



Discussion Paper

Statutory Review of the Paintball Act 2018

November 2021

Disclaimer

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Minister's Message

As the NSW Minister for Better Regulation and Innovation I am pleased to introduce the discussion paper for public consultation on the statutory review of the *Paintball Act 2018* (the **Act**).

Paintball is enjoyed recreationally and competitively by thousands of people in NSW each year with 1,489 paintball marker permits and 46 paintball venue permits issued across metropolitan and regional NSW.

In addition to state participants, NSW also welcomes interstate and overseas competitors who participate in paintball competitions. These high-level competitions drive the industry and often attract professional players as well as sponsorship arrangements. Prior to the imposition of international travel restrictions during the COVID-19 pandemic, NSW Fair Trading had granted 19 international competitor permits for paintball since 1 July 2019.

The NSW Government recognises the importance of supporting industry to operate a safe and secure environment for players and the community. This is why we introduced a standalone Act in 2018, to provide the regulatory framework for paintball businesses and providing them with enhanced levels of customer service.

The Act removed the regulation of paintball markers from the Firearms Act 1996 (the Firearms Act), transferring responsibility from the NSW Police Force to NSW Fair Trading, and established a separate streamlined permit system for the regulation of paintball markers, paintball venues and paintball activities.

The purpose of this review is to seek public opinion on how the Act has been operating since its inception in 2018. This includes determining whether policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

This discussion paper canvasses a range of issues within the Act, which may require further refinement and consideration. I encourage you to engage with the issues presented in this paper, respond to the questions and raise any further matters you consider relevant.

Your views will help the NSW Government improve the regulation of the paintball industry and ensure continued growth and a world class experience for participants.



Kevin Anderson MP

Minister for Better Regulation and Innovation

Consultation process

Making a submission

Interested individuals and organisations are invited to make a submission on any matter relevant to the *Paintball Act 2018*, regardless if the matters are addressed within this discussion paper.

We would prefer to receive your submission using the online survey on the Have Your Say website, or by email 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](#).

You can provide a submission in one of three ways:

- Completing the online survey on the [NSW Government's Have Your Say website: www.haveyoursay.nsw.gov.au/paintball](http://www.haveyoursay.nsw.gov.au/paintball)

- Uploading a written submission

- Mailing your written submission to:

Statutory review of Paintball Act 2018

Policy & Strategy, Better Regulation Division
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

The closing date for submissions is COB Friday 24 December 2021.

After the consultation period has closed:

- all comments and submissions will be considered
- there may be targeted consultation on specific issues
- a report on the review and its findings will be provided to the Minister for Better Regulation and Innovation
- the final report is required to be tabled in both Houses of Parliament by 30 June 2022
- a copy of the report will be published on the Have Your Say consultation page.

Release of submissions

All uploaded submissions will be 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*.

Purpose of the Discussion Paper

The discussion paper seeks your views on the laws that regulate paintball in New South Wales (NSW), as part of a statutory review into the *Paintball Act 2018* (the Act).

The Act establishes a legal permit system for the regulation of paintball markers and paintball venues used in the sport. The laws provide for the safety and security of players as well as the community, while reducing red tape for businesses and delivering better government services.

Section 81 of the Act requires the Minister for Better Regulation and Innovation to review the Act, two years after the Act has commenced. This review is required to determine whether the Act's policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives. The review is also required to consider, in light of those policy objectives, whether other Acts, including the *Crimes Act 1900*, continues to deal appropriately with paintball markers. A report on the outcome of the review is to be tabled in each House of Parliament by 30 June 2022.

The Department of Customer Service, through NSW Fair Trading (the Department), is conducting the review on behalf of the Minister.

This discussion paper outlines the current regulatory regime and seeks your feedback on:

- the objectives of the Act and whether they remain valid and relevant
- the adequacy of details recorded on the NSW Register of paintball markers (Paintball Register)
- whether the Act should regulate paintball markers used for purposes other than the sport of paintball
- how modified paintball markers should be regulated
- the impact of the paintball venue permit system on paintball venue operators
- the adequacy of the safety and training provisions under the Act.

This discussion paper provides an opportunity for industry and the community to participate in the review, which will inform whether the Act is performing against its policy objectives. This includes considering whether the policy objectives should continue or be adjusted to include other matters. Your feedback will help us to ensure the legislation continues to reflect the needs of industry and the community.

While the Act provides the regulatory framework for paintball activities across NSW the Paintball Regulation (the **Regulation**) sets out key provisions to support the operation of the parent Act. The Regulation will be subject to review in 2024 where industry and the community will have an opportunity to comment on the operation on the Regulation's operation.

Any feedback received from this discussion paper that relates to the Regulation will be collated and used to inform the Regulation's review.

The matters identified in this discussion paper are not exhaustive and are intended to facilitate discussion as part of the review. Further comments are welcome on any other matters that are relevant to improving the regulatory framework established by the Act. Throughout the review process, the Department may conduct further consultation on specific issues relating to the Act, where necessary.

1. Background

Paintball Act 2018

The Act received assent on 21 August 2018 and came into effect on 1 July 2019. The Act introduced a new regulatory framework for paintball markers and activities that secure the safety and security of players and the community, while also reducing red tape for businesses and providing them with enhanced levels of customer service.

Before the Act was introduced, paintball markers were regulated under the *Firearms Act 1996* (the **Firearms Act**), which is administered by the NSW Police Force. Under the Firearms Act, significant financial and administrative regulatory obligations were placed on paintball businesses and participants, as a paintball marker was classified as a prohibited firearm. This meant that in order to purchase a paintball marker, a person had to apply for and be granted both a firearms licence and a permit to acquire a firearm, and was also required to complete a firearms safety training course. Once purchased, a paintball marker was also required to be registered on the Register of Firearms.

The Act removed the regulation of paintball markers and associated activities from the Firearms Act and established a separate permit system for the regulation of paintball markers, venues and activities, administered by the Department.

The Act introduced a new regulatory framework to reduce the compliance burden for paintball businesses by putting in place provisions that are commensurate with the low-risk profile of the sport of paintball.

Some of the major reforms introduced by the Act included:

- reclassifying paintball markers as a sporting device by removing their classification as 'prohibited firearms', which saw them categorised and controlled in the same way as weapons such as cannons and machine guns
- delivering a more modern and streamlined permit system, and removing the requirement to complete an application for each purchase of a paintball marker
- establishing a separate system of permits and requirements for the regulation of paintball markers and paintball venues to be administered by the Department through NSW Fair Trading
- establishing a register that records and monitors the sale, disposal, ownership and location of all paintball markers, with access to the register provided to the Department and the NSW Police Force
- reducing the minimum age limit of participants from 16 years to 12 years and over (subject to written parental consent), with additional and appropriate safety precautions

- establishing a clear and safe regulatory system specific to the unique profile of the paintball industry, including key statutory offence provisions and maintaining offences in the *Crimes Act 1900*, which apply to paintball markers if they are used unlawfully or endanger the community.

Paintball Regulation 2019

The Regulation commenced on 1 July 2019 to provide legislative support and administrative detail for the operation of the Act and the paintball system, including:

- paintball marker sharing arrangements between venues
- paintball marker register
- training requirements for new permit applicants, as well as for those who supervise the use of paintball markers at paintball venues
- safety requirements on protective clothing and equipment to enter a paintball area
- fees and penalty notice offences
- provides for equivalent interstate paintball marker authorisations to be recognised in NSW.

2. Scope of the Act

The Act establishes a system of permits for the regulation of paintball markers and paintball venues.

Under section 3 of the Act, a paintball marker is defined as:

“a sporting device for use in the sport known as paintball that can propel, or is designed to propel, a paintball by means of any gas or mixture of gases, including air (but not including a gas or mixture of gases generated by an explosive) and is operated or designed for operation by means of a trigger or similar device, but does not include-

(a) a paintball marker that has been modified to propel something other than a paintball, or

(b) a paintball marker prescribed by the regulations.”

Three types of permits may be granted by the Department under the Act:

1. a paintball venue permit
2. a paintball marker permit
3. an international paintball competitor permit.

The Act requires that a child under the age of 12 years must not be permitted to possess or use a paintball marker at the paintball venue or enter the paintball game area. Importantly, a child or young person who is aged 12 or over and under the age of 18 years must not be permitted to possess or use a paintball marker at the paintball venue or enter the paintball game area without parental consent.

The Act sets out various grounds for determining whether a person is not suitable to hold a permit. To support this permit system, the Department can take disciplinary action against permit holders in a variety of ways (including, suspend or cancel a permit, caution or reprimand the permit holder, and impose conditions on a permit) when a permit holder does not comply with the Act.

The Act also contains key offences in relation to the unlawful use of paintball markers and operation of paintball venues outside the permit system, which are discussed later in the discussion paper.

1. Is the scope of the Act appropriate? Please explain.

3. Objectives of the Act

While the Act does not expressly state its policy objectives, the Second Reading Speech to introduce the Act in Parliament recognises that the objectives of the Act include:

- recognising that paintball markers are not firearms
- removing the regulation of paintball markers from the Firearms Act
- establishing a separate system of permits and requirements for the regulation of paintball markers and paintball venues, that:
 - secures the safety and security of paintball players and the community
 - reduces red tape for businesses
 - provides businesses with enhanced levels of customer service.

The above objectives reflect that paintball activities present a low risk to players and to the community, and that paintball activities and paintball markers should not be regulated as restrictively as a prohibited firearm. This reflects the Government's commitment to reduce red tape for businesses in NSW and to provide better government services.

The Act balances these objectives by prescribing rigorous safety standards relating to the issuing of permits, which includes promoting the safe and responsible storage and use of paintball markers.

2. Are the objectives included as part of the Second Reading speech to the Act valid and relevant? Please explain.
 - a. Should the objectives be explicitly written into the Act?
3. Are there other objectives that should be included? If so, please specify them and explain why.

4. Paintball Register

Register requirements

The Act requires the Department to compile and maintain a Paintball Register based on information provided by authorised suppliers.

Authorised suppliers are holders of:

- a paintball venue permit under the Act;
- a firearms dealer licence under the Firearms Act; or
- a weapons dealer licence under the *Weapons Prohibitions Act 1998*.

The Paintball Register records all paintball markers that are:

- sold by an authorised supplier, or
- sold/supplied to an authorised supplier by another person who is not an authorised supplier, and disposed of by an authorised supplier.

Note: this does not include information on the supply of a paintball marker by a paintball venue permit holder to a person at the paintball venue solely for the temporary use of the paintball marker at the venue.

Authorised suppliers must notify the Department within 7 days after receiving, supplying/selling or disposing of and destroying a paintball marker.

Section 65(2) of the Act requires the Paintball Register to contain:

- the serial number of each paintball marker (or a description of the paintball marker if it has no serial number)
- the person in whose name each marker is registered
- details of the permit of the person in whose name the paintball marker is registered
- any other information required by the Regulation.

Clause 9 of the Regulation requires the Paintball Register to contain:

- for each paintball marker, the address of the person who holds the permit, and, if the paintball marker is stored at a different address, the address at which the paintball marker is stored
- for each permit holder (including former permit holders):
 - details of any cancellation or suspension of a permit held by the person
 - details of any disciplinary action taken against the permit holder

- details of any convictions for an offence under the Act.

Where a paintball marker does not have a serial number, the Paintball Register must include a description and details that the Secretary of the Department of Customer Service considers sufficient to enable the paintball marker to be identified, such as the make and model of the marker. The Act does not expressly require a photograph of the paintball marker to be provided to the Department, however, a photograph can form part of the information included on the Paintball Register.

Section 65(4) of the Act grants the Commissioner of Police access to the Paintball Register. This is to assist NSW Police in any related compliance, investigation, or enforcement activity where the information recorded on the Paintball Register may be helpful. The Paintball Register is not to be made publicly available.

4. Please comment on the suitability of maintaining the Paintball Register and the information that is required to be recorded, in order to achieve the Act's objectives.
 - a) Is the information that is required to be recorded in the Paintball Register suitable to help keep the community safe?

Public access to the register

In line with the NSW Government's drive to enhance public services through transparency and openness, the Department is considering whether to make a provision in the Act to allow some or all information on the register to be made publicly available to NSW residents. The Act currently states that the Paintball Register is not to be made available for inspection by any member of the public.

The desire to make information available needs to be balanced against constraints which may prevent this, such as legally privileged and/or personal information.

Providing NSW residents with information that is collected by Government may help residents to make decisions and exercise choices to meet their own needs. For example, consumers may wish to verify whether a supplier of paintball markers or a paintball venue holds a valid permit. Similarly, a publicly available register may reduce the cost of paintball marker suppliers verifying that their customers hold a paintball marker permit.

5. The Paintball Register contains personal information about individuals. What benefits (if any) are there to making the Register (or parts of it) publicly available?

Paintball markers brought into NSW from interstate or overseas by persons other than an authorised supplier

Authorised suppliers have obligations under section 66 of the Act to provide information about the supply, receipt or disposal of paintball markers for the purposes of the Paintball Register.

However, there is no requirement for paintball marker permit holders in NSW to provide any information to the Department when they purchase or receive paintball markers directly from interstate or overseas suppliers, who is not an authorised supplier.

As a result, the Paintball Register does not contain information about paintball markers that have been supplied to NSW paintball marker permit holders by interstate and overseas suppliers. The Commissioner of Police therefore does not have access to this information when conducting compliance, investigation or enforcement activities.

This gap may be addressed by introducing an obligation on paintball marker permit holders to notify NSW Fair Trading when a paintball marker is supplied to them by an interstate or overseas supplier, who is not an authorised supplier.

6. Should paintball marker permit holders be required to notify the Department when a paintball marker is supplied to them from an interstate or overseas supplier (who is not an authorised supplier), so that it can be recorded on the register? Please explain why or why not.
7. Paintball markers may be supplied to paintball marker permit holders from interstate and overseas suppliers. If this happens, what details about the supplied paintball markers should be recorded on the register?
8. What other measures could be taken to ensure paintball markers supplied from interstate or overseas directly to paintball marker permit holders are recorded on the register?

5. Paintball markers

Usage for purposes other than to play paintball

Section 3(1) of the Act defines a 'paintball marker' as a:

“a sporting device for use in the sport known as paintball that can propel, or is designed to propel, a paintball by means of any gas or mixture of gases (but not including a gas or mixture of gases generated by an explosive) and is operated or designed by means of trigger or similar device but does not include—

(a) a paintball marker that has been modified to propel something other than a paintball or

(b) a paintball marker prescribed by the regulations”.

This definition effectively covers all unmodified paintball markers manufactured for the intended use in the sport of paintball, meaning that all unmodified paintball markers, regardless of how they are used, are covered in the Act.

Sections 5 and 6 of the Act prohibits the use and possession of paintball markers outside of authorised paintball venues, unless authorised to do so by a permit. Significant penalties apply where these provisions are breached. An individual may receive up to two years' imprisonment or a fine of up to \$55,000 (or both) for using a paintball marker outside of an authorised paintball venue.

These measures were introduced to ensure the safe use of paintball markers by limiting their use to venues appropriately equipped to monitor them. It is a condition of every paintball venue permit that the safety requirements prescribed under the Act must be complied with. For example, section 41 requires the use of paintball markers at a paintball venue to be supervised by an employee who holds a paintball marker permit or who has satisfactorily completed an approved training course in the safe use of paintball markers and the safe conduct of activities associated with paintball markers.

There is anecdotal evidence that paintball markers are being used for purposes other than the sport of paintball, such as to:

- control pests
- mark livestock
- create special effects in film and television
- identify trees for logging in forestry
- test safety equipment used in paintball games in a laboratory or university research setting.

The abovementioned uses of paintball markers are not currently permitted under the Act. Individuals using paintball markers for purposes other than to play paintball are therefore at risk of prosecution for their non-compliance with the Act.

Expanding legislation to regulate other uses of paintball markers may go beyond the remit of the Act's policy objectives.

The Department would need to consider aspects of the current regulatory model that would apply to these other uses, such as safety and training requirements, registration of paintball markers and whether permits should be used.

Consideration would need to be given to resourcing requirements for expanding the regulatory model beyond the sport of paintball such as compliance and enforcement and administration costs, as well as whether the benefits outweigh the costs.

The Department seeks information about paintball markers being used for other purposes and if so, whether the Act should be expanded to regulate these other uses.

9. For what purposes (other than to play paintball) are paintball markers being used? Please provide relevant information.
10. Should the Act regulate other uses of paintball makers? Please explain why.
11. What parts of the Act should or should not apply to other uses of paintball markers (e.g. penalty provisions, registration of paintball markers, safety provisions)?

Potential classification as imitation firearms

Paintball markers are no longer classified as firearms as the definition of 'firearm' in section 4 of the *Firearms Act 1996* explicitly excludes a paintball marker as defined by the Act. However, it is possible for a paintball marker to be classified as an 'imitation firearm', under section 4D(3) of the Firearms Act. This provision defines imitation firearms as "an object that, regardless of its colour, weight or composition or the presence or absence of any moveable parts, substantially duplicates in appearance a firearm but that is not a firearm".

Under section 7(1) of the Firearms Act, a permit is required to use or possess an imitation firearm and an imitation firearm that imitates a prohibited firearm, which is taken to be a prohibited firearm (section 4D(2)(b) of the Firearms Act).

As a result, a person who possesses or uses a paintball marker that resembles a firearm may need to hold both a paintball marker permit under the Act and a relevant permit under the Firearms Act.

If a person does not hold a relevant permit under the Firearms Act, they may be subject to prosecution under the *Crimes Act 1900* and/or the Firearms Act for an offence, such as for unauthorised possession of a firearm (section 7A of the *Firearms Act 1996*).

It is intended to amend the Firearms Act to exclude paintball markers as defined under the Paintball Act from the definition of 'imitation firearm'. This would align with the reform objectives of regulating paintball markers and paintball activities under a separate permit system from the Firearms Act.

Modification to propel something other than a paintball

Paintball markers that have been modified to propel something other than a paintball, are excluded from the definition of 'paintball marker' under section 3(1) of the Act.

There are offences in the *Crimes Act 1900* that involve paintball markers or dangerous or offensive weapons. Use or possession of a modified paintball marker may, in some circumstances amount to an offence with significant penalties where provisions of the *Crimes Act 1900* are breached, including fines and imprisonment.

12. Are paintball markers, being modified to propel something other than a paintball? If so, how often and in what circumstances?
13. Given the existing provisions in the *Crimes Act 1900* to address potential harms associated with paintball markers being modified to propel something other than a paintball, do you think that the Act should introduce offences for modifying paintball markers to propel something other than a paintball? Please explain.

6. Paintball venues

Paintball venue permits and conditions

Under section 11(1)(a) of the Act, a paintball venue permit authorises a person to operate a paintball venue, among other things.

Each paintball venue requires a separate paintball permit (section 11(2) of the Act).

The paintball venue permit holder must comply with the statutory conditions under Part 4, Division 2 of the Act, including:

- the paintball game area must be clearly marked with signage and boundaries to show the area where a paintball marker can be used (s. 37(1) of the Act)
- a person must not be permitted to enter a paintball game area when there is a paintball marker in the area, unless the person has protective clothing and equipment (that is, protective covering for the person's eyes and face, enclosed shoes and other clothing or equipment that covers as much of the person as is reasonable in the circumstances) (s. 37(3) of the Act, cl. 8 Regulation)
- a person must not be permitted to use a paintball marker in an area, other than a paintball game area (s. 37(2) of the Act)
- children under the age of 12 must not be permitted to possess or use a paintball marker or enter the paintball game area (s. 38(1) of the Act)
- any child between the ages of 12 years old and 18 years old must have written consent from a parent or guardian to possess or use a paintball marker at the paintball venue or to enter the paintball game area (s. 38(2) of the Act)
- maintaining a public liability insurance policy that provides cover for the operation of the paintball venue, covering at least \$10 million (s. 39(1))
- ensuring the public liability insurance policy for the paintball venue covers everyone that is permitted to play paintball at the paintball venue, including children aged 12 years and over (s. 39(2) of the Act)
- all persons employed at the paintball venue must undertake any training that is required by the Regulation (not currently prescribed in the Regulation) (s. 40 of the Act)
- ensuring that any use of paintball markers is supervised by an employee who either holds a paintball marker permit or has satisfactorily completed an approved training course on the safe use of paintball markers and the safe conduct of activities associated with paintball markers (s. 41(1) of the Act, cl. 7 Regulation).

14. For businesses that operate multiple paintball venues, should the same venue permit apply to all the venues? Please explain.
15. Are the conditions on paintball venues proportionate to the risks posed by the sport of paintball? If not, what changes should be made and why?

7. Health and safety

Safety provisions

The law includes a range of safety provisions to ensure the safety and security of paintball players and the NSW community.

The conditions of a paintball venue permit (outlined on the previous page) set out a range of safety and training requirements.

In addition, the following conditions apply to every permit (i.e. a paintball marker permit, a paintball venue permit, and an international paintball competitor permit):

- (during storage), paintball markers must be in an inoperable state (such as by having the gas cannister removed and locked in a metal container) (s. 33(1) of the Act)
- (during transportation), paintball markers must be in an inoperable state (such as by having the gas canister removed) and concealed in a secured bag or locked container (s. 34(1) of the Act).

The Department has received 11 complaints since the Act commenced on 1 July 2019. To date, no penalty infringement notices have been issued and no disciplinary action has been taken by NSW Fair Trading under the Act. This suggests that the paintball regulatory framework is working well and indicates that the safety provisions under the Act are effective in protecting paintball players and the community.

The Department has identified an opportunity to improve the safety provisions under the Act by adopting the term “worker”, as used in the *Work Health and Safety Act 2011* (the **WHS Act**). Currently, the Act uses the term “employee”, such as in section 41, which requires certain employees of paintball venue permit holders to supervise the use of paintball markers at the paintball venues. Replacing the term “employee” with ‘worker’ expands the safety provisions to apply to all types of work arrangements in the paintball industry, including volunteers, contractors or a student gaining work experience. This will help ensure venues are as safe as possible when carrying out paintball activity. The proposed change will also ensure consistency with the WHS Act.

16. Are the safety provisions under the Act proportionate to the risks posed by the sport of paintball? If not, what changes should be made to them? Please explain.

17. What reasons (if any) are there for not replacing the term “employee” in the Act to “worker”, as defined in the WHS Act?

Training provisions

A person is not suitable to hold a permit under the Act if they have not completed an approved training course, as prescribed by the Regulation (s. 14(1)(e) of the Act).

To ensure consumer protection and community safety, the Regulation prescribes a training course that must be completed by a person seeking to apply for a paintball marker permit (cl. 4 of the Regulation). The training course must address the safe use of paintball markers and the safe conduct of activities associated with paintball markers and the training course must be approved by the Department (cl. 4 of the Regulation).

Currently, the course approved by the Department is the *General Firearms Safety Training Course for Long Arms*. It is a course that is accredited by the NSW Firearms Registry and it is intended for ownership and usage of a firearm. The course was approved by the NSW Government as an interim arrangement, in the absence of a paintball specific training course being available upon commencement of the Act.

The Department is developing a new safety training course specifically for paintball, to replace the *General Firearms Safety Training Course for Long Arms*. The new course is planned for delivery later in 2021.

Although the new training course has not commenced, feedback on the *General Firearms Safety Training Course for Long Arms* is not required for this review.

8. Offences and penalties

Key offences under the Act

Part 2 of the Act sets out offences and penalties in relation to the unauthorised operation of a paintball venue and unlawful use, possession, purchase, supply and disposal of paintball markers. The Act also authorises the Regulation to create additional offences punishable with a maximum penalty of \$5,500.

Both individuals and corporations can commit offences under the Act.

The penalties are intended to strike a balance between removing the regulation of paintball markers from the Firearms Act and addressing community concerns about the potential misuse of paintball markers.

Table 1 below sets out some of the offences and associated penalties under the Act and Regulation:

Offence	Maximum penalty
Using a paintball marker other than at an authorised paintball venue (s. 5 of the Act)	24 months imprisonment or \$55,000 (or both)
Possessing a paintball marker without a permit other than at an authorised paintball venue (s. 6 of the Act)	12 months imprisonment or \$22,000 (or both)
Purchasing or obtaining a paintball marker without a permit (s. 7(1) of the Act)	12 months imprisonment or \$22,000 (or both)
Operating a paintball venue without a permit (s. 8 of the Act)	24 months imprisonment or \$110,000 (or both)
Supply or sale of a paintball marker by a person (who is not an authorised supplier, or who does not hold a permit which authorises the holder to possess and supply the paintball marker) to an authorised supplier or permit holder (s. 9(1) of the Act)	6 months imprisonment or \$22,000 (or both)
Disposal of a paintball marker by a person that is not an authorised supplier (s. 10(1) of the Act)	6 months imprisonment or \$22,000 (or both)
Failure (without a reasonable excuse) to comply with a direction when a permit is suspended or cancelled (s. 27(4) of the Act)	6 months imprisonment or \$22,000 (or both)

Offence	Maximum penalty
Contravention of a permit condition including a suspension or cancellation (other than conditions relating to storage and transportation of paintball markers) (s. 28(1) of the Act)	\$110,000
Contravention of a permit condition where the contravention causes a person being injured by the illegal use of a paintball marker, and/or a significant risk to a person's safety by the illegal use (or threatened use) of a paintball marker (s. 28(3) of the Act)	12 months imprisonment or \$2,200 (or both)
Loaning a permit to another person to use the permit (s. 30(1) of the Act)	6 months imprisonment or \$22,000 (or both)
Contravention of storage requirements of a paintball marker (s. 33(2) of the Act)	6 months imprisonment or \$22,000 (or both)
Contravention of transportation requirements of a paintball marker (s. 34(3) of the Act)	\$5,500
Obstruction of authorised officers (NSW Fair Trading inspectors and police officers), failure to comply with a direction of an authorised officer, or failure to produce permit to authorised officers (ss. 62-64 of the Act)	\$55,000 for a corporation or \$22,000 imprisonment in any other case
Contravention of record keeping requirements of paintball venue permit holder sharing arrangements (cl. 6(4) of the Regulation)	\$5,500

Under section 75 of the Act, directors or individuals involved in the management of a corporation and who are in a position to influence the conduct of the corporation, can be prosecuted for 'executive liability offences'. A person commits an offence under this section, if they know or ought to reasonably know that the executive liability offence would be or is being committed, and fails to take all reasonable steps to prevent or stop the commission of that offence.

Currently, the offence of contravening a permit condition (s. 28 of the Act) by a corporation is an executive liability offence, which has a maximum penalty of \$110,000. Directors and individuals involved in management of corporations are subject to the same maximum penalty as individuals who commit the offence.

Offences under the Crimes Act 1900

Under the *Crimes Act 1900*, any reference to a firearm is taken to also include a paintball marker (s. 4(7A) of the Act). This means that all existing offences under the *Crimes Act 1900* that relate to firearms apply to paintball markers if used as offensive weapons. This reflects the seriousness of the improper use of a paintball marker.

18. Do the offences and penalties appropriately support the Act's objective of ensuring that paintball markers used safety?
19. Should the penalty levels be adjusted to take account of increases in the Consumer Price Index (a measure of inflation) since the commencement of the Act on 1 July 2019?

Compliance and enforcement

Disciplinary action may be taken against permit holders for a range of matters, including offences against the Act, Regulation or breaches of a permit condition, as well as wilfully or misleading or obstructing authorised officers and engaging in improper or unethical conduct (s. 42 of the Act).

The Act provides for the appointment of authorised officers to investigate, monitor, enforce and secure compliance with the provisions of the Act (Part 6 of the Act).

Under section 3 of the Act, authorised officers are defined to include police officers, a Departmental employee, an investigator within the meaning of the *Fair Trading Act 1987*, or a person belonging to a class of persons prescribed by the regulations, as appointed by the Secretary (s. 49 of the Act).

The powers of authorised officers' include:

- information gathering, including the power (upon serving written notice), to require a person to provide information and records, and attend a specified place at a specified time to answer questions (ss 53, 54 of the Act)
- entering any premises (at a reasonable hour) in which the paintball activity is being carried out with or without a search warrant (residential premises require the occupier's permission or search warrant) (ss 56, 57 of the Act)
- upon entry to a premises to inspect, examine, take samples, take photographs and seize anything connected with an offence under the Act or Regulation (s. 60 of the Act)
- copying and retaining documents that may be used as evidence (s. 61 of the Act).

The Department's compliance and enforcement policy is generally to provide education as the first response, to prevent ongoing breaches and to ensure future compliance.

20. Do authorised officers appointed under the Act have sufficient powers to ensure compliance with the Act? If not, what other powers do they need?

9. Other matters in the Act

The Act makes provision for numerous other matters, including:

- enabling an aggrieved person to apply to the Civil and Administrative Tribunal to review a decision of the Department in relation to a permit (there are provisions in place to ensure the confidentiality of criminal intelligence material) (ss. 45, 69 of the Act)
- permitting the Department to enter into an information sharing agreement with other NSW Government agencies and local councils to assist in exercise of the functions under the Act (s. 68 of the Act)
- enabling the Local Court to make orders in relation to disposal of paintball markers that were seized by or surrendered to the Department, including return of the paintball marker to the person claiming to be the owner (s. 70 of the Act)
- recognition of certain equivalent authorisations (i.e. permit, licence, registration or other authorisations or qualifications issued or conferred under the law of another Australian jurisdiction) to be equivalent to a type of permit under the Act (s. 71 of the Act)
- details on how documents required by the Act are to be served or given on individuals and corporations (s. 72 of the Act)
- a general regulation-making power, including specifying exemptions from the Act (ss. 79, 80 of the Act)
- savings and transitional provisions (Sch.1 of the Act).

21. Please provide any comments that you may have on these other matters under the Act.

Any other comments

The matters identified in this discussion paper are not exhaustive. They aim to encourage discussion and do not indicate government policy.

You are not confined to the questions listed in this paper (consolidated in Appendix 1) and may raise any other issue or make any other comment you wish to make on the operation of the legislation.

Appendix 1: Consolidated list of questions

1. Is the scope of the Act appropriate? Please explain.
2. Are the objectives included as part of the Second Reading speech to the Act valid and relevant? Please explain.
 - a. Should the objectives be explicitly written into the Act?
3. Are there other objectives that should be included? If so, please specify them and explain why.
4. Please provide comment on the suitability of maintaining the Paintball Register and the information that is required to be recorded, in order to achieve the Act's objectives.
 - a. Is the information required to be recorded in the Paintball Register suitable to help keep the community safe?
5. What benefits are there to making the Paintball Register (or parts of it) publicly available?
6. Should paintball marker permit holders be required to notify the Department when a paintball marker is supplied to them from an interstate or overseas supplier (who is not an authorised supplier), so that it can be recorded on the register? Please explain why or why not.
7. Paintball markers may be supplied to paintball marker permit holders from interstate and overseas suppliers. If this happens, what details about the supplied paintball markers should be recorded on the register?
8. What other measures could be taken to ensure paintball markers supplied from interstate or overseas directly to paintball marker permit holders are recorded on the register?
9. For what purposes (other than to play paintball) are paintball markers being used? Please provide relevant information.
10. Should the Act regulate other uses of paintball makers? Please explain why.
11. What parts of the Act should, or should not, apply to other uses of paintball markers (e.g. penalty provisions, registration of paintball markers, safety provisions)?
12. Are paintball markers, being modified to propel something other than a paintball? If so, how often and in what circumstances?
13. Given the existing provisions in the *Crimes Act 1900* to address potential harms associated with paintball markers being modified to propel something other than a paintball, do you think that the Act should introduce offences for modifying paintball markers to propel something other than a paintball? Please explain.

14. For businesses that operate multiple paintball venues, should the same venue permit apply to all the venues? Please explain why.
15. Are the conditions on paintball venues proportionate to the risks posed by the sport of paintball? If not, what changes should be made and why?
16. Are the safety provisions under the Act proportionate to the risks posed by the sport of paintball? If not, what changes should be made to them? Please explain.
17. What reasons (if any) are there for not replacing the term “employee” in the Act to “worker”, as defined in the *Work Health and Safety Act 2011*?
18. Do the offences and penalties appropriately support the Act’s objective of ensuring that paintball markers used safety?
19. Should the penalty levels be adjusted to take account of increases in the Consumer Price Index (a measure of inflation) since the commencement of the Act on 1 July 2019?
20. Do authorised officers appointed under the Act have sufficient powers to ensure compliance with the Act? If not, what other powers do they need?
21. Please provide any comments that you may have on these other matters under the Act.