motion that the Legislation Committee review this legislation, an Opposition Party Member cited the experiences of a Kija Jaru man from Halls Creek named Kenneth Martin Hunter.⁹⁰ Mr Hunter had told the Kimberley Echo that other countrymen might struggle with the new processes. ALSWA agree with this sentiment and submit that the application process should be made accessible to accommodate these vulnerabilities. As already noted above, there is also a lack of resources and practical supports for people who are engaging with submissions or review process under the Act, and we similarly submit that practical supports need to be put in place to ensure those processes are accessible.

Conclusion

In conclusion, ALSWA submits that there are multiple issues with the 2024 Act that require close consideration, and potentially repeal or amendment, to ensure a fairer, more reasonable and practical legislative framework for the regulation of firearms in Western Australia. Firearms are significant to the modern practice of traditional hunting by Aboriginal communities. It is therefore crucial that the regulation of firearms does not disproportionately impact on Aboriginal people, but that it specifically contemplates and provides for access to firearms for cultural hunting.

⁹⁰ Western Australia, *Parliamentary Debates*, Legislative Council, 28 May 2025, Motion Firearms Act – Referral to Standing Committee on Legislation (Nick Gioran, Leader of the Opposition) <[Hansard Daily: Legislative Council - Wednesday, May 28 2025](#)>.