

## Introduction

Thank you for the opportunity to comment and the proposed pilot program to ease restrictions on the importation of kava for personal use. We are making a submission on behalf of the informal Aotearoa/New Zealand Kava Research Network which aims at bringing together New Zealand-based academics, students and industry members who have an interest in various aspects of kava science. Over the years we have co-organised and participated in a number of scholarly conferences, research projects and workshops dedicated to kava and its consumption in both New Zealand and beyond. Some of us have been consulted by both the media and the New Zealand government on matters related to kava quality and safety. Due to the multiple links between New Zealand and Australia, frequent exchanges between our countries, shared interest in the matters of relevance to the island states of the South Pacific, the long history of regulated trade in kava (as defined and regulated by our the Food Standards Australia New Zealand) in New Zealand, we believe we are in a position to offer some comments that might be of interest and relevance to the Australian Government's inquiry into easing restrictions on the importation of kava.

We believe that a reform of the current system is both timely and needed. After a period of controversy, kava is slowly regaining good reputation as a relatively benign, relaxing beverage and a promising natural remedy for stress and anxiety. We welcome the move towards easing some of the restrictions, but express some reservations about the proposed change in the context of goals highlighted in the Consultation Paper. We also propose alternative solutions that could achieve the goal of easing the current restrictions, while at the same time providing better control over the quality and distribution of kava products available in Australia.

## Comments regarding some of the statements presented in the Consultation Paper

The Consultation Paper (CP) provides a good background regarding kava and the current regulations. However, it also contains some arguments and statements that we view as potentially problematic or contradictory. We believe that these should be addressed as part of our response to the proposed pilot program.

For instance, the CP notes that "However, liver toxicity is a known adverse effect with kava if consumed in high dosages and frequency, and the quality of kava is compromised". This statement is problematic in light of the scholarly consensus on kava's safety (including the documents quoted in the CP), but also in light of the character of the proposed pilot.

First of all, in its traditional form (a water-based extraction of pure kava roots), kava itself is not considered to be hepatotoxic. This has been acknowledged in numerous publications, including, for example, the Food Standards Final Assessment Report (17 March 2004 [http://www.foodstandards.gov.au/code/proposals/documents/P256\\_Kava\\_FAR.pdf](http://www.foodstandards.gov.au/code/proposals/documents/P256_Kava_FAR.pdf)):

*The safety assessment indicates that while excessive consumption of the traditional kava beverage has some adverse health effects after prolonged use such as kava dermatopathy, these are reversible and there is no indication of acute liver inflammation indicative of liver toxicity.(p.6)*

Similarly, the 2012 "Discussion Paper on the Development of a Standard for kava products" produced for the Codex Alimentarius Commission ([http://www.fao.org/tempref/codex/Meetings/CCNASWP/ccnaswp12/na12\\_08e.pdf](http://www.fao.org/tempref/codex/Meetings/CCNASWP/ccnaswp12/na12_08e.pdf)) noted that:

*The kava drink, has been consumed in Pacific Island Countries for centuries without any reported ill-effects on the liver, is made from a water extract of the root and/or rhizome of Piper methysticum. A recent WHO risk assessment concluded that "clinical trial of kava have not revealed hepatotoxicity*

*as a problem suggesting that “water extracts are devoid of toxic effects” and recommending that “products should be developed from water-based suspensions of kava”. The safety of water based kava drinks is supported by long-term ethno-pharmacological observations (p. 1).*

The scholarly consensus indicates that the reported cases of liver toxicity related to the consumption of products containing kava have likely been related to either unpredictable, rare, idiosyncratic, allergic reactions, or are due to the quality and form in which some of the kava-containing products have been sold in the Western markets.

The latter point is acknowledged by the leading organisations, including the Food Standards, which prohibits the sale of kava extracts obtained with the use of organic solvents (which are compositionally different from water-based kava) as well as the sale of the above-the-ground parts of the kava plant which have long been known to contain toxic alkaloids and which have never traditionally been consumed. Among quality issues affecting kava, scholars and industry experts have identified such issues as: the presence of adulterants (ranging from other plants, through sawdust to even cement powder); microbiological contamination (Salmonella, E. Coli, mould); the use of aerial parts of the plant; the use of unsuitable cultivars (e.g. wild kava).

Interestingly, the CP also acknowledges that toxicity might occur “when the quality of kava is compromised”. We believe that this point deserves greater attention in light of the proposed pilot program.

### **Our assessment of the proposal**

The proposal to increase the amount of kava that can be brought for personal reasons into Australia is a welcome step in the context of the fact that high quality kava in its traditional form can be regarded as a generally safe and benign product. However, in light of the fact that low quality, adulterated, improperly processed or otherwise compromised kava cannot and should not be considered to have the same safety profile as high quality kava, the proposal to merely increase the quantity of informal imports, does little to address the key concerns surrounding the use of kava in Australia.

While it is hard to estimate how much of the currently informally imported kava is for personal use and how much of it is sold to third parties, it is clear that at least some of it is offered for sale (both offline and online). All such sales occur outside the control of authorities tasked with safeguarding the safety of dietary products, including the adherence to the current Food Standard for kava. It is not unreasonable to expect that a mere increase in the personal allowance may result in even more of the informally imported kava of unknown quality being sold through these informal and unaccountable channels. In other words, we note that despite the clear difference between the safety profile of low quality kava versus high quality kava, the current proposal focuses merely on the quantity aspects.

This is a rather problematic approach. If low quality of imported kava products is recognised as the key (if not the only) factor that can turn this otherwise safe product into a public health concern, then one would expect any proposal concerning the reform of the current system, to focus on ensuring that kava consumed in Australia adheres to the sound recommendations put forward by the leading kava experts and regulators in both Australia and New Zealand (as described in the Food Standard 2.6.3.).

This point might be crucial to any assessment of the effects of the pilot program as, under the proposed rules, it might be impossible to assess whether or not any observed effects of the pilot, are due to the mere increase in quantity or the increase in the quantity of low quality products.

We acknowledge that one of the key concerns in Australia is the question of the potential impact of kava on some of the country's most vulnerable Aboriginal communities. The question of whether or not kava has mitigated or aggravated some of the social and health issues experienced in these communities is controversial. According to some scholars and leaders, kava has proven to be a safer alternative to alcohol and other substances, and most of the adverse health outcomes observed among the Aboriginal kava consumers are linked to the low quality and high price of black market kava, rather than kava itself. According to other observers, any type of kava sold at any price might be detrimental to the health and well-being of these communities. In the context of the current proposed pilot program, the key point is that the government remains committed to minimising the availability of kava (presumably poor quality kava in particular) in certain communities identified as vulnerable while at the same time not opposing the increase of its availability in other communities. The increase in the amount of kava powder that may be imported to Australia by travellers appears to us as presenting some difficulties in this respect. This is mainly because that due to the informal nature of such imports, the existing informal trade in kava and the ease of transporting goods within Australia, it may be possible that some of the additional informal imports may reach some of the vulnerable communities.

### **Alternative Solutions**

In light of the above, we would like to propose alternative solutions that would allow a far greater control over both the quality of the kava imported to Australia, as well as its availability in specific communities.

1. We propose **the establishment of a licensing regime that would allow for licensed establishments to sell or serve kava exclusively in the form of prepared beverage to be consumed exclusively within the establishment's premises under strict licensing conditions.**

Such a solution presents a number of advantages, including: 1) the control over the quality of kava imported into Australia; 2) the control over the food safety aspects of kava consumption in Australia; 3) the control over the availability of kava in specific communities; 4) greater developmental opportunities for kava producing island states; 5) a much more sustainable supply of kava used for cultural purposes; 6) creating a legal, safe and regulated kava market.

Cultural groups (e.g. churches, registered communities, etc.) and businesses could apply for a license to import kava commercially for the purpose of selling or serving it exclusively in the form of a prepared beverage to their members and customers. The granting of the license may be done at the discretion of the local state and/or municipal authorities and the requirements of granting such a license could potentially include the following:

- the requirement that any individual representing a business or group that may be interested in applying for a licence must have a proven record of involvement in either the kava industry or cultural activities involving kava and a good knowledge of the existing regulations and recommendations surrounding kava's quality standards and requirements.
- the requirement that all the kava imported into Australia must meet the requirements of the Food Standards and be free from any adulterants or contaminants.
- ensuring that kava is only sold or served to adults.
- providing adequate information/signage advising consumers about kava's effects (e.g. the mandatory warnings specified in the Food Standard 2.6.3)
- ensuring that kava is sold or served exclusively in the form of a beverage intended for consumption within premises.
- if operated for profit, to pay a licensing fee the proceeds of which would be used to finance at least some of the enforcement of the licensing regime

Such a solution, would achieve the goals of easing restrictions on kava imports, increasing economic opportunities for kava exporting countries, greatly improving the quality (and safety) or kava products available in Australia, while at the same time reducing the availability of kava to the immediate communities in which such licensed establishments might be permitted to operate.

The pilot licensing program could be limited to selected states (e.g. Tasmania, Victoria, NSW) and a low number of licensed establishments. Should such a solution prove successful, further licenses could be granted and the geographical scope of the program extended to other locations.

2. Another solution that could be implemented as an alternative to the above, or as a supplementary solution, would be **to permit the importation of commercially packaged kava for personal reasons via mail from New Zealand**. New Zealand and Australia share food regulations via the joint Food Standards Code. Among many other food products, the Code provides sound regulatory requirements for ensuring the safety and quality of kava sold for the purpose of human consumption. It bans the use of additives, aerial parts of the kava plant (due to their toxicity) and it requires that kava is extracted with nothing but water. These requirements are based on science and reflect a broad scientific consensus. It recognises that kava in its pure, traditional form (i.e. a suspension obtained via cold water extraction of pure kava roots) is a safe beverage. At the same time, it rightly notes that impure, adulterated kava or products obtained via extraction with organic solvents may represent a public health risk.

While the enforcement of the Food Standards Code 2.6.3. in New Zealand has been less than perfect, perhaps due to the largely informal nature of much of the kava consumption and sales in the country and apparent low-profile character of the industry, registered businesses selling kava appear to mostly adhere to the regulations, especially when it comes to the ban on the use of organic solvents in the manufacturing of kava products.

Even though the cases of kava being mixed with additives (e.g. flour) are not unheard of, they are largely limited to unregistered vendors or those operating without the knowledge of or license from the appropriate authorities. Importantly, thanks to the existence of the standard, such violations of the standard can be effectively dealt with by either the local councils or the Ministry for Primary Industries. Indeed, we have been informed of cases of kava vendors who had to cease trading kava when the Ministry for Primary Industries identified their products as non-compliant with the Food Standards Code. Importantly, despite New Zealand having some of the world's largest consumption rates of kava (with conservative estimates suggesting tens of thousands of regular consumers and many more occasional consumers), kava by itself is not identified as a source of any significant public health or social concerns. This is very likely to be at least partially related to the existence of the Food Standards Code for kava and the fact that kava vendors must by law adhere to broader food safety regulations.

In light of the above, it appears sensible to permit imports of commercially packaged kava for personal use by mail from New Zealand. Unlike in the case of other countries, any identified problems with any kava products imported from New Zealand could be addressed via existing legal channels and within the framework of the cooperation between Australia and New Zealand in matters related to food quality and safety. The importation of regulated kava products for personal use from New Zealand via mail to Australia could achieve the goal of easing the access to kava among its traditional and modern consumers, while at the same time improving the quality and the regulatory control over both the quantity and quality of kava imports into Australia.