

APPENDIX 3

LEGISLATION RELATING TO INHALANT ABUSE

Summary of Australian legislation relating to inhalant abuse

	Northern Territory	Queensland	South Australia	Victoria	Western Australia
Legislation	<i>Volatile Substance Abuse Prevention Act</i> 2005 (Not yet commenced: will commence upon gazettal) <i>Misuse of Drugs Act</i> 1990	<i>Summary Offences Act</i> 2005 and <i>Police Powers and Responsibilities Act</i> 2000	<i>Controlled Substances Act</i> 1984; <i>Graffiti Control Act</i> 2001*; <i>Petroleum Products Regulation Act</i> 1995	<i>Drugs, Poisons and Controlled Substances Act</i> 1981	<i>Protective Custody Act</i> 2000; <i>Criminal Code</i> 1913
Stated purpose of legislation	To provide for the prevention of volatile substance abuse and the protection of individuals and communities from harm resulting from volatile substance abuse.			To protect the health and welfare of persons aged under 18 years.	
Definition	'Volatile substance' means a) plastic solvent, adhesive cement, cleaning agent, glue, dope, 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) any substance declared by the Minister.	'Potentially harmful thing' a) means a thing a person may lawfully possess that is or contains a substance that may be harmful if ingested or inhaled; b) includes methylated spirits; and c) does not include a thing intended by its manufacturer to be inhaled or ingested.	'Volatile solvents' means a substance declared by regulations to be a volatile solvent. Fifty-six substances have been declared by regulation to be 'volatile solvents'.	'Volatile substance' means a) plastic solvent, adhesive cement, cleaning agent, glue, dope, nail polish remover, lighter fluid, gasoline, or any other volatile product derived from petroleum, paint thinner, lacquer thinner, aerosol propellant or anaesthetic gas; or b) any substance declared by the Governor in Council.	'Volatile substance' means a substance that produces a vapour at room temperature. 'Intoxicant' means alcohol or a drug or a volatile or other substance capable of intoxicating a person.
Offence to inhale or possess volatile substance	New Act specifically states that it does not make it an offence for a person to inhale or possess a volatile substance or item used for inhalation.			Act states that it does not create an offence to possess volatile substance or inhalation equipment or to inhale a volatile substance.	

Summary of Australian legislation relating to inhalant abuse (continued)

	Northern Territory	Queensland	South Australia	Victoria	Western Australia
Offence to sell or supply volatile substance	Offence to supply if seller knows or ought to know that the person intends to inhale it or supply it to a third person for the purpose of inhalation. (Current offence which will continue under new legislation.)	Offence to sell where seller knows or believes on reasonable grounds that the person intends to inhale/ingest the product or sell it to a third person for inhalation/ingestion.	Offence to sell or supply where seller suspects or there are reasonable grounds for suspecting that the person intends to inhale or sell/supply the product to another person for inhalation.	Offence to knowingly sell or supply volatile substances for the purposes of intoxication.	Offence to knowingly sell or supply volatile substances for the purposes of intoxication.
Other restrictions on sale	None	None	Sale of petrol prohibited to persons under 16. Purchase of petrol on behalf of person under 16 prohibited. Authorised officer may confiscate petrol from person under 16 if officer suspects person has petrol for purpose of inhalation. Sale of cans of spray paint prohibited to persons under 18. * Spray paint cans must be stored securely, for example, in locked cabinet. Must display 'no sales to minors' sign.	None	None
Indigenous communities permitted to make by-laws prohibiting petrol sniffing and other forms of inhalant abuse within community lands.	Yes	Yes	Yes	No	Yes
Notes			The primary aim of this legislation is to reduce graffiti.		

Summary of Australian civil apprehension legislation relating to inhalant abuse

	Northern Territory	Queensland	Victoria	Western Australia
Police power to search/seize	<p>Police/authorised person* may search person if has reasonable belief that the person is in possession of a volatile substance or inhalant and is inhaling or will inhale.</p> <p>Police/authorised person may seize any volatile substance or inhalant that is in the person's possession.</p>	<p>Police may search a person reasonably suspected to be in possession of a potentially harmful thing that the person has/is about to ingest or inhale. Police may seize the potentially harmful thing.</p>	<p>Police may search a person if there are reasonable grounds to suspect the person is:</p> <ul style="list-style-type: none"> • in possession of volatile substance or inhalation equipment; and • inhaling/will inhale a volatile substance. <p>Police may search a person reasonably believed to intend to provide volatile substance or inhalation equipment to person under 18.</p> <p>Volatile substances/inhalation equipment found may be seized.</p>	<p>Authorised officer* may seize intoxicant from person under 18 who is:</p> <ul style="list-style-type: none"> • in a public place • consuming/inhaling or about to consume/inhale intoxicant; and • the officer reasonably suspects that the person is likely to become intoxicated if the intoxicant is not seized. <p>Authorised officer may search an apprehended person and seize any intoxicant or any article that could endanger the health or safety of any person.</p>
Grounds for apprehension	<p>Police/authorised person may apprehend a person if there are reasonable grounds to believe the person:</p> <ul style="list-style-type: none"> • is inhaling or has recently inhaled a volatile substance; and • should be apprehended to protect the health or safety of the person or other persons. 	<p>Police may detain a person who is affected by inhalation/ ingestion of a potentially harmful thing if it is appropriate for the person to be taken to a 'place of safety' at which the person can receive the treatment or care necessary to enable the person to recover (for example, hospital, the home of a friend or relative).</p>	<p>Police may apprehend and detain a person if there are reasonable grounds to believe the person is:</p> <ul style="list-style-type: none"> • under 18; • inhaling or has recently inhaled a volatile substance; and • likely to cause serious bodily harm to him/herself or other person. 	<p>Authorised officer may apprehend a person who is in a public place or trespassing on private property if it is reasonably believed that the person is intoxicated and needs to be apprehended to protect their health or safety or health and safety of others or to prevent the person causing serious damage to property.</p>

Summary of Australian civil apprehension legislation relating to inhalant abuse (continued)

	Northern Territory	Queensland	Victoria	Western Australia
Length and place of detention	<p>As soon as practicable, the apprehended person must be:</p> <ul style="list-style-type: none"> • released into care of person at a place of safety; or • into the care of a responsible consenting adult. <p>If apprehended person cannot be released into place of safety or care of responsible adult, must be released or taken to a police station and held in protective custody. May only be held in protective custody until it reasonably appears that the person no longer poses a risk.</p> <p>Special procedures must be followed if the person is held in protective custody for longer than six hours. A person under 18 must not be held in a cell at police station except in accordance with regulations.</p>	<p>Police have duty to release the person at a place of safety at the earliest reasonable opportunity.</p> <p>Person not compelled to stay at a place of safety.</p> <p>If no place of safety can be found the person must be released.</p> <p>Person must not be taken to a police establishment or police station.</p>	<p>A person must be released immediately if it becomes known that the person is over 18.</p> <p>A person may only be detained as long as police reasonably believe the person has recently inhaled a volatile substance and is likely to cause serious bodily harm to him/herself or other person.</p> <p>Apprehended person must be released as soon as practicable into the care of a suitable person who is reasonably believed to be capable of taking care of the person and consents to taking care of the person, for example, parent, guardian, employee of appropriate health or welfare agency. Must not be detained in a jail or police cell.</p>	<p>A person who is no longer intoxicated must not be detained. A person must not be detained</p> <p>A person must not be detained any longer than is necessary to protect the health or safety of the person or any other person or to prevent the person causing serious damage to property.</p> <p>A person aged under 18 must be released into the care of parent, legal guardian or other consenting person reasonably believed to be capable of taking care of the person or into the care of an appropriate facility (as approved by Minister). The safety and welfare of the person is the paramount consideration in deciding where to release a person aged under 18.</p> <p>Apprehended adult must be released as soon as practicable into the care of another person who applies for the adult's release and who is capable of taking care of the person or into an appropriate facility.</p> <p>Persons must not be detained in a police station or lock-up except in exceptional circumstances.</p> <p>If apprehended person needs a medical examination, the authorised officer must arrange this as soon as practical.</p>

Summary of Australian civil apprehension legislation relating to inhalant abuse (continued)

	Northern Territory	Queensland	Victoria	Western Australia
Reporting requirements	Records of searches and apprehensions to be kept in accordance with regulations.	Police must enter details of detention and release in register. Crime and Misconduct Commission must review operation of legislation for nine months and report to Parliament.	Police must keep written records of searches, seizures and detentions. Chief Commissioner of Police must report to Minister for Health annually, for inclusion in the annual report.	Authorised officer must record date and time when a person is apprehended. Released person and person into whose care they are released must acknowledge in writing time/date of release and acknowledge return of any seized thing.
Protocol		Response to volatile substance misuse protocol.	Interagency protocol between Victoria Police and nominated agencies.	Police Standing Orders.
Notes	Minister may appoint 'authorised person'. Legislation will commence upon gazettal.	Power to detain applies only on trial basis to five 'declared localities'. This legislation was introduced for one year from 1 July 2004. It has been extended for a further 12 months and will now expire on 30 June 2006.	Legislation effective 1 July 2004–30 June 2006.	Authorised officer is a community officer (appointed by Commissioner of Police), a police officer or public transport security officer. Legislation commenced 1 January 2001.

Summary of treatment orders and management areas in Northern Territory's new legislation (note this legislation has not yet commenced)

	Northern Territory
Treatment orders	<p>Police, authorised person, health practitioner, family member or responsible adult who reasonably believes that a person is at risk of severe harm (defined as physical harm, neurological damage to person's mental condition resulting from volatile substance abuse), may request the Minister to apply for a treatment order.</p> <p>Minister may approve an assessment of the person's physical, neurological or mental condition. If the person fails or refuses to submit to the assessment, a police officer or authorised person may apply to a magistrate for a warrant to apprehend the person and take the person for assessment.</p> <p>If the person is assessed to be at risk of severe harm, the assessor must recommend an appropriate treatment program.</p> <p>If assessment recommends a treatment program, the Minister must, before applying for a treatment order, be satisfied that the treatment order will be in the best interests of the person and the person cannot be adequately protected from severe harm by some other means.</p> <p>Minister may apply to the Local Court for an order that the person must participate in a treatment program. In deciding whether to make a treatment order, the primary consideration of the court must be the need to protect the person at risk.</p> <p>A treatment order remains in force for two months. Minister may approve further assessment of the person at risk and make further application for a treatment order.</p> <p>While the treatment order is in force, if the person does not participate in the treatment program, a police officer or authorised person may apply to a magistrate for a warrant to apprehend the person at risk and take that person to the place specified in the treatment order to participate in the treatment program.</p>
Management areas	<p>Ten or more residents of an area or a community council may apply to the Minister for a declaration that the area is a management area.</p> <p>In deciding whether to declare a management area, the Minister must consider the needs and opinions of residents and other interested persons, may conduct any relevant investigations and must consult with the relevant community council.</p> <p>A management area must have a written plan for the management of the possession, supply and use of volatile substances in the area. The management plan must be prepared in consultation with the Minister, Commissioner of Police and Chief Executive Officer of the agency administering the Act.</p> <p>It is an offence to contravene a management plan.</p>

Source: National Inhalant Abuse Taskforce, *National Directions On Inhalant Abuse*, Final Report November 2005, pp.72-77.