

Our Ref:  
Your Ref:  
Office: Perth

Date: 26 September 2024

To:

Hon Paul Papalia CSC MLA  
Minister for Police

By email: [Minister.Papalia@dpc.wa.gov.au](mailto:Minister.Papalia@dpc.wa.gov.au)

Mr Col Blanch  
Commissioner of Police

By email: [office.of.commissioner@police.wa.gov.au](mailto:office.of.commissioner@police.wa.gov.au)

Dear Minister Papalia and Commissioner Blanch,

**RE: Effect of *Firearms Act 2024* on exercise of native title rights**

Yamatji Marlpa Aboriginal Corporation (**YMAC**) is the native title representative body (**NTRB**) recognised under s203AD of the *Native Title Act 1993 (Cth)* (**NTA**) in relation to the Geraldton and Pilbara regions of Western Australia (**YMAC's NTRB regions**). S203BJ(c) of the NTA requires YMAC, as an NTRB to take action to promote understanding of Aboriginal and Torres Strait Islanders about matters relevant to the operation of the NTA.

There are more than 50 positive native title determinations in YMAC's NTRB regions. In the vast majority of native title determinations, native title holders are recognised as having the native title right to hunt (or some variation of this right). Additionally, within our region there are currently twelve native title claimant applications, all of which claim the native title right to hunt (or some variation of this right).

**Following enquiries to YMAC from native title holders within our region, we request a meeting with the relevant State Government representatives regarding the *Firearms Act 2024*, to seek clarity and identify solutions so that Native Title Holders in Western Australia can confidently and lawfully exercise their native title rights.**

We understand and support the goals of the amended *Firearms Act 2024*, however in its current form, we are concerned that it may be an invalid future act under the NTA, and invalidly interfere with the exercise of native title rights. We are further concerned that unless the *Firearms Act 2024* is clarified, there could be unintended consequences, including disputes between Native Title Holders exercising their recognised native title rights to hunt (including hunting with firearms), and Police Officers seeking to implement and enforce the new law.

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Yamatji Marlpa  
Aboriginal Corporation  
is a Native Title  
Representative Body  
ICN 2001  
ABN 14 011 921 883

[ymac.org.au](http://ymac.org.au)

Specifically, we seek to address the following:

1. Clarity on how the *Firearms Act 2024* will affect native title holders' and claimants' native title right to hunt on Country.
2. Will native title holders be able to obtain a hunting licence under the *Firearms Act 2024* without receiving permission from a landowner?
3. If native title holders do need permission, please identify who is considered the relevant "land owner" for native title, in particular non-exclusive native title? [i.e., individual native title holders, or the prescribed body corporate (PBC?)]
4. If native title holders do not need permission to be able to hunt with firearms on their native title land, please clarify:
  - a. How this is reconciled with the *Firearms Act 2024* requirement that the Police Commissioner cannot approve someone for hunting without the landowner giving permission?
  - b. How the Police Commissioner will be determining if someone is a native title holder or claimant?
  - c. How native title holders will be able to legally possess firearms and obtain a Hunting Licence under the *Firearms Act 2024* without being approved to hunt over designated land?
5. Clarity as to whether there will be a cap on the number of native title holders who can be issued hunting licences in respect of their native title land under the *Firearms Act 2024*.

Additionally, we seek to learn who was consulted about the changes to the laws with respect to its intersection with the NTA.

While this letter primarily refers to determined native title **holders**, similar issues exist regarding members of native title **claims** exercising their rights.

## Current understanding

The *Firearms Act 2024* imposes new restrictions on the ownership and use of firearms in Western Australia, including in relation to hunting. It includes a **hunting licence**, which permits people to own and use firearms for hunting on land on which they have been approved for hunting.

We are concerned that some of these changes may have adverse impacts on native title holders' ability to exercise their native title right to hunt on their Country. We have reviewed the legislation, available subsidiary legislation as well as press releases, **information sheets**<sup>1</sup> and other official communication about *Firearms Act 2024*, and found no references to how it will affect native title holders.

## Permission to hunt on land by occupier or another person prescribed by the regulations

The *Firearms Act 2024* requires a person wishing to hunt on land to first obtain the permission from the occupier (or their appointee/delegate) or a person prescribed by the regulations. The *Firearms Act 2024* defines occupier as the person in or entitled to exclusive possession of the land.

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<sup>1</sup> Which we accessed through <https://www.wa.gov.au/organisation/western-australia-police-force/firearms-act-reform-2024>

The information sheet titled “Important Information: Landholders and Property Registration” states:

- the new legislation requires all land intended for use in shooting activities to be registered and assessed for its suitability, and
- Landowners who wish to register their land must register the land using the Certificate of Title...

The information sheet titled “Important Information: Written Authority for Individual Firearm Licences” states:

- A Written Authority (Property) can be issued by any registered landholder through the new IT system. All properties who wish to issue Written Authorities must be registered using their Certificate of Title...

Native title is derived from the traditional laws and customs of an Aboriginal group, as recognised by Australian law. Certificates of Title are not issued for native title. A PBC, who holds in trust exclusive native title rights, likely satisfies the definition of “occupier” in relation to that exclusive area. However, it is not clear that the *Firearms Act 2024* contemplates or will be able to handle land ownership or occupation other than through interests in land granted by the Crown.

It is also unclear if there is a way for holders of non-exclusive native title, or members of native title claims, to be given permission to use firearms to hunt on their Country. In many areas of Crown land, no person satisfies the definition of “occupier” in *Firearms Act 2024*.

### **Limit on numbers of people hunting on particular land**

*Firearms Act 2024* s40(d) states that the Police Commissioner must have regard to how many other hunting permissions are in force in relation to particular land before approving a new permission. Our understanding, reinforced by statements in information sheet titled “Important Information: Landholders and Property Registration” is that the intended effect of this is that only a limited number of people will be permitted to use firearms on particular land.

Native title groups can comprise thousands of people, who each have a native title right to hunt on their Country. It is unclear if the *Firearms Act 2024* will limit the number of native title holders who are able to hunt with firearms on Country, and who decides which people are permitted to hunt. We are concerned that limiting the number of native title holders who may use firearms for hunting on Country may create unnecessary internal conflict within a native title group, in addition to preventing native title holders from being able to exercise their native title rights to hunt.

### **Interaction between *Native Title Act 1993 (Cth)* and *Firearms Act 2024***

Hon Paul Papalia CSC MLA is quoted as saying:

*The Firearms Bill does not impact s211 of the Native Title Act, with hunting recognised as a genuine reason for the legal ownership of a firearm<sup>2</sup>.*

NTA s211 confirms that native title holders are claimants and are able to exercise their native title rights, including the right to hunt, notwithstanding licencing restrictions on those rights imposed by States or Territories.

We welcome this reassurance, but *Firearms Act 2024* s36 as passed contains no exception for native title holders exercising rights in accordance with NTA s211. The *Firearms Act 2024* permits people with a hunting licence to only hunt with firearms on land for which they have been approved.

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<sup>2</sup> <https://www.sbs.com.au/nitv/article/customary-hunting-activities-might-be-under-threat-in-western-australia/m2gqmiujm>

Additionally, under *Firearms Act 2024* s37 the Police Commissioner must not issue a hunting licence for a person to own a firearm unless there is land for which the Police Commissioner has approved the person for hunting. Without a hunting licence, or another firearms licence, native title holders are not permitted to possess firearms.

As the *Firearms Act 2024* affects how native title holders can exercise their right to hunt, it is, or will be, a future act under the NTA. NTA Subdivision M and s24MA allows future acts that are the making of legislation to validly affect native title if the legislation applies equally to native title holders as it does to freehold land owners, or it does not cause native title holders greater disadvantage compared to if they instead held freehold title to the area. S39 of the *Firearms Act 2024* permits occupiers, who are defined as people who have exclusive possession of land to give permission to hunt on land.

Unlike freehold land owners, people who hold non-exclusive native title do not have exclusive rights to their land, and are thus not classed as an “occupier” under the *Firearms Act 2024*. We are not aware of any other provision of the *Firearms Act 2024* that would allow non-exclusive native title holders to give permission to hunt on their land. As a result, we consider the *Firearms Act 2024* is not validated by NTA Subdivision M. We are not aware of any other provision of the NTA that would allow the *Firearms Act 2024* to validly affect native title.

As set out above, it is therefore not clear how native title holders, or members of native title claims will obtain permission to hunt on particular land, or if there will be limits to the number of hunting licences that will be approved for native title land, limiting the number of Native Title Holders or members of native title claims who will be permitted to hunt over particular traditional Country.

As stated, we would appreciate the opportunity to meet with either yourselves and/or appropriate State agency representatives to discuss and resolve the matters within this letter. This can be arranged by contacting Dionne Lamb, Executive Assistant to YMAC CEO via **email** [dlamb@ymac.org.au](mailto:dlamb@ymac.org.au) .

Thank you for your consideration. We look forward to a positive outcome so that we can provide appropriate advice to native title holders and PBCs within our representative region.

Yours sincerely,



**Simon Hawkins**  
**Chief Executive Officer**

cc: Hon John R Quigley LLB JP MLA, Attorney General ([Minister.Quigley@dpc.wa.gov.au](mailto:Minister.Quigley@dpc.wa.gov.au))  
Hon Tony Minister Buti, MLA Minister for Education; Aboriginal Affairs; Citizenship and Multicultural Interests ([Minister.Buti@dpc.wa.gov.au](mailto:Minister.Buti@dpc.wa.gov.au))