



Explanatory Paper

Draft Paintball Amendment Bill 2022

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1 Introduction

The Paintball Act 2018 (the Act) provides a separate system of permits for the regulation of paintball markers, venues and activities, and removed the regulation of paintball markers and associated activities from the firearms legislation. The new framework made it easier to play paintball and run a paintball business, while maintaining robust public safety.

The Act commenced on 1 July 2019 and removed paintball markers from the list of prohibited firearms in the Firearms Act 1996. The Act transferred responsibility for the regulation of paintball games, markers, venues and associated activities from Police to NSW Fair Trading (Fair Trading), within the Department of Customer Service (the Department).

In 2022, the Department completed a Statutory Review (the Review) of the Act. This is required under section 81 of the Act, to ensure that its policy objectives remain valid and the terms of the Act remain appropriate for achieving those objectives.

The Review, after extensive consultation, found that the objectives of the Act remain valid and its terms largely appropriate. The Review made 6 legislative recommendations which seek to:

- strengthen the Act's effectiveness
- create an even playing field for NSW and interstate paintball marker suppliers
- introduce flexibility to allow exemptions to use paintball markers for other uses where the use is genuine and presents a low risk to public safety
- enhance safety provisions and clarify the original intent of the law.

The proposed amendments are explained in detail below and are accompanied by questions to help encourage stakeholder feedback to inform their further development. It is important to note that the proposed Bill is not final and consideration will be given to all feedback and comments received.

2 Consultation process

2.1 Call for feedback

Interested individuals and organisations are invited to give feedback on any matter relevant to the draft Paintball Amendment Bill 2022, whether or not they are addressed specifically in this explanatory paper. You can take part on the Have Your Say consultation website, through the survey or a written submission that is in an 'accessible' format.

Accessibility is about making documents more easily available to members of the public who have some form of impairment (visual, physical, cognitive). More information on how you can make your submission accessible is available on the WebAIM website at <http://webaim.org/techniques/word>.

You can provide feedback in one of the following ways:

- Completing the online survey at the NSW Government Have Your Say website. www.haveyoursay.nsw.gov.au/paintball-amendment-stat-rev-bill-2022?utm_medium=email&utm_source=docos.
- Uploading your written submission on the NSW Government Have Your Say website. www.haveyoursay.nsw.gov.au/paintball-amendment-stat-rev-bill-2022?utm_medium=email&utm_source=docos.

Feedback is open until 5 pm, Wednesday 1 February 2023.

After the consultation period has closed:

- all feedback and submissions will be considered
- there may be targeted consultation on specific issues
- a report on the review and its findings will be submitted to the Minister for Small Business and the Minister for Fair Trading.

2.2 Release of submissions

We will make all uploaded submissions publicly available on the Have Your Say website. If you do not want your personal details or part of your submission published, please state this clearly in your submission and tell us why. Automatically generated confidentiality statements are not sufficient. Submissions may be referred to in a report on the outcome of the consultation, however any anonymous submissions will be referred to as such.

Please note, even if you state that you do not wish us to publish certain information, we may need to release that information by law. For example, to comply with the Government Information (Public Access) Act 2009.

3 Proposed amendments

3.1 Create an even playing field for NSW and interstate paintball marker suppliers, while ensuring public safety

Broadening the definition of ‘authorised supplier’ to capture interstate suppliers

Currently, Part 7 or 9 of the Paintball Act 2018 (The Act) does not apply to interstate suppliers. This means that there are no regulatory obligations imposed on interstate suppliers to notify Fair Trading when supplying paintball markers into NSW or for them to hold a valid permit from their own jurisdiction.

The Bill proposes to amend the definition of authorised suppliers to include interstate suppliers, who hold an equivalent permit issued by their own jurisdiction to sell paintball markers. This adds only suppliers have been vetted and approved to supply paintball markers by other State and Territory Government authorities, can supply NSW for safety and security reasons.

This amendment will also ensure that the notification provisions to require interstate suppliers to notify the Department within 7 days when supplying, receiving, or disposing of paintball markers apply to interstate suppliers. This information will be recorded on a register of paintball markers to assist with compliance, investigation, or enforcement activities by authorised officers and the NSW Police Force.

Q1. Do the proposed amendments adequately fulfil the objective of ensuring paintball makers supplied from interstate businesses are recorded on the register?

3.2 Introduce flexibility into the Act

Allowing the Secretary to provide exemptions for uses of paintball markers outside authorised paintball venues, in appropriate circumstances

The Bill seeks an amendment to section 79 of the Act to allow the Secretary to provide a case-by-case exemption for uses of paintball markers outside of authorised venues. This amendment will allow the use of paintball markers outside of authorised paintball venues that are low risk and do not pose a threat to public safety, ensuring individuals carrying out activities that are for the public good are not breaking the law. For example, using paintball markers in university settings to conduct research into eye and face protection.

The Bill is not proposing a ‘blanket exemption’ or that all other uses outside of paintball venues will be exempt, particularly if there are other avenues that achieve the desired result. Instead, the amendment is to allow for applications for exemptions to be considered while still ensuring that all risks are properly considered, prior to granting an exemption. All other aspects of the Act would apply, including the need to have the paintball markers registered, transportation and storage requirements for safety.

Q2. Is there any particular factors the Secretary should consider when providing a case-by-case exemption, where there are no public safety risks?

3.3 Enhance safety provisions and clarify the original intent of the law

Requiring the holder of a paintball marker permit to show their permit prior to entering a venue (if they wish to use their own marker) and for venue operators to ensure a person does not use their own marker at a paintball venue unless the person has shown their paintball marker permit to the venue operator prior.

To further enhance the safety and security of the NSW community, the Bill seeks an amendment to require individuals who wish to use their own paintball marker at an authorised venue to show their permit and the venue operator to sight the paintball marker holder's permit. The aim of this amendment is to promote compliance with registration requirements in the Act. This will be achieved, by providing an incentive to individual paintball marker owners to register their own paintball markers, if they wish to use them at venues. This will ensure that all paintball markers in NSW are recorded on the Paintball Register for compliance, enforcement, and investigation activities.

Q3. Is there anything we need to consider regarding venue operators being shown a paintball permit at a venue?

Venue operators must clearly display their paintball venue permit or permit number and name the business is registered under, at the paintball venue and on their website or other electronic platform.

Currently consumers, parents or guardians are unable to verify or access information regarding a venue's credentials. To strengthen consumer safety, the Bill seeks to amend the Act to require a venue operator to clearly display their paintball venue permit or permit number and name it is in at the paintball venue (where it is easily seen) or on other digital platforms. This increases consumer safety by allowing parents or guardians to look up a venue's credentials to check whether the business is legitimate.

This amendment will benefit businesses who are doing the right thing and will help prevent non-compliance from dodgy operators. In addition, it will also increase industry transparency without comprising any private information about paintball venue operators, being released to the public.

Q4. Do the proposed amendments provide transparency for the public when booking at a paintball venue?

Clarifying that a paintball marker permit allows for ownership of more than one marker

The Review noted that there is ambiguity in the Act on whether a paintball marker permit holder and international paintball competitor permit holder, can purchase multiple paintball markers under the one permit.

The intent of the Act, as described by the second reading speech, is that operators and individuals only need one permit, regardless of the number of markers they own. The Bill proposes clarifying the original intent of the Act. This will ensure clarity for individuals wishing to participate in paintball games and will reduce red tape and fees for consumers.

Q5. Does the proposed amendment fulfill the objective of clarifying that the original intent of the Act is that you only need one permit despite how many paintball markers you own?

Strengthening transport requirements on paintball markers

The Bill proposes to strengthen the transportation requirements to clarify that a paintball marker must be transported in a strong lockable bag. Currently section 34 (b) of the Act states a paintball marker must be transported in a secure bag or container that conceals the paintball marker and that does not indicate that it contains a paintball marker.

However, section 33 of the Act, states that a paintball marker must be in a strong lockable metal container to prevent access. This amendment will ensure consistency within the Act and enhance public safety through strengthening the provision.

Q6. Does the proposed amendment adequately protect consumers and the public from the safety and security risks posed by the sport?

3.4 Penalties

The Statutory Review of the Act recommended:

- imposing appropriate penalties for breaches of new amendments to the Act; and
- in consultation with the Department of Communities and Justice, reviewing the existing penalties under the Act and Regulation, to determine whether they remain fit for purpose and reflect increases in line with the Consumer Price Index (CPI).

A review has been completed which determined that the current penalty amounts are reasonable and reflect an appropriate level of deterrence for non-compliance.

Adequate compliance and enforcement powers not only discourage illegal activity but increase consumer confidence in the industry and the individuals who operate paintball venues. Based on the recommendations from the Review, the Bill proposes two new penalties (see **Figure 1** below) which will increase public safety and compliance, including:

- Venue operators must clearly display their paintball venue permit or permit number and name at the paintball venue and on their website or other digital platform; and
- The holder of a paintball venue permit must ensure a person is not permitted to use their own paintball marker at a paintball venue unless the person has shown their paintball marker permit.

Figure 1: The two new penalties that will be introduced

Section	Section title	Proposed Penalty Unit and Maximum Penalty	Proposed Penalty Infringement Notice (PIN)
Section 36A	Display paintball venue permit details	20 penalty units	Corporation \$1320 Individual \$330
Section 36B	Use of non-venue paintball markers	200 penalty units	Corporation \$3600 Individual \$720

Q7. Do the proposed penalties seem reasonable and provide sufficient deterrence for unlawful behavior?

4 Other considerations

The NSW Government understands that the effective implementation of these new requirements and obligations requires collaboration with the paintball industry. It is important that we understand how the proposed laws will impact both consumers and industry.

If there are any other elements of the proposed reforms, which are not included within the questions for feedback here that you wish to provide comment on, please add this feedback/comments in your submission.