

Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025

Statement of Compatibility

For

Amendments to be moved during consideration in detail by the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Tim Nicholls MP, Minister for Health and Ambulance Services, make this statement of compatibility with respect to amendments to be moved during consideration in detail of the Tobacco and Other Smoking Products (Dismantling Illegal Trade) and Other Legislation Amendment Bill 2025 (Bill).

In my opinion, the amendments are compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The Bill proposes to amend the *Tobacco and Other Smoking Products Act 1998* (Act) to introduce the concept of ‘compromised goods’. This term is defined in the Bill to mean smoking products, hookahs and components of hookahs. Under the Bill, ‘compromised goods’ found alongside illicit tobacco and illicit nicotine products can be seized and forfeited. These lawful products become compromised by being sold alongside illicit tobacco or illicit nicotine products, and as such are subject to seizure and forfeiture.

The amendments to be moved during consideration in detail of the Bill will expand the definition of ‘compromised goods’ to include receptacles containing nitrous oxide, including bulbs and canisters. This will allow authorised persons to seize and forfeit these products when they are found at premises involved in the trade of illicit tobacco or illicit nicotine products, which will provide a targeted and immediate mechanism to address the public health harms relating to recreational nitrous oxide misuse.

Retailers and wholesalers engaged in the supply of illicit tobacco or illicit nicotine products often diversify their business models to include other harmful recreational products. The rapid emergence of vapes and nicotine pouches are clear examples of this. To respond to these evolving patterns, the

amendments will also establish a regulation-making power to prescribe additional categories of ‘compromised goods’ in the future. This power allows products that pose, or may pose, a risk to public health to be declared as ‘compromised goods’, and ensures the framework remains flexible and responsive to emerging products and trends.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the only human right that is limited by the amendments to be moved during consideration in detail of the Bill is the right to property (section 24 of the Human Rights Act).

(a) the nature of the right

Right to property (section 24)

The right to property provides that every person has the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Case authority suggests that ‘arbitrary’ in this context refers to conduct that is capricious, unpredictable or unjust, or interferences which are not proportionate to a legitimate aim being sought.

‘Property’ includes all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and economic interests.

The amendments will limit the right to property because they will allow authorised persons to seize and forfeit property, including nitrous oxide bulbs and canisters, based on their proximity to illicit tobacco or illicit nicotine products, depriving individuals of the ownership of those products.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to property is to reduce access to nitrous oxide for recreational use, in the interests of public health.

Nitrous oxide is a colourless and non-flammable gas that is used as an anaesthetic during surgery and dentistry, but also has non-therapeutic applications in hospitality, industrial and scientific settings. However, nitrous oxide is also intentionally misused for its psychoactive effects when inhaled. Individuals access nitrous oxide from bulbs or canisters, typically via dispensers or nozzles, into balloons for inhalation, or by trapping the gas in a plastic bag.

Recreational inhalation of nitrous oxide is commonly associated with a ‘high’, and produces short-term effects such as euphoria, numbness of the body, sedation, giddiness and other dissociative effects. However, sustained or heavy use of nitrous oxide can lead to a range of serious and potentially irreversible health consequences. Chronic exposure interferes with the body’s ability to absorb vitamin B12, which is essential for healthy nerve function. This deficiency can result in neurological damage including memory loss, numbness, impaired motor control and degeneration of the spinal cord.¹ Users may also experience psychiatric symptoms such as depression, anxiety and psychosis, and physical harms including bladder and bowel incontinence, cardiovascular damage and injury to

¹ Alcohol and Drug Foundation, 2023, *Nitrous oxide – uses, impacts and risks*, <https://adf.org.au/insights/nitrous-oxide/>.

lung tissue. Long-term misuse has been linked to adverse effects on reproductive health, and in extreme cases can result in brain damage or death.² Although rare, deaths involving nitrous oxide misuse can occur due to hypoxia from oxygen deprivation, particularly when inhaled through gas masks or plastic bags, or as a result of falls or other accidents.³

Nitrous oxide bulbs and canisters marketed for recreational use are readily available to the public from a range of stores, including tobacconists, convenience stores, petrol stations, and gift shops. Products sold in these settings and promoted for recreational use are not legitimate medical or culinary products used by doctors, dentists or chefs. Although some may technically be legitimate culinary-grade products that comply with relevant labelling and safety requirements, it is clear from the context of their sale and promotion that they are not being sold for legitimate use. They are often marketed so as to maintain the pretence of legitimate use, such as baking or cocktail making, but are packaged, promoted and supplied in a way that clearly indicates they are sold for inhalation for their psychoactive effects.

Many of these retailers also sell a mix of legal smoking products, illicit tobacco, vapes and associated smoking and drug paraphernalia such as bongs, ice pipes and hookahs. During enforcement inspections under the Act, authorised persons have increasingly observed nitrous oxide bulbs and canisters being sold, including at premises engaged in the illicit tobacco and illicit nicotine product trade. They are also widely available online at all hours, with expedited delivery within 15 to 20 minutes of purchase.

Nitrous oxide marketed for recreational use is commonly sold in large quantities, typically in boxes containing 100 eight-gram bulbs or larger canisters of up to 3.3 litres. Suppliers often package the bulbs and canisters with devices that facilitate inhalation, such as balloons, flavoured dispensers and ‘crackers’ that release nitrous oxide directly into a balloon for inhalation. These features promote recreational inhalation rather than legitimate use.

These products pose a distinct risk of misuse among young people and children. Retailers frequently use colourful packaging and confectionary-style flavours such as ‘rainbow candy’, to market these products specifically to younger cohorts. Many young people perceive nitrous oxide as a low-risk substance,⁴ further increasing the likelihood of misuse and experimentation.

Neurological conditions linked to nitrous oxide misuse are increasing in both Australia and globally. An article published in the Medical Journal of Australia in 2019 reported a rise in recreational nitrous oxide use among regular drug users in Australia and internationally.⁵ The 2021 Global Drug Survey

² Yockey, A., May 2025, *Nitrous oxide recreational use is linked to brain damage and sudden death – but ‘laughing gas’ is still sold all over the US*, The Conversation, <https://theconversation.com/nitrous-oxide-recreational-use-is-linked-to-brain-damage-and-sudden-death-but-laughing-gas-is-still-sold-all-over-the-us-254983>; European Monitoring Centre for Drugs and Drug Addiction, 2022, *Recreational use of nitrous oxide: a growing concern for Europe*, Publications Office of the European Union, Luxembourg, https://www.drugsandalcohol.ie/37506/1/EMCDDA_Recreational_use_of_nitrous_oxide.pdf.

³ Metro South Health, 2024. *Nitrous oxide misuse can cause paralysis and death*, <https://www.metrosouth.health.qld.gov.au/about-us/news/pa-hospital/nitrous-oxide-misuse-can-cause-paralysis-and-death>.

⁴ Walter H., et al., 2024, *Exploring the Experiences and Perceptions of Young People’s Recreational Nitrous Oxide Use*, Qeios.

⁵ Bethmont, A., et al., 2019, *Increasing illicit use of nitrous oxide in presentations to NSW emergency departments*, Medical Journal of Australia, 211 (9).

identified nitrous oxide as the 13th most popular recreational drug in the world, with 22.5 per cent of more than 32,000 respondents across 22 countries having used nitrous oxide in their lifetime. Among people aged 16 to 24 years, a self-reported survey of 592,000 people globally estimated that 24 per cent used nitrous oxide recreationally in 2021.⁶

The limitation also serves to increase the financial impact on businesses engaged in the sale of illicit tobacco or illicit nicotine products by enabling the seizure and forfeiture of additional categories of ‘compromised goods’. This approach strengthens deterrence by targeting the broader business model of illicit retailers and ensuring that unlawful trading activity carries meaningful financial consequences.

Illicit tobacco and illicit nicotine products, such as vapes, pose serious and growing health risks. Smoking continues to be a major contributor to preventable illness and premature death, with well-established links to various cancers, cardiovascular disease, and type 2 diabetes.⁷ The availability of cheap and unregulated illicit tobacco products undermines tobacco control measures, encourages smoking, and risks reversing the progress that has been made in reducing smoking rates over recent decades.

While often marketed as a safer alternative, vaping also presents its own serious health risks. It exposes users to high levels of nicotine, leading to addiction and potential neurological effects such as seizures. Vaping has also been associated with cases of poisoning, lung injuries, and growing evidence suggests connections to heart problems and cancers affecting the lungs and oral cavity.⁸ Together, illicit tobacco and vaping products pose a significant and sustained threat to public health.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendments are closely aligned with the objective of mitigating the harms associated with recreational use of nitrous oxide, as well as the broader intent of the Bill to disrupt the economic drivers behind the supply of illicit tobacco and illicit nicotine products.

Nitrous oxide bulbs and canisters sold through tobacconists and similar retail outlets are, in practice, intended only for recreational inhalation, despite being ostensibly marketed for culinary use. Legitimate users—such as commercial kitchens and hospitality businesses—typically source nitrous oxide through reputable hospitality suppliers and commercial wholesalers, not tobacconists and similar retail and wholesale stores. By defining ‘compromised goods’ to include nitrous oxide bulbs and canisters, the regulatory approach effectively targets recreational supply channels. This preserves access for legitimate and professional purposes, ensuring minimal impact on legitimate users. Removing products from supply reduces access for recreational use, achieving the first purpose outlined on page 2.

This measure will also strengthen enforcement efforts against the illegal trade of illicit tobacco and illicit nicotine products by amplifying the financial risks. Individuals and businesses engaged in such activities will face the potential loss of not only legal smoking products, hookahs, and components of hookahs, but also nitrous oxide bulbs and canisters intended for supply. Given the substantial upfront

⁶ Zaloum, S., et al., 2025, *Tackling the growing burden of nitrous oxide-induced public health harms*, Lancet Public Health, 257 (10).

⁷ Department of Health, Disability and Ageing, May 2024, *Effects of smoking and tobacco*, <https://www.health.gov.au/topics/smoking-vaping-and-tobacco/about-smoking/effects>.

⁸ Banks, E., et al., 2023, *Electronic cigarettes and health outcomes: umbrella and systematic review of the global evidence*, Medical Journal of Australia, 218(6).

investment—wholesale purchases of 20 large 3.3-litre nitrous oxide canisters can range from \$2,000 to \$3,000—non-compliant suppliers risk losing thousands of dollars in inventory with each seizure, making the economic consequences of illegal trade more severe.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments to be moved during consideration of the Bill.

The current regulatory framework does not address the public health harms resulting from the widespread supply and use of nitrous oxide for recreational purposes. For therapeutic purposes, medical-grade nitrous oxide is classified as a Schedule 4 (prescription-only) medicine, with dealings restricted to authorised clinicians and specific clinical settings.

For non-therapeutic purposes, nitrous oxide is classified as a Schedule 6 poison under the *Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard) and must be sold in distinctive packaging with clear warnings and safety directions.

Under the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021* (Poisons Regulation), it is an offence to sell a Schedule 6 poison without taking reasonable steps to ensure it is stored in child-resistant packaging and kept out of reach of children under four years of age. However, these requirements are limited in scope and do not extend beyond failures to display the required warnings on packaging in retail settings. Seizure powers are only available for retail (not wholesale) sale and where packaging and labelling requirements are not met, limiting the capacity of the current regulatory framework to effectively address the harms relating to the recreational use of nitrous oxide.

Under the *Summary Offences Act 2005*, it is illegal for a retailer or salesperson to knowingly sell a 'potentially harmful thing' to a person they reasonably believe will inhale or ingest it, or who intends to sell it to another person for inhalation or ingestion. The Summary Offences Act does not include seizure powers in relation to this offence.

The *Police Powers and Responsibilities Act 2000* includes a power for police to seize a potentially harmful thing for ingestion or inhalation. However, this power applies only to individual users and does not extend to the seizure of nitrous oxide from retailers or wholesalers.

In practice, retailers and wholesalers avoid regulatory action under the Poisons Regulation and Summary Offences Act by simply displaying the required warning labels and claiming their products are intended for legitimate uses, such as baking or making whipped cream. This is despite clear marketing to target recreational users through confectionary-style flavours, cartoon imagery, oversized 3.3 litre canisters with no practical culinary use, and 24/7 rapid delivery services. The legitimacy of these claims is further undermined by the fact that such products are commonly sold through tobacconists and convenience stores, which have no genuine reason to sell culinary or industrial nitrous oxide products to the public. Stronger regulatory controls are therefore required to restrict access to nitrous oxide for recreational use while maintaining its availability for legitimate purposes.

The amendments are therefore highly targeted and proportionate. They apply only to retailers and wholesalers already engaged in the unlawful supply or possession of illicit tobacco or illicit nicotine products, and who exploit regulatory gaps to sell nitrous oxide for recreational use. These operators are not legitimate sellers and have no lawful basis to deal in nitrous oxide. Consequently, there are no less restrictive measures that could effectively achieve the intended purpose.

Categorising nitrous oxide bulbs and canisters as ‘compromised goods’ provides an immediate, practical enforcement tool to address the widespread availability of these products for recreational use in settings traditionally associated with tobacco and nicotine product sales. This approach directly targets retailers selling nitrous oxide for inhalation rather than legitimate use, and the business models of operators supplying harmful products, without impacting legitimate users. It complements the overall purpose of the Bill by increasing the financial impact of enforcement, making it more difficult to conceal the sale and obstruct the seizure of illicit products, and further discourages operators from supplying illicit tobacco and illicit nicotine products.

The power to seize and forfeit ‘compromised goods’ is carefully confined to avoid unnecessary interference with property rights. The amendment applies only where illicit tobacco or illicit nicotine products are found and seized at premises, ensuring that it directly targets businesses engaging in unlawful supply or possession that also exploit regulatory gaps to sell nitrous oxide for recreational use. The rights of individuals who operate within the law will not be limited.

A show cause process will apply to ‘compromised goods’ that are found alongside illicit tobacco or illicit nicotine products, other than vaping goods. In these cases, the goods are considered compromised only by association, and their forfeiture process depends on the outcome of the forfeiture process for the illicit products. If the chief executive of Queensland Health decides not to forfeit the illicit tobacco or illicit nicotine products, the ‘compromised goods’ must be returned.

As above, the show cause process does not apply to ‘compromised goods’ found alongside vaping goods. This is because vaping goods are subject to a separate framework that allows them to be immediately forfeited without a show cause process. ‘Compromised goods’ located with vaping goods can be immediately forfeited. In other words, ‘compromised goods’ take their status from the type of illicit product they are found with, and the relevant forfeiture process is applied accordingly.

While vaping goods and any associated ‘compromised goods’ can be immediately forfeited, their seizure is carefully controlled. Authorised persons may only seize the underlying illicit products where there is a clear and lawful basis to do so, and they must hold a reasonable belief that the illicit products are evidence of an offence under the Act, for example, evidence of supply as part of a business activity.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments limit the right to property by permitting the seizure and forfeiture of property, including nitrous oxide bulbs and canisters. This is a targeted and proportionate response to the public health harms caused by harmful products, particularly the sustained and heavy use of nitrous oxide for recreational use. It will also further deter the supply of illicit tobacco and illicit nicotine products by increasing the financial consequences of that illegal trade.

In light of the public health harms relating to the recreational use of nitrous oxide, the limitation on property rights is reasonable and demonstrably justifiable.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the amendments to be moved during consideration in detail of the Bill are compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE TIM NICHOLLS MP
MINISTER FOR HEALTH AND AMBULANCE SERVICES

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