

TASMANIA

JUSTICES (RESTRAINT ORDERS) RULES 2023
STATUTORY RULES 2023, No. 64

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JUSTICES (RESTRAINT ORDERS) RULES 2023

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following rules under section 106M of the *Justices Act 1959*.

Dated 11 September 2023.

B. BAKER
Governor

By Her Excellency's Command,

ELISE ARCHER
Minister for Justice

1. Short title

These rules may be cited as the *Justices (Restraint Orders) Rules 2023*.

2. Commencement

These rules take effect on 18 December 2023.

3. Interpretation

(1) In these rules –

Act means the *Justices Act 1959*;

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clerk has the same meaning as in the *Justices Rules 2003*.

- (2) Unless the contrary intention appears, an expression used in these rules has the same meaning as it has in Part XA of the Act.

4. Applications generally

- (1) An application under Part XA of the Act is to –
- (a) specify the order sought; and
 - (b) contain –
 - (i) in the case of an application made by a police officer, a statutory declaration of the police officer that to the best of the officer's knowledge and belief the information contained in the application is true; or
 - (ii) in the case of any other applicant, an affidavit of the applicant stating that to the best of the applicant's knowledge and belief the information contained in the application is true; and
 - (c) be filed with the clerk.
- (2) Subrule (1) does not apply to an application under section 106GA(1) of the Act.
- (3) If an application, under section 106B(1) of the Act, for a restraint order is filed after a warrant

has been issued under section 106C(1) of the Act in respect of a person to be restrained under the restraint order, the application is to state that the warrant has been issued.

5. Electronic filing of applications

(1) In this rule –

authorised source means a person or agency approved by the Chief Magistrate, under rule 65(2) of the *Justices Rules 2003*, to file applications with the clerk by electronic means.

(2) An authorised source may file an application under Part XA of the Act by electronic means.

(3) An application filed by electronic means under subrule (2) is to state that subrule (4) has been complied with.

(4) An authorised source must retain the original signed application that complies with rule 4 in a safe place and, if requested by a magistrate, produce the application to a magistrate.

6. Service and filing of applications or warrants

(1) In this rule –

endorsed copy means –

- (a) the copy of the sealed copy which contains the endorsement of service; or

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- (b) a facsimile copy of the endorsed copy referred to in paragraph (a);

endorsement of service means the endorsement and signature referred to in subrule (6)(a) and (b) or subrule (10).

- (2) A person making any of the following applications must cause a sealed copy of the application to be served personally on the respondent to the application as soon as practicable after the application has been filed with the clerk:
 - (a) an application under section 106B(1) of the Act for a restraint order;
 - (b) an application under section 106G(1) of the Act for the revocation of a restraint order except if –
 - (i) the application is made by, or on behalf of, a person who has attained the age of 14 years and who has the sole benefit of the restraint order; or
 - (ii) the application is made by a police officer.
- (3) In addition to any relevant requirement specified in subrule (2) to serve the respondent personally with a sealed copy of the application, a person making an application under section 106G(1) of the Act for the variation, extension or revocation of a restraint order must cause a sealed copy of the application to be served –

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- (a) on every other person who –
 - (i) has attained the age of 14 years;
and
 - (ii) benefits from the restraint order;
and
 - (b) in accordance with rule 20 of the *Justices Rules 2003*, as if a reference to a summons were a reference to the sealed copy; and
 - (c) as soon as practicable after the application has been filed with the clerk.
- (4) The clerk must notify the Commissioner of Police of the filing of an application made under section 106G(1) of the Act, and provide the Commissioner of Police with a copy of that application, if –
- (a) the applicant is not a police officer; and
 - (b) a police officer was the applicant for a restraint order to which that application relates.
- (5) A person making an application under section 106GD(2) of the Act must cause a sealed copy of the application to be served on the respondent to the application, in accordance with rule 20 of the *Justices Rules 2003* (as if a reference to a summons were a reference to the sealed copy), as soon as practicable after the application has been filed with the clerk, except if –

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- (a) the application is for the cancellation of the registration of a registered external restraint order; and
 - (b) the applicant is a person for whose benefit that order was registered.
- (6) A person serving a sealed copy, or a copy, of an application must –
 - (a) endorse on a copy of that sealed copy, or copy, of the application a memorandum stating the day, place and mode of service; and
 - (b) sign the memorandum; and
 - (c) cause the endorsed copy to be lodged in the office of the clerk for the district in which it is returnable as soon as practicable.
- (7) On receipt of an endorsed copy lodged under subrule (6)(c), the clerk is to file that copy.
- (8) Evidence of service of a sealed copy of an application or warrant may be provided by –
 - (a) the sworn evidence of the person serving it; or
 - (b) the endorsed copy.
- (9) An endorsement of service or a facsimile copy of an endorsement of service is evidence, until the contrary is shown –

- (a) that the endorsement was signed by the person whose signature it purports to be; and
 - (b) that the statements contained in the endorsement are true.
- (10) A person executing a warrant issued under section 106C(1) of the Act must –
 - (a) serve personally on the person apprehended under the warrant a copy, or a facsimile copy, of the application in respect of which the warrant was issued; and
 - (b) endorse on the warrant a memorandum stating that a copy, or a facsimile copy, of the application has been served on the person apprehended.

7. Affidavits

- (1) If a respondent to an application under Part XA of the Act wishes to defend the application, the respondent may file an affidavit in reply at the earliest practicable date before the return date of the application.
- (2) Subrule (1) does not apply to an application –
 - (a) under section 106B(3) of the Act for leave to make an application for a restraint order; or
 - (b) under section 106G(2) of the Act for leave to make an application for the

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- variation, extension or revocation of a restraint order; or
 - (c) under section 106GA(1) of the Act for the registration of an external restraint order; or
 - (d) for leave to be granted, as referred to in section 106GD(1)(d) of the Act, to make an application for the variation, variation of the period of effect or cancellation of the registration of a registered external restraint order.
- (3) An affidavit under subrule (1) is to be in concise language and to contain only –
- (a) relevant answers made to the affidavit or statutory declaration given in support of the application; and
 - (b) any other relevant matters necessary –
 - (i) to support the case of the party by whom the affidavit is to be filed; and
 - (ii) to enable the issues to be defined.
- (4) An affidavit filed in accordance with subrule (1) is to be served on the other party to the proceedings as soon as practicable after the affidavit is filed.
- (5) Rule 20 of the *Justices Rules 2003* applies to the service of an affidavit under subrule (4) as if a

reference to a summons in that rule were a reference to an affidavit filed under subrule (1).

8. Hearing of applications

- (1) At the hearing of an application under Part XA of the Act, except the hearing of an application under section 106GA(1) of the Act, evidence may be given by affidavit.
- (2) A person who made an affidavit for the purposes of subrule (1) is not required to attend the hearing of the application unless a party to the proceedings, or the justice hearing the proceedings, so requires.
- (3) By notice in writing given to the person who made an affidavit for the purposes of subrule (1), a party to the proceedings may require that the person attend the hearing for cross-examination and, if the person fails to attend, the court may –
 - (a) refuse to allow the affidavit to be used; or
 - (b) allow the affidavit to be used on any conditions that the court thinks fit; or
 - (c) adjourn the proceedings until the person attends for cross-examination.

9. Service of restraint orders

- (1) If a restraint order or an interim restraint order is made, a copy of the order is to be served on the

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person against whom the order is made as soon as practicable after it is made.

- (2) If a restraint order or an interim restraint order is made, the clerk must forward a copy of the order –
 - (a) to the Commissioner of Police; and
 - (b) to the person who made the application for the restraint order; and
 - (c) if the person who made the application is not the person for whose benefit the order is made, to the person for whose benefit the order is made.
- (3) If a restraint order, interim restraint order or registered external restraint order is varied or extended, a copy of the order, as varied or extended, is to be served personally on the respondent to the application for variation or extension of the order as soon as practicable after the order is varied or extended.
- (4) If a restraint order, interim restraint order or registered external restraint order is varied or extended, the clerk, as soon as practicable after the order is varied or extended, is to forward a copy of the order as varied or extended –
 - (a) to the Commissioner of Police; and
 - (b) to the person who made the application for the variation or extension of the order; and

- (c) if the person who made the application is not the person for whose benefit the order was made, to the person for whose benefit the order was made.
- (5) On the revocation of a restraint order or the cancellation of the registration of an external restraint order, the clerk must notify the following persons of that revocation or cancellation:
 - (a) the Commissioner of Police;
 - (b) the person who made the application for that revocation or cancellation;
 - (c) the person for whose benefit the restraint order or external restraint order was made;
 - (d) the person against whom the restraint order or external restraint order was made.
- (6) If a restraint order or interim restraint order is served on the person against whom the order is made, or a registered external restraint order, as varied or extended, is served on the respondent to the application for variation or extension to the order, the person who served the order is to –
 - (a) endorse on the copy of the order a memorandum stating that the order has been served; and
 - (b) sign the memorandum and specify the date on which the order was served; and

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- (c) forward a copy of the endorsed order to the clerk.
- (7) On receipt of the copy of the order endorsed in accordance with subrule (6), the clerk is to notify the fact that the order has been served and the date on which it was served to –
 - (a) the applicant for the restraint order or its variation or extension; and
 - (b) the person for whose benefit the order was made if that person was not also the applicant; and
 - (c) the Commissioner of Police.
- (8) Evidence of service of a sealed copy of an application may be provided by –
 - (a) the sworn evidence of the person serving it; or
 - (b) the endorsed copy.
- (9) An endorsement of service or a facsimile copy of an endorsement of service is evidence, until the contrary is shown –
 - (a) that the endorsement was signed by the person whose signature it purports to be; and
 - (b) that the statements contained in the endorsement are true.

10. Power of justices to dispense with provisions

Subject to Part XA of the Act and on any conditions that they consider necessary, the justices may dispense with the need for compliance, with any provisions of that Part or these rules, by a party to proceedings under Part XA of the Act.

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 20 September 2023.

These rules are administered in the Department of Justice.

EXPLANATORY NOTE

(This note is not part of the rules)

These rules –

- (a) prescribe the procedures to be followed in relation to the making, serving, filing and hearing of applications in respect of restraint orders under the *Justices Act 1959*; and
- (b) are made consequentially on the repeal of the *Justices (Restraint Orders) Rules 2013* under section 11 of the *Subordinate Legislation Act 1992*.