

NORTHERN TERRITORY OF AUSTRALIA

VOLATILE SUBSTANCE ABUSE PREVENTION AMENDMENT ACT 2009

Act No. 37 of 2009

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 37 of 2009

An Act to amend the *Volatile Substance Abuse Prevention Act*

[Assented to 15 December 2009]
[Second reading 20 October 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

1 Short title

This Act may be cited as the *Volatile Substance Abuse Prevention Amendment Act 2009*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Act amended

This Act amends the *Volatile Substance Abuse Prevention Act*.

4 Amendment of section 4 (Definitions)

(1) Section 4

omit

Act, unless the contrary intention appears:

substitute

Act:

(2) Section 4

insert (in alphabetical order)

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).

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.

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

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

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

Court means the Local Court.

health practitioner means a person who is registered or enrolled under the *Health Practitioners Act* as an Aboriginal health worker, medical practitioner, registered nurse or enrolled nurse and, in Part 3, includes a person who is registered under that Act as a psychologist.

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

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.

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).

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.

treatment order, see section 41(1).

treatment program, see section 31A(1).

treatment warrant, see section 41B(2).

5 Repeal and substitution of section 31

Section 31

repeal, substitute

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;

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- (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).

6 Repeal and substitution of Part 3, Divisions 2 and 3

Part 3, Divisions 2 and 3

repeal, substitute

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

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- (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.

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- (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.

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- (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;

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- (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.

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- (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

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- (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.

7 Amendment of section 67 (Delegations)

Section 67(2)

omit, substitute

- (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.

8 Amendment of section 68 (Protection from liability)

Section 68(1)

omit, substitute

- (1) This section applies to a person who is or has been one of the following:
 - (a) an employee;

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- (b) an authorised officer;
 - (c) a person assisting an authorised officer to execute a treatment warrant;
 - (d) an authorised person;
 - (e) an assessor.

9 New Part 8

After section 70

insert

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;

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- (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.
- (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

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- (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).

10 Further amendments

The Schedule has effect.

Schedule Further amendments

section 10

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
Heading, Part 1	Preliminary	Preliminary matters
section 8(1)(a)	place;	place; or
sections 17(3)(a) and 20(3)(a)	offence;	offence; and
section 23, definition <i>health practitioner</i>	whole definition	
Headings, Part 3, Division 1 and Part 4, Division 1	Preliminary	Preliminary matters
section 44(3)(a)	writing;	writing; and
section 44(3)(b)	applicant;	applicant; and
section 47(1)(a)	45(3);	45(3); and
section 48(2)(a)	area;	area; and
section 50(3)(a)	49(2)(b);	49(2)(b); and
sections 52, 53 and 55(2)	Penalty:	Maximum penalty:
section 56(2)(a)	identification;	identification; or
section 59(5)(a)	person;	person; and
section 59(6)	Penalty:	Maximum penalty:
section 60(1)	as	to be
section 60(2)(a)(i)	2;	2; or
section 61(1)(a)	person;	person; and
section 61(2)	Penalty:	Maximum penalty:

section 64	request for a treatment order under section 33	assessment application
section 65	requests for treatment orders under section 33	assessment applications
section 66(1)	an employee as	a person to be
section 66(2)(a)	officer;	officer; and
section 66(3)	Penalty:	Maximum penalty:
section 69(3)(a)	application;	application; and
section 69(3)(b)	circumstance;	circumstance; and
