



Briefing for decision

Options to respond to nitrous oxide misuse

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

Contact for telephone discussion

| Name | Position | Telephone |
|-------------------------------|--|-----------|
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| Tanya Roth (NZ Police) | Director - Policy, Policy and Planning | 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 Withdrawn | |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:

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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

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:

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|------|--|---------------|
| 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:

Hon Simeon Brown
Minister of Health
Date:

Tanya Roth
Director - Policy
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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.

- 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.

Appendix One: Table of regulatory options

| | Practicality | Time | Effectiveness |
|---|--|--|---|
| <p>Enhanced status quo</p> <p>Police undertake targeted engagement, education and encouragement, and enforcement.</p> | <p>No regulatory change.</p> <p>Enforcement action undertaken using existing powers and resources.</p> | <p>No lead-in time. Graduated enforcement approach means likely to be some weeks before a prosecution.</p> | <p>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.</p> |
| <p>Regulations under psychoactive substances Act. Provide for regulations excluding some products, to ensure clarity</p> | <p>Order in council. Could clarify position and allow targeted enforcement of large cannisters.</p> | <p>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.</p> | <p>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.</p> |
| <p>Customs import prohibition order</p> <p>Prohibits import of specified good without a permit. Could be targeted at larger containers or general.</p> | <p>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.</p> <p>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</p> | <p>Short development time as no primary legislation required. Could be in place within 3-4 months.</p> | <p>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.</p> <p>Will not affect domestic distribution, sale or supply settings.</p> |



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| | likely to be seized by Customs and destroyed. | | |
| <p>Controlled under Misuse of Drugs Act with purpose exemption.</p> <p>Nitrous oxide is a Class C drug, except when used for legitimate purpose.</p> | 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. |
| <p>Controlled under Misuse of Drugs Act with size exemption</p> <p>Nitrous oxide is Class C except when sold for culinary use in containers smaller than 10g. Industrial and automotive use exempted in regulation.</p> | 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. |
| <p>Controlled under Misuse of Drugs Act with person exemption</p> <p>Class C, but may only be sold to and possessed by certain types of business/person.</p> | 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). |
| <p>Controlled under Misuse of Drugs Act with licence/permit</p> | 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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| <p>Class C, licence required to supply or use.</p> | <p>so licences can be issued. Imposes costs on legitimate users.</p> | <p>scheme needs to be designed and resourced. Estimate 9-12 months</p> | |
| <p>New Legislation</p> | <p>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</p> | <p>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.</p> | <p>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</p> |