

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: <input type="checkbox"/>		
Proactive release:	This title is proposed by the Ministry of Health for proactive release: <input type="checkbox"/>		

Contact for telephone discussion

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

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |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 canisters 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.

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.

- 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.

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ENDS.