

February, 2, 2023

DRAFT PAINTBALL AMENDMENT BILL 2022

On behalf of the Australian Paintball Industry Association, I would like to first thank all the parties involved in helping us get the NSW Paintball Act 2018 through in the first place. This includes the NSW Government, Fair Trading, and the Shooters, Fishers and Farmers Party as well as the Licencing program as well as the rest of the team from NSW Department of Customer Service for whom without all of their input and hard work, none of this would have been possible.

The first major issue concerning the new regulations is that due to the inconsistency of the Government as to who is in charge of the Paintball Industry.

To the Australian Paintball Industry Association, it is pretty clear who is in charge. The Department of NSW Fair Trading within the Department of Customer Service is in charge and all responsibility and enforcement (unless they are used in a crime obviously) have been removed from the NSW police and NSW Firearms Registry (NSW FAR) since after all, they are no longer an actual firearm but a simple sporting device or to be more precise, a paintball marker and nothing more.

Now according to the Department of Customer Service Explanatory Paper that we are replying to now this is correct.... See below as it is written verbatim in the paper in the second paragraph of the introduction on page 4.

It reads exactly like this:

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).

So, this makes it pretty clear cut to us or anyone else who would read this simple paragraph.

Yet we find ourselves being interfered with by an overzealous NSW Firearms Registry which is making ridiculous rulings that impact negatively ONLY for NSW Stakeholders in an industry that they now have simply no longer have any jurisdiction on.

We could list several examples of why the NSW Firearms Registry should no longer be involved with Paintball, but we will just give a couple now.

When the NSW FAR sent all records of existing paintball markers this list was missing markers. We have had customers come in numerous times saying that Fair Trading does not have some or any of their markers on their pre-existing permits. That is disappointing, to say the least.

In another level of disappointment, we have recently found out that the NSW Firearms Registry has issued B709 import permits to individual paintball marker permits to import paintball markers directly.

1. Federally a Paintball Marker is still a firearm and as such can only be legally imported by a Firearms Dealer. There is no exception to this rule. Something that the staff of the NSW Firearms Registry should know.
2. In the case of at least one of these issued permits, it was for a _____, which is one of the very paintball markers ruled by the same NSW Firearms Registry as an illegal "imitation firearm". So the NSW FAR are issuing import permits for the very same markers they have already ruled illegal!

The situation is only made worse by the fact that their rulings or interference seems to benefit one particular firearms dealer in Victoria that has had a history of such favorable rulings in the past. I am happy to give more information if required. The NSW FAR has deemed it illegal for NSW Dealers to sell several types of paintball markers that are legal in pretty much every other part of Australia, and to add insult to injury seem to have no problem with this dealer selling these paintball markers directly to NSW Permit holders and send them directly to the customer as well.

So, to be 100% clear, we have been advised in writing in an email back on March 10th, 2020, that these paintball markers have been "identified" by the self-proclaimed NSW Police Ballistics Experts Department as "Imitation Firearms" and as such are illegal for anyone to sell in NSW or for that matter own or use in NSW but the very same NSW FAR and Fair Trading NSW are happy to let interstate dealers sell anything they want. This email is attached.

For the record, we do not think that any of these Paintball Markers should be deemed imitation firearms at all. We would respectfully question the validity of these so-called experts' actual ability to identify anything if they cannot tell the difference between these paintball markers and a real firearm. These are not actual "replicas" of any real firearm, well not to anyone with even the most basic knowledge of real guns. They are not like Airsoft or Soft Gel guns which are exact replicas of real guns.

There are paintball markers on the market that are very similar to a real gun like the AR15 but these are not of interest to us. It should be noted that some of these markers are legal in other states and if the government continues to ignore our warnings, then these will eventually become abundantly available here in NSW just like the SoftGel markers.

It is interesting too, that the NSW FAR and NSW Police are happy to prosecute anyone with a Softgel toy gun including the parents of children who get caught with them but do not care that they are coming into NSW thousands every year from interstate toy shops that they know of and seem to have no problem with that situation. It seems to be more important to punish NSW people and give financial advantages to interstate businesses to whom the NSW government like to give a free pass.

So after more than two years of complaining to NSW Firearms and to be transparent, NSW Fair Trading and even the NSW Police Hierarchy, in writing, in person, over the phone, via email, and via the Shooters, Fishers, and Farmers Party who in turn, wrote letter and emails, had meetings and phone calls with the Minister for Fair Trading and the Minister for Police, not a single thing has happened. No attempt to fix this has been done.

The Honourable Robert Borsak even raised these issues in the Senate Oversight Committee on October 30th, 2022, where he grilled the NSW Police Minister and Police Commissioner on why none of their correspondence had even been replied to concerning this complete breaking of the law by both the Shooters Fishers and Farmers Party and the Australian Paintball Industry Association. After all, someone was selling paintball markers from interstate and breaking interstate firearms regulations by shipping them directly to the customer. On a separate note, I have personally spoken to many of these customers (more than 20 different people) who have purchased and received these so-called illegal "Imitation Firearms" and not one has received any documentation or transfer paperwork with their markers, which is another firearms offence in itself, not that anyone in the NSW Government or particularly the NSW FAR, seems to care.

Now it is not bad enough that we have our trade restricted by this ruling that gives a total advantage to our interstate competitors (Well done NSW government for giving a one-way competitive advantage for interstate companies to compete with NSW businesses) but this also opens another massive customer problem for us.

We also have to deal with telling customers when they come to our shop or paintball parks that they are not allowed to use their new paintball markers because they are "illegal". I have lost count of the number of times I have been personally abused, called a liar, full of deceit, and had the lost forever customer storm out of my shop calling me names on the way out because of this.

This is so profoundly unfair that we must take the brunt for the lack of any action by the NSW Government to stop this.

Now in this proposal, the NSW Government wants to allow interstate dealers to sell paintball markers directly into NSW. Well, guess what? That is already happening and the reason it should not be allowed is clear to see. Some dealers will happily sell anything interstate if they think there are no repercussions. Just look at the Soft Gel industry in QLD where they are selling tens if not hundreds of thousands of soft gel guns to states including NSW where they are not legal to own, knowing full well that the NSW police will continue to do nothing about it, other than prosecute people here for possessing them.

NSW Police and the NSW Firearms Registry have no place dictating sporting equipment especially when they have a 30-year history of getting it wrong so many times. There is a history

of poor record keeping, double standards, and continual revolving rulings that strangely always seem to favour the interstate dealers over NSW dealers.

What makes this even more interesting is that this is also completely illegal to do in other states.

The reason I can say that this is completely illegal is simple, Paintball Markers are still classed as Firearms in every state and territory of Australia outside of NSW. This seemed to elude the persons writing the Draft Amendment Bill 2022. The NSW Government cannot overrule Firearms Regulations in other states.

For example, in Victoria, they mention paintball markers directly and how they **MUST** be transferred.

[Firearms Act 1996 \(legislation.vic.gov.au\)](http://legislation.vic.gov.au)

Part 4 - 100 Control of disposal to place outside the State

(1A) If a licensed firearms dealer is disposing of a paintball marker to a place outside Victoria but within Australia (whether or not on his or her own behalf or as an agent for another person), the dealer must not give possession of that firearm to any person other than a person who holds a licence in that place which corresponds with a dealers licence.

Penalty: 60 penalty units or 12 months imprisonment.

The idea behind this is twofold, one is to make sure all paintball markers coming into NSW are legal to own in NSW (the regulations in each state, just like with firearms vary greatly) and some paintball markers that are legal in other states are not so here. Secondly, it is to make sure every marker in NSW is connected legally to an existing NSW Paintball Permit.

This is how Firearms are transferred from State to State (or Territory) in Australia for decades and for good reason, it stops people from getting firearms that are not legal in their state and also makes sure that ALL interstate transactions are recorded and submitted properly to the respective state government authorities. It was agreed from the outset that this system must be kept for interstate and international transfers, disposals, and acquisitions as it would protect our industry from unscrupulous persons or companies doing the wrong thing which would eventually end up with persons with an NSW paintball permit having possession of paintball markers they should not or worse, persons with no NSW Paintball Permit having possession of paintball markers they are not legally allowed to possess.

It should also be noted that _____ from the Shooters Fishers and Farmers Party also contacted the Victorian Firearms Registry for answers and was met with utter incompetence and no response from them as well.

1 Proposed amendments

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

I feel I have well and truly addressed this question with a lot of detail above but I will slim it down here.

1. Just like with real firearms, the current situation (if it was to be enforced by anyone in the NSW Government) is the best one.
2. In most cases, the current dealers are the exclusive Australian distributors so any paintball markers in these brands can only be imported by the current dealers for example

1. Paintball Shop NSW – Planet Eclipse, DLX Technologies, Shocker Paintball, GOG Paintball, HK Army
2. HotShots Vic – Tippmann
3. Paintball Australia QLD – Empire

So if someone wants to buy one of these brands they will have been imported by the Australian distributor. So there would be no change to any so-called even "playing field". Again, it must be noted that the Firearms industry used this system for decades because it works.

All the Importers sell at wholesale rates to dealers in other states so anyone can easily purchase what they want locally in any state with the proviso it is legal to possess in that state in the first place.

The main benefits include

1. Only markers that are legal in that state can end up in the permit holder's possession.
2. 100% of all records of every transfer of ownership are properly recorded by NSW Dealers and Paintball Parks and updated weekly to the Fair Trading system. This includes all markers coming into NSW from interstate and overseas.
3. Keeps interstate marker transfers in line with all other states and territories.
4. Stops the chance of "ghost markers" ending up in the hands of persons without a valid paintball permit. Which is what is happening now.

It should also be noted that for NSW dealers selling paintball markers into any state or territory outside of NSW, we must ship all paintball markers directly to the customer's chosen Firearms dealer for them to pick up with their licence and PTA (Permit to Acquire). This is something that we do.

CONCLUSION

Whilst it is excellent that any paintball park or firearms dealer that wishes to buy, sell or transfer paintball markers inside of the state of NSW keep everything 100% legal with all overseas and

interstate transfers, the only option is that all such transactions/transfers, etc must remain with licenced firearms dealers.

We hope that the NSW government will finally do the right thing and start to enforce these existing rules.

1.1 Introduce flexibility into the Act

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

This was one of the many things missed when the Government rushed through all the new regulations back on July 1st, 2019.

There is nowhere in the act for persons to use paintball markers for reasons other than playing paintball. For many years paintball markers have had many other genuine uses that are now suddenly and since July 1st, 2019 almost 3 years ago such is the slowness of the government to fix this one simple oversight that has caused massive issues to anyone who had a permit previous to the new regulations and has to sit and wait for it to be fixed.

Just a few examples of previously allowed uses of a paintball marker before the new Regulations:

1. Police using paintball markers for riot control with pepper balls.
2. Prison officers using paintball markers for riot control with pepper balls.
3. Farmers and primary producers use paintball markers with semi-permanent marking paint-filled paintballs to mark cattle and trees.
4. Forestry workers and National Parks staff producers use paintball markers with semi-permanent marking paint-filled paintballs to mark vegetation.
5. Theatrical armorers use paintball markers with special effect clear paintballs filled with metal filings for movie special effects (to replicate bullet ricochets).
6. Electric Utility Companies, Amusement Parks, Railroads, and Cable Lifts & Cars use paintball markers shooting specialized paintball capsules filled with a lubricate specifically designed to be applied to mechanical switches safely from a distance.
7. A professional contractor using paintball markers shooting specialized paintball capsules filled with herbicides to kill weeds in difficult locations to poison safely with normal means. This process offers sub-metre accuracy when shooting non-indigenous weeds on the side of a cliff from a helicopter or drone (as an example).

We also believe that the government should look at allowing the use of a paintball marker on private property on a non-commercial basis.

As we suggested before (back pre 2018) it is legal to shoot a real gun (rifle of any calibre) on private property larger than 50 acres. So, we cannot see why a couple of friends cannot in a controlled environment with a strict set of simple safety regulations or rules like 100m buffer zones, compulsory chronographs to test speed, etc. could not be implemented. The association would be happy to set up a list of minimum safety requirements and protocols if needed.

They are no longer a firearm in NSW so why must they be treated as being more dangerous than one?

The fact is there are a lot of people who own paintball markers and do not live within a 4 or 5 hour drive to their nearest paintball park. In many cases, these people live on properties that are hundreds if not thousands of acres in size. They can walk out the back door of their house and shoot a high-powered rifle or shotgun or even a high-powered compound bow without any fear of being prosecuted, but if they gas up their paintball marker and take a couple of shots at a target in the paddock they risk a \$100,000.00 fine? This does not make any sense.

Again we stress non-commercial and have no issue if the government wanted to put a limit to no more than (as an example only) 10 people at a time on a property for private practice as a starting point.

CONCLUSION

The ability to use paintball markers for pre-existing uses that were legal before the new Paintball Regulations 2018 were implemented should have been fixed immediately. Hopefully, this will be addressed now.

We also hope that with some input from the association for minimum safety guidelines we could look into the possibility of persons using their sporting equipment on a strictly non-commercial basis on private properties that are big enough that they are allowed to legally shoot actual real firearms.

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

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

Two parts to this.

1. If the government wants to implement this then maybe they should make the permit an app on their phone instead of on an A4-sized piece of paper without any photo identification that could be photoshopped by anyone. How does the field know that the paintball permit is not a fake? We have no way of knowing this so this idea is useless with the current permit.

2. There is so much irony to the very same government that does not care that paintball markers that are currently deemed illegal to be shipped to persons here from interstate to suddenly be concerned that people with their paintball permits have a permit. Also, they may have a permit but the marker may not be registered to anyone in NSW and there is no way for us to know. So again, what is the point under the current system?

CONCLUSION

All this will do is slow down the processing of our customers and cause delays and inconvenience to them for a thought bubble that does nothing.

There should be an online system that Paintball Parks can easily check if a permit is real and valid and better yet, what paintball markers are attached to this permit.

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

If the person writing this Draft Paintball Amendment Bill had been present at any of the original stakeholder meetings or even briefed by anyone present then they would know that one of the founding points as there is no reason why anyone needs to have a limit of how many paintball markers they can own. As it was discussed no one could see how if one person owned 2 markers or 10 markers how it could affect the safety of the general public. It was agreed by all in the industry and the government representatives in the stakeholder meetings that the only limiting factor for paintball marker ownership would be the cost.

The NSW Government does not have any limitations on how many high-powered archery or compound bows, baseball bats, spear guns, or any other type of sporting equipment (including real firearms), that people can own and since a paintball marker is only sporting equipment then it was agreed that the situation is the same for them.

CONCLUSION

There is, nor was there any reason to impose a limit on how many paintball markers a person could legally own. As long as they abide by all the regulations including the required safe storage requirements this does not need to change.

Strengthening transport requirements on paintball markers

You do not need this sort of storage for transporting a real firearm. This is just silly. So, a person taking all their gear to a paintball park will need to put their paintball marker in a locked box and then when they get to the paintball park they will then transfer it from their locked box into their gear bag?

Why would transportation for a paintball marker need to be higher than for a real gun? Has there been a mass number of paintball markers being stolen from people as they are driving between the paintball park and their homes? I do not think so.

CONCLUSION

This idea is ridiculous. They are sporting equipment! The current requirements are more than enough! There is no justification to make the transportation of a paintball marker stricter than it is for a real firearm!

3.4 Penalties

The Statutory Review of the Act recommended:

CONCLUSION

How about penalising companies and persons you know are already breaking our laws, as a sign of some sort of consistency before deciding to go after others?

That would be a good start.

1 Other considerations

NSW Paintball Liaison Officer

The industry desperately needs someone for NSW industry stakeholders (and not interstate) to be able to directly consult with. It appears to us that there is no actual leadership in Service NSW concerning issues or fixes. No one is actually in charge that we can deal with. Front-of-line service staff are wonderful but in many cases are not able to do anything because it is above them. All of the issues listed above are examples of mostly simple things that could and should have been fixed but nearly 3 years later have not been.

A suggestion, it would be very beneficial, if the NSW government wants to understand what is effective and what is not then maybe they need to leave their offices in the city and go visit a couple of paintball parks or stores and see for themselves first-hand how the industry works and get feedback first hand in a face-to-face meetings with the actual stakeholders. It is tiring dealing with legislation being written by people who have never even set foot on a paintball park (and it shows in this Draft Amendment Bill). This is how we get bad regulations from ill-informed people who may have the best of intentions but fail to deliver common sense results.

Reballs

There was a mention to ban Reballs

Reballs are used by several indoor paintball parks because they make no mess. They are also good for use on indoor parks with concrete floors since they had no paint in them, they do not make the floor slippery and dangerous to play on. So, it is a safety issue

Reballs are used by some shops and parks to use at their indoor test ranges because they make no mess and can be reused.

Reballs offer very similar dynamics and characteristics such as accuracy and distance and joules of energy (same amount of ouch) to a real paintball and are no more dangerous than a real paintball.

Reballs are extremely expensive to purchase which is why they are not used for outdoor paintball. This is also why they are never used outside of a paintball park either.

To try and ban Reballs would offer absolutely no wins for the industry and maybe even cause a couple of venues to possibly shut down as they could not afford to clean up the mess inside their battlefields if they had to start using actual paintballs.

CONCLUSION

There is no benefit to banning Reballs. There is no added safety to anyone, in fact in the case of some indoor fields it would make it possibly more dangerous due to slipping over wet concrete floors to participants. Reballs should be allowed to stay.



I would like to again thank the NSW Government for giving us the opportunity to fix the outstanding issues and give our industry the full potential it deserves after having to work under some of the most draconian unfair regulations when they were classed as Prohibited Firearms.

If the government would like any more assistance, then the Australian Paintball Industry Association and all of its members are here to assist in any capacity at all.

Kind Regards,

Michael Whybrew

President

Australian Paintball Industry Association