



12 October 2026

Medicines Scheduling
Therapeutic Goods Administration
medicines.scheduling@health.gov.au

To the TGA Delegate,

RE: Public consultation on proposed amendments to the Poisons Standard in relation to nitrous oxide – Joint ACMS-ACCS #45 – November 2026

We appreciate the opportunity to comment on the proposed amendments to the Poisons Standard relating to nitrous oxide. The Alcohol, Tobacco and Other Drug Association ACT (ATODA) is particularly concerned with Proposal 2, which would reschedule nitrous oxide for non-therapeutic use as a Schedule 8 controlled drug. The proposal includes specific exemptions for limited personal possession and legitimate use for industrial, automotive and hospitality purposes. ATODA does *not* support this proposal or the introduction of criminal penalties for personal possession. Such an approach would be inconsistent with the ACT's evidence-informed direction on drug policy and may undermine the Territory's broader health and harm reduction objectives, while posing unreasonable risks to the community.

About ATODA

ATODA is the peak body for the alcohol and other drugs sector in the ACT. We work with members, government and the community to promote evidence-informed policy and support a strong and capable sector that works in tandem to reduce drug-related harm, improve health and wellbeing, and respect the rights and dignity of people who use drugs.

ACT policy coherence, decriminalisation and harm reduction

ATODA supports a proportionate, multifaceted response to nitrous oxide that combines supply controls, prevention, health promotion, monitoring and harm reduction. We support limiting the retail sale of large canisters for non-therapeutic purposes. Large cylinders make sustained or heavy use easier, while smaller bulbs create an important friction point that may reduce bingeing. Any regulation should also preserve legitimate therapeutic, food-service and industrial uses and be accompanied by clear arrangements for safe, responsible disposal. Proposal 1 would place non-refillable containers containing more than 10 g in Schedule 10, prohibiting supply and use. ATODA supports proportionate restrictions on the retail supply of large disposable canisters but does not necessarily support placing them in Schedule 10 unless legitimate uses and conduct associated with surrender, return and safe disposal are expressly protected. Schedule 10 would prohibit use as well as supply and may therefore

extend beyond the stated objective of reducing availability for recreational consumption. The Delegate should consider whether targeted supply controls could achieve the intended public-health benefit without prohibiting legitimate use or exposing individuals to penalties.

We do not support Proposal 2. Its personal-possession exemption requires less than 48 g in fewer than six bulbs, each containing 8 g or less. Six 8 g bulbs and any 10 g bulbs would fall outside that exemption. Rescheduling non-therapeutic and non-commercial nitrous oxide to Schedule 8 would attach criminal consequences to possession in circumstances where the principal risks are better addressed through public health, product regulation and targeted controls on supply. It would also risk treating possession of nitrous oxide more severely than possession of small quantities of other drugs under the ACT's decriminalisation framework.

The ACT has deliberately shifted its response to personal drug possession away from punishment and towards health engagement. Introducing a new possession offence for nitrous oxide would cut across that direction and create confusion for the community, police, health services and people who use drugs. It may also widen the net of criminal justice contact for conduct that the ACT otherwise seeks to manage through diversion, information and support. The ACT's existing small-quantity arrangements would not automatically extend to nitrous oxide.

Criminalisation can increase stigma and discourage people from seeking timely medical advice when they experience neurological symptoms or other harms. This is especially concerning for nitrous oxide, where early recognition and treatment are important. A health-led response should make it easier—not harder—for people to disclose use and access care.

A prohibition-led approach also carries foreseeable unintended consequences: displacement to more harmful substances, growth of an unregulated market, reduced opportunities to provide product warnings and harm reduction information, a flattening of risk messages in which nitrous oxide is presented as equivalent to substances with substantially different harm profiles, and risky disposal of canisters. These ramifications would be at odds with the ACT's broader commitment to proportionate, evidence-informed and harm reduction focused drug policy.

We believe the priority in the ACT should be to strengthen surveillance of nitrous oxide-related presentations, equip frontline services to identify and respond to neurotoxicity, provide practical information on safer use and polydrug risks, and ensure safe disposal pathways for canisters. Measures aimed at retailers and suppliers should be evaluated against clear health outcomes and designed to avoid shifting penalties onto individuals. Proposal 2 risks overriding a proportionate, considered approach that responds to the local context. The ACT coroner's April 2026 findings support reviewing controls on large canisters and supply to minors, improving emergency-service data and developing targeted education and the ACT Government is currently considering potential legislative responses.

Recommendations

ATODA recommends that:

- Proposal 2 not proceed: nitrous oxide should not be rescheduled to Schedule 8 for non-therapeutic and non-commercial use, and criminal penalties for personal possession should not be introduced.
- Proportionate container-size limits proceed under Proposal 1, with exemptions for legitimate therapeutic, commercial and industrial uses and enforcement directed at non-compliant supply

and distribution, as well as appropriate protection from penalties for personal use or for returning canisters for disposal. New controls be monitored and independently evaluated for health impacts, unintended market displacement, equity effects and changes in help-seeking.

Thank you for considering ATODA's submission. If you would like further information, please don't hesitate to contact ATODA's Acting CEO, Anke van der Sterren.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anke van der Sterren', written in a cursive style.

Anke van der Sterren

Acting CEO

Alcohol Tobacco and Other Drug Association ACT (ATODA)

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