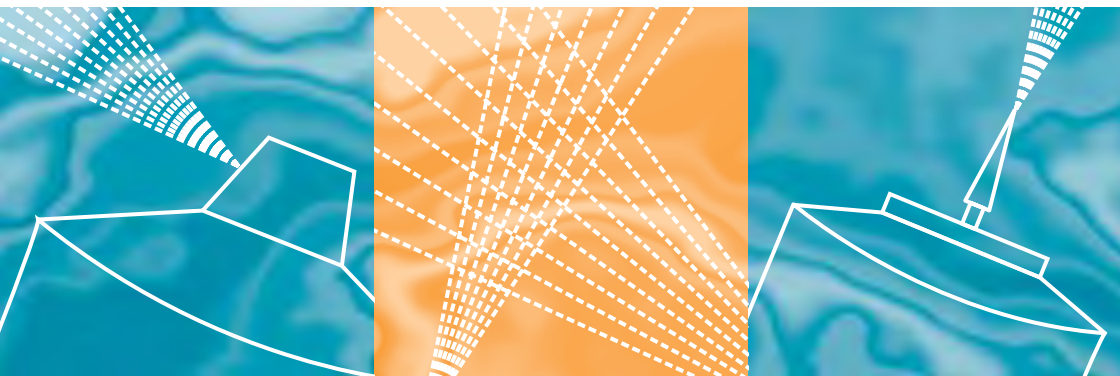


# Interagency Protocol between Victoria Police and nominated agencies

Drugs Poisons and Controlled Substances  
(Volatile Substances) Act 2003



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# Section 1:

## Background and the Legislation

### Introduction

This Interagency Protocol has been developed to support the implementation of the ***Drugs Poisons and Controlled Substances (Volatile Substances) Act 2003*** (“the Act”). The Victoria Police, Alcohol and Drug Agencies, Koori services, Out of Home Care Services, and legal services have contributed to the development of the Protocol. A Reference Group comprising representatives from drug and alcohol, legal, and Aboriginal services, the Departments of Justice, Human Services and Victorian Communities and the Victoria Police, have endorsed this Protocol.

### 1.1 Background to the Protocol

In September 2002 the Victorian Government’s Parliamentary Drugs and Crime Prevention Committee (DCPC) tabled its Final Report on its *Inquiry into the Inhalation of Volatile Substances* following an 18 month examination of volatile substance misuse.

The Inquiry handed down 16 recommendations, which included a proposal to develop legislation giving police search and seizure powers in relation to volatile substance abuse by young people. The Government, in its response, has supported this recommendation and made it a priority to introduce legislation to implement the proposal.

***The Drugs Poisons and Controlled Substances Act 1981*** (‘the DPCS Act’) was amended to include ***The Drugs Poisons and Controlled Substances (Volatile Substances) Act 2003***. The Act will come into operation on 1 July 2004.

The new legislation allows for an integrated police and health response, which will take into consideration the best interests of the young person.

The purpose of the Protocol is to provide guidance to Police, Department of Human Services (DHS), Alcohol and Drug (A&D) and Out of Home Care Services when carrying out their responsibilities under the provisions of the Act. The Protocol maps the interaction between departments and agencies to ensure a unified and consistent response to young people detained under the provisions of the Act.

A key aspect to successfully implementing the volatile substances legislation is the development of appropriate operational protocols between relevant agencies.

The new laws have a “sunset” clause, which will provide an opportunity to review the implementation of the legislation after two years of operation.

## **1.2 Description of the Provisions of the Drugs Poisons and Controlled Substances (Volatile Substances) Act 2003**

### **(a) Search power under 18 years**

The Act allows a police officer, subject to certain safeguards (see Section 1.3 of this Protocol), without warrant, to search a person, or

- any vehicle, package or thing in that person’s possession or control, for a volatile substance or an item used to inhale a volatile substance
- in a public place; or on private premises, if consent to enter the premises is given to the member, by occupier, or if no occupier, the owner.

The officer may only do so if he or she reasonably suspects that the person is:

- under 18 years of age,
- possesses or has control of a volatile substance or an item used to inhale a volatile substance, and
- is inhaling or will inhale the substance.

### **(b) Search powers, any age**

The Act also provides that a police officer may also search a person, or search things in that person’s possession or control, for a volatile substance or an item used to inhale a volatile substance, *regardless* of the person’s age. But the officer may only do so if he or she reasonably suspects that the person intends to *provide* a volatile substance or item to a person under 18 years of age to inhale or use to inhale.

### (c) Seizure power

The Act also provides that a police officer may seize a volatile substance or an item used to inhale a volatile substance where the officer reasonably suspects that a person who has been searched:

- is under 18 years and is inhaling or will inhale a volatile substance, or
- intends to provide the substance or item to a person under 18 years to inhale or to use to inhale.

In forming the relevant suspicion, the member of the police force must have regard to any explanation the person has offered for his or her possession of the substance or item.

### (d) Detention by Police

The Act provides that a police officer may apprehend and detain a person who the member reasonably believes is:

- under 18 years of age,
- inhaling or has recently inhaled a volatile substance, and
- likely by act or neglect to cause immediate serious bodily harm to himself or herself or some other person.

The officer must, if the person is able to understand or it is not otherwise impracticable, inform a detained person that he or she has not been arrested for an offence but is being detained in order to prevent the person harming him or herself or others.

As per section 60M (3) of the Volatile Substances Act 2003, a detained person must be released if the conditions for apprehension and detention cease to apply, e.g. If the officer no longer has grounds for believing that the person is likely by act or neglect to cause immediate serious bodily harm to himself or herself or some other person.

Further, as soon as practicable after being apprehended and detained, a young person must be released into the care of a suitable person who consents and who the officer reasonably believes is capable of taking care of the person. Examples of such persons include a carer, parent or guardian, another responsible family member or an employee of an appropriate health or welfare agency.

If the officer cannot find a suitable person then the officer may release or continue to detain the person, until the grounds for detention no longer apply.

A young person apprehended under the Act must not be detained in a Police gaol (see definition Corrections Act 1989) or a Police cell or lock-up. However, this does not exclude detention at a police station.

### **1.3 Safeguards provided by the Act**

The Act provides a number of 'safeguards' in relation to the new police powers.

#### **a) Safeguards in relation to search and seizure**

Police must:

- inform the person of the officer's name, rank and place of duty,
- provide that information in writing, if requested,
- produce the officer's identification, unless the officer is in uniform,
- inform the person that it is not an offence to possess or inhale a volatile substance or an item used to inhale, but the officer has the power to search for and seize volatile substances and items used to inhale them and may use reasonable force to do so,
- ask the person to produce any such substances or items that he or she has in his or her possession,
- ask the person why he or she is carrying or possessing a volatile substance or item that is detected during a search,

- make a record of the search, regardless of whether anything was found, and
- provide a copy of the record of the search to the young person if requested within 12 months of the search.

## **b) Safeguards in relation to detention**

Police must:

- release a detained person if the conditions for apprehension and detention cease to apply,
- inform the detained person that they are not under arrest for an offence, and are only being detained to prevent harm to themselves or others,
- not detain a person under this section in a police gaol, cell or lock-up (**note:** a young person may be detained at a police station),
- not interview or question a detained person in relation to any known or alleged offence during detention,
- make a record of the detention, and
- provide a copy of the record of the detention to the young person if requested within 12 months.

## **1.4 Return of seized property**

After seizing a volatile substance or an item used to inhale, a police officer must inform the person that he or she has the right to have it returned. However, the property may only be returned to a person who is under 18 years of age if accompanied by a parent or guardian.

## Section 2: Apprehension, detention and release options

The following section describes service options following police intervention.

### 2.1 Police assessment and response

An officer attending an incident involving volatile substance abuse will assess the situation. The officer's response may also be informed by the *Victoria Police Drug Guide (1996)*. The Guide contains specific information dealing with solvents and inhalants including: a definition and description of volatile substances, effects and symptoms, immediate dangers, course of actions and options and referral.

In some circumstances search and seizure is all that is required. In other circumstances, further intervention by police including detaining the young person on site or moving the young person may be required.

### 2.2 Service options available to police officers

Based on the assessment of the situation and the powers given under the Act, police may decide to apprehend and detain the young person. In exercising this power, police may take up one or more of a range of service options. The options include:

- a) Call an ambulance.
- b) Release the young person if they are no longer affected by inhalant misuse.
- c) Provide the young person, parent or guardian with education and referral information (*including Directline on 1800 888 236 a confidential alcohol and drug counselling and referral line*).
- d) Connect the young person with a parent, carer, guardian or other suitable person.
- e) Return the young person to their Out of Home Care Service, if a statutory client.
- f) Contact the DHS Child Protection Intake Team if there are risks or protective concerns for children under 17 years of age as defined under the ***Children and Young Persons Act 1989***.

- g) Notify the appropriate authorities if it is known that the young person is under a guardianship, child protection, residential order or other statutory order.
- h) Connect young person with Alcohol and Drug agency.

**Note:** An officer can contact the Drug Diversion Appointment Line (DDAL) on 9418 1030 who will advise of the most appropriate A&D agency to connect the young person to. In some localities police officers may have existing arrangements with local A&D agencies and may transport the young person directly to such an agency. Such local arrangements must be in keeping with the Volatile Substances Legislation.

## 2.3 Current practices and agreements at the local level

In some districts and regions local agreements and practices relating to volatile substance abuse and young people have been successfully introduced between Police, Koori, Youth A&D agencies and/or the DHS. Local agreements have been developed based on local issues, however local agreements must be in keeping with the Volatile Substances Legislation.

## 2.4 Response to Aboriginal or Torres Strait Islander youth

If a young Aboriginal or Torres Strait Islander person is detained under the provisions of the Act and ***taken to a police station***, police are to advise the Victorian Aboriginal Legal Service (VALS) by ringing them directly on (03) 9419 3888.

The VALS may be able to arrange for support to be provided to the young person, or to assist the police with contacting the young person's family.

In situations where police detain a young person under the Act, but do ***not*** take them to a police station, police are not required to contact VALS but may choose to do so for further information or assistance.

It should be noted that in addition to contacting VALS there may be local arrangements to be considered such as those with a local Aboriginal Community Justice Panel (ACJP).

## 2.5 Alcohol and Drug agency response

The metropolitan and regional Alcohol and Drug (A&D) services will provide information, support and crisis intervention to young people intoxicated by a volatile substance when a young person is connected to the service via a police officer.

To facilitate this individual agencies are encouraged to develop agreements with local police that take into account local factors (such as hours of access) in referring and supporting young people affected by volatile substance misuse.

### 2.5.1 Role of police officer

If a police officer decides, when exercising powers under the Act, to detain a young person and connect them to an Alcohol and Drug agency, then:

1. Police can contact Directline on the DDAL (Drug Diversion Appointment Line), who will advise police of an appropriate and available A&D agency.
2. Explains to the young person why they are being detained and taken to an A&D agency.
3. Communicates with agency staff member to arrange to accept the young person.
4. Provides agency staff member with relevant information about the circumstances and details of the young person.

**Note:** When taking a young person to an A&D agency, the officer need only enter the premises if requested by staff.

### 2.5.2 Role of A&D agency

1. Accept the presentation of the young person from the police officer.
2. Engage and inform the young person and make them feel comfortable about entering the service.
3. Document information if known (name, address of young person and parent or guardian if known, circumstance the young person was found in, assessment of young person's health, and demeanour) (For agency use only).
4. Undertake a brief health and risk assessment of the young person. This assessment would cover the type of inhalant use; frequency and pattern; other drug use and the perception of harm and risk (i.e. to what extent does the young person experience problems or harms with their inhalant use).
5. Provide information about the service for the young person.
6. Provide brief education about the harms of inhalant abuse.
7. Contact parent or guardian if not already contacted.
8. Contact child protection worker, Juvenile Justice worker, or other case worker if relevant.
9. Provide follow up appointment and referral to appropriate services.
10. If appropriate inform Police of outcome of their contact with young person.

## 2.6 Out of Home Care Services response

If a young person residing in an Out of Home Care Service is abusing volatile substances, Community Service Organisation (CSO) staff/carers are required to follow the Management Response to Inhalant Use Guidelines (DHS, 2003) and/or CSO Policy.

If, after implementation of the above mentioned guidelines, CSO staff/carers assess that they require assistance to confiscate volatile substances and/or paraphernalia, they may call the Police to enact the seizure powers under the provisions of the Act. Note that it is not the role of police to transport young people between services.

### **When Police are contacted by Out of Home Care staff**

1. CSO staff/carer provides information to Police Officer regarding:
  - name and age of young person
  - circumstances leading to the need for police intervention
  - substances used by the young person
  - relevant information about the child or young person's demeanour and behaviour.

There may also be situations where police return children and young people to their out of home care placement who have been found using volatile substances and detained under the provisions of the Act.

### **When a young person is returned to Out of Home Care placement by Police**

1. CSO staff/carers will provide support and care to the child or young person involved, and other residents as required.
2. CSO staff/carers will refer to the child or young person's case management and care plan, also any existing crisis intervention plans and crisis prevention strategies to manage the situation.
3. CSO staff/carers may refer to the *Management Response to Inhalant Use Guidelines* and/or CSO Policy (where applicable).
4. CSO staff/carers will complete a DHS Incident Report.

CSO staff/carers will provide support and care to the child or young person involved, and other residents, this includes the development of crisis intervention and crisis prevention strategies to manage the situation when police have returned the child or young person.

In all situations where a child or young person is using volatile substances CSO staff/carers are required to comply with the Department of Human Services (DHS) Incident Reporting Departmental Instruction (2002) requirements for reporting substance abuse.

For further information on managing incidents of inhalant abuse in Out of Home Care Services see list of relevant documents under 2.8 Resources for workers.

## **2.7 Process for assisting young people who choose not to engage with services**

There is no power under the provisions of the **Volatile Substances Act** for health workers, CSO staff or A&D agency staff to detain children and young people who are free to leave the agency if they wish to do so.

A worker who believes that a young person who chooses to leave the agency is at risk of causing immediate harm to him/herself or another, should assess the situation and take any action considered reasonable to reduce the immediate risk.

## **2.8 Resources for workers**

The information within this document has been based on current protocols, practices, agreements and police guidelines.

- Drugs Poisons and Controlled Substance (Volatile Substances) Act 2003.
- Protecting Children: Protocol between Department of Human Services and Victoria Police (Victoria Police, Department of Human Services, 1998).

- Minimum Standards and Outcomes Objectives for Residential Care Services.
- Management Response to Inhalant Use—Guidelines for the Community Care and Drug and Alcohol Sector, Drug Policy and Services Branch and Child Protection and Juvenile Justice Branch Department of Human Services February 2003.
- Victoria Police Drug Guide 1996.
- Additional Juvenile Justice Guidelines—DHS Management Response to Inhalant Use.

#### **Resources specific to Out of Home Care**

- DHS Residential Care Services—Substance Abuse Guidelines February 2002.
- Management Response to Inhalant Use—Guidelines for the Community Care and Drug and Alcohol Sector, Drug Policy and Services Branch and Child Protection and Juvenile Justice Branch Department of Human Services February 2003.
- Protecting Children: Protocol between Department of Human Services and Victoria Police (Victoria Police, Department of Human Services, 1998).
- DHS Minimum Standards and Outcomes Objectives for Residential Care Services in Victoria (2002).
- DHS Minimum Standards and Outcome Objectives for Home Based Care Services in Victoria (2003).

