

Serial 270
Volatile Substance Abuse Prevention Bill 2004
Ms Scrymgour

**A BILL
for
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



NORTHERN TERRITORY OF AUSTRALIA
VOLATILE SUBSTANCE ABUSE PREVENTION ACT 2004

No. of 2004

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY

1. Short title
2. Commencement
3. Objects
4. Definitions
5. Minister may declare volatile substance
6. Not offence to inhale or possess volatile substance or inhalant

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 power
8. Where power may be exercised
9. No warrant required
10. Reasonable force may be used
11. Manner of giving information
12. Records to be kept

Division 2 – Powers of search and seizure

13. Search for and seizure of volatile substance or inhalant
14. Procedures before searching for volatile substance or inhalant
15. Disposal etc. of volatile substance or inhalant

Division 3 – Powers of apprehension

16. Definitions
17. Meaning and effect of apprehension of person
18. Interests of apprehended person and welfare of children
19. When person may be apprehended
20. Procedures when apprehending person
21. Taking person to place of safety or responsible adult

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

Division 4 – Protective custody

23. Definitions
24. Child not to be kept in police station cell
25. Searching apprehended person
26. Period of protective custody
27. Release from protective custody
28. Continued protective custody
29. Application to Justice for release
30. Notification of release of child to person other than parent etc.

PART 3 – TREATMENT ORDERS FOR PERSONS AT RISK OF SEVERE HARM

Division 1 – Preliminary

31. Definitions
32. Powers not in derogation of other powers

Division 2 – Assessments of persons believed to be at risk of severe harm

33. Request for treatment order
34. Assessment
35. Warrant to take person for assessment

Division 3 – Treatment orders

36. Application for treatment order
37. Notice of application
38. Hearing of application
39. Jurisdiction and procedure of Court
40. Treatment order
41. Warrant to take person to participate in treatment program

PART 4 – COMMUNITY MANAGEMENT OF POSSESSION, SUPPLY AND USE OF VOLATILE SUBSTANCES

Division 1 – Preliminary

42. Interpretation
43. Declaration that area must not be management area

Division 2 – Management areas

44. Application for declaration of management area
45. Meeting about proposed management area
46. Application may be varied or withdrawn

- 47. Decision to declare or refuse to declare management area
- 48. Publication of notice of declaration

Division 3 – Management plans

- 49. Management plan for each management area
- 50. Preparation and approval of management plan
- 51. Amendment or replacement of management plan

PART 5 – OFFENCES AND CONFIDENTIALITY

Division 1 – Offences

- 52. Unlawful supply of volatile substances
- 53. Contravention of management plan

Division 2 – Confidentiality

- 54. Definitions
- 55. Informer's identity confidential
- 56. Protection in proceedings of informer's identity etc.
- 57. Protection in proceedings of report by or to police officer
- 58. When information may be disclosed
- 59. Court may prohibit publication of proceedings

PART 6 – ADMINISTRATION

Division 1 – Administration for Part 2

- 60. Authorised person
- 61. Identity card for authorised person
- 62. Guidelines for exercise of powers by authorised person
- 63. Declaration of place of safety

Division 2 – Administration for Part 3

- 64. Approval of form of request and information
- 65. Approval of employee who may make request
- 66. Authorised officer

Division 3 – General administration

- 67. Delegations
- 68. Protection from liability

PART 7 – MISCELLANEOUS

- 69. Regulations
- 70. Regulations may incorporate other instruments

8

9

10

11



NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

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

[Assented to 2004]
[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Volatile Substance Abuse Prevention Act 2004*.

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

Volatile Substance Abuse Prevention Act 2004

- (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, unless the contrary intention appears –

"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;

"apprehended person" means a person apprehended under Part 2, Division 3;

"authorised person" means a person appointed under section 60;

"Chief Executive Officer" means the Chief Executive Officer of the Agency administering this Act;

"child" means a person who is less than 18 years of age;

"contravene" includes fail to comply with;

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

Volatile Substance Abuse Prevention Act 2004

"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;

"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;

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

"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);

"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 power

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;
- (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;

(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.

Volatile Substance Abuse Prevention Act 2004

(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;
- (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 –

"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;

"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.

Volatile Substance Abuse Prevention Act 2004

- (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

Volatile Substance Abuse Prevention Act 2004

- (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. Notification of release of child to person other than parent etc.

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

31. Definitions

In this Part –

"applicant" means the Minister or the Minister's delegate;

"application" means an application for a treatment order made under Division 3;

"assessment" means an assessment referred to in section 34;

Volatile Substance Abuse Prevention Act 2004

"assessor" means a medical practitioner or psychologist approved under section 34 to make an assessment;

"authorised officer" means an employee appointed under section 66 or a police officer;

"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, psychologist or enrolled nurse;

"person at risk", in relation to an application or treatment order, means the person in respect of whom the application or order is made;

"responsible adult", in relation to a child at risk of severe harm or believed to be at risk of severe harm, means a parent or guardian of the child or a person who has custody of the child;

"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" means an order under section 40 that a person must participate in a treatment program;

"treatment program" means a program for the treatment of a person at risk of severe harm, including a program for withdrawal, stabilisation, rehabilitation or aftercare.

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 – Assessments of persons believed to be at risk of severe harm

33. Request for treatment order

(1) If one of the following persons reasonably believes an adult or child is at risk of severe harm, the person may request the Minister to apply for a treatment order in respect of the child or adult named in the request:

- (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 respect of a child believed to be at risk of severe harm – the responsible adult.

(2) The request must be in the form, and include the information, approved under section 64.

(3) The Minister may require additional information from the person making the request.

(4) The request may be made irrespective of whether the person named in the request has committed any offence.

(5) The Minister may refuse the request without approving an assessment of the person named in the request and, if the Minister does so, must give the person who made the request written reasons for the refusal.

34. Assessment

(1) If the Minister is satisfied the information provided under section 33 indicates the person named in the request may be at risk of severe harm, the Minister may in writing approve –

- (a) an assessment of the person's physical, neurological or mental condition; and
- (b) a medical practitioner or psychologist (or both) registered under the *Health Practitioners Act* to examine the person and make the assessment.

(2) The approval must specify the name of the assessor, the name and last known address of the person to be assessed and the place where the assessment is to take place.

(3) The assessor must, as soon as practicable, provide the Minister with a written assessment in respect of the person believed to be at risk of severe harm.

(4) If the person is assessed to be at risk of severe harm, the assessor must include in the assessment a recommendation for an appropriate treatment program and specify the place or places where such a program is administered.

(5) If the Minister considers it appropriate, the Minister may approve additional assessments and assessors in respect of a person believed to be at risk of severe harm.

(6) If an assessment recommends a treatment program for a person, the Minister must, before applying for a treatment order, be satisfied that –

- (a) a treatment order will be in the best interests of the person; and
- (b) the person cannot be adequately protected from severe harm by some other means.

(7) If a person named in a request under section 33 is assessed as not being at risk of severe harm, the Minister must refuse the request to apply for a treatment order and give the person who made the request written reasons for the refusal.

35. Warrant to take person for assessment

(1) An authorised officer may, within a reasonable time after an assessment has been approved, apply to a magistrate for a warrant in any of the following circumstances:

- (a) if the person to be assessed is an adult and fails or refuses to submit to the assessment;
- (b) if the person to be assessed is a child of sufficient age and understanding to form an informed opinion and fails or refuses to submit to the assessment;
- (c) if the person to be assessed is a child and no responsible adult has taken the child for assessment or permitted the assessment.

(2) The magistrate may issue a warrant to the authorised officer if the magistrate is satisfied the assessment and assessor have been approved and all other grounds for the application are established.

(3) The warrant must authorise the authorised officer –

- (a) to enter, at any reasonable time, a place where the officer reasonably believes the person to be assessed is to be found;

Volatile Substance Abuse Prevention Act 2004

- (b) to search the place in order to find the person;
 - (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 approved assessor for assessment.
- (4) The warrant remains in force for 30 days after the day on which it is issued.
- (5) In executing the warrant, the authorised officer –
- (a) may use reasonable force or assistance; and
 - (b) must produce the warrant (or a copy of the warrant) to a person at the place where the warrant is executed.
- (6) Any person assisting the authorised officer to execute the warrant may also use reasonable force in doing so.

Division 3 – Treatment orders

36. Application for treatment order

(1) The Minister may apply to the Court for an order that the person at risk named in the application must participate in a treatment program.

(2) The application must be in a form approved by the Chief Magistrate and accompanied by the assessment in respect of the person at risk.

(3) No fee is payable on the filing of the application at the Court.

37. Notice of application

(1) The applicant must give notice to the following persons that the application has been made:

- (a) the person who requested the application for a treatment order;
- (b) if the person at risk is an adult – the person at risk;
- (c) if the person at risk is a child and the applicant believes the child is capable of understanding the notice – the person at risk;
- (d) if the person at risk is a child and a responsible adult did not request the application for a treatment order – a responsible adult.

(2) The notice must include a statement of the requirements of this Division, including a statement about the persons who may attend at the Court for the hearing of the application.

(3) The notice must be accompanied by a copy of the application endorsed with particulars of the time, date and place of the hearing of the application and a copy of the assessment that accompanied the application.

38. Hearing of application

(1) The Court may hear the application in the absence of the applicant if the applicant is represented at the hearing.

(2) Any of the following persons may attend at the hearing of the application:

- (a) the person at risk;
- (b) any other person given notice of the application;
- (c) any member of the family of the person at risk.

(3) If the applicant is required by section 37 to give notice to a responsible adult and is unable to find such a person, the Court may hear the application in the absence of a responsible adult if satisfied reasonable investigations have been made to find such a person.

(4) Unless the Court orders otherwise, the hearing must be in closed court.

39. Jurisdiction and procedure of Court

(1) The Court has jurisdiction in all matters relating to an application and, in particular, may –

- (a) hear and determine the application as it sees fit;
- (b) adjourn the application, including in the absence of the applicant or the applicant's representative;
- (c) make a treatment order, with or without conditions;
- (d) review, amend, or revoke the treatment order; or
- (e) make any other order or give any direction it considers appropriate, including that it be provided with further assessments, reports, opinions or other information relating to the person at risk.

(2) Subject to this Division and any direction of the Chief Magistrate, the Court may regulate its own procedure in respect of 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.

40. Treatment order

(1) In deciding whether to make a treatment order, the primary consideration of the Court must be the need to protect the person at risk.

(2) A treatment order must specify the place where the person at risk is to participate in the treatment program.

(3) A treatment order remains in force for 2 months, after which time it lapses.

(4) Before or after a treatment order has lapsed, the Minister may –

- (a) approve a further assessment of the person at risk; and
- (b) if satisfied about the matters referred to in section 34(6), make a further application for a treatment order.

(5) A further assessment may be made by the assessor who made the previous assessment or by another assessor.

(6) The Minister may make any number of further applications in accordance with subsection (4).

41. Warrant to take person to participate in treatment program

(1) During the time a treatment order is in force, if the person at risk does not participate in the treatment program at the place specified in the order, an authorised officer may apply to a magistrate for a warrant.

(2) The magistrate may issue a warrant to the authorised officer if the magistrate is satisfied the treatment order is in force and all other grounds for the application are established.

(3) The warrant must authorise the authorised officer –

- (a) to enter, at any reasonable time, a place where the officer reasonably believes the person at risk to be;
- (b) to search the place in order to find the person at risk;
- (c) to remain at the place for as long as the officer considers reasonably necessary to find the person at risk; and
- (d) if the person at risk is found – to apprehend the person and take the person to the place specified in the treatment order to participate in the treatment program.

Volatile Substance Abuse Prevention Act 2004

- (4) The 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 treatment order lapses.
- (5) In executing the warrant, the authorised officer –
 - (a) may use reasonable force or assistance; and
 - (b) must produce the warrant (or a copy of the warrant) to a person at the place where the warrant is executed.
- (6) Any person assisting the authorised officer to execute the warrant may also use reasonable force in doing so.

**PART 4 – COMMUNITY MANAGEMENT OF POSSESSION, SUPPLY
AND USE OF VOLATILE SUBSTANCES**

Division 1 – Preliminary

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 community government council within the meaning of the *Local Government Act* or an incorporated association;

"council area" means the area under the control and management of a community council;

"incorporated association" means –

- (a) an association incorporated under the *Associations Act* that has been identified under section 101 of that Act as an incorporated association that is functioning as a community government council within the meaning of the *Local Government Act*; or
- (b) an Aboriginal corporation within the meaning of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth;

Volatile Substance Abuse Prevention Act 2004

"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 ^umanagement 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;
 - (b) if the application is made by residents of an area – be signed by each applicant;
 - (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);

Volatile Substance Abuse Prevention Act 2004

- (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;
 - (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);
 - (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.

Volatile Substance Abuse Prevention Act 2004

(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.

Penalty: 200 penalty units or imprisonment for 2 years.

53. Contravention of management plan

A person must not contravene a management plan.

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.

(2) A person who discloses the name of an informer, or any other particular that may be likely to lead to the informer's identification, is guilty of a crime.

Penalty: 200 penalty units or imprisonment for 2 years.

(3) A person is not criminally responsible for an offence against subsection (2) if it is proved the disclosure was made in good faith for the protection of the interests of the informer or for the public good.

56. Protection in proceedings of informer's identity etc.

(1) This section applies to the following persons appearing in proceedings in respect of an offence:

- (a) the prosecutor;
- (b) a person who appears as a witness for the prosecution;
- (c) a police officer who appears as a witness for the defence.

(2) The person must not be asked, and if asked must not be compelled, to disclose –

- (a) the name of an informer or other particular that may be likely to lead to the informer's identification;
- (b) the fact that, in respect of the offence, the informer, the prosecutor or a police officer who appears as a witness for the prosecution received information from an informer or gave information to an informer; or
- (c) the nature of any such information.

57. Protection in proceedings of report by or to police officer

In proceedings in respect of an offence, a police officer appearing as a prosecutor or witness must not be compelled –

- (a) to produce a report or document made or received in his or her official capacity or containing confidential information in relation to the offence; or
- (b) to make a statement in relation to such a report or document or such information.

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;
 - (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.

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 as 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;

(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;

(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.

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 request for a treatment order under section 33 and the information required to be included in that form.

65. Approval of employee who may make request

The Minister may in writing approve employees, or a class of employees, who may make requests for treatment orders under section 33.

66. Authorised officer

(1) The Minister may in writing appoint an employee as 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;
- (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.

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) The Chief Executive Officer may, in writing, delegate to an employee any of the Chief Executive Officer's powers or functions under this Act.

(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 –

- (a) an employee;
- (b) an authorised officer; or
- (c) an authorised person.

(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 (1) does not affect any liability the Territory would, apart from those subsections, 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;
 - (b) differ according to differences in time, place or circumstance;
 - (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.
