

Serial 132
Kava Management Amendment Bill 2003
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Kava Management Act*

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NORTHERN TERRITORY OF AUSTRALIA
KAVA MANAGEMENT AMENDMENT ACT 2003

No. of 2003

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2003

AN ACT

to amend the *Kava Management Act*

[Assented to 2003]
[Second reading 2003]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Kava Management Amendment Act 2003*.

2. Commencement

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

3. Principal Act

The *Kava Management Act* is in this Act referred to as the Principal Act.

4. New section

The Principal Act is amended by inserting after section 2 the following:

"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;

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- (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."

5. Pricing and packaging

Section 15 of the Principal Act is amended by omitting subsection (1)(a) and (b) and substituting the following:

- "(a) for the price determined under Part 2A; and
- (b) packaged in a manner that complies with the Regulations."

6. New Part

The Principal Act is amended by inserting after section 28 the following:

"PART 2A – PRICE OF KAVA

"28A. Commission determines price of kava

"(1) Subject to this Part, the Commission determines the price of kava.

"(2) The Commission 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 Commission may determine different prices to apply in different licence areas.

"28B. Matters Commission to take into account in determining price

"In determining the price of kava, the Commission 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."

7. Destruction of kava

Section 43 of the Principal Act is amended by omitting from subsection (1) "45" and substituting "85".

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8. Repeal

Section 45 of the Principal Act is repealed.

9. Application for declaration of licence area

Section 54 of the Principal Act is amended –

- (a) by omitting subsection (1A) and substituting the following:

"(1A) A community government council may apply to the Minister for the Minister to declare, in writing, that –

- (a) the whole of the council area in respect of which the council is constituted is a licence area;
 - (b) a part of the council area in respect of which the council is constituted is a licence area; or
 - (c) 2 or more non-contiguous parts of the council area in respect of which the council is constituted is a licence area."; and
- (b) by inserting in subsection (2)(c) "or areas" after "the area".

10. Explanation of application

Section 55 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "the area to", "the area is" and "the area)" and substituting "the area or areas to", "the area is or areas are" and "the area or areas)" respectively;
- (b) by inserting in subsection (2)(a) "or areas" after "an area"; and
- (c) by inserting in subsection (2)(b) "or areas" after "the area".

11. Application may be varied

Section 56 of the Principal Act is amended –

- (a) by omitting from paragraph (a) all the words after "by altering" and substituting "the area or areas to which the application relates, but not so as to increase the size of the proposed licence area"; and
- (b) by inserting in paragraph (b) "or areas" after "the area".

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12. Consideration and decision of Minister

Section 57 of the Principal Act is amended –

- (a) by inserting in subsection (1) "or areas" after "an area";
- (b) by omitting from subsection (1)(c) "area is" and "area that" and substituting "area is or areas are" and "area or areas that" respectively;
- (c) by inserting in subsection (2)(a) and (b) "or areas" after "an area" (all references);
- (d) by inserting in subsection (3)(a) "or areas" after "the area"; and
- (e) by omitting from subsection (3)(b) "an area", "than the area", "includes" and "part of the area " and substituting "an area or areas", "than the area or areas", "includes or include" and "part of the area or areas" respectively.

13. Notice of declaration

Section 58 of the Principal Act is amended –

- (a) by inserting in subsection (1) "or areas" after "an area";
- (b) by inserting in subsection (1)(a) and (b) "or areas" after "the area"; and
- (c) by omitting from subsection (2)(b) "and that only one retail licence may be issued in respect of the licence area".

14. Preparation and approval of kava management plan

Section 58C of the Principal Act is amended –

- (a) by inserting in subsection (1) "or areas as" after "an area";
- (b) by omitting from subsection (2) "must" and substituting "must do so in consultation with the Commission, the Commissioner of Police and the Chief Health Officer and must"; and
- (c) by omitting subsection (3) and substituting the following:

"(3) The Commission 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);
- (b) complies with this Division and the Regulations;

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- (c) in the case of a kava management plan that will be applying in a licence area that is or part of 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 Commission, the Commissioner of Police and the Chief Health Officer.

"(3A) In addition, the Commission must not approve a kava management plan unless the Commission 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."

15. Amendment or replacement of kava management plan

Section 58D of the Principal Act is amended –

- (a) by omitting from subsection (2) "must" and substituting "must do so in consultation with the Commission, the Commissioner of Police and the Chief Health Officer and must"; and
- (b) by omitting subsections (3) and (4) and the substituting following:

"(3) The Commission 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);
- (b) the amended plan or the replacement plan complies with this Division and the Regulations;
- (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 council 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 council area or the incorporated association; and
- (d) the amendment to the plan or the replacement plan was developed to the reasonable satisfaction of the Commission, the Commissioner of Police and the Chief Health Officer.

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"(4) In addition, the Commission must not approve an amendment to a kava management plan or a replacement kava management plan unless the Commission 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 Commission may approve an amendment to a kava management plan without consulting the residents of the licence area as required by subsection (4) if the Commission, the Commissioner of Police and the Chief Health Officer agree the amendment is minor in nature."

16. Licences

Section 59 of the Principal Act is amended by omitting subsection (4).

17. New section

The Principal Act is amended by inserting after section 59 the following:

"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 Commission may grant; and
- (b) the maximum number of retail licences that the Commission 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 Commission relating to the number of wholesale licences or retail licences (as the case requires) that the Commission considers should be granted.

"(3) The Commission must not grant more than the number of licences determined under subsection (1)."

18. Application for licence

Section 60 of the Principal Act is amended –

- (a) by inserting in subsection (1) "and (2A)" after "(2)"; and
- (b) by omitting subsection (2) and substituting the following:

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"(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."

19. Notice of application

Section 61 of the Principal Act is amended by omitting from subsection (2)(d) "21" and substituting "28".

20. Objections

Section 62 of the Principal Act is amended by omitting from subsection (2)(c) "21" and substituting "28".

21. Matters to be determined regarding applicants

Section 63 of the Principal Act is amended by omitting subsection (1)(a) and substituting the following:

- "(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"

22. Consideration and decision of Commission

Section 64 of the Principal Act is amended –

(a) by omitting subsection (3)(a) and substituting the following:

"(a) if an objection has been lodged –

(i) dismiss the objection if satisfied that the objection is of a frivolous, irrelevant or malicious nature or does not describe a ground on which an objection to the granting of the licence may be made; or

(ii) conduct a hearing in relation to the application; or";

(b) by omitting from subsection (3)(b) "in any other case" and substituting "if no objections have been lodged or the objections lodged have been dismissed";

(c) by omitting from subsections (3)(b)(i), (5)(a) and (6)(a) "prescribed"; and

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- (d) by inserting after subsection (6) the following:

"(6A) If more than one application was made for the grant of the same licence, the Commission may refuse to grant a licence under subsection (6)(b) because it is satisfied that the applicant would not be the most suitable person from amongst the applicants to hold the licence."

23. Duration and renewal of licence

Section 65 of the Principal Act is amended –

- (a) by omitting subsection (1) and substituting the following:

"(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 Commission has not made its decision under subsection (3) to renew or refuse to renew the licence, the licence remains in force until the Commission makes its decision.";

- (b) by omitting from subsection (2)(a) "30" and substituting "60";

- (c) by omitting from subsection (3)(a) "prescribed";

- (d) by inserting after subsection (3) the following:

"(3A) In addition to the other matters the Commission must consider in determining an application for renewal of a licence, the Commission 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.";

- (e) by inserting after subsection (4) the following:

"(4A) A request under subsection (4) is to be made within 28 days after the applicant receives notice of the refusal."; and

- (f) by omitting from subsection (5)(a) "prescribed".

24. New sections

The Principal Act is amended by inserting after section 65A the following:

"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.

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

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

25. Suspension or variation in certain circumstances

Section 76 of the Principal Act is amended –

- (a) by omitting from subsection (1)(b) "direction; or" and substituting "direction;";
- (b) by omitting from subsection (1)(c) "licence." and substituting "licence; or"; and
- (c) by inserting after subsection (1)(c) the following:
 - "(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 Commission, 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)(c) is not to have effect for more than 7 days after the licence is suspended or the condition imposed or varied."

26. Delivery, lodgement or issue of applications etc.

Section 84 of the Principal Act is amended by inserting ", facsimile transmission or electronic mail transmission" after "post".

27. Authorisation for research purposes etc.

Section 85 of the Principal Act is amended –

- (a) by inserting after subsection (1) the following:
 - "(1A) The Chairperson or Director 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.";
- (b) by inserting in subsection (2) "or (1A)" after "(1)";
- (c) by omitting from subsection (3) "subsection (1) or (2)" and substituting "this section"; and

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(d) by adding at the end the following:

"(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."

28. Regulations

Section 89 of the Principal Act is amended –

(a) by omitting subsection (2)(b); and

(b) by omitting subsection (2)(j) and substituting the following:

"(j) the packaging of kava;"
