

**In confidence**

Office of the Minister of Health

Cabinet Social Outcomes Committee

**Addressing nitrous oxide misuse**

**Proposal**

- 1 This paper seeks authorisation to draft regulations clarifying the legal status of large nitrous oxide cannisters, and prohibiting import of all nitrous oxide, except where an importer has the permission of the Director-General of Health.

**Relation to government priorities**

- 2 The proposals in this paper contribute to the government's priority to restore law and order.

**Executive summary**

- 3 The misuse of nitrous oxide can cause significant harm. Health harms include the potential for long-term neurological damage. Recently, calls to the Poisons Centre and presentations to hospital emergency departments have increased. Police report increasingly discovering drivers consuming nitrous oxide, including finding large quantities of empty cannisters in crashed vehicles. The harmful use is particularly associated with large containers of up to 3.3 litres, which have no legitimate use.
- 4 In the short term, there are existing statutory powers that can be used to address unlawful use, while not impeding legitimate trade and use. Nitrous oxide has legitimate medical, commercial and industrial uses, meaning an outright prohibition is not feasible. I have instructed the Ministry of Health to investigate enduring regulatory controls, likely using the Misuse of Drugs Act provisions, to address the misuse, while not interfering with legitimate use. I anticipate receiving advice later this year.
- 5 When used to induce a psychoactive effect, nitrous oxide is an unapproved psychoactive product within the meaning of the Psychoactive Substances Act 2013. Such use is unlawful, with significant penalties for supply, but requires proving the supply is for unlawful purposes. Because the larger cannisters do not have any legitimate use, I propose to regulate to declare them to be psychoactive substances. This amounts to a clarification of the law and will make enforcement easier.
- 6 I propose to address the availability of the smaller cannisters through regulating their import. The only statutory vehicle available to achieve this in a timely manner is the Customs and Excise Act 2018. An Order under that Act could prohibit the import of nitrous oxide unless the importer has the permission of the Director-General of Health. Permission would be at the Director-General's discretion, subject to their satisfaction that the imported products are intended for a lawful purpose and appropriate steps will be taken to avoid diversion. There were only 20 declared

importers of nitrous oxide in the last year, meaning that it will be feasible to issue permits to legitimate importers at no cost to them and avoid any impediment to their lawful trade.

### **Nitrous oxide uses and harms**

- 7 Nitrous oxide 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. 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. Medical nitrous oxide is controlled as a prescription medicine, and we have no evidence of any significant misuse in that form.
- 8 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. Under the Psychoactive Substances Act 2013, nitrous oxide is illegal to sell for the purpose of inhalation. This law is necessary to protect human health and safety in relation to certain substances. However, these smaller cannisters are being misused for inhalation indicating that current laws are not effective in preventing their misuse and possible harm to human health.
- 9 In the last few years, larger cannisters of up to 3.3 litres have become available. These are presented as being cream chargers but are not used in catering and appear to have no legitimate purpose. The larger cannisters are associated with significant health harm, as they make it easier for people to consume a large amount.
- 10 Nitrous oxide misuse can cause short-term effects like dizziness, impaired judgment and blackouts, which can be extremely dangerous, particularly when combined with activities like driving. Mixing nitrous oxide with alcohol or other drugs greatly increases the risk of harm. Heavy or frequent use can damage the nervous system, leading to weakness, numbness, difficulty walking, and long-term neurological injury. There has been an increase in presentations to emergency departments and calls to the Poisons Centre, although numbers remain low.
- 11 Nitrous oxide is also associated with traffic hazards. We are aware of reports of drivers inhaling nitrous oxide using the large cannisters while driving. Police are increasingly finding the larger cannisters in cars following crashes, including at least one fatal crash.
- 12 Since 2021 the importation of nitrous oxide has increased almost six-fold. We have not identified any reason for an increase in demand for the product for lawful use. There are a small number of companies registered within the past five years importing significant quantities.

### ***Current regulatory controls***

- 13 When sold or used to induce a psychoactive effect, nitrous oxide is an unapproved product under the Psychoactive Substances Act 2013. 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 have taken a more active enforcement approach in response to increased reports of harm associated with nitrous oxide misuse. One retailer has pled not guilty to 35 charges relating to unlawful possession and supply of nitrous oxide and will appear in Court again on 14 August 2026.

## Analysis

- 14 The larger portable cannisters sold as “cream chargers” have no legitimate use that the Ministry of Health has been able to identify. Consultation with large catering suppliers indicates that large cannisters are not used in commercial catering. The circumstances of sale make it clear that the sellers are aware the gas is not likely to be used to whip cream. For example, one website seller requires visitors to verify that they are over 18 and agree that their details will be passed to the Ministry of Health if requested.
- 15 I have asked the Ministry of Health to investigate options for effective control of all recreational nitrous oxide use. Controls will need to be carefully designed to ensure that illegitimate use is captured, without impeding legitimate activity. I anticipate receiving advice later this year.
- 16 In the short term, there are existing mechanisms that can be used to further restrict the larger containers that are associated with the highest level of harm in recent years, and to restrict the supply of smaller cannisters to those who appear to be supplying for unlawful use. I propose:
  - 16.1 regulation to clarify that the large cannisters of nitrous oxide sold as “cream chargers” are psychoactive substances regardless of any claim to the contrary
  - 16.2 an import restriction prohibiting the import of all nitrous oxide, regardless of cannister size, without a permit from the Director-General of Health.

## Clarifying the legal status of large cannisters

- 17 The Psychoactive Substances Act provides for regulations to be made to declare something to be a psychoactive substance. I propose to make a regulation providing that cannisters larger than ten grammes net weight in a form allowing for ready consumption are psychoactive substances. This will clarify the existing legal position with respect to the larger cannisters and make enforcement easier. The regulation will exclude containers used for medical or legitimate industrial purposes, such as food manufacture.
- 18 The proposed regulation will not affect the legal status of the small cannisters. They will remain unlawful to supply or use for the purpose of inducing a psychoactive effect, but lawful to supply for the purpose of whipping cream.
- 19 Before recommending regulations under the Psychoactive Substances Act, I must be satisfied that they are reasonably necessary to achieve the purpose of the Act. The purpose is to protect the health of and minimise harm to people who use psychoactive substances. I am satisfied this regulation is reasonably necessary to achieve that purpose.

- 20 I must also consult with people I consider representative of the interests of people likely to be affected and with the Psychoactive Substances Advisory Committee. The Ministry of Health consulted selected suppliers of industrial and medical gases and catering supplies when preparing regulatory options. This confirmed that there is no market for large cannisters in the catering industry, and that importers of medical and other industrial gases can be readily identified by authorities. The Psychoactive Substances Advisory Committee supports the proposed regulatory approach.

### **Import prohibition**

- 21 While acknowledging the higher risk of public health harm consequences posed by recreational use of the larger cannisters, smaller cannisters are also being sold and used for illegal recreational psychoactive purposes. I propose to prohibit all imports of nitrous oxide regardless of container size, with the proviso that the Director-General of Health may permit import of nitrous oxide if satisfied it is intended for lawful purposes, and that the importer has taken reasonable steps to avoid diversion to unlawful use.
- 22 Under the Customs and Excise Act 2018, the Minister of Customs may recommend an Order in Council prohibiting the importation of any specified goods or class of goods. A prohibition order may provide for import with the permission of a specified authority. Such a recommendation may only be made providing the Minister of Customs is satisfied that the proposed prohibition is necessary in the public interest.
- 23 I have consulted the Minister of Customs, advising her of the points made above and the recommendations in this paper. Providing the recommendations are agreed by Cabinet, she is satisfied the proposed conditional prohibition of nitrous oxide importation is necessary in the public interest.
- 24 In the last year, Customs records show 20 importers of nitrous oxide. The majority of those appear to be legitimate users or sellers. For example, suppliers of industrial gases or medical equipment, or established catering suppliers. That means it will be feasible to issue permits to legitimate users at no charge to them, based on fair and transparent assessment criteria. Of the remainder, some may be unable to meet the criteria in which case their application will be declined, and they will be unable to legally import.
- 25 There will be no charge for the import permit, and no import efficiency loss for the permitted importer. The proposed statutory solution will allow greater oversight of nitrous oxide importations, without imposing a bureaucratic burden on low-risk importers.
- 26 However, goods imported without a permit will be forfeit and may be seized by Customs. The costs of storage and disposal of nitrous oxide, a dangerous good, are not insignificant and cannot be cost recovered direct from the importer. Nitrous oxide may only be transported by sea, so there is an approximate 6-week delivery timeframe. To reduce the cost to the Crown of storage and disposal costs, I intend announcing Cabinet decisions following Cabinet agreement. This is expected to deter illegal imports.

27 Because nitrous oxide is used widely for lawful purposes, it will be important to make sure regulation does not adversely affect legitimate business. The Ministry of Health will engage as needed with industry while regulations are being drafted. This will include working with MPI to engage with food manufacturers.

28 9(2)(h)

#### *28-day waiver to be sought*

29 At the Cabinet Legislation Committee stage, I intend seeking a waiver of the Cabinet requirement to allow 28 days from the new regulations being gazetted to them coming into force. This is to support timely implementation.

#### **Cost-of-living Implications**

30 The proposals in this paper are not expected to have any impact on the cost of living.

#### **Financial Implications**

31 There are no financial implications from the proposals in this paper,

#### **Legislative Implications**

32 The proposals in this paper will require Orders in Council to implement.

#### **Impact Analysis**

##### **Regulatory Impact Statement**

33 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.

##### **Climate Implications of Policy Assessment**

34 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the thresholds for significance are not met.

## Population Implications

35 There are no significant population implications.

## Human Rights

36 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

## Use of external Resources

37 No external resources were used in developing the proposals in this paper

## Consultation

38 This paper was prepared by the Ministry of Health. The following agencies were consulted: New Zealand Customs Service, New Zealand Police, the Ministry of Business Innovation and Employment, the Ministry of Justice, the Ministry for Primary Industries, the New Zealand Ministry of Foreign Affairs and Trade and the Department of the Prime Minister and Cabinet.

## Communications

39 I intend announcing Cabinet policy decisions following Cabinet agreement.

## Proactive Release

40 I intend to proactively release this paper following regulations coming into force.

## Recommendations

The Minister of Health recommends that the Committee:

- 1 note that harm from nitrous oxide misuse has increased in recent years, and that this harm is associated with the availability of larger, portable cannisters which do not appear to have a legitimate use
- 2 agree to regulate under the Psychoactive Substance Act 2013 to provide that nitrous oxide is a psychoactive substance when supplied in cannisters larger than 10 grammes net weight
- 3 agree that regulation will exclude containers used for legitimate medical and industrial purposes
- 4 agree that the harm occurring from the psychoactive use of nitrous oxide means it is necessary in the public interest to restrict import
- 5 agree to a new import restriction, under the Customs and Excise Act 2018, prohibiting the import of all nitrous oxide, but providing that the Director-General of Health may permit import if satisfied that:
  - 5.1 the gas is intended for lawful use, and

**I N C O N F I D E N C E**

- 5.2 the importer will take reasonable steps to avoid diversion to unlawful use
- 6 note that the Director-General of Health will publish criteria to fairly and transparently consider applications for permission to import
- 7 invite the Minister of Health to issue drafting instructions to the Parliamentary Counsel Office to prepare an Order in Council to give effect to Cabinet's decisions in recommendation 2 and 3.
- 8 invite the Minister of Customs to issue drafting instructions to the Parliamentary Counsel Office to prepare an Order in Council to give effect to Cabinet's decisions in recommendation 5.

Authorised for lodgement

Hon Simeon Brown

Minister of Health