

Information about the *Kava Management Act and Regulations*

Information about the *Kava Management Act and Regulations* includes

- Purpose of the *Kava Management Act*
- Administration of the Act
- Requirements of the *Kava Management Act*
- Requirements of the *Kava Management Regulations*
- Licence conditions
- Records to be kept by licensees
- Packaging and labelling of kava
- Signs indicating licence area
- Penalties; and
- Further information.

This information has been prepared by Racing, Gaming and Licensing as background information to the kava licensing system which operates under the provisions of the Northern Territory *Kava Management Act*.

PURPOSE OF THE *KAVA MANAGEMENT ACT*

The *Kava Management Act* was introduced and passed with the unanimous support of all Members of the Northern Territory Legislative Assembly in 1998.

The primary purpose of the Act is to prohibit and regulate kava within the Northern Territory, ie to:

- Prohibit kava in areas where there is no history of kava use and in those communities that do not want kava locally available;
- regulate kava through a licensing regime which will recognise the need for kava in certain Territory communities; and
- ensure its safe and well managed distribution

ADMINISTRATION OF THE *KAVA MANAGEMENT ACT*

The Minister for Racing, Gaming and Licensing is authorised to declare Licence Areas and the Northern Territory Licensing Commission is responsible for granting Wholesale and Retail Licences for the legal sale of kava.

Racing, Gaming and Licensing is the Government agency responsible for the day to day administration of the *Kava Management Act*. The Licensing Division will receive and process applications, issue, enforce and review Retail Licences to achieve a system designed to minimise harm due to the use and abuse of kava in the Northern Territory. Licensing inspectors from Racing, Gaming and Licensing and members of the Northern Territory Police are "authorised officers" under the *Kava Management Act*.

Under Part 2, Section 4 of the *National Code of Kava Management*, kava must not be advertised or promoted in any journal, magazine, television or radio or any other written or oral media, or in any retail advertising, or through the provision of samples.

REQUIREMENTS OF THE KAVA MANAGEMENT ACT

The *Kava Management Act* was amended in November 2000, to reflect the Northern Territory Government's focus on responsible kava management and use.

Under the provisions of the Act, Retail Licensees:

- must only purchase kava from the wholesale licensee (Section 17);
- must keep records (Section 18) and lodge returns (Section 19) as required by Section 10 of the *Regulations*;
- will be issued with a licence in relation to a declared licence area (Section 53);
- must base their application on the approved Kava Management Plan for the licence area for which a licence is sought (Section 58);
- may be individuals or corporate bodies (Section 59, (1)); and
- are required to complete the approved application forms (Section 59, (1)).

It should be noted that:

- The Wholesale Licensee is to sell to retail licensees only, and is not allowed to conduct retail sales under their wholesale licence (Sections 16 and 59 (3));
- Only one licence will be issued for each licence area (Section 59 (4)); and
- A licensee may hold both a wholesale and a retail licence (Section 59 (5)).

Applicants must:

- be over 18 years of age (Section 60 (1));
- be a resident or have their usual place of business located within the licence area (Section 60 (2) (b));
- give consent for probity checks to be undertaken (Section 60 (3) (a));
- provide the information as required by the Licensing Commission (Section 60, (3), (b)); and
- pay the prescribed application fee of \$5,000 (Section 60 (3) (c)).
- Section 61 of the *Act* requires that applicants for Retail Licences must, not less than 28 days after lodging their application, publish a notice of this application in the *NT News* and the *Arafura Times* (Section 61(1) (a)) and make a copy of the advertisement available to the Licensing Commission for distribution to relevant Aboriginal communities (Section 61 (1) (b)).

NB: As a service to all applicants, the Licensing Division will place this advertisement in the press on behalf of all applicants. Applicants should be aware that this advertisement will appear in the above newspapers, containing the name and address of each applicant. Costs for the advertisement will be borne by the Licensing Division.

- Notices advising that an application seeking a Retail Licence has been lodged must contain the:
- name and address of the applicant and
- the Licence Area to be covered by the application (Section 61 (2)).
- It is a condition of a licence that licensees must comply with the Act, the Regulations and the Terms and Conditions of their licence. The Terms and

Conditions of a licence will be based upon the content of the Kava Management Plan as approved by the Licensing Commission for the kava licence area to be serviced by the Retail Licensee (Section 65).

- A licence remains in force until 1 January following the date it is issued but may be renewed (Section 65).
- A complaint may be made to the Licensing Commission regarding the conduct of a licensee or about matters relating to the possession, supply or consumption of kava in a declared Licence Area (Section 73).

REQUIREMENTS OF THE KAVA MANAGEMENT REGULATIONS – LICENCE FEE

Under the provisions of the *Kava Management Regulations*, payment of the prescribed application fee of \$5,000 is required (Section 4, *Regulations*).

LICENCE CONDITIONS - Section 9 of the *Kava Management Regulations*.

The Licensing Commission may issue a licence under section 64 of the *Act* subject to any of the following conditions that the Commission determines necessary or desirable in the circumstances of the Retail Licence:

- That the sale of kava may only occur between the hours and on the days specified in the licence;
- That the licensee must conduct business as specified in the licence, eg, on the premises, using vehicles and with the number of employees or nominated agents specified in the licence;
- That the licensee, whether personally or by an employee or agent, must not transport kava within the Territory or a particular declared Licence Area unless as specified in their licence;
- That the licensee must not hold a quantity of kava in stock that is more than the maximum quantity specified in the licence;
- That the premises the licensee uses in conducting business under the licence must be maintained in a clean, serviceable and sanitary condition at all times;
- That the Retail Licensee must not sell kava to a person unless the person pays for the kava in cash and not by any form of credit; and
- That the licensee must comply with the *Act*, the *Regulations* and the Terms and Conditions of the licence.

For the purposes of *Regulation 9 (1)(a)*, the hours and days that a Retail Licensee may sell kava are to be fixed by the Kava Management Plan for the relevant declared Kava Licence Area.

For the purposes of *Regulation 9 (1)(d)*, the maximum quantity of kava to be held in stock by a Retail Licensee is to be fixed by taking into account:

- the number of persons ordinarily residing in the Licence Area in respect of which the licensee's licence is issued;
- the manner and quantity in which and the intervals when the licensee will purchase or otherwise be supplied with kava to sell under the licensee's licence; and
- the facilities available to the licensee, and the manner in which the licensee will be storing kava held in stock by the licensee.

Applicants should also note that to conform with the approved Kava Management Plan for their Licence Area being applied for, licensees must record the name of each purchaser in order that no individual is sold more than 800gms of kava per week.

RECORDS TO BE KEPT BY LICENSEES – Regulation 10 of the *Kava Management Regulations*

A Retail Licensee must keep and maintain, in a form that the Licensing Commission has approved, a record of:

- The date and quantity of all kava supplied to the licensee;
- the date and quantity of each sale of kava made by the licensee;
- a daily balance of the quantity of kava that is held in stock by the licensee;

AND

- lodge with the Director of Licensing, a return, in a form approved by the Licensing Commission, of the records kept under subregulation (1) in respect of each 3 month period ending on 31 March, 30 June, 30 September and 31 December (respectively) not later than 28 days after the expiry of the period to which the records relate; and
- keep each record specified in subregulation (1) for not less than 3 years.

PACKAGING AND LABELLING OF KAVA - Section 11 of the *Kava Management Regulations*

All kava is packaged and labelled by the Wholesale Licensee in accordance with this Regulation and must not be tampered with.

Kava is packaged in sealed air tight bags made of plastic or any other non-porous material that the Commission has approved.

The kava contained in each package weighs 200 grams.

In addition to complying with the labelling requirements of *clause 3(1) of standard O10 of the Food Standards Code*, each package of kava clearly displays, in type of 3 mm on a label affixed on or attached to it, the name and licence number of the Retail Licensee who will sell it. A "best before date" will be stipulated.

SIGNS INDICATING LICENCE AREA - Section 12 of the *Kava Management Regulations*

A retail Licensee must

- Erect at the points of entry into the declared Licence Area in respect of which the licensee's licence is issued a retroreflective sign on which is written in white lettering on a red background the words similar to (exact wording will be provided to the Retail Licence):
 - (i) "LICENCE AREA" in 200 mm lettering size; and
 - (ii) "You are entering an area where persons ordinarily resident who are 18 years or older may purchase and

possess up to 2 kg of kava." in not less than 50 mm lettering size;

- erect at the points of exit from the declared Licence Area referred to in paragraph (a) a retroreflective sign on which is written in white lettering on a red background the words –
 - (i) "YOU ARE LEAVING A LICENCE AREA" in 200 mm lettering size; and
 - (ii) "In the Northern Territory a person must not purchase or possess kava outside a Licence Area unless authorised by a licence." in not less than 50 mm lettering size; and
- maintain those signs in good condition.

A sign referred to immediately above is to be erected:

- At the points of entry or exit that the Licensing Commission has approved; and
- in such a manner that the words on the sign are clearly visible to persons entering or leaving the declared Licence Area at those points of entry or exit.

PENALTIES

Severe penalties will apply to persons selling or supplying kava without the necessary licence or to person under 18 years of age.

Penalties may apply as follows;

- Possession of a ‘trafficable quantity’ without licence; \$10,000 or 2yrs gaol
- Possession of a ‘commercial quantity’ without licence; 8 years gaol

Note: A trafficable quantity is more than 2 kilograms but less than 25 kilograms of kava.

A commercial quantity is 25 or more kilograms of kava.

- Unlawful possession of less than a ‘trafficable quantity’; Forfeiture
- Supply of less than a ‘trafficable quantity’; \$5,000
- Supply of a ‘trafficable quantity’; \$10,000 or 2yrs gaol.
- Supply of a ‘commercial quantity’; 8 years gaol
- Supply to minor - less than a ‘trafficable quantity’; \$10,000 or 2yrs gaol.
- Supply to minor - ‘trafficable quantity’; 8 years gaol
- Supply to minor - ‘commercial quantity’; 14 yrs gaol
- Sending minor to purchase - less than ‘trafficable’; \$10,000 or 2yrs gaol.
- Sending minor to purchase - ‘trafficable quantity’; 8 years gaol
- Sending minor to purchase - ‘trafficable quantity’; 14 yrs gaol
- Cultivation - less than ‘trafficable quantity’; \$5,000 or 2yrs gaol
- Cultivation - ‘trafficable quantity’; 5 yrs gaol
- Cultivation - ‘commercial quantity’; 8 yrs gaol
- Manufacture/produce - less than ‘commercial quantity’; 5 yrs gaol
- Manufacture/produce - ‘commercial quantity’; 8 yrs gaol
- Unlawful pricing, packaging or labelling - individual; \$10,000

- Unlawful pricing, packaging or labelling - body corporate; \$50,000
- Supply- less than 'trafficable quantity';
to unauthorised person - individual wholesaler; \$5,000
to unauthorised person - corporate wholesaler; \$25,000
- Supply- 'trafficable quantity';
to unauthorised person - individual wholesaler; \$10,000 or 2 yrs gaol.
to unauthorised person - corporate wholesaler; \$50,000
- Supply- 'commercial quantity';
to unauthorised person - individual wholesaler; 8 yrs gaol
to unauthorised person - corporate wholesaler; \$100,000
- Unlawful purchase or supply by Retail Licensee
less than 'trafficable quantity' - individual; \$5,000
'commercial quantity' - corporate Retailer; \$25,000
- Unlawful purchase or supply by Retail Licensee
'trafficable quantity' - individual; \$10,000 or 2 yrs gaol.
'trafficable quantity' - corporate retailer; \$50,000
- Unlawful purchase or supply by Retail Licensee
'commercial quantity' - individual; 8 yrs gaol
'commercial quantity' - corporate retailer; \$100,000
- Failure to keep records - individual licensee; \$5,000
- Failure to keep records - corporate licensee; \$25,000
- Failure to produce records - individual licensee; \$10,000
- Failure to produce records - corporate licensee; \$50,000
- Failure to lodge return - individual licensee; \$5,000
- Failure to lodge return - corporate licensee; \$25,000
- Lodgement of a false return - individual licensee; \$10,000
- Lodgement of a false return - corporate licensee; \$50,000
- Making a false statement; \$5,000
- Failure to comply with request of Authorised Officer; \$5,000
- Unlawful disclosure of information; \$5,000.

FURTHER INFORMATION

For further information about kava licensing in the Northern Territory please contact Greg Lye, Licensing Inspector, Racing, Gaming and Licensing.

Phone: (08) 8999 1320

Fax: (08) 8999 1888

Mobile: 0401 110 049

Email: gregory.lye@nt.gov.au

Web site: www.nt.gov.au/ntt/licensing

Location: First Floor, Enterprise House, cnr Woods and Knuckey Streets, Darwin

Post: Racing, Gaming and Licensing, GPO Box 1154, DARWIN, NT, 0801