



Magistrates' Court
Victoria

MAGISTRATES' COURT OF VICTORIA

REVOCATION OF PRACTICE DIRECTION NO. 9 of 2004

APPLICATIONS FOR SUMMARY HEARING OF INDICTABLE OFFENCES

Background

As a result of the decision in *Clayton v Hall & Anor* [2008] VSC 172, it is necessary to revoke this Practice Direction.

Revocation

I hereby revoke Practice Direction No 9 of 2004, **effective immediately**.

A Practice Direction to replace No. 9 of 2004 will be published as soon as practicable taking into account the implications of the decision in *Clayton v Hall & Anor*.

IAN L GRAY
Chief Magistrate
6 June 2008

REVOKED ON 6 JUNE 2008



**Magistrates' Court
Victoria**

Practice Direction

No. 9 of 2004

APPLICATIONS FOR SUMMARY HEARING OF INDICTABLE OFFENCES

1. A determination by a Court not to hear and determine an indictable offence summarily on the ground that the Court is of the opinion that the charge or charges is or are inappropriate to be determined summarily will be entered upon the court computer system as an "Other Order" of the Court.
2. Except as set out in paragraph 3, once such a determination is made, a further application to accept jurisdiction may not be made in respect of the same case to the same or another Magistrate, and the determination will be treated as the final order of the court.
3. Wherever a determination refusing to accept jurisdiction has been made, a further application may be made where the case against the defendant has been substantially modified, either by way of withdrawal of major charges, or amendment of charges so as to specify less serious offences. Such an application must be made to the same magistrate who made the original determination unless the Court determines that such a course is impracticable.
4. Where the prosecution applies to have an indictable charge heard and determined summarily, to which application the defendant does not consent, the case shall forthwith be adjourned to the appropriate court for full hearing.
5. Except as set out in paragraph 6, once such an order is made, a further application for the matter to be heard and determined summarily may not be made in respect of the same case to the same or other Magistrate, and the order transferring the charge or charges to the committal jurisdiction of the court will be treated as a final order of the court.
6. Wherever a defendant has refused to consent to an indictable charge or charges being heard and determined summarily, a further application may be made in exceptional circumstances. Such an application must be made to the same magistrate who made the original order referring the charge or charges into the committal jurisdiction of the court unless the court determines such a course is impracticable.

7. Where a determination is made by a court to hear and determine an indictable offence summarily the magistrate so determining will thereafter be considered as part-heard in the case, and the defendant's election shall in the absence of exceptional circumstances be considered as final.
8. Where such an election is made in the committal Mention Court, the matter may, if the defendant pleads 'Guilty', be heard and determined by the presiding Magistrate on the day the plea is entered. In cases where there is not summary contest, or the plea cannot proceed that day, the presiding Magistrate will adjourn the matter to an appropriate date to be heard and determined by that Magistrate.

IAN L GRAY
Chief Magistrate

16th September, 2004