

# NORTHERN TERRITORY OF AUSTRALIA

## KAVA MANAGEMENT ACT

As in force at 1 January 2015

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 January 2015

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## KAVA MANAGEMENT ACT

**An Act to prohibit and regulate the cultivation, manufacture, production, possession and supply of kava, to encourage responsible practices and procedures in relation to the possession, supply and consumption of kava and for related purposes**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Kava Management Act*.

#### **2                      Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### **2A                    Objects of Act**

The objects of this Act are:

- (a) to establish mechanisms and procedures for prohibiting and regulating the supply, possession and consumption of kava and for controlling the price of kava;
- (b) to reduce the health, social and economic problems associated with consumption of kava by the implementation of harm minimisation principles and other responsible practices relating to supply, possession and consumption of kava; and
- (c) to encourage the involvement of communities in the regulation of the supply, possession and consumption of kava, and the implementation of harm minimisation principles and other responsible practices relating to the supply, possession and consumption of kava, in their community areas.

#### **3                      Interpretation**

- (1) In this Act, unless the contrary intention appears:

***affected person***, see section 79.

**analyst** means an analyst appointed under section 33.

**approved form** means a form approved under section 83A.

**authorised officer** means:

- (a) a person appointed to be an authorised officer under section 29(1);
- (b) a member of the Police Force; or
- (c) an Inspector of Licensed Premises appointed under section 18 of the *Liquor Act*.

**commercial quantity** means:

- (a) 25 or more kilograms of kava;
- (b) 25 or more litres of kava prepared as a drink; or
- (c) 20 or more kava plants.

**cultivate** includes grow, sow or scatter the seed produced by kava and plant, nurture, tend or harvest kava.

**Director-General**, see section 3 of the *Licensing (Director-General) Act*.

**incorporated association** means an Aboriginal corporation as defined in section 3 of the *Aboriginal Councils and Associations Act 1976* (Cth).

**kava**, whether prepared as a drink or in another form:

- (a) means:
  - (i) the plant or a part of the plant *piper methysticum*;
  - (ii) a kava lactone; or
  - (iii) a substance produced by chemical synthesis that has the same pharmacological effect as a kava lactone; and
- (b) includes any substance that is not kava or is not identifiable as kava that is used or dealt with by a person together with kava as if it were kava.

**kava lactone** means an extract obtainable from the plant *piper methysticum* that is demethoxy-yangonin, dihydrokavain, dihydromethysticin, kavain, methysticin or yangonin.

**kava management plan** means a kava management plan referred to in section 58A(1), and includes an amended kava management plan or a replacement kava management plan.

**kava plant** means a whole kava plant or a root or part of a root or any other part of a kava plant.

**licence** means a retail licence or a wholesale licence issued or renewed under Part 8 of this Act.

**licence area** means an area declared under section 57(2)(a) to be an area where kava may be sold for consumption.

**licensee** means the holder of a retail licence or a wholesale licence.

**manufacture** includes the process of extracting and refining kava.

**possession** includes being subject to a person's control notwithstanding that the thing possessed is in the custody of another person.

**premises** includes a structure, building, area of land or other place (whether built on or not) and a part of a structure, building, area of land or place.

**produce** means:

- (a) prepare, package or produce;
- (b) offering to prepare, package or produce; or
- (c) doing or offering to do an act preparatory to, in furtherance of or for the purpose of preparing, packaging or producing.

**retail licensee** means the holder of a retail licence.

**reviewable decision**, see section 78.

**sell** includes offer or expose for sale.

**supply** means:

- (a) give, distribute, sell, administer, transport or supply, whether or not for fee, reward or consideration or in expectation of fee, reward or consideration;
- (b) have or keep in possession for supply;
- (c) offering to do an act referred to in paragraph (a); or



- (d) doing or offering to do an act preparatory to, in furtherance of, or for the purpose of an act referred to in paragraph (a),

and includes barter and exchange.

**trafficable quantity** means:

- (a) more than 2 kilograms but less than 25 kilograms of kava; or  
(b) more than 4 but less than 20 kava plants,

but does not include a quantity of kava prepared as a drink.

**vehicle** means any means of transport whether by land or water or through the air.

**wholesale licensee** means the holder of a wholesale licence.

- (2) For the purposes of this Act and the Regulations, a person takes part in the supply, cultivation, manufacture or production of kava if the person:
- (a) takes or causes to be taken or participates in a step in the process of the supply, cultivation, manufacture or production of kava;
- (b) provides or arranges finance for a step in that process; or
- (c) provides the premises or vehicle in or on which a step in that process is taken or suffers or permits a step in that process to be taken in or on the premises or vehicle in respect of which the person is the owner, lessee or occupier or participates in the management.
- (3) In this Act, a reference to an offence against this Act is to be read and construed as including an attempt or a conspiracy to commit the offence.

#### **4 Application**

This Act does not apply in relation to:

- (a) possession of a product listed or registered under the *Therapeutic Goods Act 1989* of the Commonwealth of which kava is a component or ingredient in accordance with that Act; or

- (b) possession by a person who has attained the age of 18 years of a quantity of kava that is equal to or less than 2 kg and that the person has as an incoming passenger brought or carried into Australia in his or her personal baggage.

## **5 Act to bind Crown**

This Act binds the Crown not only in right of the Territory but, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## **7 Delegation**

The Minister may delegate any of the Minister's powers and functions under this Act to:

- (a) the Director-General; or
- (b) the Chief Health Officer.

## **8 Guidelines**

- (1) Subject to the approval of the Minister, the Director-General may make guidelines with respect to the operation of this Act and the Regulations for the purpose of assisting licensees, persons wishing to apply for a licence or members of the public generally.
- (2) Guidelines under subsection (1) are to be published in the manner determined by the Director-General.
- (3) An action of a person under this Act or the Regulations is to comply with the guidelines published under this section.

## **Part 2 Obligations, offences and penalties, &c.**

### **Division 1 Obligations and offences**

#### **Subdivision 1 Possession of Kava**

##### **9 Possession of trafficable quantity or more of kava**

A person (whether he or she is in or outside a licence area and whether or not he or she has attained the age of 18) must not possess a quantity of kava that is equal to or more than the trafficable quantity unless doing so in accordance with a licence.

Maximum penalty: In the case of a trafficable quantity –  
100 penalty units or imprisonment for  
2 years.

In the case of a commercial quantity –  
imprisonment for 8 years.

##### **10 Possession of less than trafficable quantity or less than 25 litres of kava**

- (1) A person who has not attained the age of 18 (whether he or she is inside or outside a licence area) must not possess a quantity of kava that is less than the trafficable quantity or a quantity of kava prepared as a drink that is less than 25 litres.
- (2) If a person who has attained the age of 18 is outside a licence area, the person must not possess a quantity of kava that is less than the trafficable quantity or a quantity of kava prepared in the form of a drink that is less than 25 litres unless doing so in accordance with a licence.
- (3) Where an authorised officer has reason to believe that a person is not complying with subsection (1) or (2), the authorised officer may seize the kava, or a thing he or she reasonably believes to be kava, that is in the possession of the person.
- (4) If kava or a thing that an authorised officer reasonably believes to be kava is in the immediate vicinity of a person who the officer on reasonable grounds believes:
  - (a) is not complying with subsection (1) or (2); or
  - (b) would not be complying with those subsections if the kava or thing was in his or her possession),

the kava or thing may be taken to be in the possession of the person and dealt with under subsection (3) and section 11 as if the kava or thing is in the possession of the person.

- (5) A person who fails to comply with this section does not commit an offence against this Act and no prosecution may be instituted under this section against the person in relation to possession of the kava or thing.

**11 Forfeiture and disposal of kava or thing seized under section 10**

- (1) On the seizure of kava or a thing under section 10, the kava or thing is forfeited to the Territory and the authorised officer must:
- (a) take the kava or thing to a police station; or
  - (b) if the kava is prepared as a drink or the authorised officer reasonably believes that the thing is kava prepared as a drink – immediately dispose of or destroy the kava or thing by emptying the receptacle containing the kava or thing.
- (2) Where an authorised officer seizes kava or a thing under section 10, he or she must, as soon as reasonably possible, make a record of the kava or thing seized in the approved form and manner.
- (3) A record made under subsection (2) is to be delivered to the Director-General in the approved form.
- (4) Kava or a thing referred to in subsection (1)(a) is to be destroyed or disposed of in a manner determined by the Director-General.

## **Subdivision 2 Other obligations and offences**

### **12 Supply of kava**

- (1) A person must not supply kava to another person, or take part in the supply of kava to another person, unless doing so in accordance with a licence.

Maximum penalty: In the case of a quantity less than the trafficable quantity – 50 penalty units.

In the case of a trafficable quantity – 100 penalty units or imprisonment for 2 years.

In the case of a commercial quantity – imprisonment for 8 years.

- (2) A person must not supply kava to:

- (a) a person who has not attained the age of 18 years; or  
(b) a person who the person knows or has reason to believe will supply the product to a person who has not attained the age of 18 years.

Maximum penalty: In the case of a quantity less than the trafficable quantity – 100 penalty units or imprisonment for 2 years.

In the case of a trafficable quantity – imprisonment for 8 years.

In the case of a commercial quantity – imprisonment for 14 years.

- (3) A person must not send a person who has not attained the age of 18 years to purchase or collect kava from a licensee.

Maximum penalty: In the case of a quantity less than the trafficable quantity – 100 penalty units or imprisonment for 2 years.

In the case of a trafficable quantity – imprisonment for 8 years.

In the case of a commercial quantity – imprisonment for 14 years.

- (4) A person commits an offence against this section whether or not the supply of kava took place in or outside the Territory and, if the supply took place outside the Territory, whether or not the supply of kava to the person is an offence in that place.

## **12A Supply of kava to intoxicated person**

A person must not supply kava to a person who is intoxicated by kava, alcohol or a drug.

Maximum penalty: For a first offence – 100 penalty units or imprisonment for 6 months.

For a second or subsequent offence – 200 penalty units or imprisonment for 12 months.

## **13 Cultivation of kava**

A person must not cultivate kava or take part in the cultivation of kava.

Maximum penalty: In the case of a quantity less than the trafficable quantity – 50 penalty units or imprisonment for 2 years.

In the case of a trafficable quantity – imprisonment for 5 years.

In the case of a commercial quantity – imprisonment for 8 years.

## **14 Manufacture and production of kava**

A person must not manufacture or produce kava, or take part in the manufacture or production of kava, unless doing so in accordance with a licence.

Maximum penalty: In the case of a quantity less than the commercial quantity – imprisonment for 5 years.

In the case of a commercial quantity – imprisonment for 8 years.

## **15 Pricing and packaging**

- (1) A licensee must not supply kava unless it is:
- (a) for the price determined under Part 2A; and

(b) packaged in a manner that complies with the Regulations.

Maximum penalty: In the case of a natural person –  
100 penalty units.

In the case of a body corporate –  
500 penalty units.

(2) An offence against this section is a regulatory offence.

## **16 Obligation of wholesale licensee**

A wholesale licensee must not supply kava to a person unless that person is a retail licensee or a wholesale licensee.

Maximum penalty: In the case of a quantity less than the  
trafficable quantity:

(a) if the offender is a natural person –  
50 penalty units; or

(b) if the offender is a body corporate –  
250 penalty units.

In the case of a trafficable quantity:

(a) if the offender is a natural person –  
100 penalty units or imprisonment for  
2 years; or

(b) if the offender is a body corporate –  
500 penalty units.

In the case of a commercial quantity:

(a) if the offender is a natural person –  
imprisonment for 8 years; or

(b) if the offender is a body corporate –  
1,000 penalty units.

## **17 Obligations of retail licensee**

A retail licensee must not:

(a) purchase kava except from a wholesale licensee; or

- (b) supply kava unless doing so in the licence area in respect of which the licensee's licence is issued.

Maximum penalty: In the case of a quantity less than the trafficable quantity:

- (a) if the offender is a natural person – 50 penalty units; or  
(b) if the offender is a body corporate – 250 penalty units.

In the case of a trafficable quantity:

- (a) if the offender is a natural person – 100 penalty units or imprisonment for 2 years; or  
(b) if the offender is a body corporate – 500 penalty units.

In the case of a commercial quantity:

- (a) if the offender is a natural person – imprisonment for 8 years; or  
(b) if the offender is a body corporate – 1,000 penalty units.

## **18 Licensee to keep, &c., records as prescribed**

- (1) A licensee must keep records as prescribed in relation to the purchase and disposal of kava.

Maximum penalty: In the case of a natural person – 50 penalty units.

In the case of a body corporate – 250 penalty units.

- (2) A licensee must produce the records required to be kept under the Regulations on being requested to do so by an authorised officer.

Maximum penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units.

- (3) An offence against this section is a regulatory offence.



## **19 Licensee to lodge returns**

- (1) A licensee must not refuse or fail to lodge a return required to be lodged under this Act or the Regulations.

Maximum penalty: In the case of a natural person – 50 penalty units.

In the case of a body corporate –  
250 penalty units.

- (2) A licensee must not lodge a return which is false in any particular.

Maximum penalty: In the case of a natural person –  
100 penalty units.

In the case of a body corporate –  
500 penalty units.

- (3) An offence against this section is a regulatory offence.

## **20 False statement**

A person must not knowingly make a false or misleading statement in connection with a matter under this Act.

Maximum penalty: 50 penalty units or imprisonment for  
12 months.

## **21 Person to comply with request of authorised officer**

- (1) A person must not:

(a) refuse or fail to comply with a request or requirement of an authorised officer made under section 32; or

(b) otherwise obstruct or hinder an authorised officer in the proper execution of his or her duties.

- (2) A person must not make a false statement in answer to a request of an authorised officer to make a statement or provide proof of his or her age under section 32(4).

Maximum penalty: 50 penalty units.

## **22 Confidentiality**

A person must not, except in the course of his or her duty under this Act or in the course of proceedings in a court in respect of an offence against this Act or the Regulations, divulge to another person information that he or she has acquired by reason of the

inspection of premises, books, documents or papers under this Act or the Regulations.

Maximum penalty: 50 penalty units.

## **Division 2 Procedure, evidentiary, &c.**

### **23 Knowledge of age immaterial**

Where an offence against this Act is committed in respect of a person who has not attained the age of 18, it is immaterial that the accused did not know that the person had not attained the age of 18 or that the accused believed that the person had attained the age of 18.

### **24 Parties to offences committed outside Territory**

A person in the Territory who is a party to an act done at a place outside the Territory that:

- (a) is an offence under the law in force in that place; and
- (b) if it had been done in the Territory, would be an offence against this Act,

commits an offence against this Act and, on being found guilty of that offence, is liable to the same penalty and forfeiture as if the act had been done in the Territory.

### **25 Prosecution of licensee for actions of employee**

- (1) Where the actions of a person employed by a licensee would constitute an offence against this Act, the licensee may be prosecuted for the offence (whether or not the person employed is also prosecuted) as if the licensee had personally performed those actions.
- (2) A reference in subsection (1) to a person employed by a licensee includes a reference to a person whose services are provided to a licensee under a contract with the person or another person.

### **26 Bodies corporate**

- (1) Where a body corporate commits or allegedly commits an offence against this Act, each person who is a director of the body corporate or an officer concerned in the management of the body corporate is to be taken to have committed or allegedly committed the offence to the same extent as the body corporate unless the person satisfies the court that:

- (a) the commission or alleged commission of the offence occurred without the person's knowledge;
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
  - (c) the person used all due diligence to prevent the commission or alleged commission of the offence by the body corporate.
- (2) A proceeding may be brought against a person and an order or finding of guilt may be made in respect of the person by virtue of subsection (1), whether or not the body corporate has been or is being proceeded against or an order or finding of guilt has been or will be made in respect of the body corporate.
- (3) Nothing in this section prejudices or affects a body corporate's liability in relation to an offence committed against this Act.

## **27 Evidentiary**

- (1) In respect of a charge against a person for the alleged committal of an offence against this Act:
- (a) proof that kava was at the material time in or on premises or a vehicle of which the person was the occupier or in control, or the management or control of which the person was concerned with, is evidence that the kava was at that time in the person's possession unless it is shown that the person neither knew nor had reason to suspect that the kava was in or on the premises or vehicle;
  - (b) the operation of section 32 of the Criminal Code is excluded unless the person shows his or her honest and reasonable belief in the existence of a state of things material to the charge; and
  - (c) the burden of proving an authorisation to do an act or make an omission lies on the person.
- (2) If a sample of a quantity of a substance seized under this Act and alleged to be kava is analysed or examined by an analyst and the results of the analysis or examination establishes the presence of a kava lactone in the sample, for the purpose of establishing whether a person committed an offence against this Act relating to the substance seized, the whole of the quantity of the substance seized is to be taken to be kava.

**28 Possession by authorised officer**

- (1) Notwithstanding this Act, the possession of kava by an authorised officer is not an offence if the kava:
  - (a) was seized or obtained in the performance of his or her functions and the exercise of his or her powers under this Act or any other law in force in the Territory;
  - (b) is in the authorised officer's possession pending the institution and hearing of proceedings for an offence against this Act or any other law in force in the Territory; or
  - (c) is in the authorised officer's possession for a purpose associated with the administration of this Act.
- (2) Kava is to be taken to be in the possession of an authorised officer for a purpose associated with the administration of this Act if it is held by the authorised officer for:
  - (a) analysis or examination for the purpose of prosecuting an offence against this Act or any other law in force in the Territory;
  - (b) for the purpose of giving evidence in those proceedings;
  - (c) delivery to a police station or the Director-General; or
  - (d) the destruction or disposal of the kava.
- (3) Where proceedings for an offence against this Act have commenced:
  - (a) an authorised officer who has obtained kava is not, by reason only of that circumstance, to be taken to be a party to or guilty of an offence against this Act; and
  - (b) any evidence given in the proceedings by the authorised officer is not, in the absence of evidence to the contrary, to be taken to be the evidence of an accomplice.

**Part 2A Price of kava****28A Director-General determines price of kava**

- (1) Subject to this Part, the Director-General determines the price of kava.

- (2) The Director-General must, in writing, determine:
  - (a) the price for which kava is supplied by wholesale licensees; and
  - (b) the price for which kava is supplied by retail licensees.
- (3) The Director-General may determine different prices to apply in different licence areas.

**28B Matters Director-General to take into account in determining price**

In determining the price of kava, the Director-General must take into account the localities of the licence areas, the financial viability of the operations of the licensees and harm minimisation issues relevant to the communities where kava is supplied or consumed.

### **Part 3 Authorised officers**

**29 Authorised officers**

- (1) The Minister may, by notice in writing, appoint a person to be an authorised officer for the purposes of this Act.
- (2) A member of the Police Force or an Inspector of Licensed Premises appointed under section 18 of the *Liquor Act* is an authorised officer while exercising the powers conferred on an authorised officer by this Act.

**30 Identity cards**

- (1) The Director-General must issue to each authorised officer appointed under section 29(1) an identity card containing a photograph and the signature of the authorised officer.
- (2) Subject to section 32(3), an authorised officer must produce his or her identity card on being requested to do so by a person in respect of whom the authorised officer has exercised or is about to exercise his or her powers under this Act.
- (3) A person must as soon as reasonably possible after ceasing to be an authorised officer return his or her identity card to the Director-General.

Maximum penalty: 5 penalty units.

- (4) An offence against subsection (3) is a regulatory offence.

**31 Functions of authorised officers**

- (1) It is the function of an authorised officer to ensure that this Act and the Regulations are being observed.
- (2) An authorised officer is subject to the directions of the Director-General or, in the case of a member of the Police Force, the Commissioner of Police when performing his or her functions.

**32 Powers of authorised officers**

- (1) Where an authorised officer has reasonable grounds to suspect that:
  - (a) kava is being produced or supplied, whether with or without a licence, on particular premises or in or on a particular vehicle;  
or
  - (b) an offence against this Act or the Regulations has occurred, is occurring or is likely to occur on premises or in or on a vehicle,  
the authorised officer may, without a search warrant but with the assistance he or she thinks necessary:
    - (c) enter or board, with the force that is necessary and reasonable, or inspect or search the premises or vehicle;
    - (d) search or detain a person:
      - (i) who is in or on the premises or vehicle or who he or she reasonably believes is about to enter or board or has recently left the premises or vehicle; and
      - (ii) on whom he or she reasonably suspects there may be something that is evidence of or that otherwise relates to the offence;
    - (e) require the person in charge of a vehicle to cause it to stop or to bring it to a place in the Territory and to remain in control of it at that place until an authorised officer permits him or her to depart from that place;
    - (f) stop, search and detain a person on whom he or she reasonably believes that there may be something that is evidence of or that otherwise relates to the offence; or
    - (g) take any other action that is necessary and reasonable to prevent the commission of an offence against this Act or the Regulations.

- (2) An authorised officer who enters premises or gets into or boards a vehicle in pursuance of this section may:
- (a) with the force that is necessary and reasonable, open and search a cupboard, drawer, chest, trunk, box, cage, package or other receptacle, whether a fixture or not;
  - (b) if he or she reasonably believes that:
    - (i) the vehicle or a receptacle found in or on the premises or vehicle;
    - (ii) a thing found in or on the vehicle or a receptacle referred to in subparagraph (i); or
    - (iii) a thing found on a person searched in or on the premises or vehicle,is evidence of or otherwise relates to an offence that has been or is being committed against this Act or the Regulations, seize, take, detain, remove and secure the vehicle, receptacle or thing;
  - (c) examine, take stock of and take samples of any kava or a thing he or she reasonably believes to be kava;
  - (d) inspect any documents;
  - (e) remove and retain a document which he or she has reasonable grounds to believe is evidence of or otherwise relates to an offence against this Act or the Regulations for so long as is reasonably necessary for the purpose of making copies of the document; or
  - (f) seize and remove any kava or a thing he or she reasonably believes to be kava which he or she has reasonable grounds to believe is evidence of or otherwise relates to an offence against this Act or the Regulations.
- (3) Unless, before commencing a search of premises, a vehicle or a person under this section, an authorised officer produces his or her identity card to:
- (a) the person who is or appears to be in charge of the premises or vehicle; or
  - (b) the person he or she is about to search,
- the authorised officer is not authorised to search the premises, vehicle or person, as the case may be.

- (4) Where an authorised officer has reasonable grounds to believe that a person may be able to assist the officer in inquiries in connection with an offence against this Act or the Regulations that has been, may have been, is being or may be committed, the officer may request the person:
- (a) if the person's name or address is not known to the authorised officer – to state his or her name and address;
  - (b) if the person's age is not known to the authorised officer:
    - (i) to state the date and place of his or her birth; and
    - (ii) to provide proof of his or her age; and
  - (c) to state, if known by the person, the name or identity of the supplier of any kava in the person's possession.
- (5) A female must not be searched under this section except by a female.

## **Part 4                      Analysts**

### **33                      Appointment of analysts**

The Minister may, by notice in the *Gazette*, appoint a person to be an analyst for the purposes of carrying out the sampling, analysis or examination of a thing seized under this Act.

### **34                      Analyst's certificate**

In proceedings for an offence against this Act, the production of a certificate purporting to be signed by an analyst in relation to an analysis or examination made by the analyst is, without proof of the analyst's signature or that he or she is an analyst, evidence of:

- (a) the identity and quantity of the thing analysed or examined; and
- (b) the result of the analysis or examination and of the other matters relevant to the proceedings stated in the certificate,

and, in the absence of evidence to the contrary, is conclusive evidence.



## **Part 5                    Pre-trial orders for destruction of exhibits**

### **35                    Definitions**

In this Part:

***kava*** means kava, or a thing alleged to be kava, that is seized under this Act.

***magistrate*** means a magistrate sitting as the Court of Summary Jurisdiction.

***order*** means an order under this Part.

### **36                    Extent of order for destruction**

An order for the forfeiture and destruction of kava is not to be made unless:

- (a) the quantity of kava seized is more than 3 times the quantity of kava required for the sampling and analysis of the kava; and
- (b) the order authorises the destruction of not more than the quantity of kava that represents the quantity of the kava seized less 3 times the quantity of kava required for the sampling and analysis of the kava.

### **37                    Application to magistrate for order for destruction**

- (1) At any time after the seizure of kava under this Act, the Director-General or an authorised officer may apply to a magistrate for an order for the forfeiture to the Territory and the destruction of the kava.
- (2) On hearing the application, the magistrate may make an order that the kava is to be retained or that the kava is forfeited to the Territory and is to be destroyed.

### **38                    Determination of magistrate for destruction on first mention of charge**

- (1) Subject to this section, where a person is charged with an offence that relates to kava that has not been ordered to be forfeited and destroyed under section 37, on the first occasion on which the charge is mentioned before a magistrate, the magistrate may make an order that the kava is to be retained or that the kava is forfeited to the Territory and is to be destroyed.

- (2) Where the accused is legally represented and no party objects to the destruction of the kava, the magistrate must make an order that the kava is forfeited to the Territory and is to be destroyed.
- (3) Where the accused is not present before the magistrate, the accused is present but is not legally represented or a party objects to the destruction of the kava, the magistrate may make an order that:
  - (a) the kava is forfeited to the Territory and is to be destroyed; or
  - (b) if there is a requirement to retain the kava or the magistrate is satisfied that it is in the interests of justice or that there is some other sufficient reason for doing so, the kava is to be retained.

### **39 Adjourment**

- (1) A magistrate must adjourn the hearing of an application under section 37 or postpone the making of an order under section 38 if:
  - (a) no order with respect to the kava is in force and a party to the proceedings requests the adjournment or postponement; or
  - (b) in the opinion of the magistrate, it is in the interests of justice or there is some other sufficient reason for the adjournment or delay.
- (2) An adjournment or postponement under this section is to be for a period not exceeding 14 days.

### **40 Order on committal for trial**

- (1) On the committal for trial of a person for an offence with respect to kava that a magistrate has not ordered to be forfeited and destroyed, the magistrate must make an order that the kava is to be retained or that the kava is forfeited to the Territory and is to be destroyed.
- (2) Where the magistrate orders that the kava is to be retained, the magistrate must give his or her reasons for making the order.

### **41 Review of determination for retention of kava**

Where a magistrate makes an order that kava is to be retained, the magistrate must fix a date, not more than 2 months after the date of the order, on which a further order for the retention of the kava or an order for the forfeiture to the Territory and the destruction of the kava is to be made.

**42 Order on initial hearing of trial**

Where a person is committed for trial for an offence with respect to kava that has not been ordered to be forfeited and destroyed, the court hearing the trial must, on the first occasion on which the matter is mentioned before it, make an order that the kava is to be retained or that the kava is forfeited to the Territory and is to be destroyed.

**43 Destruction of kava**

- (1) Subject to subsection (2) and section 85, where a magistrate or a court makes an order for the destruction of kava, the kava is to be destroyed as soon as reasonably possible after the expiry of:
  - (a) the period of 7 days from the date on which the order was made; or
  - (b) if the order specifies a longer period – that period.
- (2) A magistrate or court making an order for the destruction of kava may revoke or vary the order.

**44 Matters for consideration on determination for retention of kava**

In determining whether to make an order that kava is to be retained or is to be forfeited and destroyed, a magistrate or court must consider:

- (a) the amount of kava seized;
- (b) whether the kava can reasonably be securely retained;
- (c) the period of retention;
- (d) the purpose of retention;
- (e) the amount of kava required for the purpose of sampling and analysis;
- (f) a report, if any, of an analyst relating to the kava;
- (g) whether the arrest of a person in relation to the kava is imminent;
- (h) the number of persons charged with offences in relation to the kava;
- (j) when the hearing of the charge relating to the kava is likely to be concluded;

- (k) whether any other order has been or will be made relating to the kava;
- (m) any claim of a person to be lawfully entitled to the kava; and
- (n) any other matter which, in the opinion of the magistrate or court, is relevant.

## **Part 6 Detention, return, forfeiture and disposal of kava or thing seized**

### **Division 1 Director-General**

#### **46 Delivery of kava or thing seized to Director-General**

Subject to this Act, an authorised officer who seizes kava or another thing under this Act must, as soon as reasonably possible after seizing it, deliver the kava or thing to the Director-General.

#### **47 Detention of kava or thing seized**

Subject to this Part, the Director-General may retain possession of kava or a thing delivered under section 46 until the institution of proceedings against this Act or the Regulations in relation to the kava or thing and, if necessary, during the proceedings.

### **Division 2 Return, forfeiture and disposal of kava**

#### **48 Application**

This Division applies subject to Part 5.

#### **49 Return of kava or thing seized**

- (1) Where kava or another thing is seized and delivered to the Director-General under this Act and:
  - (a) no proceedings are instituted for an offence relating to the kava or thing; or
  - (b) proceedings were instituted for an offence referred to in paragraph (a) but the person accused of committing the offence was not found guilty and no order for the forfeiture and disposal of kava has been made under Part 5 or otherwise by the court,

the Director-General must, by notice in writing, invite the person from whom the kava or thing was seized, or another person appearing to the Director-General to be the owner of the kava or thing, to claim delivery to him or her of it.

- (2) A person to whom a notice is directed under subsection (1) who wishes to make a claim for the delivery of the kava or thing to him or her must make the claim not later than 30 days after the date of the notice.
- (3) Where a person who receives a notice under subsection (1) makes a claim for the delivery of the kava or thing seized, the Director-General must deliver the kava or thing into the custody or possession of the Court of Summary Jurisdiction to be dealt with by the court under section 130B of the *Justices Act* as if it were property the subject of an application by a claimant of property under that section.

## **50 Return of seized vehicle pending prosecution**

- (1) Notwithstanding section 49, the owner or another person who would, but for the seizure of a vehicle under this Act, be entitled to possession of the vehicle may, any time before the trial of a person for an offence to which the seizure of the vehicle relates, apply to the Minister for the return of the vehicle to him or her.
- (2) Where an application is made to the Minister under subsection (1), the Minister may, after considering the recommendations of the Director-General in relation to the application and being satisfied that the applicant was not knowingly involved in the act allegedly constituting the offence and had no reason to suspect that it might be used in connection with the alleged commission of the offence, release the vehicle to the applicant subject to the conditions relating to its production as evidence at the trial referred to in that subsection as the Minister thinks fit.

## **51 Forfeiture of kava or thing seized**

- (1) If no claim is made for the delivery of kava or a thing under section 49, the kava or thing is, by force of this subsection, forfeited to the Territory.
- (2) If:
  - (a) a person is found guilty of an offence relating to kava or a thing seized and delivered to the Director-General under this Act; and
  - (b) the kava or thing has not already been forfeited by an order made under Part 5,

the kava or thing is, by force of this subsection, forfeited to the Territory.

- (3) Where proceedings are instituted against a person for an offence against this Act involving kava but he or she is not found guilty of the offence, the court before which the person was tried may order that all or some of the kava be forfeited to the Territory.
- (4) A forfeiture under subsection (2) is in addition to any penalty imposed on a person found guilty of the offence.

## **52           Disposal of kava or thing**

- (1) All kava and things forfeited to the Territory under this Act may be destroyed or disposed of in a manner determined by the Director-General.
- (2) Without limiting the generality of subsection (1), where the Minister approves, a vehicle that has been forfeited may be sold or returned to a person who immediately before the forfeiture of the vehicle had a legal or equitable interest in it and who, in the opinion of the Minister, was not knowingly involved in the act constituting the offence or alleged offence, and had no reason to suspect that it might be used in connection with the commission or alleged commission of the offence to which the seizure of the vehicle relates.

## **Part 7           Licence areas**

### **Division 1       Preliminary**

#### **53           Definitions**

In this Part:

**area** does not include:

- (a) a municipality within the meaning of the *Local Government Act*;
- (b) the area at Jabiru described in Part A of Schedule 1;
- (c) the area at Nhulunbuy described in Part B of Schedule 1; or
- (d) an area that the Minister by notice in the *Gazette* determines may not be declared to be a licence area.

**regional council** means a local government council constituted as a regional council under the *Local Government Act*.

**resident**, in relation to an area in respect of which an application is made under section 54, means a person who:

- (a) is 18 or more years of age; and
- (b) resides in the area or has a right or interest in land within the area.

**right or interest in land** includes the entitlement by Aboriginal tradition, within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, to use or occupy land.

**shire council** means a local government council constituted as a shire council under the *Local Government Act*.

## **Division 2           Declaration of licence areas**

### **54           Application for declaration of licence area**

- (1) At least 10 residents of an area may apply to the Minister for the Minister to declare, in writing, that the area is a licence area.
- (1A) A shire council or regional council may apply to the Minister for the Minister to declare, in writing, that:
  - (a) the whole of the local government area in respect of which the council is constituted is a licence area; or
  - (b) a part of the local government area in respect of which the council is constituted is a licence area; or
  - (c) 2 or more non-contiguous parts of the local government area in respect of which the council is constituted is a licence area.
- (2) An application is to:
  - (a) be in writing;
  - (b) be signed by each applicant or, in the case of an application made under subsection (1A), a person authorised by the applicant; and
  - (c) include a description of the area or areas in sufficient detail to enable the Minister to identify the location of the proposed licence area.

## **55           Explanation of application**

- (1) After receiving an application under section 54 the Minister must:
- (a) inform the residents of the area or areas to which the application relates and any other persons who, in the opinion of the Minister, are sufficiently interested in whether or not the area is or areas are declared to be a licence area to be informed (who may include persons residing in the vicinity of the area or areas), of the receipt of the application; and
  - (b) fix a date, time and place for a meeting with those residents and other persons and advise them of that date, time and place,
- in the manner the Minister considers appropriate.
- (2) At the meeting held in accordance with subsection (1)(b), the Minister or the Minister's nominee must:
- (a) explain to the persons present the effect of declaring an area or areas to be a licence area; and
  - (b) endeavour to ascertain the needs and opinions of the residents and other persons referred to in subsection (1) on the proposal to declare the area or areas a licence area.

## **56           Application may be varied**

The applicants under section 54 may, by notice in writing to the Minister:

- (a) after the meeting referred to in section 55, vary the application by altering the area or areas to which the application relates, but not so as to increase the size of the proposed licence area; or
- (b) at any time before the Minister declares the area or areas to be a licence area, withdraw the application.

## **57           Consideration and decision of Minister**

- (1) In deciding whether to declare an area or areas to be a licence area, the Minister:
- (a) must consider the needs and opinions of the residents and the other persons referred to in section 55(1);
  - (b) may conduct the investigations in relation to the application he or she thinks fit; and



- (c) if the area is or areas are within or in the vicinity of a local government area or an area controlled or managed by an incorporated association – must consult with the local government council for the local government area or the incorporated association to ascertain its views regarding the area or areas that the Minister should declare to be a licence area and any other matters relating to the possession, supply and consumption of kava within the proposed licence area that the Minister considers appropriate.
- (2) After due consideration of an application under subsection (1), the Minister may:
    - (a) declare an area or areas in respect of which the application was made to be an area or areas where kava may be sold for consumption; or
    - (b) refuse to declare an area or areas in respect of which the application was made to be an area or areas where kava may be sold for consumption.
  - (3) A declaration under subsection (2)(a) may be made in respect of:
    - (a) the area or areas of land described in the application; or
    - (b) an area or areas of land that is equal to, greater than or less than the area or areas described in the application and that includes or include a substantial part of the area or areas described in the application.
  - (4) A declaration under subsection (2)(a) does not take effect until notice of the declaration is published in the *Gazette* in accordance with section 58(1).

## **58           Notice of declaration**

- (1) The Minister must, not later than 14 days after declaring an area or areas of land to be a licence area under section 57, cause notice of the declaration to be published in the *Gazette* and:
  - (a) in a newspaper or other publication circulating throughout the area or areas ; or
  - (b) in any other manner the Minister considers suitable to publicise the making of the declaration throughout the area or areas.

- (2) The notice of the declaration is to:
- (a) include a description of the licence area in sufficient detail to identify the location of the area;
  - (b) include a statement that kava may be sold for consumption within the licence area; and
  - (c) specify the date the declaration takes effect.

### **Division 3           Kava management plans**

#### **58A           Kava management plan required for each licence area**

- (1) There is to be a kava management plan for each licence area.
- (2) The Director-General must not grant a retail licence in respect of a licence area unless a kava management plan has been prepared and approved under section 58C in respect of the licence area.

#### **58B           Purpose, form and content of kava management plans**

- (1) The purpose of a kava management plan is to set out:
- (a) the practices and procedures for or in relation to the possession, supply and consumption of kava in the licence area where it applies; and
  - (b) measures relating to the minimisation of harm to residents and the amenity of the community that results from the possession, supply and consumption of kava in the licence area.
- (2) A kava management plan:
- (a) is to be in writing;
  - (b) may apply in one licence area only; and
  - (c) is to specify the licence area where it applies.
- (3) The Regulations may:
- (a) prescribe the content and form of a kava management plan;
  - (b) prescribe the manner in which a kava management plan is to be prepared; and
  - (c) provide for the publication of a kava management plan.

**58C       Preparation and approval of kava management plan**

- (1) The person who applies or persons who apply under section 54(1) or (1A) to the Minister to declare an area or areas as a licence area must prepare a kava management plan for the licence area.
- (2) A person who prepares or the persons who prepare a kava management plan must do so in consultation with the Director-General, the Commissioner of Police and the Chief Health Officer and must, on completing it, give the kava management plan to the Director-General for approval.
- (3) The Director-General must not approve a kava management plan unless satisfied that the kava management plan:
  - (a) appropriately provides for the matters specified in section 58B(1)(a) and (b); and
  - (b) complies with this Division and the Regulations; and
  - (c) in the case of a kava management plan that will be applying in a licence area that is, or part of which is, within a council area or an area controlled or managed by an incorporated association – is supported by the local government council for the council area or the incorporated association; and
  - (d) was developed to the reasonable satisfaction of the Commissioner of Police and the Chief Health Officer.
- (3A) In addition, the Director-General must not approve a kava management plan unless the Director-General has consulted the residents of the licence area in which the kava management plan will apply about that kava management plan.
- (3B) For subsection (3A), consultations with residents must be conducted in the same manner in which consultations were conducted with them under section 55 about the application to declare the licence area and section 55 applies (with the necessary changes) accordingly.
- (4) A kava management plan has no effect unless it is approved by the Director-General.

**58D       Amendment or replacement of kava management plan**

- (1) At least 10 residents of a licence area, or a shire council or regional council for a local government area of which part is a licence area, may:
  - (a) prepare an amendment to the kava management plan applying in the licence area; or
  - (b) prepare a kava management plan to replace the kava management plan applying in the licence area.
- (2) A person who prepares or the persons who prepare an amendment to a kava management plan or a replacement kava management plan must do so in consultation with the Director-General, the Commissioner of Police and the Chief Health Officer and must, on completing it, give the amendment or replacement kava management plan to the Director-General for approval.
- (3) The Director-General must not approve an amendment to a kava management plan or a replacement kava management plan unless satisfied that:
  - (a) the amended plan or the replacement plan appropriately provides for the matters specified in section 58B(1)(a) and (b); and
  - (b) the amended plan or the replacement plan complies with this Division and the Regulations; and
  - (c) in the case of an amended plan or a replacement plan that will be applying in a licence area that is or part of is within a local government area or an area controlled or managed by an incorporated association – the amended plan or the replacement plan is supported by the local government council for the local government area or the incorporated association; and
  - (d) the amendment to the plan or the replacement plan was developed to the reasonable satisfaction of the Commissioner of Police and the Chief Health Officer.
- (4) In addition, the Director-General must not approve an amendment to a kava management plan or a replacement kava management plan unless the Director-General has consulted the residents of the licence area in which the amendment or replacement plan will apply about that amendment or replacement plan.

- (4A) For subsection (4), consultations with residents must be conducted in the same manner in which consultations were conducted with them under section 55 about the application to declare the licence area and section 55 applies (with the necessary changes) accordingly.
- (4B) However, the Director-General may approve an amendment to a kava management plan without consulting the residents of the licence area as required by subsection (4) if the Director-General, the Commissioner of Police and the Chief Health Officer agree the amendment is minor in nature.
- (5) An amendment to a kava management plan or a replacement kava management plan has no effect unless it is approved by the Director-General.

## **Part 8            Licensing**

### **Division 1        General**

#### **59                Licences**

- (1) The Director-General may issue a retail licence or a wholesale licence, in an approved form, to an individual or a body corporate to sell kava.
- (2) A retail licence is granted for the purpose of selling kava within a particular licence area.
- (3) A wholesale licence is granted for the purpose of selling kava to a retail licensee or another wholesale licensee.
- (5) Nothing in this Act prevents:
- (a) a wholesale licensee applying for a retail licence; or
  - (b) a retail licensee applying for a wholesale licence.

#### **59A              Number of licences that may be granted under Act**

- (1) The Minister must, by notice in the *Gazette*, determine:
- (a) the maximum number of wholesale licences that the Director-General may grant; and
  - (b) the maximum number of retail licences that the Director-General may grant in respect of a licence area.

- (2) The Minister must not make a determination under subsection (1) unless he or she has received and considered recommendations from the Director-General relating to the number of wholesale licences or retail licences (as the case requires) that the Director-General considers should be granted.
- (3) The Director-General must not grant more than the number of licences determined under subsection (1).

## **60            Application for licence**

- (1) Subject to subsection (2) and (2A), an individual who has attained the age of 18 years or a body corporate may apply to the Director-General for the grant of a wholesale licence or a retail licence.
- (2) An application for a retail licence is to be made in respect of a licence area (which the applicant must specify in the application).
- (2A) A person may not make an application for a retail licence unless the person ordinarily resides or carries on business in the licence area to which his or her application relates.
- (3) An application under subsection (1) is to be lodged in the approved form and accompanied by:
  - (a) the written consents and signed authorities necessary for the Director-General to investigate the suitability of the applicant to hold the licence;
  - (b) the prescribed information that the Director-General requires to support the application; and
  - (c) the prescribed fee.

## **61            Notice of application**

- (1) An applicant for a licence must, not less than 28 days after lodging an application under section 60, publish notice of making the application:
  - (a) in a newspaper or other publication nominated by the Director-General; or
  - (b) in any other manner the Director-General considers suitable to publicise the making of the application.
- (2) Notice under subsection (1) is to be in an approved form and is to specify:
  - (a) the name and address of the applicant;

- (b) the type of licence applied for;
  - (c) in the case of an application for a retail licence – the licence area where the applicant proposes to sell kava;
  - (d) that objections to the granting of the licence may be made to the Director-General before the expiration of 28 days after the date the notice is first published in a newspaper; and
  - (e) any other particulars required by the Director-General.
- (3) Where an applicant for a retail licence proposes to supply kava within or in the vicinity of a local government area or an area controlled or managed by an incorporated association, the Director-General must give notice of the making of the application to the local government council for that area or the incorporated association.

## **62            Objections**

- (1) A person may object to the granting of a licence on any ground other than the ground that the grant of the licence may or will adversely affect the business carried on under another licence.
- (2) An objection is to be:
- (a) in writing and is to set out the grounds on which the objection is made and the facts relied on;
  - (b) signed by the person making the objection; and
  - (c) lodged with the Director-General not later than 28 days after the first publication of the notice in a newspaper under section 61.
- (3) If an objection is lodged, the Director-General must do the following:
- (a) inform the applicant of the objection and give the applicant an opportunity to comment in writing on the substance of the objection;
  - (b) conduct the investigations concerning the objection he or she thinks fit.

**63            Matters to be determined regarding applicants**

- (1) Where an application for a licence is made, the Director-General must determine:
  - (a) whether the applicant is a fit and proper person to hold the licence;
  - (aa) if there is more than one application for the same licence – whether the applicant would be the most suitable person from amongst the applicants to hold the licence; and
  - (b) in the case of a retail licence – whether the grant of the licence is in accordance with the needs and opinions of the residents of the licence area to which the application relates.
- (2) In determining the matters referred to in subsection (1), the Director-General may make the investigations he or she thinks fit including investigations to inform the Director-General of:
  - (a) if the applicant is an individual – the character of the applicant;
  - (b) if the applicant is a body corporate:
    - (i) the membership of the body corporate;
    - (ii) the character of the officers, employees or agents of the body corporate; and
    - (iii) the management or proposed management of the body corporate; and
  - (c) the capacity of the applicant (including financial capacity) to conduct the business associated with the licence applied for.
- (3) Where the Director-General has given notice of the application to a local government council or an incorporated association under section 61(3), in determining the matters referred to in subsection (1) the Director-General must have regard to any recommendations made by the council or the association.
- (4) For the purpose of determining an application, the Director-General may obtain:
  - (a) from the Commissioner of Police:
    - (i) a written report of the criminal history (notwithstanding that part of the criminal history is a spent conviction within the meaning of the *Criminal Records (Spent Convictions) Act*) in respect of an applicant or, if the



applicant is a body corporate, a person who is an officer, employee or agent of the applicant; and

- (ii) any other evidence in relation to the character of the applicant, officer, employee or agent that may assist the Director-General ; and
  - (b) information concerning the financial background of the applicant or, if the applicant is a body corporate, a person who is an officer, employee or agent of the applicant.
- (5) For the purposes of subsection (4)(a)(i), the criminal history of a person is that which is:
- (a) in the Commissioner of Police's possession; or
  - (b) ordinarily accessible to the Commissioner of Police through arrangements with the police service of the Commonwealth or a State or another Territory of the Commonwealth.

#### **64            Consideration and decision of Director-General**

- (1) The Director-General must determine an application for a licence as soon as reasonably possible after the application is lodged.
- (2) In determining the application, the Director-General must consider the objections, the comments on and investigations concerning the objections, the prescribed matters (if any) and the investigations conducted regarding the application.
- (3) Having done so, the Director-General must decide to:
  - (a) issue the licence subject to the conditions the Director-General determines to be necessary or desirable in the circumstances of the application; or
  - (b) refuse to grant the licence.
- (4) After making the decision, the Director-General must give notice of the decision and a statement of the reasons for the decision to each affected person.
- (5) If more than one application was made for the grant of the same licence, the Director-General may refuse to grant a licence if satisfied that the applicant would not be the most suitable person from amongst the applicants to hold the licence.
- (6) If the Director-General refuses to grant a licence under this section, the Director-General may refund the whole or any part of the prescribed fee paid under section 60(3).

**65            Duration and renewal of licence**

- (1) Subject to subsection (1A), a licence remains in force for 12 months after the date it is issued.
- (1A) If the holder of a licence has applied to renew the licence under subsection (2) and, on the expiry of the licence in accordance with subsection (1), the Director-General has not made a decision under subsection (3) to renew or refuse to renew the licence, the licence remains in force until the Director-General makes the decision.
- (2) An application to renew a licence is to be:
  - (a) lodged with the Director-General not later than 60 days before the date of the expiry of the licence; and
  - (b) in the approved form and accompanied by:
    - (i) the written consents and authorities necessary for the Director-General to investigate whether or not to renew the licence;
    - (ii) the prescribed information the Director-General requires to support the application; and
    - (iii) the prescribed fee.
- (3) For the purposes of considering an application for renewal of a licence, sections 63 and 64(1) and (2) apply with the necessary changes and, after determining the application, the Director-General must decide to:
  - (a) renew the licence subject to the conditions that the Director-General determines are necessary or desirable in the circumstances of the application; or
  - (b) refuse to renew the licence.
- (3AA) After making the decision, the Director-General must give notice of the decision and a statement of the reasons for the decision to each affected person.
- (3A) In addition to the other matters the Director-General must consider in determining an application for renewal of a licence, the Director-General must consider the extent to which the applicant has implemented the harm minimisation measures in the kava management plan approved for the licence area and the harm minimisation measures in the applicant's last application for grant or renewal of the licence.

- (6) Where the Director-General refuses to grant a licence under this section, the Director-General may refund the whole or any part of the prescribed fee paid to the Director-General under subsection (2).

**65A Condition of licence that holder to comply with Act etc.**

It is a condition of a licence issued or renewed under section 64 or 65 that the holder of the licence must comply with this Act, the Regulations and the terms and conditions of the licence.

**65B Specification of conditions on licence**

The conditions imposed on a licence under section 64 or 65 are to be specified on the licence.

**65C Licensee to comply with conditions of licence**

A licensee must comply with the conditions of the licence.

Maximum penalty:      In the case of a natural person –  
500 penalty units.

In the case of a body corporate –  
2 500 penalty units.

**66 Licence not transferable**

A licence is not transferable.

**Division 2      Variation of licences**

**67 Director-General may vary conditions**

The Director-General may:

- (a) on the Director-General's own motion if the Director-General considers it is necessary or desirable to do so; or
- (b) on the application by a licensee in an approved form lodged with the Director-General;

by notice in writing served on the licensee, vary the conditions of a licence.

**68            When variation takes effect**

A variation of the conditions of a licence takes effect on the later of the following:

- (a) the date specified in the notice under section 67;
- (b) if the decision to vary the conditions was made by a delegate of the Director-General – the expiration of the period for applying for a review of the decision.

*Note for section 68*

*Part 3 of the Licensing (Director-General) Act provides for the review of decisions made under this Act by a delegate of the Director-General, and allows the Director-General to stay the operation of a decision pending completion of a review.*

**Division 3            Miscellaneous**

**71            Surrender of licence**

- (1) A licensee may surrender his or her licence by lodging it with the Director-General.
- (2) The surrender of a licence does not have effect until it is accepted by the Director-General.
- (3) On the acceptance by the Director-General of the surrender of a licence, the person whose licence is surrendered ceases to be a licensee but remains liable for:
  - (a) an act or omission done, caused, permitted or made by him prior to the surrender; and
  - (b) a liability incurred by him under this Act prior to the surrender.

**72            Acting licensee**

- (1) If a licensee is, or is expected to be, unable for any reason to conduct the licensee's business under a licence, the Director-General may appoint a person who in the Director-General's opinion is a fit and proper person to conduct the business of the licence to act in the place of the licensee.
- (2) For the purpose of appointing a person to act under subsection (1):
  - (a) the Director-General may make the investigations the Director-General thinks fit to determine the character of a proposed appointee and section 63(2) and (4) applies with the necessary changes; and

- (b) notwithstanding sections 59(5) and 60(2):
  - (i) a person appointed may be the holder of another licence; and
  - (ii) the usual place of residence or usual place of business of a person appointed to act in the place of a retail licensee is not required to be within the licence area in respect of which the licensee's licence was granted.
- (3) On appointing a person under subsection (1) the Director-General must re-issue the licence endorsed with the name of the person appointed as the person who conducts the business under the licence.
- (4) A person appointed under subsection (1) to act as a licensee has all the rights, authorities, powers, functions and obligations of the licensee and for all purposes is to be taken to be the licensee while the appointment is in force.
- (5) An appointment under subsection (1) continues in force until:
  - (a) the expiration of the period that the licensee is unable to conduct the business under the licence;
  - (b) the Director-General grants another licence in respect of the business conducted under the licence;
  - (c) the licence is surrendered; or
  - (d) the licence is cancelled,whichever occurs first.
- (6) A reference in subsection (1) to a reason for the inability of a licensee to conduct the licensee's business under a licence is to be read as including a reference to:
  - (a) a period of absence of the licensee;
  - (b) the death of the licensee;
  - (c) the bankruptcy, application to take the relief of a law for the relief of bankrupt or insolvent debtors or making of an assignment of the licensee's property, interest or remuneration for the benefit of the licensee's creditors; and
  - (d) an illness or other mental or physical incapacity of the licensee.

## **Part 9            Control of conduct of licensees**

### **Division 1        Complaints**

#### **73            Making of complaint**

- (1) A person may make a complaint to the Director-General regarding:
  - (a) the conduct of a licensee; or
  - (b) the possession, supply or consumption of kava in a licence area.
- (2) A complaint must be:
  - (a) in writing and must set out the grounds on which the complaint is made and the facts relied on by the person to constitute the grounds; and
  - (b) signed by the person making it.
- (3) If a complaint is lodged with the Director-General, the Director-General must:
  - (a) inform the licensee of the complaint and give the licensee sufficient opportunity to provide a written reply to the complaint; and
  - (b) consider and investigate the substance of the complaint as the Director-General thinks fit, taking into account any written reply of the licensee under paragraph (a).
- (4) After considering and investigating a complaint, the Director-General must:
  - (a) determine that, in the opinion of the Director-General, the complaint is of a frivolous, irrelevant or malicious nature, and dismiss the complaint; or
  - (b) determine that no further action is warranted; or
  - (c) determine to give a direction under section 75 in response to the complaint; or
  - (d) determine to take action under section 77 in response to the complaint.
- (5) The Director-General must give notice of a determination under subsection (4) to the person who made the complaint and the licensee against whom the complaint was made.

## **Division 2 Directions**

### **75 Director-General may give directions**

Where a licensee:

- (a) contravenes or fails to comply with a condition of his or her licence; or
- (b) has contravened or failed to comply with this Act or another law in force in the Territory relating to the cultivation, manufacture, production, supply or possession of kava,

the Director-General may, by notice in writing, direct the licensee to:

- (c) take, within the time specified in the notice, an action to rectify or minimise the effects of the licensee's contravention or failure; or
- (d) refrain from taking an action in relation to the contravention or failure.

## **Division 3 Suspension, variation and cancellation of licence**

### **76 Suspension or variation in certain circumstances**

- (1) The Director-General may, by notice in writing to a licensee, suspend, impose a condition on or vary a condition of his or her licence where:
  - (a) a complaint is made under section 73 and, in the opinion of the Director-General, it is in the public interest to do so until the determination or dismissal of the complaint;
  - (ab) the Director-General proposes to cancel the licence under section 77(2) and, in the opinion of the Director-General, it is in the public interest to do so until a decision on the cancellation is made;
  - (b) the Director-General has issued a direction to a licensee under section 75 and is of the opinion that suspension of his or her licence is in the interest of the public until compliance with the direction;
  - (c) a licensee has contravened or failed to comply with his or her licence, this Act or the Regulations and in the opinion of the Director-General the contravention or failure to comply is of sufficient gravity to justify the suspension or variation of the licence; or

- (d) subject to subsection (1A), there is an emergency situation (for example, a natural disaster, a medical emergency or community unrest, or the licensee or another licensee is supplying adulterated or contaminated kava) and, in the opinion of the Director-General, it is in the public interest to do so.
- (1A) The suspension of the licence or imposition or variation of a condition under subsection (1)(d) is not to have effect for more than 7 days after the licence is suspended or the condition imposed or varied.
- (2) A notice under subsection (1) is to specify the reasons for the suspension or variation.
- (3) The suspension or variation of a licence takes effect on:
  - (a) the date on which the licensee receives the notice referred to in that subsection; or
  - (b) if a later date is specified in the notice – that date.
- (4) The Director-General may, if the Director-General considers suspension or variation of a licence is no longer justified, revoke the notice of suspension or variation given under subsection (1).

## **77 Cancellation of licence**

- (1) Each of the following is a ground for cancelling a licence:
  - (a) the licensee is in the custody of the Commissioner of Correctional Services;
  - (b) the licensee has been found guilty of an offence against this Act or the Regulations;
  - (c) the licensee has been found guilty of an offence relating to the cultivation, production, possession or supply of a drug;
  - (d) the licensee has contravened a direction given under section 75;
  - (e) the licensee otherwise appears not to be a fit or proper person to hold a licence.
- (2) If the Director-General believes a ground for cancelling a licence exists, the Director-General must give the licensee written notice:
  - (a) stating that the Director-General proposes to cancel the licence; and



- (b) stating the ground for the proposed cancellation and the facts relied on to constitute the ground; and
  - (c) inviting the licensee to make a written submission in response to the proposed cancellation within a specified period not less than 28 days after the notice is given.
- (3) After considering any written submission received from the licensee in response to the notice, the Director-General may decide to cancel the licence by written notice to the licensee if satisfied:
- (a) on the balance of probabilities, that a ground for cancelling the licence exists; and
  - (b) that cancelling the licence is appropriate in relation to that ground.

## **Part 10 Review of decisions**

### **78 Meaning of *reviewable decision***

A ***reviewable decision*** is:

- (a) a decision specified in Schedule 2, unless the decision was made by a delegate of the Director-General; or
- (b) a decision made on the review, under Part 3 of the *Licensing (Director-General) Act*, of a decision that:
  - (i) is specified in Schedule 2; and
  - (ii) was made by a delegate of the Director-General.

*Note for section 78*

*A decision made under this Act by a delegate of the Director-General is not a reviewable decision but may be a delegate decision under the Licensing (Director-General) Act. Part 3 of that Act sets out procedures for applying for a review of a delegate decision.*

### **79 Meaning of *affected person***

- (1) A person is an ***affected person*** for a reviewable decision mentioned in section 78(a) if any of the following apply:
- (a) for a decision that relates to disciplinary action relating to a licence – the person is the licensee;
  - (b) for a decision that was made in relation to an application – the person is the applicant;

- (c) the person made a submission, complaint or objection (however described) during the process that resulted in the decision being made.
- (2) A person is an **affected person** for a reviewable decision mentioned in section 78(b) if the person was an affected person under the *Licensing (Director-General) Act* for the decision that was reviewed under Part 3 of that Act.

## **80 Jurisdiction of Civil and Administrative Tribunal**

- (1) An affected person for a reviewable decision may apply to the Civil and Administrative Tribunal for a review of the decision.
- (2) For a reviewable decision that was made under the *Licensing (Director-General) Act*, that Act and this Act are together taken to be the relevant Act for the *Northern Territory Civil and Administrative Tribunal Act*.

## **81 Delegate decisions**

The regulations may declare that a decision made under this Act by a delegate of the Director-General, other than a decision specified in Schedule 2, is not a delegate decision for the *Licensing (Director-General) Act*.

## **Part 11 Miscellaneous**

### **83 Duplicate licence**

Where the Director-General is satisfied that a licence has been destroyed, lost or stolen, the Director-General may, on the application of the licensee in the approved form and on payment of the prescribed fee, issue a duplicate licence to the licensee.

### **83A Approved forms**

The Director-General may approve forms for this Act.

### **84 Delivery, lodgement or issue of applications etc.**

A document that is required or permitted to be given, delivered, issued to or lodged with a person under this Act may be given, delivered, issued or lodged by post, facsimile transmission or electronic mail transmission.

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**85 Authorisation for research purposes etc.**

- (1) The Chief Health Officer may in writing, and subject to the conditions he or she thinks fit, authorise a person to possess, cultivate, manufacture or produce kava for the purposes of medical or scientific research.
- (1A) The Director-General may, in writing, authorise a person to possess, consume, cultivate, manufacture or produce kava for the purposes of medical research, forensic research, scientific research, study, education or consumer testing.
- (2) An authorisation of a body corporate under subsection (1) or (1A) is to be taken to authorise each person who is directly involved in the research to which it relates to possess, cultivate or produce kava in accordance with, and subject to the conditions (if any) of, the authorisation on behalf of the body corporate.
- (3) A person authorised under this section:
  - (a) must comply with and not contravene an authorisation under this section; and
  - (b) if acting in accordance with the authorisation, does not commit an offence against this Act.
- (4) An authorisation under this section may authorise a person to possess kava that has been forfeited to the Territory under an order of a magistrate or court under Part 5.

**86 Undercover operations**

- (1) A member of the Police Force of or above the rank of Commander may, in writing, and subject to the conditions he or she thinks fit, authorise another member of the Police Force or another person who is not a member of the Police Force to:
  - (a) acquire or supply kava; or
  - (b) have kava in the member's or person's possession,for the purpose of detecting the commission of an offence against this Act.
- (2) Without limiting the generality of section 28, a member of the Police Force or other person authorised under subsection (1) may, in the course of acting in accordance with his or her authorisation, acquire, supply or possess kava for the purpose of detecting the commission of an offence against this Act.

- (3) A member of the Police Force or other person who acquires kava in the course of acting in accordance with an authorisation under subsection (1) must, as soon as reasonably possible after acquiring the kava:
- (a) deliver it to another member of the Police Force; or
  - (b) supply the kava in accordance with the authorisation.

## **87 Power of police**

The powers conferred by this Act on a member of the Police Force, including the Commissioner of Police, are in addition to and not in derogation of any other power he or she may have under any other law in force in the Territory.

## **88 Acquisition to be on just terms**

Where the application of a provision of this Act or a regulation made under this Act would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired is entitled to receive just compensation for the acquisition and a court of competent jurisdiction may determine the amount of the compensation or make the order that, in its opinion, is necessary to ensure that the acquisition is on just terms.

## **89 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters that are:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may provide for:
- (a) the fees payable in relation to matters under this Act;
  - (c) the information to be provided by a person making an application under this Act in support of the application;
  - (d) the size of the notice of an application published in a newspaper under Part 8;
  - (e) the criteria establishing eligibility for the grant of a licence;

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- (f) the conditions that may be imposed on a licence and the matters to be taken into account by the Director-General in determining which of the conditions to impose on a licence;
  - (g) the manner, form and content of records and documents to be kept and lodged by a licensee;
  - (h) the keeping of registers relating to licences issued and licensees;
  - (j) the packaging of kava;
  - (k) the regulation or control of the pricing of kava;
  - (m) the prohibition, regulation or control of the advertising, marketing and promotion of kava;
  - (n) the prohibition or regulation of the production of kava and the substances that may be added to kava for supply and the control of the quality of kava for supply;
  - (p) the handling, storage and destruction of kava seized and removed under this Act;
  - (q) the sampling, analysis and examination of kava;
  - (r) the erection of signs to indicate that an area is a licence area and the markings to appear on the signs;
  - (s) the designation of an offence against a regulation as a regulatory offence; and
  - (t) prescribing penalties not exceeding 100 penalty units or, in the case of a body corporate, 500 penalty units for offences against the Regulations.
- (3) The Regulations may apply, adopt, incorporate or apply by reference, either wholly or in part or with or without modification, a standard, code, specification or method, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body, whether or not a Territory authority or body.
- (4) A code, standard or specification applied, adopted or incorporated under this section may require anything referred to in the code, standard or specification to be in accordance with another code, standard or specification the code, standard or specification refers to.

(5) The Minister:

- (a) must cause a copy of each code, standard and specification adopted, incorporated or applied under subsection (3), and each code, standard and specification referred to in the first-mentioned code, standard or specification, to be made available for inspection by members of the public at the office of the Director-General, without charge, during normal office hours; and
- (b) may cause copies of each code, standard, and specification adopted, incorporated or applied under subsection (3), and each code, standard and specification referred to the first-mentioned code, standard or specification (or a part of the code, standard or specification referred to), to be available for purchase by members of the public on payment of the charge the Director-General requires.

## **Part 12                    Transitional matters for Licensing (Director-General) Act 2014**

### **Division 1                Definitions**

#### **90                        Definitions**

In this Part:

**2014 Acts** means the *Licensing (Director-General) Act 2014* and 2014 Amending Act.

**2014 Amending Act** means the *Licensing (Repeals and Consequential Amendments) Act 2014*.

**commencement** means the commencement of section 22 of the *Licensing (Director-General) Act 2014*.

**Commission** means the Commission as defined in section 3 of the NTLC Act.

**NTLC Act** means the *Northern Territory Licensing Commission Act* as in force immediately before the commencement.

**NTLC Director** means the Director as defined in section 3 of the NTLC Act.

**old legislation** means the NTLC Act and this Act, as in force immediately before the commencement.

## **Division 2 Applications**

### **91 Application to Commission – not yet considered**

- (1) This section applies if, before the commencement:
  - (a) an application had been made under this Act for a decision to be made by the Commission; but
  - (b) the Commission had not commenced active consideration of the application.
- (2) The application:
  - (a) is taken to be an application made on the commencement for the decision to be made by the Director-General; and
  - (b) must be dealt with and determined in accordance with this Act as amended by the 2014 Amending Act.

*Note for section 91*

*The Director-General's decision on the application will be a decision made after the commencement and may therefore be a reviewable decision or a decision to which Part 3 of the Licensing (Director-General) Act applies.*

### **92 Application to Commission – under active consideration**

- (1) This section applies if, before the commencement:
  - (a) an application had been made under this Act for a decision to be made by the Commission and the Commission had commenced active consideration of the application; but
  - (b) the Commission had not made a decision.
- (2) The Commission must deal with and determine the application in accordance with the old legislation as if the 2014 Acts had not commenced.
- (3) However, the Commission's decision is then taken to have been made by the Director-General.

*Note for section 92(3)*

*As the decision will be made after the commencement and will be taken to be a decision of the Director-General, it may be a reviewable decision.*

### **93 Active consideration**

Regulations may make provision for determining when active consideration of an application commences for this Division.

### **Division 3 Review of decisions**

#### **94 New review regime applies to post-commencement decisions**

Part 10, as amended by the 2014 Amending Act, applies only in relation to decisions made after the commencement.

### **Division 4 Complaints and applications to cancel licence**

#### **95 New complaints regime applies to post-commencement complaints**

Subject to section 96, Part 9, Division 1 as amended by the 2014 Amending Act applies only in relation to complaints made after the commencement.

#### **96 Complaint made before commencement – pending action**

- (1) This section applies if, before the commencement:
  - (a) a complaint had been made under section 73, as then in force; but
  - (b) the NTLC Director had not taken action under section 73(3)(c), as then in force, in relation to the complaint.
- (2) The complaint:
  - (a) is taken to have been made to the Director-General on the commencement; and
  - (b) must be dealt with and determined in accordance with this Act as amended by the 2014 Amending Act.

*Note for section 96*

*The Director-General's decision on the complaint will be a decision made after the commencement and may therefore be a reviewable decision or a decision to which Part 3 of the Licensing (Director-General) Act applies.*

#### **97 Complaint made before commencement – complaint being dealt with**

- (1) This section applies if, before the commencement:
  - (a) the NTLC Director had forwarded a complaint to the Commission under section 73(3)(c), as then in force; but
  - (b) the Commission had not made a determination about the complaint under section 74, as then in force.



- (2) The Commission and NTLC Director must deal with and determine the complaint in accordance with the old legislation as if the 2014 Acts had not commenced.
- (3) If the Commission determines a complaint as mentioned in subsection (2):
  - (a) the determination has effect as if it had been made before the commencement; and
  - (b) Part 10, as amended by the 2014 Amending Act, does not apply in relation to the determination.

## **98 Application for cancellation made before commencement**

- (1) This section applies if, before the commencement:
  - (a) the NTLC Director had made an application to the Commission under section 77, as then in force; but
  - (b) the Commission had not determined the application.
- (2) The Commission must deal with and determine the application in accordance with the old legislation as if the 2014 Acts had not commenced.
- (3) If the Commission determines an application as mentioned in subsection (2):
  - (a) the determination has effect as if it had been made before the commencement; and
  - (b) Part 10, as amended by the 2014 Amending Act, does not apply in relation to the determination.

## **Division 5 General matters**

### **99 Continuation of ongoing documents and things**

- (1) This section applies if:
  - (a) before the commencement, a power or function was conferred by this Act on an NTLC entity; and
  - (b) on the commencement, the power or function (or a substantially similar power or function) is conferred on the Director-General.

- (2) On the commencement, an ongoing document continues with the same force and effect as if it had been issued by, or given to, the Director-General.
- (3) On the commencement, an ongoing thing continues with the same force and effect as if it had been done by, or in relation to, the Director-General.
- (4) This section applies subject to the other provisions of this Part and Part 5, Division 2 of the *Licensing (Director-General) Act*.
- (5) In this section, a reference to something done before the commencement includes a reference to something done after the commencement in accordance with this Part as if it had been done before the commencement.
- (6) In this section:

**NTLC entity** means the Commission, the NTLC Director or the Chairperson (as defined in section 3 of the NTLC Act).

**ongoing document** means a document that:

- (a) was issued by, or given to, the NTLC entity before the commencement in or for the exercise of the power or performance of the function; and
- (b) immediately before the commencement, had ongoing effect.

**ongoing thing** means a thing that:

- (a) was done by, or in relation to, the NTLC entity before the commencement in or for the exercise of the power or performance of the function; and
- (b) immediately before the commencement, had ongoing effect.

**Schedule 1 Areas of land that may not be declared to be licensed areas**

section 53

PART A

Area at Jabiru

The area comprising the town of Jabiru, constituted and defined by Proclamation made under section 111 of the *Crown Lands Act*, described in the Schedule to the instrument made under that section on 27 April 1982 and published in *Gazette* No. G18 dated 7 May 1982 at page 7.

PART B

Area at Nhulunbuy

All those parcels of land at Nhulunbuy in the Northern Territory of Australia containing a total area of 679.83 hectares more or less, being Northern Territory Portions 1192 and 1316 (which include the town centre, the main residential areas and the main industrial area) and being more particularly delineated on Survey Plans A708 and A952 lodged with the Surveyor General, Darwin.

## **Schedule 2 Reviewable decisions**

sections 78 and 81

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| <b>Section</b> | <b>Decision</b>   |
|----------------|---|
| 64             | Decision to issue, or refuse to grant, licence                        |
| 65             | Decision to renew, or refuse to renew, licence                        |
| 67             | Decision to vary conditions of licence                                |
| 76             | Decision to suspend, impose condition on or vary condition of licence |
| 77             | Decision to cancel licence  |

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

Key to abbreviations

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

**2****LIST OF LEGISLATION*****Kava Management Act 1998 (Act No. 33, 1998)***

|             |  |
|-------------|--|
| Assent date | 11 May 1998                                |
| Commenced   | 21 May 1998 ( <i>Gaz</i> S17, 21 May 1998) |

***Kava Management Amendment Act 1999 (Act No. 53, 1999)***

|             |                 |
|-------------|-----------------|
| Assent date | 4 December 1999 |
| Commenced   | 4 December 1999 |

***Kava Management Amendment Act (No. 2) 1999 (Act No. 66, 1999)***

|             |  |
|-------------|--|
| Assent date | 17 December 1999   |
| Commenced   | 14 February 2000 (s 2, s 2 <i>Northern Territory Licensing Commission Act 1999</i> (Act No. 67, 1999) and <i>Gaz</i> G5, 9 February 2000, p 6) |

***Kava Management Amendment Act 2000 (Act No. 66, 2000)***

|             |  |
|-------------|--|
| Assent date | 14 December 2000                                   |
| Commenced   | 19 February 2001 ( <i>Gaz</i> S3, 13 January 2001) |

***Statute Law Revision Act 2001 (Act No. 3, 2001)***

|             |               |
|-------------|---------------|
| Assent date | 22 March 2001 |
| Commenced   | 22 March 2001 |

***Kava Management Amendment Act 2003 (Act No. 15, 2003)***

|             |   |
|-------------|---|
| Assent date | 29 May 2003   |
| Commenced   | 12 November 2003 ( <i>Gaz</i> G45, 12 November 2003, p 3) |

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

|             |  |
|-------------|--|
| Assent date | 15 March 2004  |
| Commenced   | 5 May 2004 (s 2(1), s 2 <i>Associations Act 2003</i> (Act No. 56, 2003) and <i>Gaz</i> G18, 5 May 2004, p 2) |

***Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)***

|             |   |
|-------------|---|
| Assent date | 15 September 2004                                       |
| Commenced   | 27 October 2004 ( <i>Gaz</i> G43, 27 October 2004, p 3) |

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**Police Administration Amendment Act 2007 (Act No. 29, 2007)**

Assent date 12 December 2007  
 Commenced pt 1 and ss 3 and 15: 1 December 1996 (s 2);  
 pt 4: nc (rep s 9, Act No. 12, 2009: 24 June 2009);  
 rem: 19 December 2007 (*Gaz* G51, 19 December 2007, p 6)

**Amending Legislation**

**Justice and Other Legislation Amendment Act 2009 (Act No. 12, 2009)**

Assent date 26 May 2009  
 Commenced 24 June 2009 (*Gaz* G25, 24 June 2009, p 2)

**Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)**

Assent date 14 November 2008  
 Commenced 1 July 2008 (s 2)

**Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)**

Assent date 20 May 2010  
 Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

**Public and Environmental Health Act 2011 (Act No. 7, 2011)**

Assent date 16 March 2011  
 Commenced 1 July 2011 (*Gaz* S28, 3 June 2011)

**Local Government Amendment Act 2013 (Act No. 28, 2013)**

Assent date 8 November 2013  
 Commenced 8 November 2013

**Local Government Amendment Act 2014 (Act No. 19, 2014)**

Assent date 2 June 2014  
 Commenced s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014  
 (s 2)

**Correctional Services (Related and Consequential Amendments) Act 2014 (Act No. 27, 2014)**

Assent date 4 September 2014  
 Commenced 9 September 2014 (*Gaz* S80, 9 September 2014, p 2)

**Licensing (Repeals and Consequential Amendments) Act 2014 (Act No. 44, 2014)**

Assent date 5 December 2014  
 Commenced 1 January 2015 (*Gaz* S130, 19 December 2014, p 2)

**3 SAVINGS AND TRANSITIONAL PROVISIONS**

s 6 *Kava Management Amendment Act (No. 2) 1999* (Act No. 66, 1999)

**4 LIST OF AMENDMENTS**

It amd No. 66, 2000, s 4  
 s 2A ins No. 15, 2003, s 4  
 s 3 amd No. 53, 1999, s 3; No. 66, 1999, s 4; No. 66, 2000, s 5; No. 18, 2004,  
 s 3; No. 28, 2008, s 12; No. 7, 2011, s 140; No. 19, 2014, s 26; No. 44, 2014,  
 s 31  
 s 6 amd No. 66, 1999, s 5  
 rep No. 44, 2014, s 32

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|              |  |
|--------------|--|
| s 7          | amd No. 66, 1999, s 5<br>sub No. 44, 2014, s 32  |
| s 8          | amd No. 44, 2014, s 42   |
| s 9          | amd No. 66, 2000, s 18; No. 12, 2010, s 3  |
| s 11         | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| s 12         | amd No. 66, 2000, s 18; No. 12, 2010, s 3  |
| s 12A        | ins No. 66, 2000, s 6<br>amd No. 12, 2010, s 3   |
| s 13         | amd No. 66, 2000, s 18; No. 12, 2010, s 3  |
| s 14         | amd No. 12, 2010, s 3  |
| s 15         | amd No. 66, 2000, s 18; No. 15, 2003, s 5; No. 12, 2010, s 3   |
| s 16         | amd No. 66, 2000, s 18; No. 12, 2010, s 3  |
| s 17         | amd No. 66, 2000, ss 7 and 18; No. 12, 2010, s 3   |
| ss 18 – 22   | amd No. 66, 2000, s 18; No. 12, 2010, s 3  |
| s 27         | amd No. 53, 1999, s 4  |
| s 28         | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| pt 2A hdg    | ins No. 15, 2003, s 6  |
| ss 28A – 28B | ins No. 15, 2003, s 6<br>amd No. 44, 2014, s 42  |
| s 30         | amd No. 66, 2000, s 18; No. 12, 2010, s 3; No. 44, 2014, s 42  |
| s 31         | amd No. 44, 2014, s 42   |
| s 32         | amd No. 29, 2007, s 41   |
| s 37         | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| s 43         | amd No. 15, 2003, s 7  |
| s 45         | amd No. 66, 1999, s 5<br>rep No. 15, 2003, s 8   |
| pt 6         |  |
| div 1 hdg    | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| s 46         | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| s 47         | amd No. 66, 1999, s 5; No. 54, 2004, s 7; No. 44, 2014, s 42   |
| ss 49 – 52   | amd No. 66, 1999, s 5; No. 44, 2014, s 42  |
| pt 7         |  |
| div 1 hdg    | ins No. 66, 2000, s 8  |
| s 53         | amd No. 66, 2000, s 9; No. 28, 2008, s 13; No. 28, 2013, s 61; No. 19, 2014, s 26; No. 44, 2014, s 42                            |
| pt 7         |  |
| div 2 hdg    | ins No. 66, 2000, s 10   |
| s 54         | amd No. 66, 2000, s 11; No. 15, 2003, s 9; No. 28, 2008, s 14; No. 28, 2013, s 61; No. 19, 2014, s 26                            |
| s 55         | amd No. 66, 2000, s 12; No. 15, 2003, s 10   |
| s 56         | amd No. 15, 2003, s 11   |
| s 57         | amd No. 66, 2000, s 13; No. 15, 2003, s 12; No. 19, 2014, s 26   |
| s 58         | amd No. 15, 2003, s 13   |
| pt 7         |  |
| div 3 hdg    | ins No. 66, 2000, s 14   |
| s 58A        | ins No. 66, 2000, s 14<br>amd No. 44, 2014, s 42   |
| s 58B        | ins No. 66, 2000, s 14   |
| s 58C        | ins No. 66, 2000, s 14<br>amd No. 15, 2003, s 14; No. 19, 2014, s 26; No. 44, 2014, s 42   |
| s 58D        | ins No. 66, 2000, s 14<br>amd No. 15, 2003, s 15; No. 28, 2008, s 15; No. 28, 2013, s 61; No. 19, 2014, s 26; No. 44, 2014, s 42 |
| s 59         | amd No. 66, 2000, s 15; No. 15, 2003, s 16; No. 44, 2014, s 42   |
| s 59A        | ins No. 15, 2003, s 17<br>amd No. 44, 2014, s 42   |
| s 60         | amd No. 66, 1999, s 5; No. 15, 2003, s 18; No. 44, 2014, s 42  |

## ENDNOTES

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|            |   |
|------------|---|
| s 61       | amd No. 66, 1999, s 5; No. 15, 2003, s 19; No. 19, 2014, s 26; No. 44, 2014, s 42     |
| s 62       | amd No. 66, 1999, s 5; No. 15, 2003, s 20; No. 44, 2014, s 42                         |
| s 63       | amd No. 66, 1999, s 5; No. 3, 2001, s 8; No. 15, 2003, s 21; No. 44, 2014, s 42       |
| s 64       | amd No. 66, 1999, s 5; No. 3, 2001, s 8; No. 15, 2003, s 22<br>sub No. 44, 2014, s 33 |
| s 65       | amd No. 66, 1999, s 5; No. 15, 2003, s 23; No. 44, 2014, s 34                         |
| s 65A      | ins No. 66, 2000, s 16  |
| s 65B      | ins No. 15, 2003, s 24  |
| s 65C      | ins No. 15, 2003, s 24<br>amd No. 12, 2010, s 3                                       |
| s 67       | amd No. 66, 1999, s 5; No. 44, 2014, s 42   |
| s 68       | amd No. 66, 1999, s 5<br>sub No. 44, 2014, s 35                                       |
| ss 69 – 70 | rep No. 44, 2014, s 35  |
| s 71       | amd No. 66, 1999, s 5; No. 44, 2014, s 42   |
| s 72       | amd No. 44, 2014, s 42  |
| s 73       | amd No. 66, 1999, s 5; No. 66, 2000, s 17<br>sub No. 44, 2014, s 36                   |
| s 74       | amd No. 66, 1999, s 5<br>rep No. 44, 2014, s 36                                       |
| s 75       | amd No. 44, 2014, s 42  |
| s 76       | amd No. 15, 2003, s 25; No. 44, 2014, s 37  |
| s 77       | amd No. 66, 1999, s 5; No. 27, 2014, s 57<br>sub No. 44, 2014, s 38                   |
| pt 10 hdg  | ins No. 44, 2014, s 38  |
| s 78       | sub No. 44, 2014, s 38  |
| pt 9       |   |
| div 4 hdg  | rep No. 44, 2014, s 38  |
| s 79       | sub No. 44, 2014, s 38  |
| pt 10 hdg  | rep No. 44, 2014, s 38  |
| s 80       | sub No. 44, 2014, s 38  |
| s 81       | amd No. 66, 1999, s 5<br>sub No. 44, 2014, s 38                                       |
| s 82       | rep No. 44, 2014, s 38  |
| s 83       | amd No. 44, 2014, s 42  |
| s 83A      | ins No. 44, 2014, s 39  |
| s 84       | amd No. 15, 2003, s 26  |
| s 85       | amd No. 15, 2003, s 27; No. 44, 2014, s 42  |
| s 89       | amd No. 66, 2000, s 18; No. 15, 2003, s 28; No. 44, 2014, s 42                        |
| pt 12 hdg  | ins No. 44, 2014, s 40  |
| pt 12      |   |
| div 1 hdg  | ins No. 44, 2014, s 40  |
| s 90       | ins No. 44, 2014, s 40  |
| pt 12      |   |
| div 2 hdg  | ins No. 44, 2014, s 40  |
| ss 91 – 93 | ins No. 44, 2014, s 40  |
| pt 12      |   |
| div 3 hdg  | ins No. 44, 2014, s 40  |
| s 94       | ins No. 44, 2014, s 40  |
| pt 12      |   |
| div 4 hdg  | ins No. 44, 2014, s 40  |
| ss 95 – 98 | ins No. 44, 2014, s 40  |
| pt 12      |   |
| div 5 hdg  | ins No. 44, 2014, s 40  |
| s 99       | ins No. 44, 2014, s 40  |
| sch 1      | amd No. 44, 2014, s 42  |



## ENDNOTES

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sch 2            ins No. 44, 2014, s 41