



New South Wales

Paintball Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to recognise that paintball markers are not firearms and to remove the regulation of paintball markers from the *Firearms Act 1996* and to instead establish a separate system of permits for the regulation of paintball markers and of paintball venues.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act, including *paintball marker* which is a sporting device for use in the sport known as paintball that can propel a paintball capsule by means of gas or air. The clause also defines *permit* which means a paintball venue permit, a paintball marker permit or an international paintball competitor permit granted by the Commissioner for Fair Trading, Department of Finance, Services and Innovation (the *Secretary*) under the proposed Act.

Clause 4 sets out who is a close associate of an applicant for a permit or the holder of a permit.

Part 2 Key offences

Clause 5 creates an offence (with a maximum penalty of 2 years imprisonment or \$55,000 (or both)) if a person uses a paintball marker other than at an *authorised paintball venue*, being a paintball venue that is the subject of a paintball venue permit. A *paintball venue* is a place at which the sport known as paintball is played or at which paintball markers are used.

Clause 6 creates an offence (with a maximum penalty of 12 months imprisonment or \$22,000 (or both)) if a person possesses a paintball marker other than at an authorised paintball venue unless the person is authorised to do so by a permit.

Clause 7 creates an offence (with a maximum penalty of 12 months imprisonment or \$22,000 (or both)) if a person purchases (or otherwise obtains possession of) a paintball marker unless the person is authorised to do so by a permit.

Clause 8 creates an offence (with a maximum penalty of 2 years imprisonment or \$110,000 (or both)) if a person operates a paintball venue without holding a paintball venue permit.

Clause 9 creates an offence (with a maximum penalty of 6 months imprisonment or \$22,000 (or both)) if a person supplies a paintball marker unless the person is an authorised supplier who is supplying the paintball marker to another authorised supplier or to the holder of a permit or the person is the holder of a permit who is supplying the paintball marker to an authorised supplier. An *authorised supplier* is the holder of a paintball venue permit or a person who is authorised to sell firearms or weapons.

Clause 10 creates an offence (with a maximum penalty of 6 months imprisonment or \$22,000 (or both)) if a person other than an authorised supplier disposes of a paintball marker.

Part 3 Permits

Division 1 Preliminary

Clause 11 specifies what is authorised by a paintball venue permit (which includes operate a paintball venue, purchase and possess paintball markers for the purposes of operating that venue, lend paintball markers to persons at the venue for use at the venue and supply paintball markers to another holder of a paintball venue permit under a paintball marker sharing arrangement).

Clause 12 specifies what is authorised by a paintball marker permit (which includes purchase a paintball marker and possess the paintball marker at a place other than a paintball venue).

Clause 13 specifies what is authorised by an international paintball competitor permit (which includes possess, other than at an authorised paintball venue, a paintball marker that the person brought into the State).

Clause 14 sets out the grounds for concluding that a person is not a suitable person to hold a permit.

Division 2 Application for permit

Clause 15 sets out how an application for a permit is made.

Clause 16 provides that the Secretary may require an applicant for a permit or a close associate of an applicant to authorise other persons to provide the Secretary with information relevant to the investigation of the application. The Secretary may refuse to consider the application if the authorisation is not given.

Clause 17 provides that the Secretary may grant or refuse a permit application. The grounds for refusing a permit are that the application did not comply with a requirement of the proposed Act or any other ground that may be prescribed by the regulations under the proposed Act. The Secretary must refuse a permit if the applicant is not a suitable person to hold the permit.

Clause 18 provides that the maximum period for which a permit may be granted is 5 years (or 1 year in the case of an international paintball competitor permit) and that a permit has no effect during any period in which it is suspended.

Clause 19 provides for the variation of a permit by the Secretary.

Division 3 Conditions of permit

Clause 20 permits a permit to be subject to conditions.

Clause 21 permits the conditions of a permit to require the holder of a permit to comply with specified rules of conduct made by the Secretary.

Clause 22 permits the conditions of a permit to provide that the authorisation conferred by the permit will take effect in the future at a particular time or following a particular event (such as the completion of a course of training).

Division 4 Suspension or cancellation of a permit

Clause 23 sets out the grounds for suspending or cancelling a permit, which include (amongst other grounds) because the holder of the permit is not a suitable person to hold the permit or is not entitled to hold the permit or the Secretary has determined to suspend or cancel the permit under proposed Part 5 (Disciplinary action against holders of permits) of the proposed Act.

Clause 24 provides for the suspension of a permit.

Clause 25 provides for the cancellation of a permit.

Clause 26 permits the suspension or cancellation of a permit to be subject to conditions.

Clause 27 requires the Secretary, when suspending or cancelling a permit, to direct the holder of the permit as to the action the holder is required to take with respect to any paintball markers in the possession of the holder. Failure to comply with a direction is an offence (with a maximum penalty of 6 months imprisonment or \$22,000 (or both)).

Division 5 Miscellaneous

Clause 28 creates an offence (with a maximum penalty of \$110,000) if the holder of a permit or a former holder of a permit contravenes a condition of the permit or a condition of a suspension or cancellation of a permit other than a condition set out in clause 33 (1) or 34 (1) or (2) or a condition prescribed by the regulations for which a lesser maximum penalty has been prescribed. Clause 28 also creates an offence (with a maximum penalty of 12 months imprisonment or \$2,200 (or both)) for the contravention of a condition that causes a person to be injured by the illegal use of a paintball marker or that causes a significant risk to a person's safety by the illegal use (or threatened illegal use) of a paintball marker.

Clause 29 provides that a permit is not transferable.

Clause 30 creates an offence (with a maximum penalty of 6 months imprisonment or \$22,000 (or both)) if the holder of a permit lets out, hires or lends the permit to another person or permits another person to use the permit.

Clause 31 permits a person who is aggrieved by certain decisions of the Secretary under the proposed Part to apply to the Civil and Administrative Tribunal (*the Tribunal*) for an administrative review of the decision.

Part 4 Conditions of permits

Division 1 Conditions of all permits

Clause 32 specifies that each requirement set out in the proposed Division (or set out in regulations made under that Division) is a condition of every permit.

Clause 33 requires paintball markers to be stored in an inoperable state in a strong lockable metal container and permits the regulations made under the proposed Act to set out further requirements in relation to the storage of paintball markers.

Clause 34 requires paintball markers to be transported in an inoperable state in a secure bag or container and not to be left unattended when being transported. The clause also permits the regulations made under the proposed Act to set out further requirements in relation to the transport of paintball markers.

Clause 35 permits the regulations made under the proposed Act to set out requirements in relation to the maintenance, repair and disposal of paintball markers.

Division 2 Conditions of paintball venue permit

Clause 36 specifies that each requirement set out in the proposed Division (or set out in regulations made under that Division) is a condition of every paintball venue permit.

Clause 37 requires an area of the paintball venue to be clearly designated as the area in which the use of paintball markers is permitted (the *paintball game area*) and provides that a person must not be permitted to use a paintball marker in an area other than the paintball game area and that a person must wear protective clothing or equipment when in the paintball game area.

Clause 38 provides 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 and that a child or young person who is between 12 and 18 years of age may be permitted to possess or use a paintball marker at the paintball venue or enter the paintball game area only with parental consent.

Clause 39 requires the holder of a paintball venue permit to maintain a policy of public liability insurance.

Clause 40 requires the holder of a paintball venue permit to ensure that all persons employed at the paintball venue undertake any training required by the regulations made under the proposed Act.

Clause 41 requires the holder of a paintball venue permit to ensure that any use of paintball markers at the paintball venue is supervised by an employee who holds a paintball marker permit or who satisfies other requirements as may be prescribed by the regulations made under the proposed Act.

Part 5 Disciplinary action against holders of permits

Clause 42 sets out the grounds on which the Secretary may take disciplinary action against the holder of a permit.

Clause 43 requires the Secretary, before taking disciplinary action against the holder of a permit, to give the holder an opportunity to show cause why the disciplinary action should not be taken.

Clause 44 sets out the disciplinary action that the Secretary may take against the holder of a permit. This includes cautioning or reprimanding the holder, imposing a condition on the permit, suspending or cancelling the permit or disqualifying the holder from holding a permit.

Clause 45 permits a person who is aggrieved by a decision of the Secretary to take disciplinary action to apply to the Tribunal for an administrative review of the decision.

Clause 46 provides that disciplinary action may be taken under the proposed Part regardless of whether the holder concerned is subject to criminal or civil proceedings that relate to the same matters or incident and that the decision to take disciplinary action does not affect the liability of the holder for any offence.

Part 6 Powers of authorised officers

Division 1 Preliminary

Clause 47 sets out a number of definitions used in the proposed Part.

Clause 48 provides that an authorised officer may exercise functions conferred by the proposed Part for an *authorised purpose* (being to investigate, monitor and enforce compliance with the

proposed Act, to obtain information or records for purposes connected with the administration of the proposed Act or to enforce, administer or execute the proposed Act).

Division 2 Authorised officers

Clause 49 permits the Secretary to appoint persons as authorised officers.

Clause 50 provides that a person's authorisation as an authorised officer may be subject to conditions, limitations or restrictions or be for limited purposes.

Clause 51 provides for authorised officers to be issued with identification cards and to produce identification cards when requested to do so.

Division 3 Information gathering powers

Clause 52 provides that any power conferred under the proposed Division may be exercised whether or not a power of entry is being exercised.

Clause 53 permits an authorised officer to direct a person to furnish information or records for an authorised purpose.

Clause 54 permits an authorised officer to direct a person whom the authorised officer suspects to have knowledge of matters with respect to which information is required for an authorised purpose to answer questions with respect to those matters.

Clause 55 permits an authorised officer to record questions and answers given under the proposed Division.

Division 4 Entry to premises

Clause 56 provides a power of entry to premises for authorised officers.

Clause 57 prevents an authorised officer from entering any part of premises used predominantly for residential purposes without the permission of the occupier or the authority of a search warrant.

Clause 58 provides for the issuing of search warrants to authorised officers.

Clause 59 permits an authorised officer to direct the owner or occupier of premises or persons on those premises to provide reasonable assistance to the authorised officer.

Clause 60 sets out the powers that an authorised officer may exercise when on premises.

Division 5 Miscellaneous

Clause 61 permits the Secretary to retain records that an authorised officer has obtained under the proposed Part until the completion of proceedings in which they may be used as evidence. The person from whom the records are taken must be provided with a certified copy of the records.

Clause 62 creates an offence (with a maximum penalty of \$55,000 in the case of a corporation or \$22,000 in any other case) if a person obstructs, hinders or interferes with an authorised officer.

Clause 63 creates an offence (with a maximum penalty of \$55,000 in the case of a corporation or \$22,000 in any other case) if a person fails to comply with a direction of an authorised officer.

Clause 64 creates an offence (with a maximum penalty of \$55,000 in the case of a corporation or \$22,000 in any other case) if the holder of a permit fails to produce the permit to an authorised officer on demand by the authorised officer.

Part 7 Register of paintball markers

Clause 65 requires the Secretary to compile and maintain a Register of paintball markers.

Clause 66 requires authorised suppliers to provide information to the Secretary about the supply and disposal of paintball markers. Failure to do so is an offence (with a maximum penalty of \$22,000).

Part 8 Miscellaneous

Clause 67 permits the holder of a paintball venue permit to authorise an employee of the holder to do any of the things permitted by the paintball venue permit on behalf of the holder but only if the employee holds a paintball marker permit or satisfies other requirements as may be prescribed by the regulations under the proposed Act.

Clause 68 permits the Secretary to enter an information sharing arrangement with other agencies in relation to information that assists in the exercise of the functions of the Secretary under the proposed Act or of the other agency concerned.

Clause 69 protects police criminal intelligence information from being disclosed under the proposed Act by the Secretary or the Tribunal when it is provided to assess a person's suitability to hold a permit.

Clause 70 provides for the disposal of surrendered or seized paintball markers.

Clause 71 provides for the recognition in New South Wales of an authorisation that is equivalent to a permit under the proposed Act that was issued or conferred by another Australian jurisdiction.

Clause 72 provides for the means of service of documents under the proposed Act.

Clause 73 protects persons exercising functions under the proposed Act from personal liability.

Clause 74 makes provision for the giving of penalty notices (on-the-spot fines) for offences against the proposed Act or the regulations made under the proposed Act.

Clause 75 establishes an offence against proposed section 28 as an *executive liability offence* for directors and managers of corporations. An executive liability offence is an offence where the onus is on the prosecution to prove that the owner or manager knew or ought reasonably to have known of the commission of the offence and failed to take reasonable steps to prevent it.

Clause 76 provides for proceedings for offences against the proposed Act to be taken before the Local Court or the District Court.

Clause 77 provides for the issuing and effect of evidentiary certificates by the Secretary as to matters relating to permits.

Clause 78 permits the Secretary to delegate the exercise of functions under the proposed Act.

Clause 79 permits the regulations to create exemptions from the proposed Act or provisions of the proposed Act.

Clause 80 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 81 provides for a review of the proposed Act after 2 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Acts and instrument

Schedule 2 amends the Acts and instrument specified in the Schedule.