

The interim decision to include Alkyl Nitrites into the same schedule listing as LSD, Heroin and Cannabis is an unwarranted overreaction and, regardless whether intended or not, will have a disproportionate discriminatory effect on the LGBT+ community.

This submission will be structured in 2 parts: firstly, by directly responding to the reasons given in the interim decision, and secondly by exploring the additional impacts this will have not directly considered by the delegate.

Part 1:

'Risks and benefits of the use of a substance'

The initial premise of the use of these substances as a muscle relaxant as illicit is a premise that should be thoroughly rejected. The logic used here is that when something is used in a way that can increase the risk of harm, possibly beyond what was initially intended, that use should be thought of as illegal. The extension of this logic on its own would suggest that drinking alcohol to get drunk would be illicit consumption of it, as it has the potential to introduce risks of harm. The use of the term 'illicit' in the rest of the interim decision should be considered to be prejudicial and not objective, as it implies that use of this substance by consenting adults is already a crime, when in fact it is *not* (<https://adf.org.au/drug-facts/adf-drug-facts-amyl-nitrite/>)—or at worst is no different to drinking more than the 'recommended;' something we advise against but do not punish for, unless it causes actual harms to others. We allow people access to substances, that when misused, can cause harm, but as I will present in this submission, this is a reason to increase labelling and packaging, rather than place this substance into the illegal substance schedule.

Many of the risks detailed in the report are incredibly non-specific and as such should not warrant the rescheduling to class 9. These include the risk of cardiovascular harm (which can also be caused by consumption of caffeine and high fat foods), toxicity via inhalation (which the fumes of many cleaning products such as bleach also induce), and the risk of child indigestion (many things that present as edible are potentially poisonous to children, such as cleaning products, medicines and alcohols). These reasons may support better labelling, or a requirement for child-safety warnings or packaging but are clearly not justification to place in schedule 9.

The more serious, and importantly only specific risks detailed in the decision are, by admission of all the reports cited, affecting an incredibly small portion of the population. 273 calls over 11 years, in which only 41 cases required treatment for the serious methaemoglobinaemia, which equates to less than 4 calls per year, is a tiny number of individuals affected in a negative way. Importantly, unlike other schedule 9 substances, there have been no recorded deaths due to this substance, further questioning the need for it to be in schedule 9. By comparison, over 2500 children are admitted to hospital every *year* for poisoning from the products already mentioned above—mostly cleaners, and even things such as glowsticks (<https://www.smh.com.au/business/consumer-affairs/almost-2500-australian-children-admitted-to-hospital-every-year-from-poisoning-report-reveals-20160323-gnpq2w.html>). Even in the small cases of harm, at the point at which this accrues to

consenting adults, it is unclear why this calls for the scheduling proposed, as we allow consenting adults to do things such as rock climb, bungee jump, and drink, all of which have more frequent and far more long-lasting consequences when it goes wrong (often including death).

'Purposes for which a substance is to be used/toxicity'

While these are broadly immutable facts, it is still unclear why these reasons mean a schedule 9 listing is appropriate or justified. The examples already mentioned above would have the same toxicity or use issues as these substances do, and yet are not subject to this listing. In a society that values autonomy, we must thoroughly justify prohibiting consenting adults from being able to access substances and activities, and given the very general nature of these risks, it is still unclear why this response is appropriate.

'Potential for abuse'

The discriminatory nature of this rescheduling is admitted (though, somewhat interestingly, without specific mention of the identity of the 'particular sections of the community'), should be another reason why this relisting appears to be a move against the LGBT+ community, given the lacking in basis for any comparatively harmful or crying need for this rescheduling, as noted above. For this reason alone, this rescheduling should not go ahead, as it will have a prejudicial and dipropionate effect on gay men. Moreover, as also noted above, it is unclear why informed use of these by consenting adults, even where it has the potential for harm, is 'misuse.' The words of the interim decision as a 'sex aid' indicate it often is a vital component of allowing anal penetrative sex to occur without large amount of pain and discomfort, which, given the earlier analysis regarding alcohol, is at best a case for better education and labelling, not the schedule 9 that is proposed. Importantly here, this is a non-addicting, short-affect substance, (<https://adf.org.au/drug-facts/adf-drug-facts-amyl-nitrite/>) meaning even if 'abuse' of it occurs, it lacks the impacts that 'abuse' of other schedule 9 substances have. On that ground alone it is readily apparent that the relisting of this substance is incredibly inappropriate.

At the end of this, it is submitted that if the risks (which are small and often general to many common household items) are deemed too much to allow this substance to stay in schedule 4, it should be moved to a maximum of schedule 5, with the appropriate warning labels attached.

Part 2:

The LGBT+ community has suffered huge discrimination from governments, regulatory bodies and society as a whole for generations. It has only been in very recent history that rights that have been afforded to others without question have been expanded to include those whose only difference is who they are sexually attracted to/how they manifest their gender identity.

Given that the statistics show that this product is used primarily by this community, a ban on it would serve only to further discriminate against them further.

The reason for this specific use is rather basic biology—unlike a vagina, anuses do not naturally lubricate and are also not specifically 'designed' for penetration. As

such, for some individuals—especially those who are gay—this substance is the only way they are able to participate in an activity which we allow all others to do in nearly any way they choose (as long as there is positive consent), as it relaxes the muscles in the anus and sphincter to allow the initial penetration to occur without pain. Importantly, it can be incredibly difficult to ‘consciously’ relax these muscles, as they are intimately connected to other bodily functions that impede the capacity for them to be controlled. This is obviously compounded by the anxiety and stress that a person who knows this has the potential to be a problem for them is likely to be in, which makes it even harder to them to relax without assistance.

In my personal experience, the use of this has been rather short—usually only just before the first penetration of the anus, in order to reduce tension and ensure there is no pain or damage done to the person who is being penetrated. However, without this, I have seen people who have to stop the act due to pain and discomfort, causing embarrassment and shame, and denying them access to something many others can do without this issue. Moreover, all my experiences with this substance have been in situations where both parties have discussed the use of it beforehand and continuously checked in regarding its use during the entire sexual experience.

Given that individuals are likely to want to avoid disappointing their sexual partners and being unable to access an activity others can, it is highly likely that this ban would only serve to push this underground (just as bans on gay sex did not stop it from occurring), meaning the products supplied would lack any of the warnings or quality controls that would allow it to be used safely—and would make those who do have questions or problems unlikely to ask for help, as the gravity of the punishment for schedule 9 substances is substantial. If harm reduction is a goal, when the harm is already so small, this would only serve to make it larger.

I personally have no need for this substance to assist in penetration. However, the capacity for me to choose that rather than the TGA is incredibly important. I have had multiple partners who would otherwise be in immense pain and could not participate in anal penetration without the aid of these substances, and as such, in order to allow them to continue to experience things which others are able to do in almost whatever way they choose, and not have that denied on the basis of nonspecific and largely unsubstantiated harms, would be simply discriminatory.

Summary

The interim decision is totally disproportionate, and on further analysis, actively discriminatory against a group which has suffered direct harms as a result of governments and their departments, often disguised as public health campaigns.

The harms identified are either non-specific or pale in comparison to other substances which are not afforded a schedule 9 listing, and alkyl nitrites are clearly dis-analogous to the other substances listed in schedule 9 currently, such as heroin and LSD. Additionally, the discriminatory nature of this ban should also be a reason to not reschedule these substances as proposed.

Ideally, this substance should remain in its current schedule, but if that is deemed inappropriate, a max of class 5 should be imposed.