



## Compliance

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# Nitrous Oxide Advisory – September 2024

**This advisory provides advice on the law in relation to the supply and use of nitrous oxide for recreational use. It is intended for manufacturers, importers, distributors, suppliers, retailers and users.**

**This advisory is issued by Medsafe and the Psychoactive Substances Regulatory Authority.**

**It is illegal to sell, supply or possess nitrous oxide for recreational use.**

**Recreational use of nitrous oxide can have serious health effects.**

Nitrous oxide, when intended for use for a therapeutic purpose and presented for use as such, is a medicine under the Medicines Act 1981. However, if it is not intended for a therapeutic purpose and is intended for use or is used as a recreational drug, it is a psychoactive substance under the Psychoactive Substances Act 2013.

Supply of a psychoactive substance for the primary purpose of inducing a psychoactive effect, without a product approval and a licence issued under the Psychoactive Substances Act 2013 is prohibited. There are serious penalties, including substantial fines and imprisonment should a successful prosecution be taken against an organisation or individual supplying nitrous oxide for this purpose.

Whilst making a sale or supply, seeking a statement from a customer that a purchase is not for recreational use is not regarded as an effective means of limiting liability under the Psychoactive Substances Act 2013.

It is also illegal for users to possess an unapproved psychoactive substance for recreational use. Individuals found in possession of an unapproved psychoactive substance are liable to prosecution.

## What is nitrous oxide?

Nitrous oxide is a colourless gas commonly used for a therapeutic purpose for anaesthesia, pain relief and as a freezing agent. It also has other uses, such as a food additive in the manufacture of whipped cream, and to enhance automotive engine performance.

Nitrous oxide is also used recreationally by inhaling the gas to get a psychoactive effect (commonly regarded as a 'high'). Devices can be used to obtain the gas from cannisters and contain it in a way that enables it to be inhaled. These devices are often referred to as 'crackers', and balloons can be used to contain the gas.

## **Risks of recreational use**

There are many risks when nitrous oxide is used for recreational purposes depending on the circumstances, the amount inhaled and frequency of use. Because it causes dizziness and light-headedness, it can seriously affect tasks being undertaken at the time of use. Long-term use can lead to nerve damage and serious neurological effects.

Misuse of nitrous oxide can result in death.

More information about the effects of nitrous oxide is available on the [Alcohol and Drug Foundation](#) (Australia) website.

Those supplying nitrous oxide for recreational use should seriously consider the adverse health effects this illegal activity can have on those purchasing their products.

## **Sale of nitrous oxide for a psychoactive effect**

Reports have been received that there is a significant business in providing nitrous oxide in small to medium sized cannisters, used by purchasers for inhalation for a psychoactive effect. Retailers should consider the circumstances in which the product is sold and any evidence of misuse, such as the presence of used containers and paraphernalia. This trade is occurring both through physical and online retailers and through retailers with little connection to the catering industry.

## **Disclaimers – not sufficient**

Asking the customer to declare that a product is not for inhalation does not remove the retailer's liability under the legislation.

Some retailers have disclaimers that the products are only sold and / or are only to be used for catering purposes. They may require a purchaser to complete a declaration to this effect. It is Medsafe's view that such disclaimers do not protect retailers from their responsibilities to comply with the law. Inclusion of a disclaimer could suggest that the retailer is aware the products they sell are likely to be used primarily for inducing a psychoactive effect.

## **Potential offences**

### **[Psychoactive Substances Act 2013](#)**

When nitrous oxide is supplied for a recreational use (ie, for the primary purpose of inducing a

psychoactive effect), the Psychoactive Substances Act 2013 applies.

No products containing nitrous oxide have been approved under the Psychoactive Substances Act. It is therefore illegal to supply nitrous oxide in any form or container for a recreational purpose (psychoactive effect). Cream chargers and canisters containing nitrous oxide are not approved products for recreational purposes under the Psychoactive Substances Act 2013.

For selling, offering to sell and possessing for sale an unapproved psychoactive substance, the penalty on conviction is a term of imprisonment not exceeding two years for an individual or a fine not exceeding \$500,000 for a company ([section 70](#) Psychoactive Substances Act).

When an individual is found to have an unapproved psychoactive substance in their possession, the penalty on conviction is a fine not exceeding \$500 ([section 71](#) Psychoactive Substances Act).

### **[Medicines Act 1981](#)**

Nitrous oxide is a prescription medicine when intended for inhalation for a therapeutic purpose.

Offences under the Medicines Act 1981 may also be applicable.

For selling a prescription medicine by retail other than from a licensed pharmacy on prescription of an authorised prescriber, the penalty on conviction is a term of imprisonment not exceeding six months or a fine not exceeding \$40,000 ([section 18](#) Medicines Act 1981).

For selling, distributing, and / or advertising of unapproved medicines, the penalty is a term of imprisonment not exceeding six months or a fine not exceeding \$20,000 (for an individual) or a fine not exceeding \$100,000 for a company ([section 20](#) Medicines Act).

For possession of a prescription medicine without reasonable excuse, the penalty is a term of imprisonment not exceeding three months or a fine not exceeding \$500 ([section 43](#) Medicines Act).

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