VSAP Bill
Comments from Waltja Tjutangku Palyapayi

The following information relates to the Bill in general. It is also linked back to relevant sections or clauses of the Bill. Where relevant, linkages between this and other legislation, including the proposed Child Protection Act have also been made.

1 Summary of Recommendations

Recommendation 1: That issues related to VSA be addressed through amending or fully utilising existing NT and Federal legislation.

Recommendation 2: Should the government believe it necessary to introduce legislation to address VSA, it be consistent with Waltja's recommendations relating to how VSA can be addressed through existing legislation

Recommendation 3: That the NT government continue to implement strategies to reduce the supply of volatile substances, especially in remote communities including

- widespread introduction of "Opal" (or equivalent) at a subsidised rate if necessary at least within 250 km radius of any community with an identified petrol sniffing problem
- continued funding and expansion of projects targeting retailers promoting responsible sale and storage of volatile substances
- education for contractors and new employees within remote communities regarding petrol sniffing and not bringing petrol operated plant and equipment with them

Recommendation 4: That the NT government, in partnership with the Federal government continue to implement strategies to address other contributing factors to VSA including boredom, poverty, lack of access to education and training, social, cultural and family breakdown, etc.

Recommendation 5: That the NT government, in partnership with the Federal government expand existing AOD treatment and case management services, especially for children and young people, including seeking informed, locally developed and driven initiatives (eg, expansion of outstation programs)

Recommendation 6: that individual communities retain the autonomy and power to develop their own solutions to problems in their own communities, including VSA and alcohol supply and consumption and that they be resourced adequately to do this.

Recommendation 7: That the term "reasonable force" be replaced with "minimal force," including in the revised NT Children's Welfare Act and that clear Regulations, policy and procedures be developed to support a clear understanding and implementation of this as it relates to child protection matters, including VSA.

Recommendation 8: That increased efforts be made to implement culturally responsive and appropriate governance training for key stakeholders, especially Community Councils and their Secretariats. That this training also clarify the powers Community Councils have with regard to

implementing their own By Laws with regard to use, sale and supply of both petrol and alcohol within their community boundaries.

Recommendation 9: That dealing with matters relating to minors (under 18 year olds) sniffing volatile substances be dealt with as Child Protection matters and addressed in the relevant legislation.

Recommendation 10: That, where relevant, dealing with matters relating to adults sniffing volatile substances be dealt with as Mental Health or AOD health related matters and dealt with in the relevant legislation.

Recommendation 11: That where adults commit offences related to VSA that do not involve violence against (an)other person(s), eg, property damage, theft, every effort is made to engage the individual in appropriate diversionary and/or treatment programs as an alternative to incarceration.

Recommendation 12: That all clauses mentioning "authorised persons" being able to assist police in VSA related matters be deleted. That this also include engaging others at specific times to assist in executing the Act, eg clauses (35)(6) and (41)(6).

Recommendation 13: That the NT government expand its police force, especially in remote communities. That this include increased capacity to train and support ACPOs.

Recommendation 14: That should separate legislation be enacted to address VSA, a similar definition of "best interests" to that used in the revised Child Protection Act be included.

Recommendation 15: That a police cell is not to be used as a form of protective custody for a child or young person under the influence of volatile substances

Recommendation 16: That medical attention be sought within 2 hours of any person in protective custody for being under the influence of volatile substances

Recommendation 17: That police/FaCS (as relevant) are responsible for transporting affected persons, especially children and young people back to their homes (or similar) upon release from protective custody or removal to a safe place.

Recommendation 18: that assessment and treatment for VSA is offered on a voluntary basis and that communities are assisted to develop and maintain culturally appropriate VSA treatment services.

Recommendation 19: That appropriate support be given to individuals upon release from assessment/treatment, including transitional support once back in their community, transport, etc. Where NGOs expected to provide these services, they are funded at acceptable levels to do so.

Recommendation 20: delete clause 68.

Recommendation 21: That as well as expanding culturally appropriate VSA treatment services, relevant NT and Federal departments continue with the processes and learnings from COAG and consider the following as priority areas to address VSA:

- Increased funding for diversionary and leisure activities located within communities
- Increased funding for activities which strengthen culture and foster intergenerational learnings
- Better training support for workers and community members including in governance, project/service management, working within a remote community context (where relevant) in addition to specific areas of service delivery such as alcohol & other drugs, suicide awareness, challenging behaviours, planning activities, community development and so on
- increased funding for programs similar to Reconnect but with a broader focus than homelessness (early intervention, case management, contributing to coordinated service delivery across NGO/Government services)

Discussion and analysis of specific aspects of the Bill

1 Do we need a new and different Act?

The stated purpose of the Volatile Substance Abuse Prevention Bill is "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". Whilst this Bill claims 211to be about protection it seems to be more about control and about government taking control away from Aboriginal communities rather than enabling them to develop and implement community controlled, culturally appropriate responses.

The Bill's objectives could be achieved through fully utilising – or extending upon - existing related legislation including Mental Health, Police, Aboriginal Land Rights & Local Government Acts and ensuring the proposed Care and Protection of Children and Young People Act addresses relevant parts of this Bill relating to children and young people.[1] At the very least, our NT legislation needs to reflect common values and promote consistent responses as a whole body of laws.

Strategies such as introducing government subsidised, non "intoxicating" fuel such as "Opal" throughout the Territory (or within 250 km radius of any community with an identified petrol sniffing problem) and expanding upon worthwhile community projects such as Tangentyere (CAYLUS) retail strategy to educate retailers about secure storage and responsible sale of solvents would go a long way to addressing VSA and do not require the drafting of new legislation. Councils already have the power to declare the equivalent of "management areas" in their communities. Part of this could also include the requirement that all contractors and employees in the community not use or bring plant or equipment that runs on petrol. Diesel and other alternatives are readily available.

Other contributing or risk factors such as boredom could be significantly reduced by increasing quality leisure and lifestyle programs (especially those which strengthen culture and foster intergenerational learnings). More support in general could be provided to young people and families "at risk" by increasing culturally appropriate case management, and ensuring this is linked well with whatever other youth, children's and related programs are operating within each community. There is undoubtedly a need for improved "detoxification/rehabilitation" services throughout the NT but we do not think these require a new Act to create.

[1] Refer to appendix A and elsewhere in this document for specific examples of where this could be addressed through existing Acts

There has also been an identifiable policy shift towards "whole of government" and "whole of community" approaches, including within Aboriginal Affairs. The majority of those directly affected by this Bill are Aboriginal families, especially those from remote communities, many of whom remain strong in culture and language. VSA needs to be viewed within these contexts.

Recommendation 1: That issues related to VSA be addressed through amending or fully utilising existing NT and Federal legislation.

Recommendation 2: Should the government believe it necessary to introduce legislation to address VSA, it be consistent with Waltja's recommendations relating to how VSA can be addressed through existing legislation

Recommendation 3: That the NT government continue to implement strategies to reduce the supply of volatile substances, especially in remote communities including

- widespread introduction of "Opal" (or equivalent) at a subsidised rate if necessary at least within 250 km radius of any community with an identified petrol sniffing problem
- continued funding and expansion of projects targeting retailers promoting responsible sale and storage of volatile substances
- education for contractors and new employees within remote communities regarding petrol sniffing and not bringing petrol operated plant and equipment with them

Recommendation 4: That the NT government, in partnership with the Federal government continue to implement strategies to address other contributing factors to VSA including boredom, poverty, lack of access to education and training, social, cultural and family breakdown, etc.

Recommendation 5: That the NT government, in partnership with the Federal government expand existing AOD treatment and case management services, especially for children and young people, including seeking informed, locally developed and driven initiatives (eg, expansion of outstation programs)

2 What, if anything to criminalise?

The decision to not criminalise volatile substance abuse itself is justified if viewing VSA as predominantly a health related concern rather than a policing or justice issue. We **strongly** support this.

However, we do **not support** the decision to criminalise supplying with intent as a Law across NT. Whilst inhaling volatile substances is clearly damaging, so is incarceration. Waltja members have informed staff that they were unaware of any people in their communities selling petrol, especially to children and young people. They said "sniffers" break in to petrol tanks and occasionally they will humbug family, sometimes to the extent of threatening suicide if family do not hand over petrol, give them money, etc. Waltja does not want "suppliers" within this context to be penalised: we want them to be supported in raising their children and young people and the other contributing factors to VSA to be addressed (eg, better sport and recreation programs, more Aboriginal employment & training in communities, Aboriginal control of Aboriginal services within communities, more opportunities for cultural and ceremonial gatherings, better standards of health care and stronger support for AHWs, and so on).

We also note that a person who is apprehended under this Bill cannot be questioned about other charges at that time. Does this mean the questioning happens at another time? What if they have

committed a serious crime at the time they are apprehended given that intervention under this Bill is about protecting the person – or others – from harm related to VSA?

Furthermore we note that it is an offence to contravene a management plan. If this includes misusing substances then people could still be charged with an offence since sniffing would clearly contravene said plan. It needs to be clarified that this is not the case. See later comments about Management plans

Recommendation 6: that individual communities retain the autonomy and power to develop their own solutions to problems in their own communities, including VSA and alcohol supply and consumption and that they be resourced adequately to do this.

3 Additional Police Powers

We are deeply concerned by the increase in police powers, especially their "discretionary" powers, proposed in this Bill. Throughout the Bill there are many references to "reasonably believe" "reasonable force", etc. Police officers will be required to make numerous professional judgements in enacting this legislation – anything from whether someone can't understand them due to language/cultural differences or due to intoxication to what is "reasonable force" required to make someone hand over their petrol can or come along to an assessment interview.

The police force already have clear guidelines about their work. However, recently NT officers transported 4 juveniles (15 – 16 year olds) from Borroloola to Darwin in the back of a paddy wagon, with no toilet breaks or food or water, insufficient checking in on their safety and no seat belts[2]. Given this, we are cautious about any moves to extend police powers, especially where these call for a higher level of discretionary decision making.

Moreover, with regard to remote Aboriginal communities, Town Camps and other geographical areas governed by local Indigenous groups, within Local Government and similar existing Acts, Councils and their communities already have the power to enact By Laws which could "ban" petrol sniffing from communities and empower police or others to take action against them. This would be given more weight if suppliers were able to be prosecuted.

At the very least, "reasonable" needs to be defined in every context in which it is used. We would also strongly suggest that the phrase "minimal force" is used rather than "reasonable force" in any legislation relating to VSA. At another consultation regarding this Bill, it was identified that the current Victorian Child Protection legislation uses this phrase and that there are pages of guidelines plus accompanying departmental procedures which further outline exactly what this means and what steps need to be taken before even thinking about laying a hand on someone else, especially a child.

Recommendation 7: That the term "reasonable force" be replaced with "minimal force," including in the revised NT Children's Welfare Act and that clear Regulations, policy and procedures be developed to support a clear understanding and implementation of this as it relates to child protection matters, including VSA.

Recommendation 8: That increased efforts be made to implement culturally responsive and appropriate governance training for key stakeholders, especially Community Councils and their Secretariats. That this training also clarify the powers Community Councils have with regard to

[2] ABC Radio News Broadcast, Feb 14th 2005

implementing their own By Laws with regard to use, sale and supply of both petrol and alcohol within their community boundaries.

Recommendation 9: That dealing with matters relating to minors (under 18 year olds) sniffing volatile substances be dealt with as Child Protection matters and addressed in the relevant legislation.

Recommendation 10: That, where relevant, dealing with matters relating to adults sniffing volatile substances be dealt with as AOD health related matters and dealt with in the relevant legislation.

Recommendation 11: That where adults commit offences related to VSA that do not involve violence against (an)other person(s), eg, property damage, theft, every effort is made to engage the individual in appropriate diversionary and/or treatment programs as an alternative to incarceration.

4 Police powers in relation to the Act are also given to "authorised persons"

The Bill specifies that others people can become like police officers in carrying out related duties. At one point the Bill even says that these people and/or police can co-opt others to help them deal with an involuntary client. There is no information about what sort of experience, qualifications, training and support these people would require or even specifying that this needs to be taken into consideration.

We are also wondering who DHCS has in mind to become these "authorised persons", particularly in remote communities. The obvious first group would be Night Patrol. From what we have heard from Tangentyere Council (Jane Vadiveloo), Night Patrol workers are reluctant to take on this role given the "peacemaking" and "mediation" role they often play within communities and that they feel they would put themselves "at risk" through trying to apprehend sniffers. We're not too sure who else would be appropriate in remote communities, other than perhaps JDU related workers – and these are few and far between. FaCS Child Protection workers would be possible, given their other statutory powers, however remote team members are based in Alice Springs and would probably only be able to intervene to assist in serving assessment and treatment orders. "Youth workers" (mainly funded through programs such as Outside School Hours Care, Sport and Recreation and Reconnect) would require significant training and programs would need to be radically extended since most operate on a part time basis or have workers visiting the community rather than residing in them. Moreover, programs such as Reconnect clearly have client voluntarism as one of 7 guiding principles and would be jeopardised if workers were expected to act as "authorised persons" within this Bill.

We have been trying to imagine what it would mean to implement this Bill, especially within remote communities. Given that sniffing itself is not illegal, does it mean that it is up to the individual police officer or "authorised person" whether they take action or not? Would they be expected to immediately tip out petrol, confiscate cans, etc with every person they see sniffing? How would they approach a large group of sniffers? What if, as with many communities coping with VSA related issues, there are no police present? Who supports the "authorised others"?

Recommendation 12: That all clauses mentioning "authorised persons" being able to assist police in VSA related matters be deleted. That this also include engaging others at specific times to assist in executing the Act, eg clauses (35)(6) and (41)(6).

Recommendation 13: That the NT government expand its police force, especially in remote communities. That this include increased capacity to train and support ACPOs.

5 Who are we talking about apprehending?

In remote Central Australian communities, the majority of those abusing solvents are under the age of 18. They are children and young people. Whilst the Bill contains distinctions between dealing with adults and minors, it doesn't uphold children's and young people's rights sufficiently. If, for instance, a child was required to be taken into custody for their own well being (or that of others around them) and there were no responsible adults to inform of this action, surely it would be a child protection matter and best addressed through the Child Welfare (or equivalent) Act? The Bill is proposing that "reasonable force" can be used against anyone contravening the Act, which includes children.

See previous recommendations regarding dealing with minors under child protection legislation.

6 In whose best interests?

At no point is "best interests" defined. This is particularly crucial for children and young people, given that views about what is truly in their best interests are often subjectively made and there may be differences between what family, workers, community and, indeed the young person/child themselves consider this to be. It is also particularly important within the context of cross cultural work in which the opinion of workers (often non-Indigenous and/or urban) tends to carry more weight than that of clients and families (in remote work, almost always Aboriginal).

At the very least, the definition of "best interests" contained in the (proposed) Child Welfare Act should be included in the definitions in this Bill, especially in relation to children and young people

Recommendation 14: That should separate legislation be enacted to address VSA, a similar definition of "best interests" to that used in the revised Child Protection Act be included.

7 Protective custody

See detailed comments below but we would be deeply concerned about any child or young person being held in protective custody for any period. The proposed Child Welfare Act states clearly that a police cell is not to be considered appropriate for children to be held in for any period of time. There needs to be consistency between legislation.

We also believe that given current police resources it is unlikely that this option would be taken up regularly given the amount of personnel time taken up in supervising those in custody, especially if intoxicated or considered "at risk." You could engage 2 officers easily supervising one affected person: what happens, for instance, if there is a call out to attend to an instance of domestic violence or a big import of alcohol?

Within the above, we can see that there may be times with adults in which it may be appropriate for them to "cool off" for a period of time. Every effort should be made to ensure this is not in a police cell, especially if their action has not been illegal. Where they may need to be in protective custody, we think they need access to medical attention before 6 hours has elapsed and they would require careful monitoring (which we assume is in the regulations in the police act). Also,

in a remote context, the option of requesting to be brought before a Justice to apply for release is impracticable: there are no Justices on communities.

Finally, the Bill does not specify what happens to the person upon release. For instance, the person might "sober up" and want to leave: what if they have been transported from another community or outstation/homeland and have no means of returning? We assume it would be up to the Police (or "authorised persons") to provide this – or organise for its provision - and would like this included in the Bill.

Recommendation 15: That a police cell is not to be used as a form of protective custody for a child or young person under the influence of volatile substances

Recommendation 16: That medical attention be sought within 2 hours of any person in protective custody for being under the influence of volatile substances

Recommendation 17: That police/FaCS (as relevant) are responsible for transporting affected persons, especially children and young people back to their homes (or similar) upon release from protective custody or removal to a safe place.

8 Mandatory assessment and treatment orders (including the way they are served)

We are yet to be convinced that mandatory treatment, in and of itself, leads to a sustained change in behaviour or attitude with regard to drug use in general. If it were there would not be the overwhelming number of people incarcerated for drug related offences in Australia and elsewhere. Often those who do participate in court ordered treatment programs do so to stay out of jail and with little commitment to changing their behaviour or attitude and a greater desire to "go underground" and not get caught.

Changes made during "treatment" (however this is defined) are unlikely to be sustained if the situation back in the person's community remains the same. Clearly related reforms need to occur at a number of levels to achieve this – better education, more jobs on real wages, more training, healthier and cheaper food in the store, improved health care, recreational and other activities for starters.

Moreover, the Bill does not state what happens to someone if they fail to comply with an assessment or treatment order. It does state that the person can be issued with a warrant. It also states that in both these instances "any person assisting the authorised person to execute the warrant may also use reasonable force in doing so." See comments above in relation to police/etc powers. This is truly alarming.

We also predict that a lot of resources could end up diverted into making (young) people comply with court orders, including locating them when they abscond. One service recently costed that efforts to get one young woman and several of her family members to an outstation to "dry out" cost $7,000 and, at that stage, they were still unsuccessful with their desire that the young woman participate in this "treatment." And we wonder who is responsible for providing transport for the person to attend the assessment or to get to the treatment program and back home again, especially if these are conducted away from the person's community.

Moreover, there is no definition given – even broadly – of what might be considered to be a treatment program or facility. We assume it would include similar facilities to outstations such as

Mt Theo and Ipolera, as well as services similar to the 2 beds currently available through DASA in Alice Springs. If legislation and policy are to become reality, treatment facilities will need a major injection of funding. Arguably, this is clearly required and ought to be provided regardless of whether treatment and assessment are mandated. Treatment facilities should also operate under clear guidelines for minimum standards (ie, regulated like shelters, childcare centres, etc) and funded at acceptable levels that will enable them to meet such standards. That there are to be standards ought to be included in the Act itself, with the framework underpinning standards in the Regulations accompanying the Act and then policies and standard procedures developed from this. The Regulations also need to uphold requirements for proper consultation with remote communities in the developing and monitoring of standards and due respect and regard for cultural considerations.

See previous recommendations relating to the above points. Additionally,

Recommendation 18: that assessment and treatment for VSA is offered on a voluntary basis and that communities are assisted to develop and maintain culturally appropriate VSA treatment services.

Recommendation 19: That appropriate support be given to individuals upon release from assessment/treatment, including transitional support once back in their community, transport, etc. Where NGOs expected to provide these services, they are funded at acceptable levels to do so.

9 Places of safety

Similarly, there is no definition of what "places of safety" are other than the Minister being able to declare such places as existing. We anticipate that they could include outstations or other treatment facilities but are unsure where else could be gazetted as a "place of safety", especially within a remote context. If they are outstations, who provides transport? Who pays for transport? And the requirements for parental/equivalent consent take on greater significance. Additionally, some outstations (like the most popularly known and justifiably applauded Mt Theo) refuse to take anyone (especially young people/children) without supportive family accompanying them and may not wish to be a general "place of safety". Once again, in the case of minors & especially children, if there was no adult family support available to care for an intoxicated person, surely it would be a matter for FaCS to investigate and therefore dealt with under child protection legislation.

Recommendations relating to the above are included earlier in this document.

10 Management areas & Management plans

We assume these would mainly relate to remote communities. They would be difficult to implement elsewhere except in very public places (eg, Todd Mall in Alice Springs) or Town Camps.

We agree, in principle, with the idea of a management plan being developed by communities but aren't sure whether it requires separate or new legislation to achieve. There are already provisions for these to be enacted within individual Council By Laws within remote communities and Town Camps, although we are unsure if this would include giving what are essentially police powers to "authorised persons" and to what degree an actual plan needs to be formulated, as

specified in this Bill. We also note that a group of 10 "residents" can call for a plan to be made, as well as a community Council. So the Bill certainly gives management plans additional weight.

Similar provisions have already been enacted in relation to the use, sale and possession of alcohol in communities in Central Australia. Amongst other factors, insufficient police presence and a (justifiable from their perspective) reluctance for people living in small, closely knit communities to "dob on one another" makes this difficult to implement. This could well be the case with VSA related plans.

We also believe that it would be setting a double standard to "come down hard on sniffers" with no comparable action taken against "big drinkers." This is particularly the case where breaking a management plan is a criminal offence and it is not specified exactly what this means.

There are also concerns with the consultative process used to develop the plan. It appears as if the initial consultation phase becomes a single community meeting. We suspect several would be required, including with the Minister/their representative(s). Community members may need support to develop their plan, especially if it is to be a written one, as well as time to consider options at various stages of the process. This would all need to be resourced sufficiently.

See previous recommendations, especially **Recommendations 6 and 8.**

13 Protection of informers

How would information be checked for its accuracy? We know of instances in which young people who sniff petrol have been blamed for property damage or other anti-social behaviour which they were not responsible for.

14 Exemption from liability (68)

Enormous powers can be conferred on an "authorised person" (and others like police already have), including the requirement to make discretionary judgements based on notions of what is "reasonable." Given this, and the fact that legislation regarding professional/personal liability exists and that this Act says such legislation still holds, we'd prefer clause 68 to be removed entirely

Recommendation 20: delete clause 68.

15 Logistics (transport, etc) & additional resources required in implementing the Act

This has been addressed in other sections. However, we wish to emphasise the additional resources and other logistical considerations that will contribute to the success or otherwise of this legislation. We firmly believe that additional resources are necessary but are concerned that the majority of available funding will be diverted into mandatory treatment programs and into ensuring compliance with the letter of the Law with insufficient attention given to other aspects of a "whole of government/whole of community" response to VSA.

Recommendation 21: That as well as expanding culturally appropriate VSA treatment services, relevant NT and Federal departments continue with the processes and learnings from COAG and consider the following as priority areas to address VSA:

- Increased funding for diversionary and leisure activities located within communities
- Increased funding for activities which strengthen culture and foster intergenerational learnings

- Better training support for workers and community members including in governance, project/service management, working within a remote community context (where relevant) in addition to specific areas of service delivery such as alcohol & other drugs, suicide awareness, challenging behaviours, planning activities, community development and so on
- increased funding for programs similar to Reconnect but with a broader focus than homelessness (early intervention, case management, contributing to coordinated service delivery across NGO/Government services)