
GEL BLASTERS - A 'MENACING' TOY?

On 16 July 2020, the Queensland Government amended section 9 of the *Weapons Category Regulation 1997* to include Gel Blasters as a restricted item, which consequently makes the possession of a gel blaster an offence under the *Weapons Act 1990* (Qld), which carries a financial penalty of up to \$1,334.50.

Possession of a gel blaster is considered unlawful unless you have a 'reasonable excuse'. A gel blaster is a toy gun which shoots small water beads, often used in shooting skirmishes similar to paintball.

Whilst 'reasonable excuse' is not defined, Parliament noted that a reasonable excuse can include being a member of a club or association in which gel blasters are used for the purpose of taking part in the activities of that club or association. Ultimately, these laws make it virtually impossible for anyone to possess a gel blaster who is not participating in a club activity.

The new legislation is in contrast to the Queensland decision in *Comptroller-General of Customs v Clarke CFP Pty Ltd* from December 2017, Magistrate Shearer ruled that gel balls do not fall within the category of 'other projectiles' and found that gel blasters are only capable of firing a water based pellet and should therefore be classified as 'projectile toys'.

Gel Blasters have been particularly popular amongst children and families throughout Western & Northern Queensland, and the majority of owners and enthusiasts could now face criminal prosecution for possessing what has previously been defined as a toy.

The Government has not provided any proposed buy back scheme for people who have purchased these expensive toys legally. Chris Sinclair of The Gel Blaster Association has estimated there are close to 700,000 gel blasters across Queensland. or incentivise owners to return these items. With these items retailing into the hundreds of dollars and being so popular throughout the State, millions have been spent purchasing these now illegal items, with no consideration from the Government to compensate or incentivise owners to return these items.

Creevey Russell /LAWYERS

excellence in law, service and communication



(The water absorbing gel balls that are used as ammunition)

Regulating these toys to the extent that the Queensland Government has is concerning. The major push behind the legislative changes was not based upon the safety of the Gel Blaster itself, but rather the risk of these items being used in crimes like robbery where they can be represented as real weapons.

Yet even before these amendments, if a person used a gel blaster or any other imitation firearm in the commission of an offence, and a reasonable person would think it was a real firearm, those offenders would face serious criminal charges such as assault, going armed so as to cause fear and offences under the Weapons Act.

Legislation already allows for offenders using gel blasters in unlawful ways (e.g. as an imitation firearm) to be charged and prosecuted, yet the Government has decided to go hard on toys. The amendments will also have a devastating effect on those who have started businesses selling gel blasters and protective equipment.

Today we are regulating Gel-Blasters, tomorrow we may be regulating our children's cap guns and water pistols.

WE'RE ALWAYS HERE TO HELP

OUR 24 HOUR CRIME NUMBER:

1800 2746 3529

OUR OFFICES

BRISBANE | Level 24, 300 Queen Street | PO Box 10091 Brisbane QLD 4000 | +61 7 3009 6555
TOOWOOMBA | 1/1B Kitchener Street, PO BOX 833 Toowoomba QLD 4350 | +61 7 4617 8777
ROMA | 42B Wyndham Street, Roma QLD 4455 | +61 7 4622 7925

RECENT CASE - NEGOTIATING A BETTER OUTCOME

Our Crime & Misconduct team represented a man accused of several charges of unlawfully entering premises and committing an indictable offence, namely, stealing items equating to over \$70,000. He was also charged with a number of drug related offences after a search warrant was executed at this property.

Prior to the first mention, we actively negotiated with the Prosecution as to which charges our client would be willing to plead guilty to and the value of the 'damage' incurred by the victim. Ultimately, we were successful in having 7 of the 9 charges withdrawn and dismissed due to issues with the search warrant and the way in which Police particularised the charges.

Our client pled guilty to the two remaining charges, receiving a probation order, a non-conviction, and requirement to pay restitution of around \$8,000, as opposed to the previously sought \$70,000.

Matters like this are a good example of the importance of hiring a competent solicitor, as if this client had appeared self-represented, there is a chance he would have been convicted of all nine offences and subject to restitution of \$70,000.



COVID-19 UPDATE

Due to further restrictions being imposed under the Public Health Act in relation to COVID-19, we would like to remind everyone the importance of complying with the Government's directives.

Compliance is imperative to reducing the length of time until our return to normalcy, and we have recently seen the community wide ramifications due to false declarations being made and failure to adhere to quarantine.

Criminal Prosecution and/or Infringement Notices will be issued to those breaching state directives, and those in breach can face charges of, amongst others:

- Failure to comply with public health directions (s 362D of the *Public Health Act 2005*), carrying a maximum penalty of \$13,055 or 6 months imprisonment;
- Fraud (s 408C of the *Criminal Code 1899*), carrying a maximum penalty of 5 years imprisonment;
- Negligent Acts causing harm (s 328 of the *Criminal Code 1899*), carrying a maximum penalty of 2 years imprisonment.

If you have been charged with a COVID-19 related offence, or have questions in relation to your obligations, please do not hesitate to reach out to our team.



Dan Creevey



Michael Burrows



Craig van der Hoven



Dan Creevey Jr.

OUR SERVICES INCLUDE

Summary offences; Private criminal offences; CCC proceedings; Environmental Protection Act prosecutions; Animal prosecutions; Vegetation Management Act prosecutions; Health investigations; OHO and AHPRA investigations; Employment matters and internal discipline matters; White collar prosecutions; Director's breaches; Misconduct proceedings; Show cause proceedings.