



Magistrates' Court  
Victoria

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## SUBJECT MATTER

### APPEAL COSTS FUND

**Application for certificate** - Proceeding commenced - disqualification of magistrate - opposed by police - adjournment granted - certificate wrongly refused: 14/95

### CIVIL PROCEEDINGS

**Adjournment application** - refused - second application to another magistrate - abuse of process: 4/95

**Claim for cost of repairs** - vehicle repaired without written approval - "damaged motor vehicle" - does not include vehicle broken down: 5/95

**Money paid under mistake of fact** - defences available - money spent on ordinary living expenses - no defence: 10/95

**Self-executing order** - complaint dismissed - no jurisdiction to grant extension of time for compliance: 11/95

**Rehearing application** - must allow parties to put their cases - merits of defence to be considered: 16/95

**Rehearing application** - order made in excess of proper amount - defendant entitled as of right to have order set aside - magistrate in error in making amendment to claim: 24/95

**Rehearing application** - refused - not a final order - not a bar to making fresh application: 7/95

### CORONERS

**Appearance at inquest** - co-offenders - "sufficient interest" - entitled to appear: 6/95

### COSTS

**Summary proceeding dismissed** - test to determine costs - not allowed on an indemnity basis - test is how much unsuccessful party might reasonably be required to pay: 15/95

**Unlawful possession charge dismissed** - application for costs refused - based on length of time goods held and refusal to name supplier - magistrate in error: 12/95

**Where charge dismissed**, informant to show not "ordinary circumstances" - contest mention hearing provides opportunity to disclose prosecution or defence case - no costs where failure to disclose: 23/95

### CRIMES COMPENSATION

**Application for award** - Applicant unwilling to commence civil proceedings against other person - no discretion in Tribunal to force applicant to take such a course: 19/95

### CRIMINAL LAW

**Drugs** - trafficking - cannabis crop - usable and unusable parts - question is: how much of the drug was for sale?: 18/95

**Going equipped for theft** - person found in possession of filed-down keys - could be used for committing theft - guilty of offence: 21/95

**Particulars of charge** - must be given in writing rather than orally - sufficient particulars may be given in police brief and in interlocutory proceedings: 22/95

**Sentencing** - court may impose wholly suspended sentence of more than 3 months and make a CBO: 8/95

**Sentencing** - Court not to sentence for more serious offence nor bound to accept assertions from bar table - not necessary to inform practitioner of intention to reject assertions: 17/95

**Sentencing** - maximum penalty - as provided for by statute - appropriate sentence to be first determined then effect given to jurisdictional limit: 13/95

**Unlawful possession** - charge dismissed - entitled to costs: 12/95

### MOTOR TRAFFIC

#### Drink/driving—

**Certificate** - given to driver 17 minutes after test - "as soon as practicable" - charge dismissed: 9/95

**Certificate** - under *Road Safety Act* - error - sub-section wrongly stated - certificate not invalid: 2/95

**Charge laid** - under RSA instead of *Road Safety Act* - charge sufficiently identified - capable of amendment: 1/95

## SUBJECT MATTER

**Driver** - required to go to "the police station" - not necessary for police officer to nominate a particular police station: 3/95

### PRACTICE AND PROCEDURE

**Adjournment application** - refused - second application to another magistrate - abuse of process: 4/95

**Charge and summons** - informant's address omitted - document not vitiated - adjournment application refused - applicant had sufficient time to comply with Act - magistrate not in error in proceeding with hearing after told of defendant's priors: 20/95

**Commencement of proceedings** - court assembled to hear charge: 14/95

**Error in certificate** - sub-section wrongly stated - certificate not invalid: 2/95

**Identification of charge** - 'RSA' instead of *Road Safety Act* - charge sufficiently identified - capable of amendment: 1/95

**Particulars of charge** - should be given in writing not orally - may be sufficient from police brief and interlocutory proceedings material: 22/95

**Plea of guilty** - withdrawal of - probative value/prejudice - to be examined: 2/95

**Rehearing application** - must allow parties to put their case - must consider whether defence on the merits: 16/95

**Rehearing application** - refused - not a final order - can make a fresh application: 7/95

**Self-executing order** - complaint dismissed - no jurisdiction to grant extension of time for compliance: 11/95

### SENTENCING

**Court not to sentence for more serious offence** - court not bound to accept assertions from bar table - court not required to warn practitioner of intention to reject assertions: 17/95

**Jurisdictional limit** - to be given effect to after appropriate sentence determined: 13/95

**Wholly suspended sentence** - on all counts except one, CBO on remaining - no sentencing error: 8/95.

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**WORDS AND PHRASES, CATCHWORDS, CONCEPTS ETC.**

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