****

**APPLICATIONS TO SET ASIDE**

***EX PARTE* CONVICTION &/OR SENTENCE**

**GENERAL INFORMATION:**

This information relates to the procedure for applying to set aside a conviction, order, and/or sentence that was imposed by a Magistrate in the absence of the Defendant (*“ex parte”*) pursuant to the *Justices Rules* 2003r.38.

An application to have a conviction, sentence or other order set aside by the Court must be:

* in writing (see the attached Application form); and
* supported by oral evidence or affidavit; and
* accompanied by proof of service of notice of the application to set aside on the other party (eg. Police Prosecution Services).

You must file your completed Application form at the Court registry before you serve a copy of it upon the other party.

A conviction or order made *ex parte* may be set aside by the Court without attendance by either party if the consent of both parties is written on the Application form. If the application is by consent, you will be advised of the outcome by letter from the Court.

If the Court orders the conviction, order, or sentence to be set aside, the Court may:

* make an order that the applicant pay the costs of the other party;
* proceed to hear and determine the original complaint or application; or
* direct that the complaint or application be heard and determined on a later date upon notice being given to all parties.

# APPLICATION FORM:

An Application Form is attached for your use.

# AFFIDAVIT:

An affidavit form is attached for your use.

If you are applying to set aside only the sentence or penalty, your affidavit must provide detailed reasons for your non-attendance when the complaint or application was originally heard in your absence.

If you are applying to set aside a conviction, your affidavit must include detailed reasons for your previous absence at Court, as well as details that disclose an arguable defence to the charge(s) brought against you; and give details of the facts which support that defence.

The affidavit must be sworn on oath or affirmation before a justice of the peace. It is an offence to knowingly make a false affidavit, for which the maximum penalty is 21 years imprisonment.

**FILING FEE:**

A filing fee must be paid at the Magistrates Court registry when filing your application and affidavit. Details of the amount can be obtained from any registry of the Magistrates Court.

TASMANIA

*Justices Act* 1959

Complaint No………………………

In the Magistrates Court of Tasmania

Held at ……………………………………

In the Matter of

…………………………………………… v …………………………………………

**APPLICATION**

I, ………………………………………………………………………………………………………….

*(name)*

of ………………………………………………………………………………………………………....

*(address)*

DOB …../…../………….

apply for the following Orders pursuant to *Rule 38 of the Justices Rules* 2003*.*

That the conviction\*/sentence\*/other order\* on the abovementioned Complaint/Application imposed upon me on / / at the Magistrates Court at …………………….be set aside.

DATED this………………………day of …………………………20

(signed) ………………………………………….

APPLICANT

I, ………………………………………………………………………………………………..on behalf of…………………………………………………………………………………………………………

Consent to the above Order being made.

DATED this…………………..day of…………………….20….

(signed) ………………………………………….

RESPONDENT

TAKE NOTICE that this Application will be heard at the Magistrates Court at:

|  |  |  |  |
| --- | --- | --- | --- |
| 🞏 | 23-25 Liverpool Street, Hobart | 🞏 | 73 Charles Street, Launceston |
| 🞏 | 8 Griffith Street, Devonport | 🞏 | 38 Alexander Street, Burnie |

on ………………………….……………… at …………………am/pm

 CLERK OF PETTY SESSIONS

TASMANIA

*Justices Act* 1959

Complaint No……………………………

In the Magistrates Court of Tasmania

Held at ……………………………………

In the Matter of

…………………………………………… v …………………………………………

**AFFIDAVIT**

I, …………………………………………………………………………………………………………

*(name)*

of ………………………………………………………………………………………………………

*(address)*

in Tasmania make oath and say as follows:

I am the applicant in the above-mentioned application pursuant to Rule 38 of the Justices Rules 2003.

I ask the Court to set aside the conviction\*/sentence\*/other order\* on the abovementioned complaint/application imposed upon me in my absence on / / at the Magistrates Court for the following reasons:

(a) ……………………………………………………………………………………………………………

……………………………………………………………………………………………………………

……………………………………………………………………………………………………………

……………………………………………………………………………………………………………

(signed) ………………………………………

SWORN/AFFIRMED by the abovenamed deponent before me

at………………………………………………………………………………….

this…………………..day of…………………….20….

(signed) ………………………………………….

(Justice of the Peace)

TASMANIA

*Justices Act* 1959

Complaint No…………

In the Magistrates Court of Tasmania

Held at

In the Matter of

 v

**MEMORANDUM OF SERVICE**

I,

*(name)*

of

*(address)*

have today served

of

with a sealed copy of the Application in this matter by personally delivering it to:

*(name of person served)*

at:

*(address of person served)*

Dated / / *(Signed)*

 Name