

NORTHERN TERRITORY OF AUSTRALIA

VOLATILE SUBSTANCE ABUSE PREVENTION ACT

As in force at 8 November 2013

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 8 November 2013

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## VOLATILE SUBSTANCE ABUSE PREVENTION ACT

**An Act to provide for the prevention of volatile substance abuse and the protection of individuals and communities from harm resulting from volatile substance abuse, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Volatile Substance Abuse Prevention Act*.

#### **2 Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### **3 Objects**

- (1) The objects of this Act are to support child, family and social welfare and improve the health of people in the Territory by providing a legislative framework for:
  - (a) the prevention of volatile substance abuse; and
  - (b) the protection of persons, particularly children, from harm resulting from volatile substance abuse.
- (2) The framework enables the following actions to be taken to achieve the objects:
  - (a) the seizure and disposal of volatile substances that are being abused;
  - (b) the relocation to places of safety, or to responsible adults, of persons abusing volatile substances who may pose a risk to the health and safety of themselves or others;
  - (c) the making of orders that persons at risk of severe harm as a result of abuse of volatile substances must participate in treatment programs;

- (d) the making of management plans relating to the possession, supply and use of volatile substances in certain communities;
- (e) the prosecution of persons for the unlawful supply of volatile substances;
- (f) the protection of persons who give information to police officers about the commission of offences against this Act.

#### 4 Definitions

In this Act:

***abuse***, of a volatile substance, means the misuse of the substance by deliberately inhaling it to become intoxicated.

***adult*** means a person who is 18 or more years of age.

***applicant***, in relation to an application made under section 36(1) or 37(1) means the Chief Health Officer or a person to whom the Chief Health Officer has delegated the power to make the application.

***application***, for:

- (a) Part 3, Division 3 – means an application made under section 36(1) or 37(1); or
- (b) Part 4 – see section 42(1).

***apprehended person*** means a person apprehended under Part 2, Division 3.

***area***, for Part 4, see section 42(1).

***assessment***, see section 34(6).

***assessment applicant*** means a person who has made an assessment application.

***assessment application*** means an application made under section 33.

***assessment report*** means a report mentioned in section 34(1)(c).

***assessor*** means a person appointed to be an assessor under section 31(1).

***authorised officer*** means a person appointed to be an authorised officer under section 66 or a police officer.

**authorised person** means a person appointed under section 60.

**Chief Executive Officer** means the Chief Executive Officer of the Agency administering this Act.

**Chief Health Officer** means the person holding or occupying the office of Chief Health Officer under section 5 of the *Public Health Act*.

**child** means a person who is less than 18 years of age.

**community council**, for Part 4, see section 42(1).

**contravene** includes fail to comply with.

**council area**, for Part 4, see section 42(1).

**Court** means the Local Court.

**employee** means an employee within the meaning of the *Public Sector Employment and Management Act*.

**health practitioner** means:

- (a) a medical practitioner; or
- (b) a person registered under the Health Practitioner Regulation National Law (other than as a student) to practise in:
  - (i) the Aboriginal and Torres Strait Islander health practice profession; or
  - (ii) the nursing and midwifery profession as a nurse; or
- (c) for Part 3 – a person mentioned in paragraph (a) or (b), or a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student).

**informer**, for Part 5, Division 2, see section 54.

**inhalant** means an item used to inhale a volatile substance.

**management area** means an area of land declared to be a management area under Part 4.

**management plan** means a management plan in force under Part 4.

**nurse** means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a student).

**offence**, for Part 5, Division 2, see section 54.

**person at risk**, in relation to an application or order under Part 3, Division 3, means the person to whom the application or order relates.

**place of safety**, for Part 2, Division 3, see section 16.

**police officer** means a member of the Police Force.

**possession**, of a volatile substance or inhalant, includes having control of the volatile substance or inhalant.

**resident**, for Part 4, see section 42(1).

**responsible adult**, for:

- (a) Part 2, Division 3 – see section 16; or
- (b) Part 3 – means a parent or guardian of a child at risk of severe harm, or reasonably believed to be at risk of severe harm, or a person who has custody of such a child.

**responsible officer**, for Part 2, Division 4, see section 23.

**right or interest in land**, for Part 4, see section 42(1).

**risk**, posed by an apprehended person, means a risk to the health or safety of the apprehended person or other persons.

**senior officer**, for Part 2, Division 4, see section 23.

**severe harm**, in relation to a person, means any of the following resulting from abuse of a volatile substance:

- (a) physical harm;
- (b) neurological harm;
- (c) significant deterioration of or damage to the person's mental condition.

**supply** includes the following:

- (a) give, distribute, sell, administer or transport, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;



- (b) barter or exchange;
- (c) have or keep in possession for supply;
- (d) offering to do an act referred to in paragraph (a) or (b);
- (e) doing or offering to do an act preparatory to, in furtherance of, or in connection with, an act referred to in paragraph (a) or (b).

***treatment order***, see section 41(1).

***treatment program***, see section 31A(1).

***treatment warrant***, see section 41B(2).

***volatile substance*** means:

- (a) plastic solvent, adhesive cement, cleaning agent, glue, nail polish remover, lighter fluid, petrol or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas; or
- (b) a substance declared under section 5 to be a volatile substance.

## **5 Minister may declare volatile substance**

The Minister may, by notice in the *Gazette*, declare a substance to be a volatile substance.

## **6 Not offence to inhale or possess volatile substance or inhalant**

This Act does not make it an offence for a person to inhale, or have in the person's possession, a volatile substance or item used for inhaling a volatile substance.

## **Part 2 Preventing inhalation of volatile substances and protecting health and safety of persons**

### **Division 1 General provisions relating to exercise of powers**

#### **7 Police power not in derogation of other powers**

A power conferred by this Part on a police officer is in addition to and not in derogation of any other power the police officer may have under any other Part of this Act or any other law in force in the Territory.

*Example for section 7*

*If a person inhaling a volatile substance is also committing an offence under Part 5 or under a provision of any other Act, a police officer may charge the person in connection with the offence instead of taking action under this Part.*

#### **8 Where power may be exercised**

- (1) A police officer or authorised person may exercise a power under Division 2 or 3 only in relation to a person who is:
  - (a) in a public place; or
  - (b) trespassing on private property; or
  - (c) on private premises, if consent to enter the premises is given to the police officer or authorised person:
    - (i) by the occupier of the premises; or
    - (ii) if there is no occupier – by the owner of the premises.
- (2) An authorised person may exercise a power under Division 2 or 3 (as applicable in relation to the person) only in the area specified in the notice of appointment of the authorised person.

#### **9 No warrant required**

A police officer or authorised person may exercise a power under this Part without a warrant.

#### **10 Reasonable force may be used**

A police officer or authorised person may use the force that is reasonably necessary when exercising a power under this Part.

**11            Manner of giving information**

Any information or request that a police officer or authorised person is required to give to or make of a person under this Part must be given or made in a way the person is likely to understand and, if possible, in a language the person is able to understand.

**12            Records to be kept**

Records must be kept, in accordance with the Regulations, of all actions taken under Division 2 or 3.

**Division 2        Powers of search and seizure**

**13            Search for and seizure of volatile substance or inhalant**

- (1) This section applies if a police officer or authorised person has reasonable grounds to believe a person:
  - (a) is in possession of a volatile substance or inhalant; and
  - (b) is inhaling or will inhale a volatile substance.
- (2) The police officer or authorised person may search the person, and any thing in the person's possession, for a volatile substance or inhalant.
- (3) Before conducting the search, the police officer or authorised person must follow the procedures in section 14 unless he or she believes on reasonable grounds that:
  - (a) the person is unable to understand the information or request referred to in that section because of the effects of inhaling a volatile substance; or
  - (b) it is otherwise impracticable to do so.
- (4) If subsection (3) applies or the person does not comply with a request made in accordance with section 14(4), the police officer or authorised person may search the person and seize any volatile substance or inhalant that is in the person's possession.
- (5) This section does not authorise a search that involves the removal of the person's clothes or an examination of the person's body cavities.

#### **14 Procedures before searching for volatile substance or inhalant**

- (1) If a police officer is going to conduct the search, the officer must inform the person of the officer's rank and the police station to which the officer is attached and, if not in uniform, must show the person a written form of identification.
- (2) If an authorised person is going to conduct the search, the authorised person must inform the person of his or her identity by showing the person his or her identity card issued under section 61.
- (3) The police officer or authorised person must inform the person that, although it is not an offence to possess a volatile substance or item used to inhale a volatile substance, the police officer or authorised person may, using reasonable force:
  - (a) search the person for a volatile substance or item used to inhale a volatile substance; and
  - (b) seize a volatile substance or item used to inhale a volatile substance that is in the person's possession.
- (4) The police officer or authorised person must then request the person to give the police officer or authorised person any volatile substance or item used to inhale a volatile substance that is in the person's possession.

#### **15 Disposal etc. of volatile substance or inhalant**

- (1) This section applies if a police officer or authorised person:
  - (a) seizes a volatile substance or inhalant under section 13; or
  - (b) is given a volatile substance or inhalant under section 14.
- (2) If the police officer or authorised person believes that removing the volatile substance or inhalant to a police station may cause a risk to any person's health or safety or is impracticable in the circumstances, he or she may dispose of or destroy the volatile substance or inhalant.
- (3) If the police officer or authorised person does not dispose of or destroy the volatile substance or inhalant, he or she must take it to a police station as soon as practicable for disposal or destruction.

## **Division 3 Powers of apprehension**

### **16 Definitions**

In this Division:

*place of safety* means a place of safety declared under section 63.

*responsible adult* means a person reasonably considered by a police officer or authorised person to be capable of taking care of an apprehended person.

### **17 Meaning and effect of apprehension of person**

- (1) For this Division, the apprehension of a person is the detention of the person in order to take the person to a place of safety or to a responsible adult.
- (2) An apprehended person is not under arrest and, unless section 22(3) applies, must not be taken into police custody.
- (3) An apprehended person:
  - (a) must not be charged with an offence; and
  - (b) must not be questioned by a police officer in relation to an offence; and
  - (c) must not be photographed or have his or her fingerprints taken.

### **18 Interests of apprehended person and welfare of children**

- (1) In exercising a power under this Division, a police officer or authorised person must consider the best interests of the apprehended person.
- (2) The welfare of any child who may be affected by the exercise of the power is of paramount consideration, whether the child is the apprehended person or is a child whose health and safety may be at risk from the apprehended person.

### **19 When person may be apprehended**

- (1) A police officer or authorised person may apprehend a person if the police officer or authorised person has reasonable grounds to believe the person:
  - (a) is inhaling or has recently inhaled a volatile substance; and

- (b) should be apprehended to protect the health or safety of the person or other persons.
- (2) Subsection (1) applies irrespective of whether the apprehended person has been searched under Division 2 and irrespective of whether a volatile substance or inhalant is in the person's possession.
- (3) When apprehending the person or as soon as practicable after the apprehension, the police officer or authorised person must follow the procedures in section 20 unless the police officer or authorised person believes on reasonable grounds that:
  - (a) the apprehended person is unable to understand the information referred to in that section because of the effects of inhaling a volatile substance; or
  - (b) it is otherwise impracticable to do so.
- (4) Section 20(1) and (2) does not apply if the person has been searched in accordance with Division 2 immediately before being apprehended.

## **20 Procedures when apprehending person**

- (1) If a police officer apprehends the person, the police officer must inform the person of the police officer's rank and the police station to which the police officer is attached and, if not in uniform, must show the person a written form of identification.
- (2) If an authorised person apprehends the person, the authorised person must inform the person of his or her identity by showing the person his or her identity card issued under section 61.
- (3) The police officer or authorised person must inform the apprehended person that:
  - (a) the person is not under arrest in relation to any alleged offence; and
  - (b) the person is being apprehended to protect the health or safety of the person or other persons; and
  - (c) the police officer or authorised person intends to take the person to a place of safety or to a responsible adult.

**21 Taking person to place of safety or responsible adult**

- (1) Subject to subsection (2) and section 22, as soon as practicable after apprehending a person, the police officer or authorised person must take the apprehended person:
  - (a) to a place of safety, where the person may be released into the care of a person at that place; or
  - (b) to a responsible adult and, if the responsible adult consents, release the apprehended person into that adult's care.
- (2) If a child is released into care at a place of safety or into the care of a responsible adult who is not the child's parent or guardian, the police officer or authorised person must, if practicable, inform a parent or guardian of the child of that action.

**22 When person may be released or taken into protective custody**

- (1) This section applies if, after making all reasonable efforts, the police officer or authorised person is unable:
  - (a) to take the apprehended person to a place of safety or responsible adult; or
  - (b) to find a responsible adult who will consent to take care of the apprehended person.
- (2) If the police officer or authorised person considers the apprehended person no longer poses a risk, he or she may release the apprehended person in a place he or she considers suitable in the circumstances.
- (3) If the police officer or authorised person considers the apprehended person continues to pose a risk, he or she may take the apprehended person to a police station to be held in protective custody in accordance with Division 4.
- (4) If a child is taken to a police station to be held in protective custody, the police officer or authorised person must, if practicable, inform a parent or guardian of the child of that action.

## **Division 4 Protective custody**

### **23 Definitions**

In this Division:

*responsible officer* means a police officer on duty at the police station where an apprehended person is in protective custody, who is responsible for the care of the person.

*senior officer* means a police officer of or above the rank of Superintendent.

### **24 Child not to be kept in police station cell**

An apprehended person who is a child must not be held inside a cell at a police station except in accordance with the Regulations.

### **25 Searching apprehended person**

- (1) A responsible officer may:
  - (a) search an apprehended person or cause an apprehended person to be searched; and
  - (b) remove or cause to be removed from the apprehended person, for safe keeping until the person is released from protective custody:
    - (i) money and valuables found on or about the apprehended person; and
    - (ii) items on or about the apprehended person that are likely to cause harm, or could be used by any person to cause harm, to the apprehended person or any other person.
- (2) All money and valuables taken from an apprehended person must be recorded in a register kept for that purpose and must be returned to the apprehended person on receipt of a signature or other mark made in the register by the apprehended person.

### **26 Period of protective custody**

- (1) Subject to this Division, an apprehended person may be held in protective custody only until it reasonably appears to a responsible officer the person no longer poses a risk.



- (2) Subject to this Division, if it reasonably appears to a responsible officer that an apprehended person no longer poses a risk, the officer must release the person or cause the person to be released from protective custody.
- (3) An apprehended person who is in protective custody after midnight and before 7.30 am on a particular day may be held in custody until 7.30 am of that day even if the person no longer poses a risk during that period.

## **27 Release from protective custody**

- (1) A responsible officer may at any time release an apprehended person or cause an apprehended person to be released into the care of a person the officer reasonably believes is capable of taking care of the apprehended person.
- (2) Subsection (1) does not apply in the following circumstances:
  - (a) if the apprehended person is an adult who objects to being released into the care of the other person;
  - (b) if the apprehended person is a child who objects to being released into the care of the other person and the responsible officer is satisfied the child is of sufficient age and understanding to form an informed opinion.

## **28 Continued protective custody**

- (1) This section applies if:
  - (a) an apprehended person is held in protective custody for 6 hours; and
  - (b) after the 6 hours expires, it reasonably appears to a responsible officer the person continues to pose a risk.
- (2) The responsible officer must take the following actions:
  - (a) notify a senior officer that it reasonably appears to the responsible officer the apprehended person continues to pose a risk;
  - (b) if instructed to do so by the senior officer – continue, subject to subsection (4), to hold the apprehended person in protective custody until:
    - (i) the expiry of 10 hours after the apprehended person was taken into custody; or

- (ii) at any earlier time if it reasonably appears to the responsible officer the apprehended person no longer poses a risk;
  - (c) make a record in the custody log (however described) of the time at which and manner in which the responsible officer notified the senior officer, the content of the notification and the instruction the senior officer gave to the responsible officer;
  - (d) if instructed to hold the apprehended person in protective custody – arrange for a health practitioner to examine the person as soon as practicable.
- (3) Notification under subsection (2)(a) may be:
  - (a) made orally, whether in person or by radio, telephone or any other available means of communication; or
  - (b) made in writing by facsimile transmission or any other available electronic means of communication.
- (4) After an apprehended person has been examined by a health practitioner:
  - (a) if the health practitioner is of the opinion the person requires medical treatment – the person may be released into the care of the health practitioner; or
  - (b) if the health practitioner is of the opinion the person does not require medical treatment – the responsible officer must continue to hold the person in custody until the expiry of the period referred to in subsection (2)(b).

## **29 Application to Justice for release**

- (1) An apprehended person may, at any time after being apprehended, request a responsible officer to take the person before a Justice so the person may make an application for release from protective custody.
- (2) After a request is made, a responsible officer must bring the apprehended person before a Justice without delay unless it is impracticable to do so or the person is released from protective custody under another section of this Division.

**30 Informing parent or guardian of child's release to another person**

If a child is released from protective custody into the care of a person who is not the child's parent or guardian, a responsible officer must, if practicable, inform a parent or guardian of the child of that action.

**Part 3 Treatment orders for persons at risk of severe harm**

**Division 1 Preliminary matters**

**31 Assessors**

- (1) The Chief Health Officer may, in writing, appoint a person to be an assessor to make assessments of persons reasonably believed to be at risk of severe harm and to exercise and perform related powers and functions under this Part.
- (2) An assessor must be:
  - (a) a health practitioner; or
  - (b) a person who holds a qualification approved under subsection (5).
- (3) An assessor must exercise and perform his or her powers and functions in accordance with assessment guidelines issued by the Chief Health Officer.
- (4) Without limiting subsection (3), the assessment guidelines may specify the practice and procedures to be followed by an assessor in relation to the following matters:
  - (a) examining and making an assessment of a person;
  - (b) consulting a responsible adult for a child to whom an assessment application relates;
  - (c) preparing an assessment report;
  - (d) making an application for a treatment warrant.
- (5) The Minister may, by *Gazette* notice, approve a qualification or class of qualifications for subsection (2)(b).

### **31A Treatment program**

- (1) A *treatment program* is a program of treatment or intervention appropriate for a person at risk of severe harm.
- (2) A treatment program may provide a person at risk of severe harm with any of the following:
  - (a) treatment for withdrawal, stabilisation, rehabilitation or aftercare;
  - (b) therapeutic, health, diversionary or educational intervention;
  - (c) any other type of treatment or intervention intended to alleviate the severe harm;
  - (d) a combination of any treatment or intervention mentioned in paragraphs (a) to (c).
- (3) A person at risk of severe harm may participate in any component of a treatment program:
  - (a) at a residential facility or any other place; or
  - (b) by taking part in a treatment or intervention that is not specific to a particular place (for example, a diversionary intervention involving travelling through an area of the Territory).

### **32 Powers not in derogation of other powers**

The powers that may be exercised by a person under this Part are in addition to and not in derogation of powers the person may exercise under any other law in force in the Territory.

*Example for section 32*

*The Adult Guardianship Act and Community Welfare Act are laws under which powers may be exercised in relation to a person at risk of severe harm as a result of volatile substance abuse.*

## **Division 2 Assessment of persons believed to be at risk**

### **33 Assessment application**

- (1) This section applies if one of the following persons reasonably believes a child or adult is at risk of severe harm:
  - (a) a police officer or authorised person;
  - (b) an employee approved under section 65;
  - (c) a health practitioner;

- (d) a member of the family of the child or adult believed to be at risk of severe harm;
  - (e) in relation to a child believed to be at risk of severe harm – a responsible adult for the child.
- (2) The person may apply to an assessor for an assessment of the child or adult believed to be at risk of severe harm.
- (3) An assessment application:
- (a) must be in the form, and include the information, approved under section 64; and
  - (b) must be accompanied by all documents in the person's possession that support the belief that the child or adult is at risk of severe harm.

#### **34 Assessment and report**

- (1) If an assessor to whom an assessment application is made is satisfied the information provided in or accompanying the application indicates the person to whom the application relates (*the relevant person*) is at risk of severe harm, the assessor must:
- (a) examine the person; and
  - (b) make an assessment of the person; and
  - (c) prepare an assessment report about the person and give it to the Chief Health Officer; and
  - (d) notify the assessment applicant about whether or not the person was assessed as being at risk of severe harm.
- (2) Despite subsection (1)(a), the assessor may take the actions mentioned in subsection (1)(b) to (d) without examining the relevant person if the following circumstances apply:
- (a) it is impracticable to examine the person;
  - (b) the assessor received sufficient information about the person (for example, medical records or police records) to enable the assessor to make an assessment of the person.

- (3) If the assessor makes an assessment of the relevant person as being at risk of severe harm, the assessment report must recommend an appropriate treatment program for the person and include the following details:
  - (a) each type of treatment or intervention to be provided by the program;
  - (b) if applicable – the residential facility or place at which a particular component of the program is to be provided.
- (4) The assessor may request more information from the assessment applicant before deciding whether or not to make an assessment of the relevant person.
- (5) If the assessor is satisfied the information provided by the assessment applicant does not indicate that the relevant person is at risk of severe harm, the assessor must give the applicant a notice stating:
  - (a) the assessor's decision not to make an assessment of the person; and
  - (b) the reasons for the decision.
- (6) For this section, an assessor makes an *assessment* of whether a person is at risk of severe harm by making a comprehensive assessment of one or both of the following:
  - (a) the person's condition (which may include the person's physical, neurological and mental condition);
  - (b) the person's circumstances (which may include the circumstances of the person's lifestyle, environment and relationships with others).

### **35 Decision after considering assessment report**

- (1) As soon as practicable after considering an assessment report about a person (*the relevant person*), the Chief Health Officer must make a decision about whether or not to apply for a treatment order in relation to the person.
- (2) The Chief Health Officer may decide to apply for a treatment order in relation to the relevant person if satisfied all of the following circumstances apply:
  - (a) the person has been assessed as being at risk of severe harm;

- (b) a treatment program has been recommended for the person;
  - (c) the person has not participated in a treatment program since the assessment report was made;
  - (d) a treatment order will be in the best interests of the person;
  - (e) the person cannot be adequately protected from severe harm in any other way.
- (3) If the Chief Health Officer is not satisfied all of the circumstances mentioned in subsection (2) apply in relation to the relevant person, the Chief Health Officer:
- (a) may decide not to apply for a treatment order in relation to the relevant person; and
  - (b) must give the assessor, and the assessment applicant, a notice stating the decision and the reasons for it.

### **Division 3 Matters relating to treatment orders**

#### **36 Application for treatment order**

- (1) As soon as practicable after making a decision under section 35 in relation to a person who has been assessed as being at risk of severe harm, the Chief Health Officer (or a delegate) may apply to the Court for a treatment order in relation to the person.
- (2) The application must be:
- (a) in a form approved by the Chief Magistrate; and
  - (b) accompanied by the assessment report about the person at risk.

#### **37 Application for order in connection with treatment order**

- (1) During the period a treatment order is in force, the Chief Health Officer (or a delegate) may apply to the Court for an order in connection with the treatment order (for example, an order to vary, extend or revoke the treatment order).
- (2) The application must be:
- (a) in a form approved by the Chief Magistrate; and
  - (b) accompanied by documents in support of the application.

### **38 Notice of application**

- (1) As soon as practicable after making an application under section 36(1), the applicant must give notice to the following persons that the application has been made:
  - (a) if the person at risk is an adult – the person at risk;
  - (b) if the person at risk is a child and the applicant believes the child is capable of understanding the notice – the person at risk and a responsible adult for the child;
  - (c) if the person at risk is a child and the applicant believes the child is incapable of understanding the notice – a responsible adult for the child;
  - (d) the assessor of the person at risk;
  - (e) the assessment applicant in relation to the person at risk, unless the assessment applicant is the responsible adult given notice under paragraph (b) or (c).
- (2) As soon as practicable after making an application under section 37(1), the applicant:
  - (a) must give notice of the application to a relevant person mentioned in subsection (1)(a) to (c); and
  - (b) may give notice of the application to one or both of the persons mentioned in subsection (1)(d) and (e), as the applicant considers appropriate taking into account the nature of the application.
- (3) A notice given under subsection (1) or (2):
  - (a) must include information about:
    - (i) the persons who are required to attend at the hearing of the application; and
    - (ii) the persons who are entitled to attend at the hearing of the application but need not do so; and
  - (b) must be accompanied by a copy of the application endorsed with details of the time, date and place of the hearing of the application.
- (4) A notice given under subsection (1) to the person at risk, or a responsible adult for the person at risk, must be accompanied by the assessment report about the person at risk.



- (5) A notice given under subsection (2)(a) must be accompanied by each document filed at the Court in support of the application.
- (6) A notice given under this section to an assessment applicant must not be accompanied by:
  - (a) any assessment report; or
  - (b) any other document filed at the Court in support of the application.

### **39 Hearing of application**

- (1) Unless an order to the contrary is made under subsection (2), the following persons are required to attend at the hearing of an application:
  - (a) the applicant or a person representing the applicant;
  - (b) if the person at risk is an adult mentioned in section 38(1)(a) or a child mentioned in section 38(1)(b):
    - (i) the person at risk; or
    - (ii) a person representing the person at risk;
  - (c) if the person at risk is a child mentioned in section 38(1)(c) – a responsible adult or a person representing that adult.
- (2) The Court may order that a person required by subsection (1) to attend at the hearing need not attend if:
  - (a) the Court has sufficient information to make a decision without the person's attendance; or
  - (b) in relation to a responsible adult mentioned in subsection (1)(c) – the Court is satisfied reasonable investigations have been made to find such an adult but have been unsuccessful.
- (3) If the person at risk or a responsible adult does not attend at the hearing because he or she is represented by another person, the Court may order the person at risk or responsible adult to attend if the Court requires information from the person or adult.
- (4) The following persons are entitled to attend at the hearing but need not do so unless the Court orders the attendance:
  - (a) the assessment applicant in relation to the person at risk;
  - (b) the assessor of the person at risk;

- (c) any member of the family of the person at risk.
- (5) Unless the Court orders otherwise, the hearing must be in closed court.

#### **40 Jurisdiction and procedure of Court**

- (1) The Court has jurisdiction in all matters relating to an application and, in particular, may do any of the following:
  - (a) hear and, subject to subsection (4), decide the application as it sees fit;
  - (b) adjourn the application;
  - (c) make the order to which the application relates, with or without conditions;
  - (d) refuse to make the order to which the application relates;
  - (e) make any other order or give any direction relevant to the application as the Court considers appropriate, including that it be provided with further assessment reports or any other reports, opinions or information about the person at risk.
- (2) Subject to this Division and any direction of the Chief Magistrate, the Court may regulate its own procedure in relation to an application.
- (3) The Court is not bound by the rules of the Court or rules of evidence but may inform itself in the manner it considers appropriate.
- (4) In deciding an application, the primary consideration of the Court must be the protection from severe harm of the person at risk.

#### **41 Treatment order**

- (1) A ***treatment order*** is an order made by the Court that the person at risk specified in the order must participate in a treatment program.
- (2) A treatment order must specify the following:
  - (a) the person at risk must participate in each component of the treatment program as specified in the order;
  - (b) if applicable – the facility or place at which a particular component of the treatment program will be provided;
  - (c) the date on which the order will come into force;

- (d) the period, not exceeding 16 weeks, for which the order will be in force;
  - (e) any other matter the Court considers appropriate.
- (3) On application under section 37(1), the Court may extend a treatment order for a period not exceeding 16 weeks.

#### **41A Application for treatment warrant**

- (1) This section applies if a person at risk specified in a treatment order fails to participate in any component of a treatment program as specified in the order.
- (2) Any one of the following persons may apply, in the prescribed form, to a magistrate for a treatment warrant in relation to the person at risk:
- (a) an assessor;
  - (b) an authorised officer;
  - (c) the Chief Health Officer;
  - (d) a legal practitioner representing a person mentioned in paragraphs (a) to (c).
- (3) The application may be made:
- (a) in person; or
  - (b) if it is impracticable to apply in person – by telephone in accordance with the procedure prescribed by regulation.

#### **41B Issuing treatment warrant**

- (1) A magistrate to whom an application under section 41A(2) is made may issue a treatment warrant in relation to a person at risk if satisfied:
- (a) a treatment order in relation to the person is in force; and
  - (b) the person has failed to participate in any component of the treatment program as specified in the treatment order.
- (2) A *treatment warrant* is a document, in the prescribed form, that authorises an authorised officer:
- (a) to enter, at any reasonable time, a place where the officer reasonably believes the person specified in the warrant may be found; and

- (b) to search the place in order to find the person; and
  - (c) to remain at the place for as long as the officer considers reasonably necessary to find the person; and
  - (d) if the person is found – to apprehend the person and take the person to the place specified in the warrant to participate in the component of the treatment program as specified in the warrant.
- (3) If a magistrate issues a treatment warrant on application made by telephone, the procedure prescribed by regulation applies.
- (4) A treatment warrant remains in force for the lesser of the following periods:
- (a) 30 days after the day on which it is issued;
  - (b) until the relevant treatment order ceases to be in force.

#### **41C Executing treatment warrant**

- (1) In executing a treatment warrant, an authorised officer:
- (a) may use reasonable force and, if necessary, reasonable assistance; and
  - (b) must produce the warrant (or a copy of the warrant) to a person at the place where the warrant is executed.
- (2) A person assisting the authorised officer to execute a treatment warrant may also use reasonable force in doing so.

#### **41D Effect of order under *Alcohol Mandatory Treatment Act***

- (1) This section applies if a mandatory treatment order under the *Alcohol Mandatory Treatment Act* is made in relation to a person at risk specified in a treatment order.
- (2) Despite anything to the contrary in this Act, the person at risk need not comply with the treatment order to the extent the mandatory treatment order makes it not reasonably practicable to do so.
- (3) As soon as practicable after the mandatory treatment order is made, the Chief Health Officer must apply under section 37 for an order to:
- (a) vary the treatment order so it can be complied with while the mandatory treatment order is in effect; or
  - (b) revoke the treatment order.

## Part 4 Community management of possession, supply and use of volatile substances

### Division 1 Preliminary matters

#### 42 Interpretation

(1) In this Part:

**application** means an application for a declaration of a management area made under section 44.

**area** does not include an area described in a declaration under section 43.

**community council** means:

- (a) a shire council or regional council constituted under the *Local Government Act*, or
- (b) an Aboriginal corporation within the meaning of the *Aboriginal Councils and Associations Act 1976* (Cth).

**council area** means the area under the control and management of a community council.

**resident**, of an area in respect of which an application is made, means a person who:

- (a) is 18 or more years of age; and
- (b) resides in the area or has a right or interest in land within the area.

**right or interest in land** includes the entitlement by Aboriginal tradition, within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, to use or occupy land.

- (2) A reference in this Part to an area of land described in an application or in a declaration made under section 47 is, if more than one area of land is described in the application or declaration, a reference to all the areas of land so described.

#### 43 Declaration that area must not be management area

The Minister may, by notice in the *Gazette*, declare that an area described in the notice must not be a management area.

## **Division 2 Management areas**

### **44 Application for declaration of management area**

- (1) A minimum of 10 residents of an area may apply to the Minister for a declaration that the area is a management area.
- (2) A community council may apply to the Minister for a declaration that any of the following is a management area:
  - (a) the whole of its council area;
  - (b) part of its council area;
  - (c) 2 or more non-contiguous parts of its council area.
- (3) The application must:
  - (a) be in writing; and
  - (b) if the application is made by residents of an area – be signed by each applicant; and
  - (c) if the application is made by a community council – be signed by a person authorised by the council; and
  - (d) include a description of the area of land to which the application relates in sufficient detail to enable the Minister to identify the location of the proposed management area.

### **45 Meeting about proposed management area**

- (1) After receiving an application the Minister must, in the manner the Minister considers appropriate:
  - (a) inform the residents of the area of land described in the application, and other interested persons, of the receipt of the application; and
  - (b) fix a date, time and place for a meeting with the residents and other interested persons and advise them of those details.
- (2) At the meeting, the Minister must:
  - (a) explain to the persons present the effect of declaring a management area; and
  - (b) endeavour to ascertain the needs and opinions of the residents and other interested persons about the proposal to declare a management area.

- (3) For this section, other interested persons are persons the Minister considers are likely to be affected by and interested in the application and may include persons residing in the vicinity of the area of land described in the application.

#### **46 Application may be varied or withdrawn**

The applicants for the declaration of a management area may, by notice in writing to the Minister:

- (a) after the Minister's meeting with residents and other interested persons – vary the application by altering the area of land described in the application, but not so as to increase the size of the proposed management area; or
- (b) at any time before the Minister declares an area of land to be a management area – withdraw the application.

#### **47 Decision to declare or refuse to declare management area**

- (1) In deciding whether to declare an area of land to be a management area, the Minister:
- (a) must consider the needs and opinions of residents in the area and of other interested persons referred to in section 45(3); and
- (b) may conduct any investigations the Minister considers relevant to the application; and
- (c) if the application relates to an area of land within, or in the vicinity of, a council area – must consult with the relevant community council to ascertain its views about the proposed declaration and any other matters relating to the possession, supply and use of volatile substances within that area.
- (2) The Minister may then:
- (a) declare an area of land described in the application to be a management area; or
- (b) refuse to make such a declaration.
- (3) A declaration of a management area may be made in respect of:
- (a) the area of land described in the application; or
- (b) an area of land equal to, greater than or less than the area of land described in the application and including a substantial part of the area of land described in the application.

- (4) The declaration does not take effect until the date specified in the notice of the declaration published in the *Gazette*.

#### **48 Publication of notice of declaration**

- (1) Not later than 14 days after making a declaration of a management area, the Minister must cause notice of the declaration to be published:
- (a) in the *Gazette*; and
  - (b) in a newspaper or other publication circulating throughout the management area or in any other manner the Minister considers suitable to publicise the making of the declaration throughout the management area.
- (2) The notice of the declaration must:
- (a) include a description of the management area in sufficient detail to identify the location of the area; and
  - (b) include a statement that the management area is declared to enable a plan to be made for the management of the possession, supply and use of volatile substances in the area; and
  - (c) specify the date the declaration takes effect.

### **Division 3 Management plans**

#### **49 Management plan for each management area**

- (1) Each management area must have a written plan for the management of the possession, supply and use of volatile substances in the area.
- (2) The management plan must specify the following:
- (a) the management area to which the plan relates;
  - (b) practices and procedures relating to the management of the possession, supply and use of volatile substances.
- (3) The Regulations may provide for the following:
- (a) the content and form of management plans;
  - (b) the manner in which management plans must be prepared;



- (c) the publication of management plans.

#### **50 Preparation and approval of management plan**

- (1) The applicants for the declaration of a management area must prepare the management plan for that area in consultation with the Minister, Commissioner of Police and Chief Executive Officer.
- (2) After the applicants have finished preparing the management plan, they must give it to the Minister for written approval.
- (3) The Minister must not approve the management plan unless satisfied:
  - (a) it appropriately provides for the matters to be specified under section 49(2)(b); and
  - (b) it complies with this Division and the Regulations; and
  - (c) if the plan will apply in a management area entirely or partly within a council area – it is supported by the relevant community council.
- (4) In addition, the Minister must not approve the management plan unless the Minister has held a meeting with residents of the management area in order to:
  - (a) explain to them the effect of the management plan; and
  - (b) ascertain their opinions about the management plan.
- (5) The Minister must give notice in the *Gazette* of the approval of a management plan and specify in the notice:
  - (a) the date on which the plan comes into force; and
  - (b) the place at which copies of the plan may be inspected or obtained during normal business hours.

#### **51 Amendment or replacement of management plan**

- (1) A minimum of 10 residents of a management area, or a community council for a council area within which there is a management area or part of a management area, may:
  - (a) prepare an amendment to the management plan for the management area; or
  - (b) prepare a new management plan to replace the management plan for the management area.

- (2) Section 50 applies (with the necessary changes) in relation to an amendment to or replacement of a management plan but, if the Minister considers that an amendment is of a minor nature, the Minister need not hold the meeting referred to in section 50(4).

## **Part 5            Offences and confidentiality**

### **Division 1        Offences**

#### **52            Unlawful supply of volatile substances**

A person (*the first person*) must not supply a volatile substance to a second person if the first person knows or ought to know the second person intends:

- (a) to inhale the volatile substance; or
- (b) to supply the volatile substance to a third person for inhalation by the third person or any other person.

Maximum penalty:        200 penalty units or imprisonment for 2 years.

#### **53            Contravention of management plan**

A person must not contravene a management plan.

Maximum penalty:        100 penalty units or imprisonment for 6 months.

### **Division 2        Confidentiality**

#### **54            Definitions**

In this Division:

*informer* means a person who supplies information to a police officer in respect of the commission of an offence.

*offence* means an offence against section 52 or 53.

#### **55            Informer's identity confidential**

- (1) Subject to this Division, an informer's identity must be kept confidential at all times.



**58 When information may be disclosed**

Sections 56 and 57 do not apply to the extent the defendant satisfies the court it is in the interest of justice, in the particular circumstances, that the disclosure, production or statement be made.

**59 Court may prohibit publication of proceedings**

- (1) In proceedings in respect of an offence, the magistrate or Judge conducting the proceedings may make an order prohibiting the publication of the whole or any part of the proceedings and the name and address of any witness appearing in the proceedings (*prohibition order*).
- (2) A prohibition order remains in force for the time the magistrate or Judge specifies in the order.
- (3) An application for a prohibition order may be made in the presence of the persons the magistrate or Judge thinks fit.
- (4) At the hearing of an application for a prohibition order, the magistrate or Judge may receive and act on information as he or she thinks fit.
- (5) When considering an application for a prohibition order, the magistrate or Judge must have regard to:
  - (a) the safety of any person; and
  - (b) the extent to which the detection of offences of a similar nature may be affected; and
  - (c) the need to guarantee the confidentiality of information given by an informer.
- (6) A person must not contravene a prohibition order.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

**Part 6 Administration**

**Division 1 Administration for Part 2**

**60 Authorised person**

- (1) The Minister may, by written notice, appoint a person to be an authorised person who may exercise powers under Part 2.

- (2) The notice must specify the following:
- (a) whether the authorised person may exercise powers under:
    - (i) Part 2, Division 2; or
    - (ii) Part 2, Division 3; or
    - (iii) Part 2, Divisions 2 and 3;
  - (b) the area in which the authorised person may exercise those powers, which may be the whole of the Territory or a part of the Territory;
  - (c) any conditions to which the appointment is subject.

**61 Identity card for authorised person**

- (1) The Minister must issue to each authorised person an identity card containing:
- (a) a photograph and the signature of the authorised person; and
  - (b) a statement of the powers the person is authorised to exercise; and
  - (c) any other information prescribed by the Regulations.
- (2) As soon as reasonably practicable after a person ceases to be an authorised person, the person must return the identity card to the Minister.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is a regulatory offence.

**62 Guidelines for exercise of powers by authorised person**

- (1) The Minister may issue guidelines in relation to the exercise by authorised persons of powers under Part 2.
- (2) The guidelines may specify the qualifications required by persons before being appointed as authorised persons and the standards authorised persons are expected to meet when exercising their powers.
- (3) The guidelines may refer to or incorporate (wholly or partially and with or without modification) a standard, code or other document as in force at the time the guideline is issued or as in force from time to time.

- (4) The Minister must give notice in the *Gazette* of the issuing of guidelines and specify in the notice the place at which copies of the guidelines that are in force, and all documents referred to or incorporated in those guidelines, may be inspected or obtained during normal business hours.
- (5) The Minister must ensure all guidelines that are in force, and all documents referred to or incorporated in those guidelines, are provided free of charge to authorised persons.

**63 Declaration of place of safety**

The Minister may, by notice in the *Gazette*, declare a place or premises or class of places or premises to be a place of safety to which a person apprehended under Part 2, Division 3 may be taken.

**Division 2 Administration for Part 3**

**64 Approval of form of request and information**

The Minister may approve a form of assessment application and the information required to be included in that form.

**65 Approval of employees who may make requests**

The Minister may in writing approve employees, or a class of employees, who may make assessment applications.

**66 Authorised officer**

- (1) The Minister may in writing appoint a person to be an authorised officer who may exercise the powers of an authorised officer under Part 3.
- (2) The Minister must issue to each authorised officer an identity card containing:
  - (a) a photograph and the signature of the officer; and
  - (b) a statement of the powers the officer is authorised to exercise; and
  - (c) any other information prescribed by the Regulations.
- (3) As soon as reasonably practicable after a person ceases to be an authorised officer, the person must return the identity card to the Minister.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (3) is a regulatory offence.

### **Division 3 General administration**

#### **67 Delegations**

- (1) The Minister may, in writing, delegate to an employee any of the Minister's powers or functions under this Act.
- (2) Each of the following persons may, in writing, delegate to an employee any of the person's powers or functions under this Act:
- (a) the Chief Executive Officer;
  - (b) the Chief Health Officer.
- (3) The Commissioner of Police may, in writing, delegate to a police officer or an employee any of the Commissioner's powers or functions under this Act.

#### **68 Protection from liability**

- (1) This section applies to a person who is or has been one of the following:
- (a) an employee;
  - (b) an authorised officer;
  - (c) a person assisting an authorised officer to execute a treatment warrant;
  - (d) an authorised person;
  - (e) an assessor.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

## Part 7                    Miscellaneous

### 69                    Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may provide for the handling, transportation, storage and disposal or destruction of volatile substances and inhalants.
- (3) The Regulations may:
  - (a) be of general or limited application; and
  - (b) differ according to differences in time, place or circumstance; and
  - (c) confer powers or discretions or impose duties on any person; and
  - (d) provide that a matter in respect of which regulations may be made may be determined, regulated or prohibited according to a management plan.

### 70                    Regulations may incorporate other instruments

- (1) The Regulations may apply, adopt or incorporate (either wholly or in part or with or without modification) an instrument, as in force at a particular time or as in force from time to time, prescribed or published by any authority or body.
- (2) An instrument applied, adopted or incorporated under this section may require anything referred to in that instrument to be in accordance with another instrument to which that instrument refers.
- (3) In this section:

*instrument* means a standard, code, specification, protocol, method or other document.



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## Part 8 Transitional matters for Volatile Substance Abuse Prevention Amendment Act 2009

### 71 Definitions

In this Part:

*commencement day* means the day on which this section commences.

*repealed*, in relation to a provision mentioned in this Part, means the provision of this Act as in force immediately before the commencement day.

*substituted*, in relation to a provision mentioned in this Part, means the provision substituted by the *Volatile Substance Abuse Prevention Amendment Act 2009*.

### 72 Request for treatment order undecided by Minister

- (1) This section applies if:
  - (a) the Minister received a request under repealed section 33 to apply for a treatment order in relation to a person believed to be at risk of severe harm (*the relevant person*); and
  - (b) before the commencement day, the Minister had not made a decision under repealed section 34 about whether or not to apply for a treatment order in relation to the relevant person.
- (2) Repealed Part 3 continues to apply in relation to the following matters that are applicable:
  - (a) an assessment of the relevant person;
  - (b) an application for and the issuing of a warrant to take the relevant person for an assessment;
  - (c) the decision about whether or not to apply for a treatment order in relation to the relevant person;
  - (d) the making and hearing of an application for a treatment order in relation to the relevant person, the exercise of the Court's jurisdiction in relation to the application, and the making of a treatment order.

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- (3) However, if a treatment order is made in relation to the relevant person:
- (a) the Chief Health Officer may:
    - (i) apply under substituted section 36(1) for a further treatment order in relation to the relevant person after the procedures under substituted Part 3, Division 2, have been followed; or
    - (ii) apply under substituted section 37(1) for an order in connection with the treatment order as if the treatment order had been made under substituted Part 3, Division 3; and
  - (b) the relevant provisions of substituted Part 3, Division 3, apply in relation to the application and the further treatment order or other order mentioned in paragraph (a).

### **73 Court applications undecided under repealed provisions**

- (1) If the Minister made an application under repealed section 36(1) and the application was not determined before the commencement day, repealed Part 3, Division 3, continues to apply in relation to the application.
- (2) However, if the Court makes a treatment order under repealed Part 3, Division 3, for a person at risk:
- (a) the Chief Health Officer may:
    - (i) apply under substituted section 36(1) for a further treatment order in relation to the person at risk after the procedures under substituted Part 3, Division 2, have been followed; or
    - (ii) apply under substituted section 37(1) for an order in connection with the treatment order as if the treatment order had been made under substituted Part 3, Division 3; and
  - (b) the relevant provisions of substituted Part 3, Division 3, apply in relation to the application and the further treatment order or other order mentioned in paragraph (a).

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**ENDNOTES**
**1 KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

**2 LIST OF LEGISLATION*****Volatile Substance Abuse Prevention Act 2005 (Act No. 22, 2005)***

Assent date	6 May 2005
Commenced	9 February 2006 ( <i>Gaz</i> S2, 9 February 2006)

***Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)***

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

***Volatile Substance Abuse Prevention Amendment Act 2009 (Act No. 37, 2009)***

Assent date	15 December 2009
Commenced	22 February 2010 ( <i>Gaz</i> G7, 17 February 2010, p 2)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)***

Assent date	20 May 2010
Commenced	1 July 2010 (s 2)

***Health Practitioner (National Uniform Legislation) Implementation Act 2012 (Act No. 17, 2012)***

Assent date	22 May 2012
Commenced	1 July 2012 (s 2)

***Alcohol Mandatory Treatment Act 2013 (Act No. 17, 2013)***

Assent date	28 June 2013
Commenced	1 July 2013 (s 2)

***Local Government Amendment Act 2013 (Act No. 28, 2013)***

Assent date	8 November 2013
Commenced	8 November 2013

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**3****LIST OF AMENDMENTS**

pt 1 hdg	amd No. 37, 2009, s 10
s 4	amd No. 37, 2009, s 4; No. 18, 2010, s 85; No. 17, 2012, s 55
s 8	amd No. 37, 2009, s 10
s 17	amd No. 37, 2009, s 10
s 20	amd No. 37, 2009, s 10
s 23	amd No. 37, 2009, s 10
pt 3	
div 1 hdg	amd No. 37, 2009, s 10
s 31	sub No. 37, 2009, s 5
s 31A	ins No. 37, 2009, s 5
pt 3	
div 2 hdg	sub No. 37, 2009, s 6
ss 33 – 35	sub No. 37, 2009, s 6
pt 3	
div 3 hdg	sub No. 37, 2009, s 6
ss 36 – 41	sub No. 37, 2009, s 6
ss 41A – 41C	ins No. 37, 2009, s 6
s 41D	ins No. 17, 2013, s 180
pt 4	
div 1 hdg	amd No. 37, 2009, s 10
s 42	amd No. 28, 2008, s 3; No. 28, 2013, s 61
s 44	amd No. 37, 2009, s 10
ss 47 – 48	amd No. 37, 2009, s 10
s 50	amd No. 37, 2009, s 10
ss 52 – 53	amd No. 37, 2009, s 10
s 55 – 56	amd No. 37, 2009, s 10
ss 59 – 61	amd No. 37, 2009, s 10
ss 64 – 66	amd No. 37, 2009, s 10
s 67	amd No. 37, 2009, s 7
s 68	amd No. 37, 2009, s 8
s 69	amd No. 37, 2009, s 10
pt 8 hdg	ins No. 37, 2009, s 9
ss 71 – 73	ins No. 37, 2009, s 9