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15 May 2026

s 9(2)(a)

By email: s 9(2)(a)
Ref: H2026081730

Tēnā koe s 9(2)(a)

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act) to the Ministry of Health – Manatū Hauora (the Ministry) on 17 April 2026. You requested:

"Please provide a copy of the briefing "Options to restrict usage of nitrous oxide" and any other advice on nitrous oxide provided to the Minister or Cabinet since 1 October 2025"

I have identified 12 documents within scope of your request. All documents and decisions regarding their release are outlined in Appendix 1 with copies enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time. Information deemed out of scope of your request has been removed from the final response and is noted in the documents themselves.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on:
oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at:
info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa. nā



Suzanne Townsend
Manager, Regulatory Policy
Strategy and Policy | Te Pou Rautaki

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	20 November 2025	Weekly report item to the Minister for Health Hon Simeon Brown: 1.2 Nitrous oxide	Released as an excerpt in accordance with section 16(1)(e) of the Act. Some information is withheld under section 9(2)(a) of the Act, to protect the privacy of natural persons.
2	19 February 2026	Briefing for Information: <i>Options to restrict the use of nitrous oxide (H2026078645)</i>	Some information is withheld under section 9(2)(a) of the Act.
3	26 February 2026	Weekly report item to the Minister for Health Hon Simeon Brown: 1.1 Nitrous oxide misuse	Released as an excerpt in accordance with section 16(1)(e) of the Act.
4	5 March 2026	Weekly report item to the Minister for Health Hon Simeon Brown: 2.5 Nitrous oxide misuse	Some information is withheld under section 9(2)(a) of the Act.
5	12 March 2026		
65		Briefing for decision: <i>Options to respond to nitrous oxide misuse (H2026079183)</i>	Some information is withheld under section 9(2)(a) of the Act.
7	19 March 2026	Weekly report item to the Minister for Health Hon Simeon Brown: 2.4 Nitrous oxide misuse	Released as an excerpt in accordance with section 16(1)(e) of the Act. Some information is withheld under the following sections of the Act: • section 9(2)(a); and, • section 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials.
8	26 March 2026	Weekly report item to the Minister for Health Hon Simeon Brown: 2.2 Nitrous oxide misuse	Released as an excerpt in accordance with section 16(1)(e) of the Act. Some information is withheld under section 9(2)(a) of the Act
9	1 April 2026	Weekly report item to the Minister for Health Hon Simeon Brown: 2.3 Nitrous oxide misuse	Released as an excerpt in accordance with section 16(1)(e) of the Act.
10	9 April 2026	Briefing for decision: <i>Draft Cabinet paper: Addressing nitrous oxide misuse (H2026080750)</i>	Some information is withheld under the following sections of the Act: • section 9(2)(a); and, • section 9(2)(f)(iv).
11		Weekly report item to the Minister for Health Hon Simeon Brown: 2.1 Nitrous oxide	

12	16 April 2026	Weekly report item to the Minister for Health Hon Simeon Brown: <i>2.2 Nitrous oxide</i>
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1 Ministerial priorities

Out of scope

1.2 Nitrous oxide

You have sought advice on the regulation of nitrous oxide.

Anecdotal reports from the New Zealand Police (Police) and healthcare professionals suggest harm associated with the recreational use of nitrous oxide appears to be increasing in New Zealand. This is a trend that has emerged in other jurisdictions, including Australia and several European countries, particularly the United Kingdom. Recreational use of nitrous oxide is a complex matter that spans the health, mental health, police, food safety, and environment portfolios.

Evidence on availability is generally anecdotal from the news media; however, many report that nitrous oxide is widely available to buy in both online and physical shops, including dairies and vape shops. Products include small cream chargers that hold around 8g of gas and larger cannisters (up to 2kg of gas), which are relatively new to the New Zealand market.

Recreational use and supply of nitrous oxide are prohibited under the Psychoactive Substances Act 2013, with Police as the key enforcement agency. Challenges in enforcement include resourcing and obtaining sufficient evidence for prosecution.

In 2024, Medsafe issued advice that clarified the law on nitrous oxide, which was expected to help Police enforcement. Police have informed us that its enforcement activities are focused on drugs with greater harm profiles, such as cannabis and methamphetamine.

An advisory letter was sent to vape stores advising them that sale of nitrous oxide for recreational use was illegal. Harm reduction material was also updated.

Ministry lead	Allison Bennett, Group Manager, Health System Settings, Strategy and Policy, s 9(2)(a)
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Briefing for Information

Options to restrict the use of nitrous oxide

Date due to MO:	19 February 2026	Action required by:	N/A
Security level:	IN CONFIDENCE	Reference:	H2026078645
To:	Hon Simeon Brown, Minister of Health		
Consulted:	Health New Zealand: ☐		
Proactive release:	This title is proposed by the Ministry of Health for proactive release: ☐		

Contact for telephone discussion

Name	Position	Telephone
Allison Bennett	Group Manager, Health System Settings, Strategy and Policy	s 9(2)(a)
Suzanne Townsend	Manager, Regulatory Policy, Strategy and Policy	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| ☐ Approved | ☐ Decline | ☐ Overtaken by events |
| ☐ Needs change | ☐ Seen | |
| ☐ See Minister's Notes | ☐ Withdrawn | |

Comment:

IN CONFIDENCE

Briefing for Information

Options to restrict the use of nitrous oxide

Security level: IN CONFIDENCE **Date:** 19 February 2026

To: Hon Simeon Brown, Minister of Health

Purpose of report

1. You have asked for a briefing on options to control the psychoactive use of nitrous oxide.

Summary

2. The sale or supply of nitrous oxide for its psychoactive effect is illegal. Under the Psychoactive Substances Act the penalty for such supply is up to 2 years imprisonment, or a fine of \$500,000. Police are the enforcement authority.
3. There are potential harms associated with the inhalation of nitrous oxide, including nerve damage from very heavy use. However, they are relatively low when compared with other readily available substances, such as solvents.
4. Nitrous oxide has typically been available in small canisters of about 8.5 grammes. In the last couple of years, larger canisters have been more readily available, increasing the likelihood of significant overconsumption, which can lead to nerve damage.
5. There are several legitimate uses, such as catering, industrial and automotive application and rocket fuels. This range of use means an outright prohibition would have an undue impact on legitimate businesses and is unlikely to be an appropriate response to the low risk of harm.
6. Police have advised they are seeing a rapid escalation in the use and harmful effects of nitrous oxide. Police currently enforce nitrous oxide restrictions at a district level, however they have recently begun to develop a national response based on the apparent increase in harm. The Ministry will work with them on a coordinated response to this issue and will update you via your Weekly Report.
7. This briefing sets out our initial view on the available legislative options. We will further consider these options as part of the work with Police, with the intention of developing a joint response.

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Recommendations

We recommend you:

- a) **Note** that Police have observed an escalation in the use and harmful effects of nitrous oxide **Noted**
- b) **Note** that the Ministry of Health and Police are developing a coordinated response to this issue and will update you via the Weekly Report. **Noted**



Allison Bennett
Group Manager, Health System Settings
Strategy and Policy
Date: 20/02/26

Hon Simeon Brown
Minister of Health
Date:

Options to restrict the use of nitrous oxide

Background

8. Recent news reports have highlighted what appears to be a spike in recreational use of nitrous oxide in Hawke's Bay. You have asked for advice on options to control nitrous oxide sale.

Uses of nitrous oxide

Psychoactive use of nitrous oxide

9. Psychoactive use of nitrous oxide appears to have declined over the past three years. Our best data comes from the New Zealand Drug Trends Survey, which is an annual survey, targeted at self-identified drug users. It is not representative of the population, and the rates of use are much higher than in the general population.
10. For example, the most recent survey 69% of respondents used cannabis in the previous 6 months, which compares to an annual use rate of about 15% from the more representative New Zealand Health Survey. However, the trend data is useful. For nitrous oxide, respondents' use in the previous 6 months has decreased from 25% in 2023 to 10% in 2025.
11. There are potential significant harms from misuse of nitrous oxide, but there appears to be limited actual harm occurring. Hospitalisations have remained low, though did increase in 2024. We have seen an increase in calls to the Poisons Centre from about 5 to about 11 per year. Emergency departments have reported an increase in presentations related to use of nitrous oxide. These numbers remain very small, particularly in comparison to other drug-related presentations.
12. Police have advised us that they are seeing an increase in the recreational use of nitrous oxide. They do not have specific figures, but have more reports from staff, including road policing, and their district prevention managers.

Legitimate uses

13. Nitrous oxide has a number of uses beyond its psychoactive effect, such as:
 - a. in clinical settings as an anaesthetic
 - b. in catering to quickly whip cream (including in cans for home use)
 - c. as an oxidiser in high performance engines, specialist welding equipment, and in some rocket fuels, and
 - d. other industrial uses, in specialised analytical instruments and semiconductor manufacture.

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14. Because of these legitimate uses, outright prohibition or licensing of use is likely a disproportionate response to the low risk of harm.

Availability

15. Traditionally, nitrous oxide has been readily available at retail in small cannisters of about 8.5 grams. These cannisters are manufactured to fit hand-held whipped cream dispensers. More recently, larger cannisters of up to 3.3 litres have been sold, including via specialist websites offering rapid delivery. Larger cannisters are not sold by major catering suppliers and appear to have no legitimate culinary use.
16. The larger cannisters being sold at retail are often branded as party supplies, rather than catering equipment. For example, one variety is sold as 'Miami Magic', with bright tropical pictures. This has potentially contributed to increased overdose and emergency presentations.
17. Nitrous oxide is also available in large bottles for industrial and medical use. We are not aware of such containers having been diverted to recreational use. Even when products are not controlled as medicines, the sellers of such gases keep records of sale and will only sell to account holders, which is likely to be sufficient to discourage diversion.

Legal position

18. Nitrous oxide is an unapproved psychoactive substance when sold or used for its psychoactive effect. There are significant enforcement powers and penalties for improper sale or possession.
19. If nitrous oxide is being supplied for recreational purposes, Police have significant enforcement powers under the Psychoactive Substances Act. These include warrantless search powers and the power to seize substances with reasonable cause to believe an offence is being committed. The penalties for supply are up to 2 years imprisonment or a fine of up to \$500,000. We are not aware of any products being seized or charges laid, relating to nitrous oxide.

Options for control*Strengthen current enforcement approach*

20. In September 2024, in response to concerns about the misuse of nitrous oxide, particularly 2 litre cannisters being sold from vape shops, the Ministry updated its public health advice on nitrous oxide and liaised with Police to consider enforcement action. People who appeared to be supplying nitrous oxide for recreational purposes were sent a letter outlining that supply for this purpose was in breach of the Psychoactive Substances Act and set out the potential penalties.
21. This approach appeared to be reasonably effective, at least in the short term. The sale of nitrous oxide products from vape shops drastically reduced, if not stopped. The New Zealand Herald, reporting shortly after the announcement, found that no vape shops were still selling nitrous oxide.

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22. Since the letter was sent, the Ministry has recorded complaints about the retail sale of nitrous oxide. In the last year, the Ministry has received 24 complaints about retail sale of nitrous oxide and referred 19 to Police to consider action. We are not aware that any charges have been laid.
23. In response to the reported increase in use, Police have begun to consider a national enforcement response. The Ministry is working with Police to develop a coordinated national response across agencies. We will update you on progress via the Weekly Report.
24. Part of a national coordinated response will be considering whether regulatory change could support the response. The Ministry does not yet have a view on whether regulatory change would be helpful, but we have canvassed some possibilities below.

Misuse of Drugs Act

25. Nitrous oxide could be controlled under the Misuse of Drugs Act 1975. The United Kingdom has made nitrous oxide a class C drug as of November 2023.
26. In order to allow legitimate use, any classification decision would need to allow for extensive exemptions. The UK provisions exempt every supply or possession except where the person intends to wrongfully inhale it or knows or is reckless as to whether another person intends to wrongfully inhale it. This amounts to the same legal position as we have now, albeit with harsher penalties.

Psychoactive Substances Act 2013

27. The Psychoactive Substances Act is intended to manage approved products and prevent people selling unapproved psychoactive substances. The Act provides for approval of individual products, rather than substances. There is no mechanism to set specific controls on something other than an approved product. There are currently no approved products, primarily due to the prohibition on using animal testing data to demonstrate a low risk of harm.
28. Nitrous oxide sold for recreational use is already subject to the highest-level controls available under the Act. Supply or possession for recreational use is prohibited. Enforcement officers' powers largely relate to approved products and would therefore not make any difference unless a product were to be approved.
29. This is not a feasible option to further restrict nitrous oxide. We do not believe anyone would be willing to sponsor a nitrous oxide product for approval, given the cost and difficulty of doing so.

Hazardous Substances and New Organisms Act 1996

30. Nitrous oxide is also a hazardous substance in the terms of the Hazardous Substances and New Organisms Act. The Hazardous Substances Act allows for specific controls to be placed on a substance, including restrictions on possession.
31. The Environmental Protection Authority (EPA) is the regulator for this purpose. It could reassess nitrous oxide if there is evidence of increased harm to human health (e.g. increased hospitalisations). They have a set process for reassessments which takes a

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minimum of 100 days but often takes at least a year. Any regulatory decisions are made by a decision-making committee acting under delegation from the EPA.

32. We discussed nitrous oxide with EPA in 2024. Neither EPA nor the Ministry consider nitrous oxide is likely to meet the threshold for further regulation, given the low risk of harm.

Next steps

33. We are meeting with Police to discuss a coordinated response to the reported increase in the misuse of nitrous oxide.
34. Control of nitrous oxide is an agenda item for your meeting with the Ministry on Monday 23 February 2026.

ENDS.

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1 Ministerial priorities

1.1 Nitrous oxide misuse

The Ministry of Health (the Ministry) and the New Zealand Police (Police) have agreed to coordinate work on responding to nitrous oxide misuse. Ministry officials met Police on Monday 23 February 2026 to discuss an approach. Police has prepared a template warning letter for its districts to send to businesses selling nitrous oxide. At least one district has begun distributing the letters. A similar letter from public health officials was used in September 2024 and was followed by a sharp decrease in sellers.

Police has told us it will be taking a graduated response to unlawful supply of nitrous oxide under the Psychoactive Substances Act 2013, with a focus on engagement, education, and encouragement, as well as enforcement where appropriate. It has undertaken to keep us updated and we will keep you informed as appropriate.

Table one Prosecutions related to nitrous oxide

Prosecutions related to nitrous oxide	
Charges laid	0

Part of the coordinated response is making sure harm prevention messaging is up to date and consistent with the overall approach. The Ministry and Health New Zealand (Health NZ) are working on this in cooperation with the Drug Foundation.

We are preparing joint advice with Police on options for further regulatory controls.

Upcoming briefings

Briefing for decision	Joint briefing with Police on options to respond to nitrous oxide misuse (H2026079183)	Date Thursday 12 March 2025
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Next steps

We will provide you with the briefing noted above (H2026079183) in the week of Monday 9 March 2026, which will set out options for regulatory changes, including advice on likely timeframes and effectiveness.

We will work with Police on a process for getting weekly updates on prosecutions.

Ministry lead	Allison Bennett, Group Manager, Health System Settings, Strategy and Policy, s 9(2)(a)
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Out of scope

2.5 Nitrous oxide misuse

Update

We are preparing joint advice with New Zealand Police on further regulatory action. You will receive the joint paper on Thursday 12 March 2026. The advice will set out progress with the enforcement approach, and options for regulatory reform, including potential legislation change.

Police are taking a graduated response with a focus on engagement, education, and encouragement, moving to enforcement where appropriate. In line with this approach, it is unlikely there will be any Police prosecutions of suppliers in the next few weeks.

Prosecutions related to nitrous oxide

Charges laid ever	1
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Next steps

We will provide a briefing in the week beginning Monday 9 March 2026 that sets out options for regulatory changes, including advice on timeframes and effectiveness.

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Upcoming briefings		
Briefing for Decision	Options to respond to nitrous oxide misuse (joint briefing with Police) (H2026079183)	Date Thursday 12 March 2026
Contact	Allison Bennett, Group Manager, Health System Settings, Strategy and Policy, s 9(2)(a)	

Out of scope

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Out of scope

2.5 Nitrous oxide misuse

Update

We have prepared advice with the New Zealand Police (Police) on further regulatory action including changes to regulatory settings, which we provided to your office on Thursday 12 March 2026. The advice sets out progress with the enforcement approach, and options for regulatory reform, including potential legislation change.

The Ministry and Police are coordinating their media responses. That includes joint statements, where appropriate, and using spokespeople from both agencies, where required.

Police are taking a graduated response with a focus on engagement, education and encouragement, moving to enforcement where appropriate. One retailer has been charged with selling an unlawful psychoactive substance. They have been remanded on bail until Friday 27 March 2026.

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Police have asked the Ministry about testing for nitrous oxide use. Nitrous oxide testing is difficult because of how quickly it leaves the body, but there are possible tests being investigated overseas. We will discuss this with Police and with the New Zealand Institute of Public Health and Forensic Science (PHF science) and keep you informed.

Prosecutions related to nitrous oxide

Charges laid

1

Next steps

We will continue to engage with Police on its approach and next steps.

Contact

Allison Bennett, Group Manager, Health System Settings, Strategy and Policy,
s 9(2)(a)

Out of scope

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Briefing for decision

Options to respond to nitrous oxide misuse

Date due to MO:	12 March 2026	Action required by:	N/A
Security level:	IN CONFIDENCE	Health reference:	H2026079183
		Police reference:	BR/26/34
To:	Hon Simeon Brown, Minister of Health		
Copy to:	Hon Mark Mitchell, Minister of Police		
Consulted:	Health New Zealand: ☐		
Proactive release:	This title is proposed by the Ministry of Health for proactive release: ☒		

Contact for telephone discussion

Name	Position	Telephone
Allison Bennett	Group Manager, Health System Settings, Strategy and Policy	s 9(2)(a)
Tanya Roth (NZ Police)	Director - Policy, Policy and Planning	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| ☐ Approved | ☐ Decline | ☐ Overtaken by events |
| ☐ Needs change | ☐ Seen | |
| ☐ See Minister's Notes | ☐ Withdrawn | |

Comment:



Briefing for decision

Options to respond to nitrous oxide misuse

Security level: IN CONFIDENCE **Date:** 12 March 2026

To: Hon Simeon Brown, Minister of Health

Copy to: Hon Mark Mitchell, Minister of Police

Purpose of report

1. This briefing outlines the work undertaken by the Ministry of Health (the Ministry) and Police to respond to nitrous oxide misuse. It sets out potential regulatory change options and seeks your view on which, if any, should be pursued.

Summary

2. Nitrous oxide is unlawful when supplied or used for its psychoactive effect. Recently, there has been an increase in harm attributed to the accessibility of large cannisters, which can hold up to 3.3 litres, in contrast to the smaller 8.5 gram cream chargers that have been available for some time.
3. increased targeted education and enforcement action against retailers suspect of supplying nitrous oxide. This activity involves community engagement, warning letters to retailers, and they have now charged one retailer with unlawfully selling a psychoactive substance. Agencies consider increased enforcement, particularly if the current prosecution is successful, is likely to discourage sellers and address the increased harm.
4. There are regulatory options that are likely to make enforcement easier, limiting availability, and therefore harm. There are choices to be made about the scope of what is controlled, and how access is controlled:
 - a. Whether to target the large cannisters that are associated with the increased harm, or to target additional controls across the sale and supply of nitrous oxide more generally. Targeting the large cannisters would address the most significant harm, and not affect legitimate users.
 - b. Whether to control access by clarifying who can sell or supply nitrous oxide through regulation (eg lawful if sold to or by a registered food business) or through a permit or license scheme. The definitional approach would have the least impact on legitimate users, but would risk loopholes, while the permit would allow all illegitimate use to be controlled, but pose significant costs to legitimate users and government agencies.
5. Within those options, there are potential quick options to address the large cannisters, using the existing provisions of the Psychoactive Substances Act or a Customs import prohibition order. We estimate it would take 3-4 months to have one of those options in place. If you wish to control the smaller cannisters as well, we will need more time to design controls including potentially scheduling nitrous oxide as a controlled drug under

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the Misuse of Drugs Act, with regulations allowing legitimate use. We estimate 9-12 months to implement this option.

Recommendations

We recommend you:

a) **Indicate** your preferred approach to addressing nitrous oxide misuse:

- | | | |
|------|--|---------------|
| i) | Continue to monitor enforcement | Yes/No |
| ii) | Consider regulations controlling large cannisters | Yes/No |
| iii) | Develop comprehensive controls on all retail nitrous oxide | Yes/No |

b) **Note** the Ministry will provide further advice on options once you indicate your preference.

Allison Bennett
Group Manager, Health System Settings
Strategy and Policy
Ministry of Health
Date: 12 March 26

Hon Simeon Brown
Minister of Health
Date:

Tanya Roth
Director - Policy
Policy and Planning
New Zealand Police
Date:



Options to respond to nitrous oxide misuse

Context

6. Nitrous oxide has a wide range of legitimate uses. It is a permitted food additive for a range of products, as an antioxidant, foaming agent, packing gas and propellant. It is used industrially in welding and some rocket fuels. We will need to make further enquiries, but our initial conversations with legitimate users indicate that industrial and automotive users do not pose a significant risk of diversion to misuse. Automotive nitrous oxide is denatured with sulphur dioxide, and industrial users are supplied in large cylinders which are not easily transportable.
7. The nitrous oxide that is misused is supplied in the form of cream chargers. These have been readily available for decades as small cannisters of about 8.5 grammes, intended to fit a handheld cream whipper. While these have been misused, harm has been low.
8. In the last few years, larger cannisters of up to 3.3 kilogrammes have become available. These are not used in commercial catering, despite being marketed as cream chargers. Our largest catering supplier only sells the smaller cannisters, as those are the ones used in catering. The larger cannisters are associated with greater health harm, as they make it easy for people to consume a large amount. They are also associated with traffic hazard. We are aware of reports of drivers inhaling nitrous oxide using the large cannisters while driving, and Police report finding large numbers of the larger cannisters in cars following crashes.
9. When sold or used for its psychoactive effect, nitrous oxide is an unapproved product under the Psychoactive Substances Act. Anyone who sells or supplies it to someone for the purpose of inducing a psychoactive effect is liable on conviction to up to 2 years in prison or a \$500,000 fine. Someone possessing it for that purpose is liable to a \$500 infringement fee. Police are the enforcement authority. They have taken a more active enforcement approach in response to increased reports of harm associated with nitrous oxide misuse.

Current activity

Police enforcement effort

10. Police are taking a graduated response to unlawful supply of nitrous oxide under the Psychoactive Substances Act, with a focus on engagement, education and encouragement, as well as enforcement where appropriate. Police are focussing on the engagement and education phases of this response through the delivery of enforcement letters, and therefore it is unlikely there will be many Police prosecutions of suppliers in the immediate future.
11. Engagement and education has included letters sent to retailers warning them of the legal status of nitrous oxide. Police have charged one retailer with selling an unapproved psychoactive substance. The person has been remanded on bail and will appear again in Court on 27 March.



Coordinated communications response

12. The Ministry and Police are taking a joint media approach with the nationally coordinated police response. That includes joint statements, where appropriate, and availability of spokespeople from both agencies, where required. The purpose of any media engagement is to emphasise key and consistent messages from both agencies.

Regulatory options

13. Increased enforcement activity is likely to achieve the goal of nitrous oxide being removed from dairies and vape shops. In 2024, when warning letters were sent from public health officers, a follow-up report found no vape shop selling nitrous oxide.
14. We consider active enforcement targeted at sellers is likely to minimise availability for misuse. We suggest waiting to see if increased enforcement works before regulating further, given the difficulty and expense of designing and implementing regulation.
15. We have considered the range of options for regulatory change to address the issue of nitrous oxide misuse. If you wish to proceed with further regulation, we suggest there are three key objectives:
 - a. target the supply of larger nitrous oxide cannisters for better enforcement (while maintaining the current unlawfulness of all recreational NOS use)
 - b. minimise harms to users
 - c. minimise costs to legitimate users and the Government.

What to target:

16. Regulation could target the larger cannisters, or all of the forms subject to misuse. Larger cannisters have no legitimate use we have been able to discover, and appear to be the cause of the recent increased harm, so an outright prohibition of them under all circumstances would be reasonable. That would avoid the need to design exceptions based on use or user, or to prove intent in prosecution. The legal position of the smaller cannisters would remain unchanged: sale or use for a psychoactive effect would be unlawful, and Police could prosecute on that basis.
17. The downside of targeting the larger cannisters is that the smaller ones would remain available for diversion, although this presents a lower risk. Smaller cannisters have been available for decades, with minimal harm recorded. The small dose from an individual cannister, and the short break the user has while a new one is opened, means they do not pose the same risk of asphyxiation as the larger ones, and they are impractical to use while driving. Smaller canisters are used in hospitality so if they are included in controls we will need to design exceptions carefully to ensure legitimate use was not adversely impacted.

The form of controls

18. There are two broad options for the form of regulation:
 - a. allowing legitimate use through the definitions in the regulatory instrument. This will have the lowest impact on legitimate users, but a greater risk of continued availability for recreational use. Definitions will inevitably be imperfect, and prosecution will require proving illegitimacy and intent.

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- b. with a license or permit scheme to allow legitimate use. This has the greatest chance of restricting misuse but imposes the greatest cost on legitimate users and sellers, and government agencies. Legitimacy becomes a simple question of whether someone has the appropriate license or permit, but a licensing or permit agency, with the associated costs and fees, is required.

Specific regulatory options

19. Appendix One sets out our initial thinking on specific regulatory options. All these options will need further thought and careful consultation if you wish to proceed.
20. If you are interested in quick action targeting the highest risk, regulation using the Psychoactive Substances Act is the best option. That could be used to clarify that the large cannisters are always psychoactive substances and therefore unlawful. We would expect that to stop most sellers supplying them, as they seem to be exploiting a perceived legal loophole rather than outright flouting the law. We estimate regulations could be in place in 3-4 months.
21. Import controls could also be put in place relatively quickly, though are more complex. They would be made by the Minister of Customs, and interagency work would be required to ensure legitimate importations face low compliance costs, and unlawful importations are prevented. These controls could be in place within 3-4 months.
22. If you favour a comprehensive response to all recreational nitrous oxide use, one option would be making nitrous oxide a controlled drug under the Misuse of Drugs Act, with accompanying regulations to ensure legitimate use is not impeded. However, this would introduce a criminal offence for use of a low-risk drug, which is not consistent with that Acts' principles and could result in disproportionate criminal justice harms to users. This option would require House time, and time to design workable exceptions. Enforcement would remain a Police responsibility. We estimate 9-12 months, depending on the specific approach. We do not recommend progressing a Misuse of Drugs Act option as there are faster and simpler options that are likely to be effective, as outlined above.

Next steps

23. The Ministry will continue to update you on progress in responding to nitrous oxide misuse, including prosecutions, via your Weekly Report.

ENDS.

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HEALTH
MANATŪ HAUORA

Appendix One: Table of regulatory options

	Practicality	Time	Effectiveness
Enhanced status quo Police undertake targeted engagement, education and encouragement, and enforcement.	No regulatory change. Enforcement action undertaken using existing powers and resources.	No lead-in time. Graduated enforcement approach means likely to be some weeks before a prosecution.	Likely to reduce use and may prevent large containers being sold. Likely that a successful publicised prosecution will put sellers off. Would not change the position that the offence is dependent on proving intention.
Regulations under psychoactive substances Act. Provide for regulations excluding some products, to ensure clarity	Order in council. Could clarify position and allow targeted enforcement of large cannisters.	Short development time as no primary legislation required. Need to carefully design restriction to make sure only capturing intended target. Could be in place within 3-4 months.	Likely to prevent large cannisters being sold as legal position clear. Does not change penalties but would clarify that large cannisters always illicit. Would mean prosecutions easier.
Customs import prohibition order Prohibits import of specified good without a permit. Could be targeted at larger containers or general.	Order in council. Similar timeframe as for regulations under Psychoactive Substances Act. Still need to be reasonably specific but could capture small cannisters as permit allows legitimate importers to be identified. We believe there are only a small number of legitimate importers. Orders are recommended by the Minister of Customs, who must be satisfied it is in the public interest. Unlawfully imported goods would be forfeit, and	Short development time as no primary legislation required. Could be in place within 3-4 months.	Likely to prevent large scale illicit sale over time. While unlikely that Customs would intercept all importations, if low value goods involved, it is highly likely to deter commercial importers. As the goods are "dangerous goods", there are strong limitations on their carriage by air, limiting fast freight or postal importation. Will not affect domestic distribution, sale or supply settings.

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	likely to be seized by Customs and destroyed.		
Controlled under Misuse of Drugs Act with purpose exemption. Nitrous oxide is a Class C drug, except when used for legitimate purpose.	Simple legislation change. Regulations made at same time. Can be based on overseas model.	Shortest legislative option at estimated 4-6 months. Simple exemption, following UK model of exempting unless knowingly inhaling or selling for that purpose.	Likely to reduce availability. Effectively the same as the status quo, with higher penalties. Issue of offence being dependent on intent remains. The "end use" component, if applied at the border, may make effective border enforcement problematic.
Controlled under Misuse of Drugs Act with size exemption Nitrous oxide is Class C except when sold for culinary use in containers smaller than 10g. Industrial and automotive use exempted in regulation.	Simple legislation change. Targets highest identified risk. Regulations made at the same time. No model to follow, but reasonably clear what should be in and out.	More development time needed to ensure exemption works properly. Need to carefully design regulation to exclude legitimate use, while avoiding gaming of new rules. Estimate 9 months.	Likely to eliminate sale of large cannisters. If we can effectively eliminate the larger cannisters from recreational use, that removes the greatest identified health risk. Would not impact on catering activity or home cooking. Smaller cannisters would still be readily available.
Controlled under Misuse of Drugs Act with person exemption Class C, but may only be sold to and possessed by certain types of business/person.	Simple legislation change. Regulations made at the same time. Exemption difficult to manage without some sort of permit scheme.	More development time needed to design effective exemption. Similar to Western Australia scheme, which allows supply only to registered food businesses etc. Estimate 9 months	Likely to reduce use by discouraging market participation. Could prevent home use of cream whippers if follow Western Australian model, but could restrict to sales by legitimate businesses (which we would need to define).
Controlled under Misuse of Drugs Act with licence/permit	Simple legislation change. Regulations made at the same time. Requires administrative operation to be set up	Medium time. Can follow existing models of regulation and licensing. Still need to carefully identify exceptions. Licensing	Likely to be very effective in restricting availability. High cost to legitimate users.

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Class C, licence required to supply or use.	so licences can be issued. Imposes costs on legitimate users.	scheme needs to be designed and resourced. Estimate 9-12 months	
New Legislation	New legislation would allow provisions to be designed as needed, without the need for separate exemption rules. Most resource-intensive regulatory option, dependent on PCO and House time. Last resort option if other options don't work	New primary legislation will take the most time. There are models to follow, but would be likely to take 18 months, assuming some urgency in passage. Could be done faster, but risk of error increases.	Likely to be very effective in restricting availability. Would enable narrowly defined rules. Could provide for licensing/permitting scheme to be created in the future if necessary

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Out of scope

2.4 Nitrous oxide misuse

Update

We continue to monitor the response to nitrous oxide misuse. We are working on regulations under the Psychoactive Substance Act 2013 to manage large cannisters of nitrous oxide. At the same time, we are working on longer-term control options using the Misuse of Drugs Act. We are working with Police and Customs on regulatory change and Police continue to take a graduated response with a focus on engagement, education and encouragement, moving to enforcement where appropriate. One retailer has been charged with selling an unlawful psychoactive substance and we understand the New Zealand Police have issued a press release to this effect. They were remanded on bail until Friday 27 March 2026.

Prosecutions related to nitrous oxide

Charges laid	1
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Next steps

The following table outlines the timeline for the making of the regulations.

Phase	Fastest timeline	Alternative timeline (Policy work or drafting delay)	Notes
s 9(2)(f)(iv)			
Contact Allison Bennett, Group Manager, Health System Settings, Strategy and Policy, s 9(2)(a)			

2.2 Nitrous oxide misuse

Update

We are working with the New Zealand Police (Police) and the New Zealand Customs Service (Customs) to prepare Cabinet material to progress regulations restricting the sale of large bottles of nitrous oxide, including an import prohibition order. We will prepare a letter for you to seek agreement to an import prohibition from the Minister for Customs once the proposal is clarified between the three agencies. We are aiming for Cabinet's consideration at the Cabinet Social Outcomes Committee meeting on Wednesday 22 April 2026.

We have received a list of nitrous oxide importers for the past year. There are 20 in total. Of those, about 12 are suppliers of catering equipment, industrial gases, or medical supplies. We are consulting those companies in confidence to confirm our information that the larger retail cannisters do not have any legitimate use and to check the impact of a possible import restriction. The remaining importers operate vape shops, or party supply websites, or it is unclear what business they are in. We are not communicating with them at this stage.

Police continue to take a graduated response with a focus on engagement, education, and encouragement, moving to enforcement where appropriate. One retailer has been charged with selling an unlawful psychoactive substance. They were remanded on bail until Friday 27 March 2026.

Prosecutions related to nitrous oxide

Charges laid	1
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Next steps

We will provide you with a letter to the Minister of Customs, seeking her agreement to an import prohibition order by Thursday 2 April 2026

Contact	Allison Bennett, Group Manager, Health System Settings, Strategy and Policy, s 9(2)(a)
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Out of scope

Out of scope

2.3 Nitrous Oxide misuse

Update

As agreed, we are preparing a draft Cabinet paper seeking authorisation to issue drafting instructions to the Parliamentary Counsel Office (PCO) for new regulations on nitrous oxide, including an import prohibition. We have provided a letter to your office seeking Hon Casey Costello, Minister of Customs' agreement to the approach, as she will need to approve the import prohibition.

We have consulted with the New Zealand Customs Service (Customs) and the New Zealand Police (Police), who support the paper. The Psychoactive Substances Expert Advisory Committee also supports the approach.

We are consulting with the Ministry of Business, Innovation and Employment (MBIE) on whether the proposal conflicts with any trade obligations. There are no Trans-Tasman Mutual Recognition Act 1977 implications, and we think it unlikely that there will be World Trade Organisation notification requirements.

On Friday 27 March 2026, there was a court appearance by the alleged perpetrator of an illegal sale of nitrous oxide. We have not been updated on the outcome.

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Prosecutions related to nitrous oxide

Charges laid

1

s 9(2)(f)(iv)

Upcoming briefings**Briefing for
Decision**Draft Cabinet paper 'Addressing Nitrous
oxide misuse' (H2026080750)**Date** Tuesday 8 April 2026**Contact**Allison Bennett, Group Manager, Health Surveys and Regulatory Systems Policy,
Strategy and Policy, s 9(2)(a)

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Briefing for decision

Draft Cabinet paper: Addressing nitrous oxide misuse

Date due to MO:	9 April 2026	Action required by:	9 April 2026
Security level:	IN CONFIDENCE	Reference:	H2026080750
To:	Hon Simeon Brown, Minister of Health		
Consulted:	Health New Zealand: ☐		
Proactive release:	This title is proposed by the Ministry of Health for proactive release: ☐		

Contact for telephone discussion

Name	Position	Telephone
Allison Bennett	Group Manager, Health System Settings, Strategy & Policy	s 9(2)(a)
Suzanne Townsend	Manager, Regulatory Policy, Health System Settings	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| ☐ Approved | ☐ Decline | ☐ Overtaken by events |
| ☐ Needs change | ☐ Seen | |
| ☐ See Minister's Notes | ☐ Withdrawn | |

Comment:

Briefing for decision

Draft Cabinet paper: Addressing nitrous oxide misuse

Security level: IN CONFIDENCE

Date: 7 April 2026

To: Hon Simeon Brown, Minister of Health

Purpose of report

1. This paper covers a draft Cabinet paper seeking agreement for immediate controls on nitrous oxide.

Summary

2. The attached draft Cabinet paper seeks agreement to drafting two new regulations:
 - A regulation to clarify that large cannisters of nitrous oxide are psychoactive substances regardless of any claim to the contrary, and
 - An import restriction prohibiting the import of nitrous oxide without a permit from the Director-General of Health.
3. We consulted the Psychoactive Substances Advisory Committee and they support the proposal. We also consulted with four legitimate importers (catering, medical, industrial). Catering suppliers indicated there is no legitimate need for large canisters in food preparation. No concerns were raised about the concept of the proposed regulations.
4. The costs of implementation are to be met from baseline. The risk of legal challenge will be mitigated through clear criteria for import permits.
5. Seizure and storage of unlawful imports could be costly. This can be mitigated by early communication of the Cabinet policy decision. The draft Cabinet paper says you intend to announce Cabinet policy decisions following Cabinet agreement. While this will minimise unlawful imports, there is a risk of stock dumping. This can be mitigated by announcing continued Police enforcement of the current law.
6. You have written to the Minister of Customs seeking her agreement to an import restriction. Customs advises she is likely to agree but will seek Cabinet agreement. We have drafted the paper accordingly and will consult agencies on the draft Cabinet paper from Wednesday 8 April to 14 April. We anticipate ministerial consultation will begin from 9 April.

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Recommendations

We recommend you:

- a) **Note** you have written to Hon Casey Costello, Minister of Customs, on 7 April 2026 seeking her agreement to the import prohibition **Noted**
- b) **Agree** to announce decisions following Cabinet agreement to the policy, in order to discourage further imports **Yes/No**
- c) **Agree** to consult Ministers on the attached draft Cabinet paper: Addressing nitrous oxide misuse, from 9 April to 14 April. **Yes/No**
- d) **Agree** to consider lodging the Cabinet paper on 16 April for consideration by SOU on 22 April, subject to any changes following consultation. **Yes/No**
- e) **Note** that following Cabinet approval, we will issue drafting instructions to the Parliamentary Counsel Office. **Noted**



Allison Bennett
Group Manager, Health System Settings
Strategy & Policy
Date: 09 April 2026

Hon Simeon Brown
Minister of Health
Date:

Draft Cabinet paper: Addressing nitrous oxide misuse

Background

7. In response to our briefing of 12 March 2026, you asked for advice on
 - a. immediate controls on nitrous oxide, and
 - b. longer term controls, including Misuse of Drugs Act options [H2026079183].
8. This paper sets out immediate controls and seeks your approval to proceed to Cabinet consideration.

Cabinet paper

9. We have been working closely with Police and Customs on the attached Cabinet paper. The paper seeks Cabinet's agreement to drafting two new regulations to strengthen the law and support enforcement:
 - A regulation to clarify that the large cannisters are psychoactive substances regardless of any claim to the contrary, and
 - An import restriction prohibiting the import of nitrous oxide without a permit from the Director-General of Health.
10. The import restriction requires an importer to obtain a permit, free of charge. Permits will be granted to importers, rather than for individual consignments. We will work with legitimate importers to arrange permits. In practice, importers will receive a reusable permit number to include in their import documents for a consignment, which will allow Customs to readily identify lawful shipments.

Statutory consultation

11. The Psychoactive Substances Act requires the Minister of Health to seek, and have regard to, the advice of the Psychoactive Substances Advisory Committee before recommending regulations. We sought advice from the Committee on your behalf and were supportive of regulating to address harm from nitrous oxide misuse. It advised regulations need to be careful about defining container sizes and highlighted the need to avoid opportunities for people to game the rules. The committee also advised it would be particularly important to limit sales from dairies, vape shops and similar.
12. We have considered their advice as part of developing the proposals in your Cabinet paper and consider the final proposals reflect the Committee's advice. The import restriction will enable us to restrict supply to vape shops and the like, and is sufficiently broad to avoid gaming of the rules.
13. The Act also requires you to consult persons or organisations representative of the interests of persons likely to be substantially affected by the proposed regulations. From information supplied to us by Customs, we identified legitimate importers of nitrous

oxide products and contacted them by phone. We spoke with two suppliers of catering equipment and two suppliers of medical and/or industrial equipment.

14. The catering suppliers said they only imported nitrous oxide cannisters of around 8.5 grammes. They did not think there were any cream chargers in the catering industry that would require a cannister of more than 10 grammes, and did not see a place for large cannisters in the industry. When asked about the potential for an import permit requirement, they understood the rationale and said compliance would be straightforward. One person we spoke with expressed support for authorities to take stronger action against unlawful distributors.
15. The two importers of nitrous oxide for medical and automotive uses were similarly unconcerned about the proposed new compliance requirements. While their products are in large containers, these are clearly distinguishable from cream charger cannisters and are either medical grade nitrous oxide or not food grade (ie contains impurities).
16. These stakeholders noted that importers of large amounts of nitrous oxide are familiar with complying with border declaration requirements because for safety reasons the nitrous oxide supply chain is regulated under maritime and transport laws and under the Hazardous Substances and New Organisms Act 1996.

Implementation

Resourcing

17. Any cost to issue permits will need to be met from the Ministry of Health's baseline. There has not been time to include a cost recovery option within the timeframe to develop the proposal, but we will consider options for cost recovery as part of developing longer-term options.
18. The Ministry will need to issue permits, but this will be for a low number of importers – about 12. There is a risk of legal challenge by unsuccessful applicants for a permit, which could prove costly. This risk will be mitigated by the Director-General setting clear criteria for permits to be granted.
19. Storage of seized cannisters will be a significant cost to Customs. The cost can be mitigated by communicating the proposal to importers following Cabinet's policy decisions, so as to deter unlawful shipments and ensure that as few shipments as possible need to be seized at the border.
20. We will monitor impacts on resourcing as part of thinking about longer term options to address nitrous oxide misuse.

Timing of announcement

21. The timing of announcing the regulations affects outcomes. There are two options:
 - a. Announce following Cabinet policy agreement, approximately two months before the regulations come into force (or one month if the 28 days is waived). This will alert importers ahead of time, minimising the amount of unlawful imports that need to be seized and stored by Customs. The risk with this approach is that stocks of cannisters already in the country will be sold at a low price, thus increasing the risk of misuse and harms.

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- b. Alternatively, the announcement could be made when the regulations are made. This increases the likelihood of Customs seizing illegal imports and incurring significant storage costs. But on the positive side, there would be less risk of large amounts of nitrous oxide being dumped on the market with subsequent harms.
- 22. We have drafted the Cabinet paper that you intend to announce Cabinet policy decisions following Cabinet agreement (Option A). This can be amended if you prefer to make the announcement when the regulations are made.
- 23. The risks of Option A can be mitigated by including in the announcement a reminder that Police will continue to enforce the current law.
- 24. Police recently charged a Rotorua man with 35 charges relating to the possession and supply of nitrous oxide. He appeared on Friday 27 March 2026 entering a not guilty plea to next appear on the 14th of August 2026.

International trade considerations

- 25. We can confirm the proposal has no trans-Tasman trade obligations associated with it, based on advice from the Ministry of Business Innovation and Employment and the Ministry of Foreign Affairs and Trade. It is unlikely that the regulations will have to be notified under World Trade Organisation rules. We await MBIE's confirmation of this.

Next steps

- 26. Before Cabinet recommends an import restriction to the Governor-General, the Minister of Customs must be satisfied that it is necessary in the public interest. You have written to Hon Casey Costello, Minister of Customs, seeking her agreement. Customs have advised she is likely to agree, but will want Cabinet to also be satisfied the prohibition is necessary. The attached paper asks Cabinet to agree the prohibition is necessary.
- 27. We will consult agencies on the draft Cabinet paper from Wednesday 8 April to 14 April. We anticipate ministerial consultation will begin from 9 April. Following agency and ministerial consultation, we will work with your office to finalise the paper for lodgement.
- 28. We will provide you with talking points ahead of the Cabinet Committee meeting.

s 9(2)(f)(iv)



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s 9(2)(f)(iv)



ENDS.

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2 Health system strategy and policy issues

2.1 Nitrous oxide

Update

You have received the draft Cabinet paper that seeks authorisation to issue drafting instructions for new regulations on nitrous oxide including an import prohibition as well as an option for a 28-day waiver. It is now out for ministerial consultation. The paper is on track to be lodged by Thursday 16 April 2026 to be considered at the Cabinet Social Outcomes Committee meeting on Wednesday 22 April 2026.

You have written to Hon Casey Costello, Minister of Customs, seeking her agreement to an import prohibition. Customs has advised that its Minister will agree but will seek Cabinet confirmation that it is necessary in the public interest (the legal test).

The alleged perpetrator of an illegal sale of nitrous oxide has pled not guilty and will next appear in August 2026.

The Ministry has consulted legitimate importers in the catering and industrial gas trades, who have advised the proposed changes will not have any significant impact on their business.

Prosecutions related to nitrous oxide

Charges laid	1
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Cabinet paper 'Addressing Nitrous Oxide misuse'

Process	Date
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s 9(2)(f)(iv)

Contact Allison Bennett, Group Manager, Health System Settings, Strategy and Policy,
s 9(2)(a)

2.2 Nitrous oxide

Update

The paper seeking agreement to regulate to respond to nitrous oxide misuse is on track to be considered at the Cabinet Social Outcomes Committee (SOU) meeting on Wednesday 22 April 2026. The proposed changes:

- clarify that the larger retail cannisters are always unapproved psychoactive products, with large penalties for supply
- prohibit import unless the Director-General of Health is satisfied it is for a lawful purpose and reasonable steps will be taken to avoid diversion.

The import restriction will allow us to prevent supply of the smaller cannisters to vape shops and similar, minimising their availability for recreational use.

We are working to refine import criteria to ensure we are able to issue permits to legitimate importers at the same time as regulations come into effect to avoid any disruption to their business.

Next steps

We will provide talking points for SOU on Friday 17 April 2026.

Cabinet paper 'Addressing Nitrous Oxide Misuse'

s 9(2)(f)(iv)



Contact

Allison Bennett, Group Manager, Health System Settings, Strategy and Policy,
s 9(2)(a)