

CENTRAL AUSTRALIAN YOUTH LINK-UP
SERVICE

Targeted Volatile Substances Legislation



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Synopsis

This paper discusses the case for targeted state legislation that aims to reduce the impact of volatile substance misuse on individuals, their families and the community. We argue that such legislation, if developed and introduced through an inclusive and consultative process, can empower communities and families to take action to deal with a crippling issue. Such legislation can also provide clear powers and terms of engagement to the state justice, health and community welfare systems and thus ensure an effective, reliable and systematic response to emerging volatile substance misuse.

The paper considers the NT experience where the NT Volatile Substance Abuse Prevention (VSAP) Act 2005 has played an important role as a key component of a suite of responses to petrol sniffing and other volatile substance misuse. In light of recent coroners recommendations in both Western Australia (WA)¹ and South Australia (SA)² the paper also considers how similar legislation could be effected in these states.

Background

The Central Australian Youth Link Up Service (CAYLUS) was set up in 2002 to address endemic levels of petrol sniffing in the region at the time. We work to reduce the impact of substance misuse on young people and families by supporting community initiatives that improve quality of life. Broadly our efforts target (i) demand reduction (activities and strategies to reduce the uptake demand for drugs), (ii) supply reduction (activities and strategies to reduce the availability or supply of drugs) and (iii) harm reduction (activities and strategies to reduce the harm caused by use of drugs). CAYLUS provides services to 30 main Aboriginal communities across a region of 873,000 square kilometres.

When CAYLUS commenced operation in 2002 there were a number of issues where the NT was systematically failing to take direct logical action in relation to sniffing. These included

- a failure to gather data on the prevalence of sniffing and related harms
- a lack of clear powers for police in relation to intervening in sniffing
- a consequent mixed response from police - ranging from ignoring pleas for assistance from the community to heavy-handedness (in one community police reported to us that they regularly poured confiscated petrol over sniffers heads as a way of trying to put them off the habit)
- a lack of any legal mechanism under which people whose major substance misuse issue was petrol sniffing could be compelled to attend rehabilitation

¹, WA Coroners office, Record into the investigation of the Death of Ashton Michael Sunfly, Mitchell Nanala, Lewis John Kalions, and Jason Milner.

² SA Coroner. Finding of inquest into the Death of Kunmanara Brown Oct 2011

- poor quality and inconsistent protocols for exchange of information between the child welfare, health and justice systems in relation to people whose major substance misuse issue was petrol sniffing
- a lack of systematic health and psychological assessment and follow up for people for whom petrol sniffing was the major issue
- a lack of treatment capacity and suitable treatment programs for people for whom petrol sniffing was the major issue

After a number of years of CAYLUS and others pushing for improvement, and after a number of tragic incidents that highlighted the failings of the existing regime, in 2005 the Northern Territory Government developed the NT VSAP ACT.

The act has four main prongs³

Prevention and intervention

The act empowers police and authorised persons to remove and dispose of volatile substances from somebody who is inhaling, intends to inhale, or has recently inhaled a volatile substance. If it is necessary for the health and safety of the person or other people around them, the person can be taken to a responsible adult (usually a family member) or to a place of safety. A place of safety is a place declared by the Minister and can be within or outside the community. In remote areas it may be a youth centre or an outstation; in urban centres it may be a sobering up shelter or a youth accommodation service. If there is no safe place the police can take a person into short term protective custody, until the person is no longer at risk of harm. As many remote areas do not have police stations, the Act allows for specially trained authorised persons to remove volatile substances from persons at risk and take them to a safe place or to a responsible adult. Authorised persons must be individually approved by the Minister. They can be health workers, youth workers, councillors, elders, night patrollers, etc. Authorised persons must successfully complete an approved training course, which includes volatile substance abuse related health information, intoxication management and first aid. They must also have a current drivers licence and undergo a criminal history check.

Assessment and Treatment

³ Much of the information in this section is drawn from a NT Department of Health and Families fact sheet which explains the operation of the Volatile Substance Abuse Prevention Act

Since the advent of the VSAP ACT the NT Department of Health and Families (DHF) has employed specialist assessors for people with volatile substance abuse issues. Under the Act people in the community who are concerned about a person's volatile substance abuse can contact an assessor and apply for an assessment to be carried out on the person at risk. The following are authorised to apply for such an assessment: police officers or authorised persons; family members of persons at risk; responsible adults for children; doctors, registered nurses, Aboriginal health workers and psychologists; and Northern Territory Families and Children (NTFC) workers.

The assessment findings determine whether a recommendation is made to the Chief Health Officer to apply to the local court for a treatment order. A court-ordered treatment program can be up to 16 weeks in duration and can be extended if necessary. A range of treatment programs are available that include residential programs, as well as treatment for withdrawal, stabilisation and aftercare, other appropriate therapies, and health, diversionary, and educational interventions.

If a person fails to participate in a court-ordered treatment program or absconds, a warrant can be applied to compel the person to attend. Persons authorised to seek a warrant include VSA assessors, police officers, authorised officers, the Chief Health Officer, or a legal representative of the above mentioned persons. At times, when a court-ordered program is not the best option for a person, other plans are made to support the person at risk, their family and community. The general goals for the person at risk remain the same as those for a compulsory program: cessation of volatile substance abuse, reduced high risk behaviour, improved physical and mental health and improved social functioning.

Community Management of Volatile Substances

Community members and Shire Councils are able to apply to the Minister for a certain area in their community or their whole community to be declared a management area under the VSAP Act. A management plan is then developed for the area which establishes rules for possession, supply and use of volatile substances. Delegates of the Minister hold community meetings, explaining the workings of management plans. The delegates also assist and guide communities through the making of the plan. Community members, with support from shire council managers, elders, police and community agencies must be consulted about the area and the plan. This requires at least one community meeting, to ensure all relevant stakeholders are aware and consulted. The community can ban petrol and make rules on storage and disposal of paints, glues and any other volatile substances. The draft plan is first provided to the Commissioner of Police and the Chief Executive (DHF), who need to endorse it and then it is submitted to the Executive Director Health Protection, for approval. Once the plan becomes law in the community, contravening it can result in fines or imprisonment. Signs

must be erected at community entry points warning people of the existence of the plan and informing them of its provisions (see the cover page of this document for an example).

Unlawful supply of volatile substances and confidentiality

The Act provides that a person must not supply a volatile substance to another person if the supplier knows, or ought to know, that the other person intends to inhale the substance. Likewise a supplier must not give a person a volatile substance if the supplier knows, or ought to know, that the recipient intends to give the substance to another person for inhaling. Unlawful supply is an offence under the Act and is punishable by a fine or imprisonment. This part of the Act empowers retailers to refuse sale to anyone they suspect of inhalant abuse.

The Act also provides that the identity of a person who supplies information to the police regarding an offence under the Act must be kept confidential. A person who discloses the name of an informer or gives details leading to the informer's identity, commits a crime punishable by a fine or imprisonment.

The operation of the VSAP Act in the NT

The NT VSAP Act has played a critical role in improving the situation with sniffing in the NT. As such it is worth noting and learning from the experience of the actual development and implementation of the Act, particularly when considering implementing similar legislation in other jurisdictions.

The NT VSAP Act was developed when NT Minister Marion Scrymgour was Minister for Families and Community Services. Ms Scrymgour, herself a Tiwi Islander, took particular interest in the development of this legislation, visiting many communities and conducting consultations first hand. The various aspects of the Act were built on ideas identified through community consultations and were based in part on her first hand knowledge of what was needed.

There is ample evidence to demonstrate that behavioural change in any community is much more readily achieved when new policies are produced as a result of genuine consultation. It is critical for success that new policies are developed in partnership with communities rather than a manner where they are imposed from the outside. People need to have 'ownership' of the new policy, which gives them an incentive to comply which is more powerful and persuasive than just the fear of punishment for non-compliance.

Prevention and intervention

The prevention and intervention aspects of the NT VSAP Act had mixed success. The main gain was that the Act gave a clear mandate to police to become involved in sniffing. Along with the Act, regulations, policies, and procedures were developed to specify the actions that police were required to take in response to reports of sniffing, and the powers that enabled them to take action.

On the ground this meant that in locations where there were police there was now a much more reliable response to reports of sniffing. Sniffing was now being systematically interrupted (previously the practice had been quite public and open in some locations); children's sniffing was being routinely brought to the attention of their families; in a growing number of sites people who were sniffing were systematically being taken for health checks as a part of the police response; data was being collected to assess the prevalence of sniffing, and necessary referrals and information were being passed on to appropriate agencies.

In the experience of CAYLUS these gains endure. Currently, when we contact police in any NT location the response is a vast improvement on the situation that existed when CAYLUS commenced operation in 2002. Compared to the arrangements prior to the passage of the legislation when police didn't have clear guidelines for response to VSA, the police response now is more informed and constructive, is safer for all parties, and it is more systematic.

Declaration and use of 'places of safety' under the Act has proven less problematic than it did when Queensland introduced similar legislation several years earlier. In remote communities there are few declared places of safety. People who are apprehended tend to be taken for a health check and then taken back home to family.

The provisions in relation to 'authorised persons' have had less obvious impact and uptake. People who were willing and able to confiscate volatile substances were generally already doing so and in practice didn't need a card or to participate in a training course in order to do this. However agencies such as night patrols have put staff through authorised persons training and reportedly found it useful. Also under the Act, authorised persons are able to refer people to assessment for mandatory treatment, so at CAYLUS we ensure we have a number of authorised persons on staff in order that we can make referrals as necessary.

Assessment and Treatment

This section of the Act has been the most controversial, particularly the mandatory treatment powers. As a starting point it is worth noting the context in which these powers were developed and implemented.

When consultations in relation to the NT VSAP Act were first conducted, the practice of mandating treatment for sniffing had existed informally for some years in the NT. The best known example was Yuendumu where as a part of the Mt Theo program families and other agencies had worked together to force young people who were sniffing to reside at the Mt Theo Outstation in the care of community elders. The program had been a clear success and had led to the cessation of sniffing in the community. There had also been a number of similar efforts in other communities over the years, some of which had worked well. At the time of the development of the Act, Ilpurla, Ipolera and Intjartnama outstations all operated to some degree in Central Australia, and had taken or were still taking placements of clients who were being forced to reside at the outstation away from petrol sniffing and other substances. They were forced in various ways including: directly by family; by police (often working informally in support of families and without any legal mandate to do so); through bail conditions imposed by courts; and through corrections orders.

On the basis of this experience, the principle of legislation that could compel chronic sniffers to receive treatment, but that did not criminalise sniffing, had wide support in many affected communities.

Prior to the mandatory treatment provisions, CAYLUS had at times with the support of family and community stakeholders, worked to get particularly high risk individuals jailed, both for their own and their communities benefit. Often petrol sniffing was the major issue and the cause of their offending. At CAYLUS we considered that in some cases mandatory treatment orders would provide for a more targeted and appropriate response to people with major substance misuse issues.

The implementation of mandatory treatment was slow. Anecdotally it seems in part this was because some AOD practitioners in NT Health charged with its implementation objected to the practice. The first requests for assessment under the Act took 6-12 months to complete, and by this time the person who was sniffing could no longer be found or had moved on to other things. However in time the implementation of treatment orders became considerably more speedy and appropriate. Over the last few years assessments have tended to take between one and three months depending on a range of factors including remoteness and the priority the case is given.

Another factor that may have led to slow implementation is that mandatory treatment capacity needed to be developed at the same time as the Act. At the time the legislation was being developed there were few facilities ready to take large numbers of placements. However, by creating legislation the NT Government committed to developing additional treatment capacity Funds were allocated to complement the Act and services were resourced to take on additional placements.

Since the development of the Act all of the outstation programs other than Mt Theo have ceased operation for various reasons. Mt Theo only takes placements of Warlpiri youth, leaving only limited options for formal treatment placements through the Act. The placement options that are left are generally in facilities that are based in urban settings so don't have the geographical advantage that remote outstations had when trying to contain mandated clients (because of their remoteness it is not possible to simply walk out of such facilities rather an exit needs to be negotiated. In practice, while clients are encouraged to stay in treatment facilities, staff cannot deprive liberty and clients can walk out at any time. If they do, a warrant can be issued and police can escort them back to the facility. If the placement is clearly not working a new strategy can be pursued, including seeking a different order from a Magistrate.

In practice, this section of the Act doesn't often provide an end result of a mandatory treatment placement. More often it mandates that clients participate in some level of case management, discussing their substance misuse, and factors that lead to this with an AOD professional and developing plans to overcome this or at least minimise the harms caused by the behavior.

Over the six years since the advent of the NTVSAP Act CAYLUS estimates that more than 500 people have been referred for assessment. A significant proportion of these people were located in the Central Australian region where there is a fairly comprehensive roll out of Opal fuel, indicating that Opal is not the single solution to inhalant abuse. It is our experience that there are always people so addicted to inhalants that they will find a way to access them despite Opal. However, this is a small minority, as can be seen from the 94% reduction in inhalant abuse in the CAYLUS field area⁴. For many, the initial referral and assessment process has been enough to cause them to cease sniffing, so no further action was required. Many individuals have also benefited from mandatory treatment because it has caused them to genuinely change their behavior, or simply because it has given them a break from heavy substance misuse, some medical attention and a safe place to stay for a while.

Community Management of Volatile Substances

⁴ 4 Peter d'Abbs and Gillian Shaw 2008, Executive summary of the Evaluation of the Impact of Opal Fuel, Commonwealth Department of Health and Ageing, Canberra

The capacity to create community management areas has been well utilised, particularly as a way of complementing the roll out of low aromatic fuel by placing legally enforceable requirements on the management of other substances in declared zones. The options for management of volatile substances in such areas include banning a substance from a community altogether (some communities have banned standard unleaded) and placing requirements on the storage and use of particular substances if they come into the zone eg: that contractors should store glues etc securely and take empty canisters off the community when they leave.

The time taken to implement such areas has proven troublesome: there are still communities in the NT that requested management areas more than three years ago but that haven't had an area approved. Understandably the Act places a lot of emphasis on community consultation about such areas, including a provision that community members need to attend multiple community meetings about the process in order to progress the declaration. It has been our experience that community members may be quite supportive of creating such laws and agree that they may be a good idea. However,, now that prevalence of sniffing has substantially dropped in our region, community members are not dealing with sniffing day to day as they had to in the past. Given this reduction, attending multiple meetings on this issue has been less of a priority, given the range of other complex issues that people are dealing with in their lives and the many other meetings that community leaders are asked to attend.

a way to improve the process might be as follows: once a group of community members has requested a management area and given some detail about the approach they would like to take, public notices should be widely posted about the declaration of a zone with a set waiting time for objections or submissions in relation to the zone and management practices. This way the default settings of the Act would allow for such areas to become established rather than lapse.. In locations where sniffing is a more pressing issue, this may not be such a problem as community members may more be keen to attend meetings and find solutions.

Depending on developments with federal Opal mandating legislation (legislation that has capacity to force retailers in strategically important locations to stock Opal/ Low Aromatic Fuel) it may also be worth considering creating this capacity in a state VSA act, particularly if the federal government has failed to create a national Act that does this.

All in all this section of the Act has proven useful in providing a legal basis around which communities can make rules about the management and use of high risk volatile substances. Though it is our experience that there have been few prosecutions under this section of the Act, it can be used to provide clear ground rules for such management. This has been especially useful in ensuring that staff

visiting communities such as builders and contractors are aware of the seriousness of the issue and therefore manage such substances appropriately (see the attached contractors guide).

Unlawful supply of volatile substances and confidentiality

The NT VSAP Act was initially developed before Opal/ Low Aromatic Fuel had been rolled out comprehensively in the region. At the time it was developed many communities were using either Opal or Av Gas (a low aromatic fuel used prior to the development of Opal to reduce sniffing prevalence), but sniffing continued because standard unleaded fuel was still readily available at other sites in the region. At this time there were ongoing reports that people deliberately brought standard unleaded fuel into Opal/ Av Gas communities and sold it for sniffing. This provision of the Act substantially increased the penalties for supplying fuel in this way. Such provisions had existed prior to this under section 18 of the NT Misuse of drugs act, but were not specific to volatile substances and were rarely used. The VSAP legislation also gave a greater level of protection to people who reported petrol dealers: in many cases such reports were made in small communities where the informant may be required to have ongoing close contact with the person who was supplying fuel and /or their family.

Importantly this section of the legislation provides a basis under which retailers of volatile substances such as glues and sprays are obliged not to sell the product if they suspect it will be used for sniffing by the buyer or a third party. This has provided the legal basis for an ongoing collaboration between health agencies and retailers that has led to considerable reduction in use of such substances in Alice Springs⁵

With the overall regional reduction of sniffing prevalence in Central Australia, reports of petrol supply and dealing have decreased significantly, so these powers have not been used a great deal. However they do offer an important range of tools to enable deliberate dealing or supply of volatile substances to be acted upon as it emerges.

⁵ K Marel, Introduction of Reduced-Toxicity Spray Paints and the Effects on 'Suspicious' Sales, Current Issues in Criminal Justice Volume 21 Number 3 March 2010

Recommendations for other states

Along with other measures such as Opal fuel and community efforts, the NT VSAP Act has played a critical role in responding to and reducing the prevalence of volatile substance misuse in Central Australia.

If similar legislation were to be adopted in other jurisdictions we would make the following key recommendations based on our experience in Central Australia:

1. The development of an Act, particularly if it includes mandatory treatment provisions, should be founded on consultation, particularly with community leaders in affected communities, and service agencies that provide on-the-ground services to families affected by substance misuse.
2. Whilst mandatory treatment has proven valuable in the NT it is not the only useful feature of the Act. The Act also provides capacity for communities to make rules about the management of volatile substances so that they are harder to access, provides clear powers to police and a mandate to act on VSA, provides for mandatory engagement/participation in case management/planning, and provides for an integrated response to VSA between the health, social welfare and justice systems. All of these features are useful in their own right.
3. In the absence of federal legislation with the power to compel retailers in strategically significant locations to stock Opal fuel, states should investigate creating this capacity as a part of efforts to develop targeted volatile substances legislation⁶.

Key Challenges

Inadequacy of current capacity in treatment services

One major factor in considering targeted Volatile Substance Abuse (VSA) legislation is the capacity of existing treatment services and their willingness to take mandated treatment placements. The ability of services to take such placements in the NT is still quite limited and only exists because it was specifically funded as a part of the implementation of the legislation. It is worth noting that while such capacity is limited, the VSA beds in these services are often unused as mandatory treatment (particularly in urban locations where clients can easily walk out of services) is seldom the best way

⁶ See CAYLUS discussion paper Mandating the Use of Opal Fuel, Feb 2012

forward for clients. Voluntary placement in treatment, supervised /supported family placements, and compulsory participation in case management and planning often produce more positive results.

A different kind of facility may be needed if people are to be confined against their will

The NT Legislation does not allow for the people to be forcibly restrained and confined against their will: people can walk out of services at any time. Police can be given a warrant to forcibly escort a client back to rehab, but the client can generally easily walk out again once Police leave. The remote location of outstation services made it much harder to walk out, however a number of clients negotiated early exit from mandatory treatment at these services can be negotiated for a range of reasons.

Confining people against their will carries a considerable risk both to the client and to staff and this should be considered as a part of development of mandatory treatment options

Other state legislation already exists with powers to take action against VSA

In WA and SA two recent coronial inquiries have found that existing legislation was not adequate to prevent the VSA related deaths that they were investigating⁷ In the NT prior to implementation of the NT VSAP Act there were a range of state laws under which action could be taken, but wasn't. These included Child Welfare Act, the Mental Health Act and the Misuse of Drugs Act. The lack of specific legislation also meant that in some cases instead of acting on the basis of an individuals chronic substance misuse, we needed to wait for a serious crime to be committed (often as a symptom/result of the substance misuse) before action could be taken. This meant that people's drug and alcohol issues were not directly targeted, and the community suffered in various ways due to delaying action until a serious crime happened.

^{7 7} WA Coroners office, Record into the investigation of the Death of Ashton Michael Sunfly, Mitchell Nanala, Lewis John Kalions, and Jason Milner.

SA Coroner. Finding of inquest into the Death of Kunmanara Brown Oct 2011

Conclusion

Given the experience in the NTVSAP Act and recent coronial recommendations in WA and SA it is well worth these and perhaps other states reviewing their existing legal and service delivery frameworks and considering the implementation of targeted state volatile substances legislation. Targeted state legislation if developed in a spirit of partnership with affected communities and services agencies may look different from state to state. The NT legislation is made up of a group of discretely useful complimentary measures all of which could be replicated or learnt from in other states

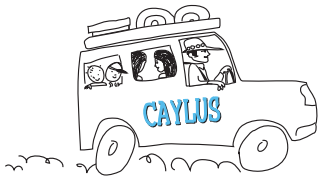
The systematic nature of legislation and the impact of this should not be overlooked: now in the NT anyone who has become seriously involved in sniffing routinely has to engage with the health system, talking with AOD counselors, having their families made aware and their views taken into account, possibly having to interact with police and attend court because of their sniffing. All in all this adds up to a powerful systematic disincentive to sniff. This a vast step forward from the days when children in remote communities across the NT routinely, went shopping, sat with their parents at the campfires and attended community events all while openly sniffing inhalants.

Warning

Did you know that young people in remote communities can misuse common products used by contractors?



Tangentyere Council



Central Australian
Youth Link-Up Service



An Australian Government Initiative

Amity
Community Services Inc



Central Australian
Petrol Sniffing
Strategy Unit

Developed with the support of the Northern Territory Department of Health and Families and the Australian Government through the Commonwealth Department of Health and Ageing and the Attorney General's Department

Further Information

Central Australia

**Central Australia Youth Link Up Service
(CAYLUS)**

Ph: 08 8951 4219
Mob: 0488 159 129

**Alcohol and Other Drug Services Central
Australia (ADSCA)**

Ph: 08 8951 7580

Top End

AODP Top End Community Services

Ph: 08 8922 6905

Amity Community Services Inc.

Ph: 08 8944 6565



CONTRACTORS and VOLATILE SUBSTANCES

When you take volatile substances to remote communities and town camps anywhere in the Northern Territory, it is important to look after these products so that they can't be used for sniffing. This means that you will have less trouble on your building site and makes the community a safer place.

It is also a legal requirement in a growing number of communities under the Volatile Substance Abuse Prevention (VSAP) Act.

IT IS YOUR RESPONSIBILITY TO KEEP YOUR MATERIALS SAFE

Ways to keep your materials safe:

- Use Opal fuel where available.
- Where Opal is not available, use a lockable fuel cap or diesel powered equipment.
- Keep used and unused products in lockable containers.
- Take used cans, tubes and bottles with you when you leave the community. Young people have been accessing products thrown in community bins and local dumps.

VSAP Management Areas

The VSAP Act allows communities and town camps to create management areas and plans. Unsafe management of materials in these areas can contravene a management plan and can incur penalties of up to \$13,000 or 6 months imprisonment.

Find out if the community you are working in has a management plan by contacting the local police station or shire council, or by contacting the Policy Officer at Alcohol and Other Drugs Program (AODP) on 8999 2830.

For more detailed information about management areas go to http://www.health.nt.gov.au/Alcohol_and_Other_Drugs/Volatile_Substances/index.aspx

Materials That Could Be Misused

Petrol (from fuel tanks and jerry cans)

Aerosol Spray Cans

Glues (Kwik Grip/Tarzans Grip/Contact Adhesive)

Paint Thinners and **Glue Removers**

**Please be careful not to display this flyer in public.
It may give kids ideas about what to sniff.**

