

# NORTHERN TERRITORY OF AUSTRALIA

## KAVA MANAGEMENT REGULATIONS

As in force at 5 May 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 5 May 2004

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## KAVA MANAGEMENT REGULATIONS

### Regulations under the *Kava Management Act*

#### 1 Citation

These Regulations may be cited as the *Kava Management Regulations*.

#### 2 Commencement

These Regulations come into operation on the commencement of the *Kava Management Act 1998*.

#### 3 Definitions

In these Regulations, unless the contrary intention appears:

***associate*** means an associate within the meaning of Division 2 of Part 1.2 of the Corporations Act 2001.

***Code of Kava Management*** means the National Code of Kava Management endorsed in October 1997 by the Australia New Zealand Food Standards Council within the meaning of the *Australia New Zealand Food Authority Act 1991* of the Commonwealth.

***company*** means a company that is registered under the Corporations Act 2001 or a co-operative registered under the *Co-operatives Act*.

***Food Standards Code*** means the Australia New Zealand Food Standards Code within the meaning of the *Australia New Zealand Food Authority Act 1991* of the Commonwealth.

***incorporated association*** means:

- (a) an incorporated association or an incorporated trading association as defined in section 4(1) of the *Associations Incorporation Act*; or

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- (b) an Aboriginal corporation as defined in section 3 of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth.

#### **4 Fees**

The fees that are payable for the matters under the Act specified in Column 1 of the Table to this regulation are specified opposite in Column 2 of the Table.

TABLE

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Column 1 Matters under the Act	Column 2 Fees
Application under section 54 of the Act for a declaration that an area is a licence area	\$5,000
Application under section 60 of the Act for the grant of a wholesale licence	\$20,000
Application under section 60 of the Act for the grant of a retail licence	\$5,000
Application under section 65 of the Act to renew a wholesale licence	\$20,000
Application under section 65 of the Act to renew a retail licence	\$5,000
Issue of a duplicate licence under section 83 of the Act	\$100

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#### **6 Information to accompany application for licence**

The Commission may require that any of the following information is to be provided in support of an application under section 60 or 65 of the Act:

- (a) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a natural person:
- (i) the name of the applicant;
  - (ii) the residential and business addresses of the applicant;
  - (iii) 4 written references as to the character of the applicant;
  - (iv) a written curriculum vitae of the applicant; or

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- (v) details of the criminal history of the applicant;
- (b) in the case of an applicant (whether alone or jointly with another person or as a partner) who is a company:
- (i) the name of the applicant;
  - (ii) the names of the directors, associates and other officers of the applicant;
  - (iii) the addresses of the registered office and principal place of business of the applicant;
  - (iv) a certified copy of the certificate of incorporation of the applicant;
  - (v) a certified copy of the constitution or rules of the applicant;
  - (vi) a certified copy of a search showing the date of incorporation, principal place of business and the names of the directors, secretaries and shareholders of the applicant;
  - (vii) a written curriculum vitae of each director and other officer of the applicant; or
  - (viii) details of the criminal history of each director and other officer of the applicant;
- (c) in the case of an applicant (whether alone or jointly with another person or as a partner) who is an incorporated association:
- (i) the name of the applicant;
  - (ii) the names of the public officer, committee members and other officers of the applicant;
  - (iii) the address where the business of the applicant is being carried on;
  - (iv) a certified copy of the certificate of incorporation of the applicant;
  - (v) a certified copy of the constitution of the applicant;
  - (vi) a written curriculum vitae of each committee member and other officer of the applicant; or

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- (vii) details of the criminal history of each committee member and other officer of the applicant;
  - (d) if 2 or more persons making an application are partners – a copy of their partnership agreement;
  - (e) if an applicant will be conducting business under the licence the subject of the application under a business name registered under the *Business Names Act* – a certified copy of a business name search showing that registration;
  - (f) documentation of an applicant's current assets and liabilities or the applicant's existing and future income;
  - (g) a business plan or other documentation of the proposed operation of the business under the licence the subject of the application, including details of the:
    - (i) premises and vehicles that the applicant will use;
    - (ii) number of employees or agents the licensee will engage;
    - (iii) manner of transportation of the kava into and within the Territory or the licence area concerned; and
    - (iv) manner in which the applicant proposes to purchase or otherwise be supplied with, sell and store the kava;
  - (h) a copy of an applicant's signification of clause 8 of the Code of Kava Management;
  - (i) a statement or plan of the measures or programs the applicant would support, fund or implement as the holder of the licence for facilitating harm minimisation and other responsible practices relating to the supply, possession and consumption of kava.

## **7 Notice of application**

- (1) The size of the notice of making an application for the grant of a licence that an applicant must publish in a newspaper under section 61(1)(a) of the Act is to be not less than 2 columns in width by 8 cm in depth.
- (2) At the time of making an application for the grant of a licence under section 60 of the Act the applicant must provide to the Commission a copy of the notice the applicant intends to publish under section 61(1) of the Act for the purpose of being approved by the Commission.

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## **8 Licensees must be signatories to Code of Kava Management**

The Commission must not issue a licence to a person under section 64 of the Act unless the person has signed at clause 8 of the Code of Kava Management.

## **9 Conditions of licence**

- (1) The Commission may issue a licence under section 64 or 65 of the Act subject to any of the following conditions that the Commission determines necessary or desirable in the circumstances of the licence:
  - (a) in the case of a retail licence – that the sale of kava under the retail licence may only occur between the hours and on the days specified in the licence;
  - (b) that the licensee must not conduct business under the licence except on the premises, by using the vehicles, with the number of employees or by the agents specified in the licence;
  - (c) that the licensee, whether personally or by an employee or agent, must not transport kava into and within the Territory or a particular licence area unless as specified in the licence;
  - (d) that the licensee must not hold a quantity of kava in stock that is more than the maximum quantity specified in the licence;
  - (e) that the premises the licensee uses in conducting business under the licence must be maintained in a clean, serviceable and sanitary condition at all times;
  - (f) in the case of a retail licensee – that the licensee must not sell kava to a person unless the person pays for the kava in cash and not by credit;
  - (g) that the licensee must comply with the Act, these Regulations and the terms and conditions of the licence.
- (2) For the purposes of subregulation (1)(a), the hours and days that a retail licensee may sell kava are to be fixed by taking into account:
  - (a) the size of the licence area in respect of which the licensee's licence is granted;
  - (b) the number of person's ordinarily residing in the licence area and their distribution within the licence area; and

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- (c) the wishes of the residents of the licence area regarding when kava may be purchased.
- (3) For the purposes of subregulation (1)(d), the maximum quantity of kava to be held in stock by a licensee is to be fixed by taking into account:
- (a) in the case of a wholesale licensee – the number of licensees who will be purchasing kava from the wholesale licensee;
  - (b) in the case of a retail licensee – the number of persons ordinarily residing in the licence area in respect of which the licensee's licence is issued;
  - (c) the manner and quantity in which and the intervals when the licensee will purchase or otherwise be supplied with kava to sell under the licensee's licence; and
  - (d) the facilities available to the licensee for, and manner in which the licensee will be, storing kava held in stock by the licensee.

## **10 Records to be kept by licensees**

- (1) A licensee must keep and maintain, in a form that the Commission has approved, a record of:
- (a) the date and quantity of all kava supplied to the licensee (whether by importation into the Territory or purchase from another licensee);
  - (b) the date and quantity of each sale of kava made by the licensee and, if the kava is sold to another licensee, the name and licence number of that licensee; and
  - (c) a daily balance of the quantity of kava that is held in stock by the licensee.
- (2) A licensee must:
- (a) lodge with the Director a return, in a form approved by the Commission, of the records kept under subregulation (1) in respect of each 3 month period ending on 31 March, 30 June, 30 September and 31 December (respectively) not later than 28 days after the expiry of the period to which the records relate; and
  - (b) keep each record specified in subregulation (1) for not less than 3 years.

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**11 Packaging of kava: section 15(1)(b) of Act**

- (1) Kava is to be packaged in sealed airtight bags made of plastic or any other non-porous material that the Commission has approved.
- (2) If kava is being supplied by a retail licensee, the kava is to be contained in packages that weigh not more than 200 grams.

**12 Signs indicating licence area**

- (1) A retail licensee must:
  - (a) erect at the points of entry into the licence area in respect of which the licensee's licence is issued a retroreflective sign on which is written in white lettering on a red background the words:
    - (i) "KAVA LICENCE AREA" in 200 mm lettering size; and
    - (ii) "You are entering an area where persons who are 18 years or older may purchase and consume kava in accordance with the Kava Management Plan for the area. It is illegal to possess more than 2 kg of kava in this area." in not less than 50 mm lettering size;
  - (b) erect at the points of exit from the licence area referred to in paragraph (a) a retroreflective sign on which is written in white lettering on a red background the words:
    - (i) "YOU ARE LEAVING A KAVA LICENCE AREA" in 200 mm lettering size; and
    - (ii) "Possession of any kava outside this area is illegal unless authorised by a licence and may result in a fine, seizure of a vehicle or imprisonment." in not less than 50 mm lettering size; and
  - (c) maintain those signs in good condition.
- (2) A sign referred to in subregulation (1) is to be erected:
  - (a) at the points of entry or exit that the Commission has approved; and
  - (b) in such a manner that the words on the sign are clearly visible to persons entering or leaving the licence area at those points of entry or exit.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = Gazette	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

**2****LIST OF LEGISLATION*****Kava Management Regulations (SL No. 12, 1998)***

Notified	21 May 1998
Commenced	21 May 1998 (r 2, s 2 <i>Kava Management Act 1998</i> (Act No. 33, 1998) and <i>Gaz S17</i> , 21 May 1998)

***Statute Law Revision Act (No. 2) 1999 (Act No. 48, 1999)***

Assent date	10 November 1999
Commenced	10 November 1999

***Amendment of Kava Management Regulations (SL No. 6, 2000)***

Notified	9 February 2000
Commenced	14 February 2000 (r 2, s 2 <i>Northern Territory Licensing Commission Act 1999</i> (Act No. 67, 1999) and <i>Gaz G5</i> , 9 February 2000, p 6)

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz S285</i> , 13 July 2001)

***Amendments of Kava Management Regulations (SL No. 18, 2002)***

Notified	10 July 2002
Commenced	10 July 2002

***Amendment of Kava Management Regulations (SL No. 58, 2002)***

Notified	18 December 2002
Commenced	18 December 2002

***Amendments of Kava Management Regulations (SL No. 4, 2004)***

Notified	3 March 2004
Commenced	3 March 2004

**Statute Law Revision Act 2004 (Act No. 18, 2004)**

Assent date 15 March 2004  
Commenced 5 May 2004 (s 2(1), s 2 *Associations Act 2004* (Act No. 56, 2003) and *Gaz G18*, 5 May 2004, p 2)

**3 LIST OF AMENDMENTS**

r 3 amd Act No. 17, 2001, s 22  
r 5 rep No. 4, 2004, r 2  
r 6 amd Act No. 48, 1999, s 4; No. 4, 2004, r 3; Act No. 18, 2004, s 3  
r 10 amd No. 6, 2000, r 2  
r 11 amd No. 58, 2002  
sub No. 4, 2004, r 4  
r 12 amd No. 18, 2002