

# Briefing for Information

## Options to restrict the use of nitrous oxide

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

## Contact for telephone discussion

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

## Minister's office to complete:

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- See Minister's Notes                       Withdrawn

Comment:

# 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.

## 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.

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.

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

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.**