
JUSTICES AMENDMENT ACT 1988

No. 8 of 1988

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JUSTICES AMENDMENT ACT 1988

No. 8 of 1988

AN ACT to amend the Justices Act 1959.

[Royal Assent 26 May 1988]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Justices Amendment Act* Short title. 1988.

2—(1) This section and section 1 shall commence on the Commencement. day on which this Act receives the Royal assent.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3—In this Act, the *Justices Act 1959** is referred to as the Principal Act. Principal Act.

4—Section 36B of the Principal Act is amended by adding Amendment of section 36B of Principal Act (Power of justice to direct person to go to, and remain at, place for purpose of being provided or served with relevant documents). in subsection (1) “or served” after “provided”.

* No. 77 of 1959. For this Act, as amended to 1st May 1982, see the continuing Reprint of Statutes. Subsequently amended by Nos. 33 and 51 of 1982, Nos. 45 and 75 of 1983, Nos. 29, 48, and 55 of 1984, Nos. 9, 51, and 121 of 1985, Nos. 45, 77, 93, and 115 of 1986, and Nos. 45 and 57 of 1987.

Substitution of
Part XA of
Principal Act.

5—Part XA of the Principal Act is repealed and the following Part is substituted:—

PART XA
RESTRAINT ORDERS

Interpretation.

106A—(1) In this Part—

“interim restraint order” means an order made under section 106D;

“restraint order” means an order made under section 106B.

(2) In this Part, a reference to an application under this Part shall not include a reference to an application made under section 106B (3) or section 106G (2).

Restraint orders.

106B—(1) Where on an application made under this section, justices are satisfied on the balance of probabilities—

(a) that—

(i) a person has caused personal injury or damage to property; and

(ii) that person is, unless restrained, likely again to cause personal injury or damage to property;

(b) that—

(i) a person has threatened to cause personal injury or damage to property; and

(ii) that person is, unless restrained, likely to carry out that threat; or

(c) that—

(i) a person has behaved in a provocative or offensive manner;

(ii) the behaviour is such as is likely to lead to a breach of the peace; and

(iii) that person is, unless restrained, likely again to behave in the same or a similar manner,

they may make an order imposing such restraints upon that person as are necessary or desirable to prevent the person from acting in a manner specified in this subsection.

(2) An application for a restraint order may be made—

- (a) by a police officer;
- (b) by a person against whom, or against whose property, the behaviour that forms the subject-matter of the application was directed, or, where that person is a child, a parent or guardian of that child; or
- (c) by a person to whom leave is granted under subsection (3).

(3) A person other than a person referred to in subsection (2) (a) or (b) may apply to justices for leave to make an application for a restraint order.

(4) An application referred to in subsection (3) may be made in the absence of the respondent to the application.

(5) Without limiting the nature of the orders which may be made under this section, the justices hearing the application for the order may make a restraint order—

- (a) directing the person against whom the order is sought to vacate premises, restraining that person from entering premises, or limiting that person's access to premises, whether or not that person has a legal or equitable interest in the premises, but before making such an order the justices shall consider—
 - (i) the effect of making or declining to make the order on the accommodation of the persons affected by the proceedings; and
 - (ii) the effect of making or declining to make the order on any children of, or in the care of, the persons affected by the proceedings;
- (b) prohibiting or restricting the possession by the person against whom the order is sought of all or any firearms specified in the order or directing the forfeiture or disposal of any firearms in the possession of that person; or
- (c) prohibiting the person against whom the order is sought from causing another person to engage in conduct restrained by justices.

(6) A restraint order shall remain in force for such period as justices consider necessary to protect the person for whose benefit the order is made or until an order is made revoking the restraint order.

Issue of warrants
in respect of
applications for
restraint orders.

106C—(1) Where an application for a restraint order, whether or not filed with a clerk of petty sessions, and the materials required by the rules to accompany such an application are produced to a justice, the justice may, if in his opinion it is a case of urgency and he sees sufficient cause to do so, issue a warrant for the apprehension of the person against whom the restraint order is sought.

(2) Where a justice issues a warrant for the apprehension of a person pursuant to subsection (1) and an application for a restraint order has not been filed at the time the warrant is issued, the application shall be filed as soon as practicable after the warrant is issued.

Interim restraint
orders.

106D—(1) Where an application for a restraint order has been filed with a clerk of petty sessions, justices may, if they see sufficient cause to do so and whether or not they are satisfied of any of the matters specified in section 106B (1)—

- (a) make an interim restraint order at any stage of the proceedings in respect of the application for the restraint order;
- (b) at any stage of those proceedings vary an interim restraint order so made; and
- (c) whether or not they make an interim restraint order, give such directions with respect to the further hearing of the application for the restraint order as they consider necessary.

(2) An interim restraint order shall be expressed to operate for such period, not exceeding 60 days, as may be specified by the justices.

(3) Notwithstanding subsection (2), if it appears to justices that the period for which an interim restraint order is expressed to have effect will expire before the conclusion of the proceedings in respect of the application for a restraint order, they may extend the interim restraint order until—

- (a) a restraint order is served on the person against whom it is sought; or
- (b) the proceedings are otherwise terminated.

(4) An interim restraint order may be made, varied, or extended in the absence of the person against whom a restraint order is sought whether or not the application for the restraint order has been served on that person.

(5) In addition to, or in lieu of, making an interim restraint order, justices may issue a warrant for the apprehension of the person against whom a restraint order is sought.

(6) The provisions of section 106B (5) apply to the making of an interim restraint order in the same manner as they apply to the making of a restraint order.

106E—(1) Except where otherwise provided in this Act or except as otherwise ordered by justices, an application under this Part shall be heard and determined in open court and in the same manner as nearly as practicable as a complaint for a simple offence.

Hearing and determination of applications under this Part.

(2) If the justices hearing an application under this Part are satisfied that—

- (a) a sealed copy of the application has been served on the respondent to the application; or
- (b) reasonable attempts have been made to serve a sealed copy of the application on the respondent,

they may proceed in the absence of the respondent and may—

- (c) make the order sought in the application or such other order as they consider necessary; or
- (d) issue a warrant for the apprehension of the respondent.

(3) If the parties to an application under this Part consent, justices may make an order under this Part in accordance with the terms consented to by the parties.

106F—(1) If for any reason the proceedings in respect of an application under this Part are adjourned, justices may—

Powers of justices to remand in custody, admit to bail, &c.

- (a) remand the respondent to the application in custody, with a justice issuing his warrant accordingly;
- (b) admit the respondent to bail; or
- (c) order the respondent to appear before justices at the time and place to which the proceedings are adjourned.

(2) Where the respondent to an application under this Part is remanded in custody, the justices who remand that person shall inform him that he shall, and the warrant shall provide that he shall, be kept for a period not exceeding 28 clear days at any one time and then be brought before justices as specified in the warrant.

(3) The period for which a person may be admitted to bail under this section shall not, without his consent, exceed 60 days.

(4) An order under subsection (1) (c) has the same effect as a summons in similar terms.

Variation,
extension, and
revocation of
restraint orders.

106G—(1) A person who may make an application for a restraint order or a person against whom a restraint order has been made may at any time apply to justices for the variation, extension, or revocation of the restraint order.

(2) A person other than a person referred to in subsection (1) may apply to justices for leave to make an application for the variation, extension, or revocation of a restraint order.

(3) An application referred to in subsection (2) may be made in the absence of the respondent to the application.

(4) A restraint order which has been varied under this section shall have effect for the period for which the restraint order before it was varied had effect unless otherwise provided by the justices hearing the application for the variation of the restraint order.

(5) A restraint order may be extended for such period as justices consider necessary to protect the person for whose benefit the restraint order was made or until an order is made revoking the restraint order.

Costs.

106H—(1) The justices hearing an application under this Part made by a person other than a police officer may, if they think fit, order either party to pay to the other such costs as the justices consider reasonable.

(2) Payment of costs which justices may order to be paid by either party to the other under this section shall be enforced in like manner as costs ordered to be paid under Part IX.

106i—(1) Where a person who has been served personally with a restraint order made, varied, or extended under this Part or with an interim restraint order made, varied, or extended under this Part contravenes or fails to comply with the order, that person is guilty of an offence and is liable on summary conviction to fine not exceeding 10 penalty units or to imprisonment for a period not exceeding 6 months.

Contravention of restraint order or interim restraint order.

(2) Where a police officer has reasonable cause to suspect that a person has committed an offence under subsection (1), he may, without warrant, arrest and detain that person and may, for the purpose of arresting and detaining such a person, enter, by force if necessary, any premises on which he has reasonable cause to believe that person is present and search those premises for that person.

(3) Section 34 does not apply to a person arrested and detained under subsection (2).

106j—Where, upon the hearing of a complaint for an offence punishable summarily, justices are satisfied on the balance of probabilities as to the matters set out in section 106b (1), they may make an order under this Part in addition to any other order which they may make.

Power of justices to make orders under this Part at hearing of complaint for offence.

106k—(1) Where it appears to justices that for the furtherance of, or otherwise in the interests of, the administration of justice it is desirable to prohibit the publication of the name of any party to, or witness in, any proceedings before justices under this Part, justices may, either before or during the course of the proceedings or after the proceedings, make an order forbidding the publication of the name of the party or witness.

Restriction of publication of names of parties, &c.

(2) Where justices make an order under subsection (1), the publication of any reference or allusion to any party or witness, the name of whom by an order under that subsection is forbidden to be published, shall, if that reference or allusion is, in the opinion of the justices making the order, intended, or is sufficient, to disclose the identity of the party or witness, be deemed to be a publication of the name of the party or witness.

(3) Where justices make an order under subsection (1) forbidding the publication of any name, they shall report the fact to the Attorney-General and shall embody in their report a statement of the name forbidden to be published by that order and the circumstances in which the order was made.

(4) No person shall print or publish any name that justices have, under subsection (1), ordered not to be published.

(5) A person who contravenes subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units or to imprisonment for a period not exceeding 3 months.

106L—(1) A police officer may—

- (a) at the request of a person who apparently resides on any premises; or
- (b) if he has reason to believe that a person on those premises is or may be under threat or attack or has recently been under threat or attack or that an attack on such a person is imminent,

enter those premises and remain on the premises for such period as he considers necessary to prevent a breach of the peace.

(2) A police officer who enters premises pursuant to subsection (1) may, without warrant—

- (a) search any person on those premises whom he suspects on reasonable grounds to have in his possession any object;
- (b) search those premises for the presence of any object; and
- (c) seize and detain any object,

which the police officer suspects on reasonable grounds has been used or may be used to threaten or injure any person on those premises.

(3) For the purpose of subsection (2), if a person on premises entered by a police officer pursuant to subsection (1) alleges to a police officer that an object has been used to threaten or injure that person, that allegation shall be sufficient justification for a police officer to search any person, to search the premises, and to seize and detain that object.

(4) On an application made by a police officer or by any person who claims to be the owner of an object seized and detained under subsection (2), justices may order that the object—

- (a) be forfeited to Her Majesty;
- (b) be destroyed;
- (c) be returned to that person; or
- (d) be otherwise disposed of in such manner as justices think fit.

(5) Where an object is seized and detained under subsection (2) and an application for an order has not been made under subsection (4) within 60 days after the date of the seizure, the object shall be returned to the person from whom it was seized.

106M—(1) The Governor may make rules for the purposes of this Part. Rules for purposes of Part XA.

(2) Rules made for the purposes of this Part may authorize justices, upon such terms and conditions as they consider necessary, to dispense with the need for compliance by a party to proceedings under this Part with the provisions of any such rules.

6—Where proceedings in respect of an application made under section 106A as in force immediately before the day fixed under section 2 (2) have not been determined before that day, the provisions of Part XA of the Principal Act as in force immediately before that day shall continue to apply to those proceedings. Transitional provision.

