

**NORTHERN TERRITORY OF AUSTRALIA**

**KAVA MANAGEMENT ACT**

As in force at 22 March 2001

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**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 22 March 2001

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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*.

#### 3 Interpretation

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

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

***approved*** means approved by the Commission.

***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*.

***Chairperson*** means:

- (a) the Chairperson appointed under section 6 of the *Northern Territory Licensing Commission Act*; or

- (b) a person appointed to act as the Chairperson under section 8 of that Act while acting as the Chairperson.

**Chief Health Officer** means the Chief Health Officer appointed under section 5 of the *Public Health 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.

**Commission** means the Northern Territory Licensing Commission established by section 4 of the *Northern Territory Licensing Commission Act*.

**council area** means a council area as defined in section 3 of the *Local Government Act*.

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

**Director** means:

- (a) the Director of Licensing appointed under section 22(1) of the *Northern Territory Licensing Commission Act*; or
- (b) a person appointed to act as the Director of Licensing under section 22(2) of that Act while acting as the Director.

**hearing** means a hearing conducted in accordance with Part 10.

**incorporated association** means:

- (a) an association incorporated under the *Associations Incorporation Act* that has been identified under section 25AZH of that Act as an incorporated association that is functioning as a community government council within the meaning of the *Local Government Act*; or
- (b) an Aboriginal corporation as defined in section 3 of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth.

**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.

**local government council** means a municipal council or a community government council as defined in section 3 of the *Local Government Act*.

**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.

**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.

#### **6 Functions of Commission, Chairperson and Director**

- (1) The Commission must perform the functions conferred on it by this Act and do any other thing that is necessary or convenient to be done for the due and proper performance of those functions.
- (2) The Commission has power to do all things that are necessary or convenient to be done for or incidental to the performance of its functions under this Act.
- (3) The Chairperson and Director must perform the duties required to be performed by them for the purposes of the administration of this Act.

#### **7 Delegation**

- (1) The Minister may, by instrument, delegate to the Chairperson or the Chief Health Officer all or any of the Minister's powers and functions under this Act, other than this power of delegation.
- (2) A power or function delegated under this section is, when exercised or performed by the Chairperson or the Chief Health Officer, to be taken to have been exercised or performed by the Minister.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister.

## **8 Guidelines**

- (1) Subject to the approval of the Minister, the Commission 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 Commission.
- (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.

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 Chairperson in the approved manner.
- (4) Kava or a thing referred to in subsection (1)(a) is to be destroyed or disposed of in a manner determined by the Chairperson.

## **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.

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.

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.

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.

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.

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.

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 a price that complies with the Regulations; and

(b) packaged and labelled in the prescribed manner.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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 Chairperson; 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 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 Commission 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 Commission.

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 Commission 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 believe 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 believes 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 Chairperson 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 Adjournment**

- (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 45, 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.

**45 Use of kava for research, &c.**

Where, before kava is destroyed in pursuance of an order, the Chief Health Officer makes a written request to the Chairperson to give the kava to a person or body specified in the request for the purpose of medical or scientific research, instruction, analysis or study, the Chairperson must comply with the request.

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

**Division 1 Delivery to and detention by Chairperson**

**46 Delivery of kava or thing seized to Chairperson**

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 Chairperson.

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

Subject to this Part, the Commission may retain in its possession or under its control kava or a thing delivered to the Chairperson under section 45 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 Chairperson 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 Chairperson must, by notice in writing, invite the person from whom the kava or thing was seized, or another person appearing to the Chairperson 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 Chairperson 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 Chairperson 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 Chairperson 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 Chairperson.
- (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 the Schedule;
- (c) the area at Nhulunbuy described in Part B of the Schedule; or
- (d) an area that the Minister by notice in the *Gazette* determines may not be declared to be a licence area.

**community government council** has the same meaning as in 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.

### **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 community government council may apply to the Minister for the Minister to declare, in writing, that a part of the council 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 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 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 declared to be a licence area to be informed (who may include persons residing in the vicinity of the area), 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 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 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 to which the application relates, but not so as to increase the area; or
- (b) at any time before the Minister declares the area to be a licence area, withdraw the application.

**57           Consideration and decision of Minister**

(1) In deciding whether to declare an area 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 within or in the vicinity of a council area or an area controlled or managed by an incorporated association – must consult with the local government council for the council area or the incorporated association to ascertain its views regarding the area 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 in respect of which the application was made to be an area where kava may be sold for consumption; or
- (b) refuse to declare an area in respect of which the application was made to be an area where kava may be sold for consumption.

(3) A declaration under subsection (2)(a) may be made in respect of:

- (a) the area of land described in the application; or
- (b) an area of land that is equal to, greater than or less than the area described in the application and that includes a substantial part of the area 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 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
  - (b) in any other manner the Minister considers suitable to publicise the making of the declaration throughout the area.
- (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 that only one retail licence may be issued in respect of 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 Commission 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 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, on completing it, give the kava management plan to the Commission for approval.
- (3) If the Commission is satisfied that a kava management plan:
  - (a) appropriately provides for the matters specified in section 58B(1)(a) and (b);
  - (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 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,

the Commission must approve the kava management plan.

- (4) A kava management plan has no effect unless it is approved by the Commission.

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

- (1) At least 10 residents of a licence area, or a community government council for a council 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, on completing it, give the amendment or replacement kava management plan to the Commission for approval.
- (3) If the Commission is given an amendment of a kava management plan to approve and the Commission is satisfied that:
  - (a) the kava management plan as amended by the amendment appropriately provides for the matters specified in section 58B(1)(a) and (b) and complies with this Division and the Regulations; and
  - (b) in the case of an amendment of a kava management plan that amends a kava management plan applying in a licence area that is within a council area or an area controlled or managed by an incorporated association – the amendment is supported by the local government council for the council area or the incorporated association,

the Commission must approve the amendment of the kava management plan.
- (4) If the Commission is given a replacement kava management plan to approve and the Commission is satisfied that:
  - (a) the replacement kava management plan appropriately provides for the matters specified in section 58B(1)(a) and (b) and complies with this Division and the Regulations; and
  - (b) in the case of a replacement kava management plan that will apply in a licence area that is within a council area or an area controlled or managed by an incorporated association – the replacement kava management plan is supported by the local government council for the council area or the incorporated association,

the Commission must approve the replacement kava management plan.

- (5) An amendment to a kava management plan or a replacement kava management plan has no effect unless it is approved by the Commission.

## **Part 8            Licensing**

### **Division 1        General**

#### **59            Licences**

- (1) The Commission 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.
- (4) There is to be only one retail licence in force for each licence area.
- (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.

#### **60            Application for licence**

- (1) Subject to subsection (2), an individual who has attained the age of 18 years or a body corporate may apply to the Commission for the grant of a wholesale licence or a retail licence.
- (2) A person who wishes to apply for a retail licence may only do so:
- (a) in respect of a specified licence area in respect of which a retail licence is not in force; and
  - (b) if the person's usual place of residence or usual place of business is within the licence area.
- (3) An application under subsection (1) is to be lodged with the Director in the approved form and accompanied by:
- (a) the written consents and signed authorities necessary for the Commission to investigate the suitability of the applicant to hold the licence;

- (b) the prescribed information that the Commission 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 Commission; or
  - (b) in any other manner the Commission 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 Commission before the expiration of 21 days after the date the notice is first published in a newspaper; and
  - (e) any other particulars required by the Commission.
- (3) Where an applicant for a retail licence proposes to supply kava within or in the vicinity of a council area or an area controlled or managed by an incorporated association, the Director 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 not later than 21 days after the first publication of the notice in a newspaper under section 61.
- (3) Where an objection is lodged with the Director, the Director must:
- (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; and
  - (c) provide the comments received under paragraph (a) and a report on the investigations under paragraph (b) to the Commission for consideration.

**63            Matters to be determined regarding applicants**

- (1) Where an application for a licence is made, the Commission must determine:
- (a) whether an applicant for a licence is a fit and proper person 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 Commission may make the investigations it thinks fit including investigations to inform the Commission 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 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 Commission must have regard to any recommendations made by the council or the association.

- (4) For the purpose of determining an application, the Commission 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 Commission; 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 Commission**

- (1) The Commission must determine an application for a licence as soon as reasonably possible after the application is lodged with the Director.
- (2) In determining an application for a licence, the Commission must consider the objections, comments and reports regarding the application, the prescribed matters (if any) and the investigations conducted regarding the application.
- (3) On completion of its consideration of the matters under subsection (2) regarding an application for a wholesale licence, the Commission must:
  - (a) if an objection has been lodged – conduct a hearing in relation to the application; or

- (b) in any other case:
  - (i) issue the licence subject to the prescribed conditions that the Commission determines are necessary or desirable in the circumstances of the application;
  - (ii) refuse to grant the licence and direct the Director to forward notice of the refusal and a statement of the reasons for refusal to the applicant; or
  - (iii) conduct a hearing in relation to the application.
- (4) Where the Commission refuses, without a hearing, to grant a wholesale licence, the applicant may request the Commission to conduct a hearing in relation to the application and the Commission must comply with the request.
- (5) On completion of its consideration of the matters under subsection (2) regarding an application for a retail licence, the Commission must:
  - (a) where the Commission is satisfied that the applicant is a suitable person to hold a retail licence, issue the licence subject to the prescribed conditions that the Commission determines are necessary or desirable in the circumstances of the application; or
  - (b) conduct a hearing in relation to the application.
- (6) Where the Commission has conducted a hearing in relation to an application for a licence, the Commission must:
  - (a) issue the licence subject to the prescribed conditions the Commission determines to be necessary or desirable in the circumstances of the application; or
  - (b) refuse to grant the licence and direct the Director to forward notice of the refusal and a statement of the reasons for refusal to the applicant.
- (7) Where the Commission refuses to grant a licence under this section, the Commission may refund the whole or any part of the prescribed fee paid to the Commission under section 60(3).

## **65            Duration and renewal of licence**

- (1) A licence remains in force until 1 January following the date it is issued but may be renewed.

- (2) An application to renew a licence is to be:
  - (a) lodged with the Director not later than 30 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 Commission to investigate whether or not to renew the licence;
    - (ii) the prescribed information the Commission 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, on completion of its determination of the application, the Commission must:
  - (a) renew the licence subject to the prescribed conditions that the Commission determines are necessary or desirable in the circumstances of the application; or
  - (b) refuse to renew the licence and direct the Director to forward notice of the refusal and a statement of the reasons for refusal to the applicant.
- (4) Where the Commission refuses to renew a licence, the applicant may request the Commission to conduct a hearing in relation to the application for renewal and the Commission must comply with the request.
- (5) Where the Commission has conducted a hearing in relation to an application for renewal, the Commission must, without derogating from the action it may otherwise take under section 82(1):
  - (a) renew the licence subject to the prescribed conditions the Commission determines to be necessary or desirable in the circumstances of the application; or
  - (b) refuse to renew the licence and direct the Director to forward notice of the refusal and a statement of the reasons for refusal to the applicant.
- (6) Where the Commission refuses to grant a licence under this section, the Commission may refund the whole or any part of the prescribed fee paid to the Commission 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.

**66            Licence not transferable**

A licence is not transferable.

**Division 2            Variation of licences**

**67            Commission may vary conditions**

The Commission may:

- (a) on its own motion if it 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,

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

**68            Hearing in relation to variation of licence**

- (1) If a licensee is not satisfied with the Commission's decision to vary the licensee's licence under section 67, the licensee may, not later than 28 days after the date on which the licensee receives a notice under that section, by notice in writing lodged with the Director, request the Commission to conduct a hearing in relation to the conditions of his or her licence.
- (2) If a licensee requests the Commission to conduct a hearing under subsection (1), the Commission must comply with the request.
- (3) After conducting the hearing, the Commission must, without derogating from the action it may otherwise take under section 82(1):
  - (a) vary the conditions of the licence, whether or not as proposed in the notice under section 66; or
  - (b) refuse to vary the conditions of the licence.

**69            When variation takes effect**

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

- (a) where the licensee does not make a request under section 68 for a hearing:
  - (i) the expiration of the 28 day period referred to in that section; or
  - (ii) the date specified by the Commission in the notice under section 67,whichever occurs later; or
- (b) where the licensee makes a request under section 68 for a hearing:
  - (i) the date of the conclusion of the hearing; or
  - (ii) the date specified in the Commission's order,whichever occurs later.

**70            Re-issue of licence as varied**

Where:

- (a) a notice has been issued under section 67 and the licensee does not request a hearing under section 68; or
- (b) the licensee requests a hearing under section 68 and the Commission makes an order varying the conditions of the licence,

the Commission must re-issue the licence as varied.

**Division 3            Miscellaneous**

**71            Surrender of licence**

- (1) A licensee may surrender his or her licence by lodging it with the Director.
- (2) The surrender of a licence does not have effect until it is accepted by the Commission.

- (3) On the acceptance by the Commission 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 Commission may appoint a person who in its 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 Commission may make the investigations it thinks fit to inform itself of 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 Commission 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 Commission 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 Commission regarding:
- (a) the conduct of a licensee; or
  - (b) the possession, supply or consumption of kava in a licence area.
- (2) A complaint is to be:
- (a) in writing and is to set out the grounds on which the complaint is made and the facts relied on by the person to constitute the grounds;
  - (b) signed by the person making it; and
  - (c) lodged with the Director.

- (3) Where a complaint is lodged with the Director, the Director must:
- (a) inform the licensee of the complaint and give the licensee sufficient opportunity to provide a written reply to the complaint;
  - (b) investigate the substance of the complaint as he or she thinks fit; and
  - (c) forward the complaint, the reply from the licensee, if any, and a report on his or her investigation to the Commission.

#### **74 Consideration and decision of Commission**

- (1) Where the Commission receives a complaint, the Commission:
- (a) must consider the complaint, taking into account any written reply of the licensee and report of the Director regarding the complaint; and
  - (b) may conduct the investigations regarding the complaint it thinks fit.
- (2) On completion of its consideration of and investigations into a complaint, the Commission must make a determination:
- (a) that, in the opinion of the Commission, the complaint is of a frivolous, irrelevant or malicious nature, and dismiss the complaint;
  - (b) that no further action is warranted; or
  - (c) to conduct a hearing in relation to the complaint,
- and the Director must, as soon as reasonably possible, inform the person who made the complaint and the licensee against whom the complaint was made of the Commission's determination.

### **Division 2 Directions**

#### **75 Commission 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 Commission 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 Commission 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 or an application to cancel a licence is made under section 77 and in the opinion of the Commission it is in the public interest to do so until the determination or dismissal of the complaint or application;
  - (b) the Commission 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; or
  - (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 Commission the contravention or failure to comply is of sufficient gravity to justify the suspension or variation of the licence.
- (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 Commission may, where it considers suspension or variation of a licence is no longer justified, revoke the notice of suspension or variation given under subsection (1).

## **77 Application for cancellation of licence**

- (1) Where it comes to the attention of the Director that a licensee:
- (a) is in prison;
  - (b) has been found guilty of an offence against this Act or the Regulations;
  - (c) has been found guilty of an offence relating to the cultivation, production, possession or supply of a drug;
  - (d) has contravened or failed to comply with a direction given under section 75; or
  - (e) otherwise appears not to be a fit or proper person to hold a licence,

the Director must apply to the Commission for an order cancelling the licence.

- (2) The Director must deliver the application to the Chairperson together with a statement signed by the Director setting out:
- (a) the grounds on which the application is made; and
  - (b) the facts relied on by the Director to constitute the grounds.
- (3) The Director must, as soon as reasonably possible, forward a copy of the application and the statement to the licensee the subject of the application.

## **78 Consideration of application by Commission**

The Commission must consider an application made under section 77 and:

- (a) where the Commission is of the opinion that the facts set out in the statement would not, if proven, establish the grounds on which the application is made, dismiss the application; or
- (b) conduct a hearing in relation to the application.

## **Division 4 Licensee's right to request hearing**

### **79 Right to request hearing**

- (1) Subject to subsection (2), where the Commission gives a direction under section 75 to a licensee or suspends or varies a licence under section 76, the licensee the subject of the direction,

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suspension or variation may request the Commission to conduct a hearing in relation to the direction, suspension or variation and the Commission must comply with the request.

- (2) Subsection (1) does not apply in the case of an application to cancel a licence referred to in section 76(1)(a).

## **Part 10            Hearings**

### **80            Procedure at hearing**

Subject to this Part, a hearing under this Act is to be conducted in accordance with Part V of the *Liquor Act*, and that Part applies with the necessary changes and to the extent necessary to the conduct of a hearing under this Act as if references in that Part to:

- (a) the circumstances where a hearing may be conducted is a reference to the circumstances where a hearing may be conducted under this Act; and
- (b) a hearing is a reference to a hearing under this Act.

### **81            Membership of Commission for hearing**

At a hearing, the Commission is to be constituted by either 2 or 3 members (whether or not including the Chairperson).

### **82            Outcome of hearing**

- (1) After the Commission has conducted a hearing, the Commission may:
- (a) affirm, set aside or vary the decision of the Commission the subject of the hearing;
- (b) vary a condition of, or impose a condition on, the licence the subject of the hearing;
- (c) issue a direction to the licensee under section 75;
- (d) suspend or cancel the licence; or
- (e) make any other order it thinks fit.
- (2) The decision of the Commission under subsection (1) is final and conclusive.



**Part 11            Miscellaneous****83            Duplicate licence**

Where the Commission is satisfied that a licence has been destroyed, lost or stolen, the Commission 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.

**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.

**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.
- (2) An authorisation of a body corporate under subsection (1) 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 subsection (1) or (2):
  - (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.

**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;
  - (b) the maximum number of licences that may be granted under this Act;

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- (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;
  - (f) the conditions that may be imposed on a licence and the matters to be taken into account by the Commission 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 manner, form and method of packaging and labelling 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 Commission, 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 Commission requires.

**Schedule 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.

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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 S17</i> , 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 G5</i> , 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 S3</i> , 13 January 2001)

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

Assent date	22 March 2001
Commenced	22 March 2001

**3 SAVINGS AND TRANSITIONAL PROVISIONS**s 6 *Kava Management Amendment Act (No. 2) 1999* (Act No. 66, 1999)**4 LIST OF AMENDMENTS**

lt	amd No. 66, 2000, s 4
s 3	amd No. 53, 1999, s 3; No. 66, 1999, s 4; No. 66, 2000, s 5
ss 6 – 7	amd No. 66, 1999, s 5
s 9	amd No. 66, 2000, s 18

## ENDNOTES

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s 11	amd No. 66, 1999, s 5
s 12	amd No. 66, 2000, s 18
s 12A	ins No. 66, 2000, s 6
s 13	amd No. 66, 2000, s 18
ss 15 –16	amd No. 66, 2000, s 18
s 17	amd No. 66, 2000, ss 7 and 18
ss 18 – 22	amd No. 66, 2000, s 18
s 27	amd No. 53, 1999, s 4
s 28	amd No. 66, 1999, s 5
s 30	amd No. 66, 2000, s 18
s 37	amd No. 66, 1999, s 5
s 43	amd No. 15, 2003, s 7
s 45	amd No. 66, 1999, s 5
pt 6	
div 1 hdg	amd No. 66, 1999, s 5
ss 46 – 47	amd No. 66, 1999, s 5
ss 49 – 52	amd No. 66, 1999, s 5
pt 7	
div 1 hdg	ins No. 66, 2000, s 8
s 53	amd No. 66, 2000, s 9
pt 7	
div 2 hdg	ins No. 66, 2000, s 10
s 54	amd No. 66, 2000, s 11
s 55	amd No. 66, 2000, s 12
s 57	amd No. 66, 2000, s 13
pt 7	
div 3 hdg	ins No. 66, 2000, s 14
ss 58A – 58D	ins No. 66, 2000, s 14
s 59	amd No. 66, 2000, s 15
ss 60 – 62	amd No. 66, 1999, s 5
s 63	amd No. 66, 1999, s 5; No. 3, 2001, s 8
s 64	amd No. 66, 1999, s 5; No. 3, 2001, s 8
s 65	amd No. 66, 1999, s 5
s 65A	ins No. 66, 2000, s 16
ss 67 – 68	amd No. 66, 1999, s 5
s 71	amd No. 66, 1999, s 5
s 73	amd No. 66, 1999, s 5; No. 66, 2000, s 17
s 74	amd No. 66, 1999, s 5
s 77	amd No. 66, 1999, s 5
s 81	amd No. 66, 1999, s 5
s 89	amd No. 66, 2000, s 18