SUPREME COURT OF QUEENSLAND

CITATION:	*R v Barbaro; Ex parte Attorney-General (Qld)* [2019] QCA 286
PARTIES:	**R** **v** **BARBARO, Harley Joe** (respondent) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (appellant)
FILE NO/S:	Appeal No 67 of 2019 MC No 11373 of 2018
DIVISION:	Court of Appeal
PROCEEDING:	Reference under s 669A(2A) Criminal Code
ORIGINATING COURT:	Magistrates Court at Southport – [2019] QMC 1 (Magistrate Magee)
DELIVERED ON:	6 December 2019
DELIVERED AT:	Brisbane
HEARING DATE:	20 September 2019
JUDGES:	McMurdo JA and Boddice and Crow JJ
ORDERS:	**The questions before the Court were answered as follows:** **1. Do the legislative provisions in Part 6A, Chapter 2 of the *Police Powers and Responsibilities Act* 2000 (Qld) require that in order that an official warning for consorting to be validly given, a separate official warning for consorting must be given for each separate stated person who is a recognised offender?** **No.** **2. If a validly issued official warning for consorting may refer to more than one stated person as a recognised offender, and an official warning for consorting is given which nominates more than one stated person as recognised offenders but in fact one of those stated persons is not a recognised offender, does the official warning stop having effect in respect of all stated persons 24 hours after it is given, pursuant to s 53BAD(3) of the *Police Powers and Responsibilities Act* 2000 (Qld)?** **No.**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST PEACE AND PUBLIC ORDER – OFFENCES RELATING TO PARTICIPATION IN

CRIMINAL ORGANISATIONS – where the Attorney-General of Queensland referred two points of law to the Court of Appeal under s 669A(2A) of the *Criminal Code Act* 1899 (Qld) – where both points raise for consideration the requirements for the giving of a valid Official Warning for Consorting under Part 6A of the *Police Powers and Responsibilities Act* 2000 (Qld) – where the respondent was charged with habitually consorting with recognised offenders in breach of s 77B of the Code – where the charge alleged that, the respondent habitually consorted with at least two recognised offenders, together and separately, and that at least one of the consorting happened after the respondent had been given an official warning for consorting in relation to those recognised offenders – where the official warning for consorting referred to in the charge related to a written notice served on the respondent which named 15 stated persons as recognised offenders – where one of the 15 stated persons was not a recognised offender, as defined in the legislation – where the Magistrate ruled that the written document was not a valid official warning and the respondent was, accordingly, found not guilty of the charge – whether the written notice which nominated 15 stated persons as recognised offenders, was a valid official warning under the PPRA

Acts Interpretation Act 1954 (Qld), s 9, s 14A, s 32C
Criminal Code 1899 (Qld), s 77, s 77B, s 669A(2A)
Domestic and Family Violence Protection Act 2012 (Qld), s 3(1)(b), s 4(1), s 5(f), s 101B
Police Powers and Responsibilities Act 2000 (Qld), s 5(f), s 53BAA, s 53BAC, s 53BAD
Serious and Organised Crime Legislation Amendment Act 2016 (Qld), s 77B

Peters v Attorney-General (NSW) (1988) 16 NSWLR 24, cited
R v Ng (2002) 5 VR 257; (2002) 136 A Crim R 299; [2002] VSCA 108, cited
Telstra Corporation Ltd v Australian Competition and Consumer Commission (No 3) (2007) 99 ALD 268; [2007] FCA 1905, cited

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A Glynn QC, with M Longhurst, for the respondent

SOLICITORS: Office of the Director of Public Prosecutions for the appellant
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[1] **McMURDO JA:** The Attorney-General of Queensland has referred two questions of law to this Court, under s 669A(2A) of the *Criminal Code*. The background of the reference is set out in the judgment of Boddice J and I need not repeat it here.

Before going to the questions, it is necessary to set out the relevant statutory provisions.

[2] Section 77B of the *Criminal Code* provides for an offence of habitually consorting with recognised offenders. It does so by sub-section 77B(1) in these terms:

> "**77B Habitually consorting with recognised offenders**
>
> (1) A person commits a misdemeanour if—
>
> (a) the person habitually consorts with at least 2 recognised offenders, whether together or separately; and
>
> (b) at least 1 occasion on which the person consorts with each recognised offender mentioned in paragraph (a) happens after the person has been given an official warning for consorting in relation to the offender.
>
> Maximum penalty — 300 penalty units or 3 years imprisonment."

By s 77B(2), a person does not habitually consort with a recognised offender unless the person consorts with the offender on at least two occasions.

[3] The questions which are referred to this Court concern that element of the offence which is expressed within paragraph (b) of s 77B(1). More particularly, they are concerned with what constitutes an "official warning" for the purposes of that element. By s 77B(4), that term takes its meaning from s 53BAA of the *Police Powers and Responsibilities Act* 2000 (Qld) ("the PPRA").

[4] Section 53BAA defines the term "official warning" as follows:

> "***official warning***, for consorting, means a warning given in person, whether orally or in writing, that—
>
> (a) a stated person is a recognised offender; and
>
> (b) consorting with the stated person on a further occasion may lead to the commission of the offence of habitually consorting."

[5] Consequently, an official warning, whether given orally or in writing, must convey to the recipient three things. It must identify a certain person, it must inform the recipient that this person is a recognised offender,[1] and it must warn that consorting with that person on a further occasion may lead to the commission of the offence of habitually consorting.

[6] Section 53BAC confers certain powers and imposes certain duties upon police officers, in relation to giving an official warning. The section relevantly provides as follows:

> "**53BAC Police powers for giving official warning for consorting**
>
> (1) This section applies if a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

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[1] Defined by s 77 of the *Criminal Code* as "an adult who has a recorded conviction, other than a spent conviction, for a 'relevant offence' (whether on indictment or summary conviction)." A 'relevant offence' is also defined in s 77.

(2) The police officer may stop the person and require the person to remain at the place where the person is stopped for the time reasonably necessary for the police officer to do any or all of the following—

(a) confirm or deny the police officer's suspicion, including, for example, by exercising a power under section 40 or 43B;

(b) give the person an official warning for consorting;

(c) if the official warning is given orally—confirm under subsection (5) the official warning.

…

(4) If an official warning for consorting is given in writing, the warning must be in the approved form.

(5) If an official warning for consorting is given orally, the police officer must, within 72 hours after giving the warning orally, confirm the warning by giving it, in the approved form, to the person in the prescribed way.

…

…

(8) To remove any doubt, it is declared that—

(a) an official warning for consorting may be given to a person in relation to a recognised offender before, during or after the person has consorted with the recognised offender;

…

(9) In this section—

…

recognised offender includes a person who a police officer reasonably suspects is a recognised offender."

[7] Section 53BAD prescribes the effect of an official warning, relevantly in these terms:

"**53BAD Effect of official warning for consorting**

(1) An official warning for consorting given in relation to a stated person who is a recognised offender has effect until the stated person stops being a recognised offender.

(2) However, if an official warning for consorting is given orally, and the warning is not confirmed under section 53BAC(5), the official warning stops having effect 72 hours after it is given.

> (3) Also, if an official warning for consorting is given in relation to a stated person who is not a recognised offender, the official warning stops having effect 24 hours after it is given."

[8] The questions which have been referred to this Court are as follows:

> "**Question 1**
>
> Do the legislative provisions in Part 6A, Chapter 2 of the [PPRA] require that in order that an official warning for consorting to be validly given, a separate official warning for consorting must be given for each separate stated person who is a recognised offender?
>
> **Question 2**
>
> If a validly issued official warning for consorting may refer to more than one stated person as a recognised offender, and an official warning for consorting is given which nominates more than one stated person as recognised offenders but in fact one of those stated persons is not a recognised offender, does the official warning stop having effect in respect of all stated persons 24 hours after it is given, pursuant to s 53BAD(3) of the [PPRA]?"

[9] It is to be noted that neither question requires this Court to consider the correctness of the magistrate's decision that the respondent had not been given an official warning as required by these provisions.

[10] There is no issue between the parties about whether, in the case of an official warning in writing, the one document may refer to more than one recognised offender. In other words, it is common ground that if, say, a recipient is to be warned about consorting with two recognised offenders, it is unnecessary for that to be done by two documents, rather than in the same document.

[11] As the arguments have made clear, the difference between the present parties is whether, where the recipient is to be warned about two or more offenders in the one document, the words of warning (the third thing which must be conveyed to the recipient) must be repeated for each offender.

[12] Thus, according to the respondent's argument, where a warning is to be given in relation to each of two offenders, it must be given in substantially these terms:

> "*You are officially warned that [name of the first offender] is a recognised offender and consorting with him/her on a further occasion may lead to the commission of the offence of habitually consorting*.
>
> *You are officially warned that [name of the second offender] is a recognised offender and consorting with him/her on a further occasion may lead to the commission of the offence of habitually consorting*."

I will call this the "first example".

[13] The effect of the argument for the Attorney-General is that the following would suffice:

> "*You are officially warned that each of [name of the first offender and name of the second offender] is a recognised offender, and*

> *consorting with either of those persons on a further occasion may lead to the commission of the offence of habitually consorting.*"

I will call this the "second example".

[14] The first example illustrates what is meant by a "a separate official warning" within question one. Under the respondent's argument, the words of warning must be repeated, offender by offender. Under the Attorney-General's argument, the words of warning need be stated only once, as long as the recipient is unambiguously informed that consorting with any of the stated persons may lead to the commission of the offence.

[15] The arguments do not distinguish between an official warning given orally, and one given by writing. That is consistent with the definition of "official warning" and the terms of s 53BAC.

[16] Before returning to the legislation, it is to be observed that between the two examples which I have set out, there is no difference in the information which would be conveyed to the recipient. In each case, persons would be identified, each of whom would be said to be a recognised offender, and the recipient would be warned that consorting with one of them might lead to the commission of the offence.

[17] I go then to the legislation. Section 77B(1)(b) of the *Criminal Code* requires that the person must have consorted with each recognised offender, at least once after having been given an official warning for consorting *in relation to* the offender, in order for that person to have committed the offence.

[18] By s 77B(4), the term 'official warning' takes its meaning from the definition in s 53BAA of the PPRA. Importantly, an official warning is defined by s 53BAA, not by reference to a communication, orally or in writing, which contains certain words, but by reference to the effect of the communication, in the information and the warning which it must convey. As I have said, the second example meets those requirements. Consequently, the second example would be "an official warning for consorting *in relation to* the offender", as referred to in s 77B(1)(b).

[19] The first of the referred questions contains an ambiguity, as to what is meant by the expression "a separate official warning for consorting". If that means that the recipient must be warned against the risk of an offence by consorting with a certain person, then clearly the question would be answered "yes". But as the arguments have made clear, that is not the intended question; it is whether the words of warning must be repeated, offender by offender, as in my first example. That is not required, according to the definition in s 53BAA. And doing so would not add to what would be conveyed by stating the words of warning only once; there is no reason to add, by an implication, a requirement to that effect. I would answer the first question "no".

[20] Consequently, it is necessary to answer the second question. It addresses a case to which s 53BAD(3) would apply. Section 53BAD(3) is to be interpreted according to the meaning which should be given to the expression "official warning for consorting in relation to the offender" in s 77B(1)(b). In my second example, there are two official warnings which would be given, in relation to a certain person, without the words of warning having to be stated twice. If, in one case, the stated

person is not in truth a recognised offender, then the official warning in relation to that stated person, but only that official warning, would cease to have effect under s 53BAD(3).

[21] Consequently, I would answer the second question "no".

[22] For these reasons, I would answer the questions as follows:

(a) No.

(b) No.

[23] **BODDICE J:** On 28 March 2019, the Attorney-General of Queensland referred two points of law to this Court, under s 669A(2A) of the *Criminal Code Act* 1899 (Qld) (***"the Code"***). Both points raise for consideration the requirements for the giving of a valid Official Warning for Consorting under Part 6A of the *Police Powers and Responsibilities Act* 2000 (Qld) (***"PPRA"***).

Background

[24] On 24 May 2018, the respondent was charged with habitually consorting with recognised offenders in breach of s 77B of the Code.

[25] The charge alleged that, between 3 July 2017 and 25 May 2018 at Gold Coast in the State of Queensland, the respondent habitually consorted with at least two recognised offenders, together and separately, and that at least one of the consorting happened after the respondent had been given an official warning for consorting in relation to those recognised offenders.

[26] The official warning for consorting referred to in the charge related to a written notice served on the respondent on 23 July 2017. That written notice named 15 stated persons as recognised offenders, including the named offenders in the charge. The written notice was in the form approved for the purposes of s 53BAC of the PPRA.

[27] On 6 February 2019, the respondent pleaded not guilty to the charge. A summary hearing was conducted over two days. An issue at that hearing was whether the written notice entitled "Official Warning for Consorting", which nominated 15 stated persons as recognised offenders, was a valid official warning under the PPRA.

[28] A further issue raised at the summary hearing was that one of the 15 stated persons was not a recognised offender, as defined in the legislation. That stated person was not one of the persons specified in the charge laid against the respondent.

[29] On 8 March 2019, the Magistrate ruled that the written document was not a valid official warning in accordance with the legislation. The respondent was, accordingly, found not guilty of the charge.

Reference

[30] By reference dated 26 March 2019, the Attorney-General for the State of Queensland referred to this Court for its consideration and opinion, two points of law said to have arisen at that summary trial:

Question 1

Do the legislative provisions in Part 6A, Chapter 2 of the PPRA require that in order that an official warning for consorting to be validly given, a separate official warning for consorting must be given for each separate stated person who is a recognised offender?

Question 2

If a validly issued official warning for consorting may refer to more than one stated person as a recognised offender, and an official warning for consorting is given which nominates more than one stated person as recognised offenders but in fact one of those stated persons is not a recognised offender, does the official warning stop having effect in respect of all stated persons 24 hours after it is given, pursuant to s 53BAD(3) of the PPRA?

Legislative provisions

[31] Section 77B of the Code provides that a person commits a misdemeanour if the person habitually consorts with at least two recognised offenders, whether together or separately and at least one occasion on which the person consorts with each recognised offender happens after the person has been given an official warning for consorting in relation to the offender. This section provides that the expression "official warning, for consorting" refers to s 53BAA of the PPRA. A recognised offender is defined as "an adult who has a recorded conviction, other than a spent conviction, for a relevant offence (whether on indictment or summary conviction)".[2]

[32] Section 53BAA of the PPRA defines an official warning for consorting as meaning, "a warning given in person whether orally or in writing, that… a stated person is a recognised offender; and … consorting with the stated person on a further occasion may lead to the commission of the offence of habitually consorting."

[33] Section 53BAC of the PPRA provides the police power for the giving of official warnings for consorting. It states:

> "(1) This section applies if a police officer reasonably suspects the person has consorted, is consorting or is likely to consort with 1 or more recognised offenders.
>
> (2) The police officer may stop the person and require the person to remain at the place where the person is stopped for the time reasonably necessary for the police officer to do any or all of the following –
>
> (a) confirm or deny the police officer's suspicion, including, for example, by exercising a power under section 40 or 43B;
>
> (b) give the person an official warning for consorting;
>
> (c) if the official warning is given orally – confirm under subsection (5) the official warning.
>
> *Note –*

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2 *Criminal Code* 1899 (Qld) s 77.

Failure to comply with a requirement given under this subsection is an offence against section 791.

(3) However, before giving an official warning under subsection (2)(b), the police officer must consider whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network.

(4) If an official warning for consorting is given in writing, the warning must be in the approved form.

(5) If an official warning for consorting is given orally, the police officer must, within 72 hours after giving the warning orally, confirm the warning by giving it, in the approved form, to the person in the prescribed way.

(6) Unless the contrary is proved –

(a) an approved form given by post is taken to have been received by the person to whom the form was addressed when the form would have been delivered in the ordinary course of post; and

(b) an approved form given by electronic means is taken to have been received by the person to whom the form was sent on the day the form was sent to the electronic address nominated by the person to a police officer.

(7) If practicable, the giving of an official warning under subsection (2)(b) must be electronically recorded.

(8) To remove any doubt, it is declared that –

(a) an official warning for consorting may be given to a person in relation to a recognised offender before, during or after the person has consorted with the recognised offender; and

(b) a failure to comply with subsection (3) does not affect the validity of an official warning for consorting.

(9) In this section –

criminal activity means the commission of a relevant offence under the Criminal Code, section 77.

electronic address includes an email address and a mobile phone number.

electronic means includes by email, multimedia message and SMS message.

prescribed way, for giving an approved form to a person, means –

(a) delivering the form to the person personally; or

(b) sending the form by electronic means to the electronic address nominated by the person to a police officer; or

(c) sending the form by post or certified mail to the person at the last known or usual place of residence or business of the person or the last known or usual postal address of the person.

recognised offender includes a person who a police officer reasonably suspects is a recognised offender.

Example of when a police officer might reasonably suspect a person is a recognised offender –

A police officer reasonably suspects a person has been convicted of an indictable offence. The police officer is unable to confirm the nature of the indictable offence, or whether the conviction is spent, due to the unavailability of the person's complete criminal history or the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. However, the police officer reasonably suspects the person is a recognised offender.

SMS message means a text message sent using the mobile phone service known as the short messaging service."

[34] Section 53BAD of the PPRA provides for the effect of an official warning for consorting:

"(1) An official warning for consorting given in relation to a stated person who is a recognised offender has effect until the stated person stops being a recognised offender.

(2) However, if an official warning for consorting is given orally, and the warning is not confirmed under section 53BAC(5), the official warning stops having effect 72 hours after it is given.

(3) Also, if an official warning for consorting is given in relation to a stated person who is not a recognised offender, the official warning stops having effect 24 hours after it is given.

(4) A person does not commit an offence against section 791 if –

(a) the person was required to do something under section 53BAC(2); and

(b) the court is not satisfied the police officer, at the time of making the requirement, had the suspicion mentioned in section 53BAC(1)."

Primary decision

[35] At the summary hearing, the respondent admitted police had delivered to him on 23 July 2017 a document entitled "Official Warning for Consorting under section 53BAC of the *Police Powers and Responsibilities Act 2000*". That document, a copy of which is ***Annexure A*** to these reasons, was in the approved form and referred to the respondent's name, address and date of birth before stating:

> "**Official Warning:**
>
> **YOU ARE OFFICIALLY WARNED THAT THE STATED PERSON(S) IS A RECOGNISED OFFENDER, AND CONSORTING WITH THE STATED PERSON(S) ON A FURTHER OCCASION MAY LEAD TO THE COMMISSION OF THE OFFENCE OF HABITUALLY CONSORTING.**"

[36] The notice contained 15 photographs, each photograph containing under it a specified name and date of birth. The notice recorded that a copy was personally served on the respondent on 23 July 2017.

[37] The Magistrate accepted that, whilst the respondent had admitted being given an official written notice for consorting in the approved form on 23 July 2017, that admission related to the receipt of a notice not a warning. That admission did not include an admission that an official warning for consorting was validly given.

[38] After noting that the respondent challenged the official warning on a number of bases, namely, that it was invalid because the one warning was given for multiple recognised offenders, and that it was invalid because the warning was ambiguous or otherwise was ineffective and did not comply with the pre-conditions necessary for the issuing of a valid warning, the Magistrate found that the official warning was invalid as one warning was given in relation to 15 purported separate recognised offenders.

[39] In coming to that conclusion, the Magistrate found that s 32C of the *Acts Interpretation Act* 1954 (Qld) (***"AI Act"***), which provides that words in an Act in the singular include the plural, was displaced by a contrary intention. The legislation affected personal liberty and should therefore be construed strictly in favour of the respondent. Further, the contents of the Explanatory Notes to the *Serious and Organised Crime Legislation Amendment Bill* 2016 (Qld) in relation to the creation of the offence were consistent with such a contrary intention as was the fact that, once a warning had been given, conduct that would otherwise not be unlawful may result in the commission of a criminal offence.

[40] The Magistrate noted that s 53BAD provided that an official warning given in relation to a stated person who is a recognised offender has effect until the stated person stops being a recognised offender and that, if an official warning is given in relation to a stated person who is not a recognised offender, the official warning stops having effect 24 hours after it is given. As that section did not distinguish between the part of the warning given in relation to the stated person with the official warning itself, the official warning given to the respondent ceased to have effect 24 hours after it was given as one of the stated persons was not a recognised offender.

[41] The Magistrate concluded:

> "I find that notwithstanding that the approved form provides for the giving of one warning for multiple recognised offenders, under the legislation a separate official warning must be given for each separate recognised offender. As the warning given to the defendant

> was one warning given to in relation to 15 purported separate recognised offenders it is not compliant with the legislation."[3]

Appellant's submissions

Question 1

[42] The appellant submits that the provisions of Part 6A of the PPRA in respect of official warnings for consorting are all expressed in the singular but, pursuant to s 32C of the AI Act, include the plural. Accordingly, a police officer has power to give multiple official warnings orally at the same time. Official warnings in writing may also contain multiple official warnings with respect to more than one recognised offender. Such a construction is consistent with the purpose of Part 6A, which is to give police powers to prevent and disrupt criminal consorting. That power is promoted by a construction which allows for multiple official warnings to be given at the same time.

[43] It is unsurprising that ss 53BAA and 53BAC are expressed in the singular. Such an expression is designed to overcome the difficulties of drafting legislation to refer to both the singular and the plural. The application of s 32C of the AI Act allows a police officer to give a person an official warning or multiple warnings for consorting, at the same time. That construction is consistent with the purpose of the provision and its requirement that the offence of consorting occur in relation to "at least two recognised offenders".

[44] A construction that does not allow for multiple warnings in one notice ignores the elements of the offence, is cumbersome and distracting, defeats the clarity and purpose of a warning and will result in many practical consequences, including increasing the likelihood of error from multiple documents and the burden on the recipient of multiple documents, as well as the burden of compiling multiple documents in the context of record keeping. Police issue other notices which contain multiple names, such as a Police Protection Notice under the *Domestic and Family Violence Protection Act* 2012 (Qld).

[45] The appellant further submits that the text of the provisions, their context and the purpose of Part 6A of the legislation, support the conclusion that the legislation does not give a contrary intention which would displace the effect of s 32C of the AI Act. The principle that ambiguity or doubtfulness is to be resolved in favour of the subject by refusing to extend the category of criminal offences is a principle of last resort. It does not apply in the present case as the ordinary rules of construction do not reveal language that is ambiguous or doubtful.

[46] The reference in the Explanatory Notes to an official warning being given by police with respect to each of those individuals, refers to the requirement that a person have been given an official warning prior to consorting with the particular recognised offender. The extract relates to the provisions in the Code, not the PPRA. The Explanatory Notes concerning the PPRA specifically referred to the Bill providing "that official warnings can be given orally or in writing".[4] The reference to official warnings in the plural is consistent with s 53BAC being given

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3 AB116 at [23].

4 Explanatory Note to the *Serious and Organised Crime Legislation Amendment Bill* 2016 (Qld).

an interpretation which permits a police officer to give multiple official warnings, orally or in one document.

[47] Section 14A of the AI Act provides that the interpretation that will best achieve the purpose of the Act is to be preferred to any other interpretation. An interpretation requiring the giving of an official warning in respect of each recognised offender does not best achieve the purposes of the PPRA. Those purposes are best achieved where all information is within the one document.

[48] The appellant submits it is erroneous to have regard to the terms of the approved form, in finding that the legislation expresses a contrary intention. Ambiguity arising from the wording of the approved form is not relevant to the question of whether the Act has expressed a contrary intention.

[49] Finally, the appellant submits s 53BAC of the PPRA contemplates a situation where a person is consorting with multiple recognised offenders. It is impractical to interpret the legislation to require a police officer to stop a person multiple times to give a separate official warning in respect of each recognised offender. The definition of official warning in s 53BAA is directed to setting out the information that must be contained in an official warning, rather than the form of the warning.

Question 2

[50] Section 53BAD specifies that an official warning with respect to either a person who stops being a recognised offender (subsection (1)) or a person who is not a recognised offender (subsection (3)) is not invalid. The official warning ceases to have effect, either when a person stops being a recognised offender or 24 hours after it was given, if the person is not a recognised offender.

[51] The appellant submits that in the event an official warning made reference to a non-recognised offender, that portion is severable from the balance, without having any effect on the validity of the warning. Any other conclusion is impractical and inconsistent with the terms of the legislation. This conclusion is supported by s 9 of the AI Act, which specifically provides that legislation is to be read distributively.

[52] This conclusion is also consistent with the common law concept of severance. That concept involves a two stage process. First, determining the parts of the instrument which are invalid. Second, assessing the impact of severing those parts from the remainder. Severing one official warning from a notice containing multiple official warnings does not change the content or meaning of the other official warnings. Such a construction would not cause the notice to "operate differently or produce a different result from that which was intended".[5] Each official warning operates independently.

[53] The appellant submits the answers to the points of law referred to the Court are:

(a) No.

(b) No.

Respondent's submissions

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5 *R v Ng* (2002) 136 A Crim R 299, 323, 324 at [45].

[54] The respondent submits that the questions of law identified by the appellant conflate two distinct issues, namely, whether multiple official warnings can be given on a single notice and whether a single official warning can be given for multiple recognised offenders. The first issue did not arise at the trial of the respondent and, in any event, is not in dispute. The second issue was raised at the trial of the respondent and is the true issue of law identified in the question of law on the appeal.

[55] The respondent submits that a correct interpretation of the relevant legislation is that a valid notice given by police may contain multiple official warnings but that a notice, to be valid, must contain an official warning in relation to each stated person who is a recognised offender. A notice purporting to give a single warning for multiple recognised offenders is invalid.

[56] Such an interpretation is consistent with the terms of the legislation. It also prevents ambiguity and conflict. By contrast, the interpretation urged by the appellant leads to substantial ambiguity and conflict.

[57] The respondent submits that a number of factors, alone or in combination, evidences a contrary intention within the PPRA, such that s 32C of the AI Act is displaced in respect of the legislation.

[58] First, the clear wording of the section suggests an application to a single person per warning.

[59] Second, application of the plural leads to ambiguity and absurdity. The nomination of multiple people in one warning makes the scope of the warning unclear: is it contact with the people individually or only contact with all nominated persons as a group?

[60] Third, a single warning for multiple persons gives rise to the exact ambiguity for which the appellant seeks instruction from the Court. It also gives rise to ambiguity as to when an official warning comes to an end.

[61] Finally, one of the nominated purposes of the PPRA is "to enable the public to better understand the nature and extent of the powers and responsibilities of police officers".[6] An interpretation restricted to the singular is more in line with this purpose and is consistent with the terms of the Explanatory Notes of the *Serious and Organised Crime Amendment Bill* 2016 (Qld). Those notes are consistent with the intention of Parliament being that official warnings were to be given in respect of each recognised offender.

[62] The respondent submits the *Domestic and Family Violence Protection Act* 2012 (Qld) is an example of an Act which contains an interpretation favouring the plural, such that there is no contrary intention to displace the effect of s 32C of the AI Act. For example, that Act expressly refers to "persons", "people" and "children".[7]

[63] The respondent submits the answers to the questions are:

(a) Yes.

(b) Unnecessary to answer.

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6 *Police Powers and Responsibilities Act* 2000 (Qld) s 5(f).

7 *Domestic and Family Violence Protection Act* 2012 (Qld) ss 101B, 3(1)(b), 4(1) and 5(f).

Consideration

[64] Part 6A of the PPRA contains specific police powers in respect of the giving of official warnings, non-compliance with which may result in the commission of a criminal offence. The proper interpretation of legislation authorising the exercise of those powers must have regard to the purpose of the legislation containing that power and its intention in the context of the consideration of the legislation as a whole.

[65] In interpreting the police power to give an official warning, under Part 6A of the PPRA, it is important to have regard to what is required to be contained within an official warning. That requirement is not merely that the person be warned they may risk criminal prosecution for consorting in the future with specified recognised offenders. The official warning must also contain a warning that the stated person is a recognised offender.

[66] Another relevant consideration in the proper interpretation of the provisions of Part 6A of the PPRA is the terms of s 53BAC(2) of the PPRA, which permits the giving to a person of an official warning for consorting orally although, in that event the police officer must, within 72 hours of giving the warning orally, confirm the warning by giving it in writing in the approved form.

[67] It is also relevant to consider the effects of an official warning for consorting. That effect is set out in s 53BAD of the PPRA. Relevantly, it provides that an official warning for consorting "given in relation to a stated person who is a recognised offender" has effect until the stated person stops being a recognised offender; that an official warning for consorting given orally, which is not confirmed in writing in accordance with s 53BAC(5) of the PPRA, stops having effect 72 hours after it is given, and that an official warning for consorting given in relation to a stated person who is not a recognised offender stops having effect 24 hours after it is given.[8]

[68] A consideration of those sections, read in the context of the legislation as a whole, and after having regard to the purpose of the legislation, supports a conclusion that an official warning for consorting is only validly given to a person in accordance with the legislation if that official warning relates to one stated person who is said to be a recognised offender.

[69] A conclusion that an official warning may be validly given in respect of multiple stated persons said to be recognised offenders is inconsistent with the terms of the legislation and its purpose. The legislation specifically uses the singular, in respect of not only "a stated person" but also "the stated person" when warning that consorting on a further occasion may lead to the commission of an offence. That latter reference is significant as consorting involves impermissible contact with two or more recognised offenders.

[70] Such a construction is the preferred construction, notwithstanding the provisions of s 32C of the AI Act. The effect of that section is displaced as a proper interpretation of Part 6A evinces a contrary intention on the part of the legislature in respect of the singular including the plural.

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8 *Police Powers and Responsibilities Act* 2000 (Qld) s 53BAD.

[71] The terms of s 53BAD, which expressly provide for the circumstances in which "an official warning for consorting" no longer has effect, are also consistent with a conclusion that an official warning is only valid if given in respect of one stated person said to be a recognised offender. The proper interpretation of s 53BAD displaces the statutory rule that a provision is to be read distributively.

[72] To read down s 53BAD to permit severance of the official warning in a notice given in respect of multiple stated persons would be to effectively insert the words "in relation to that person" into the section. That would add to the legislation, causing the notice to "operate differently or produce a different result from that which was intended".[9] Severance in such circumstances would change "the nature of the conduct the subject of the notice and also alters the content and meaning of the notice".[10]

[73] This construction does not lead to confusion or increased risk of ambiguity. A requirement that a police officer give an official warning in respect of each stated person who is a recognised offender enhances clarity and precision. An individual warning is easily given orally and will itself serve to highlight to the person receiving the official warning the seriousness of further consorting with that individual stated person.

Conclusions

[74] A proper interpretation of the provisions of Part 6A of the PPRA, read in context and as a whole, supports a conclusion that while a police officer may give more than one official warning for consorting at the same time, an official warning for consorting is only validly given in accordance with that legislation if the official warning relates to one stated person said to be a recognised offender. It follows that the presently approved form is not in accordance with the legislation.

[75] I would answer the points of law referred to this Court as follows:

(a) Yes.

(b) Unnecessary to answer.

[76] **CROW J:** I agree with the reasons of Boddice J in all respects other than his Honour's conclusion that "[i]t follows that the presently approved form is not in accordance with the legislation".[11]

[77] The *Serious and Organised Crime Legislation Amendment Act* 2016 (Qld) introduced the crime of consorting into Queensland law by inserting chapter 9A of the Code. The principal section constituting the offence is s 77B which provides:

"**77B Habitually consorting with recognised offenders**

(1) A person commits a misdemeanour if—

(a) the person habitually consorts with at least 2 recognised offenders, whether together or separately; and

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9 *Peters v Attorney-General (NSW)* (1988) 16 NSWLR 24 at [41].

10 *Telstra Corporation Ltd v Australian Competition and Consumer Commission (No 3)* (2007) 99 ALD 268, 283, 284 at [86]-[87].

11 Paragraph [74].

(b) at least 1 occasion on which the person consorts with each recognised offender mentioned in paragraph (a) happens after the person has been given an official warning for consorting in relation to the offender.

Maximum penalty—300 penalty units or 3 years imprisonment.

(2) For subsection (1), a person does not ***habitually consort*** with a recognised offender unless the person consorts with the offender on at least 2 occasions.

(3) This section does not apply to a child.

(4) In this section—

official warning, for consorting, see the *Police Powers and Responsibilities Act 2000*, section 53BAA."

[78] It ought to be noted that s 77B(1) does not require an official warning by notice or form for each offender. Section 77B does not make reference at all to the word "notice" or make any reference to an "approved form", it refers to "an official warning for consortium in relation to the offender". Section 77B does not require a separate "form" or separate "notice" or a repetition of any separate words but it does require a warning to be specific to a person who is a recognised offender.

[79] Section 77B(4) directly engages s 53BAA of the PPRA and allows officials warnings for consorting to be given orally or in writing. Under s 53BAD(2) if the oral warning is not confirmed in writing with an approved form, within 72 hours after the oral warning "the official warning stops having effect 72 hours after it is given".

[80] As explained by Boddice J, the legislation permits an approved form with multiple stated recognised offenders, and a form is in accordance with the legislation if it meets the requirements of the definition of official warning in s 53BAA of the PPRA which provides:

"***official warning***, for consorting, means a warning given in person, whether orally or in writing, that—

(a) a stated person is a recognised offender; and

(b) consorting with the stated person on a further occasion may lead to the commission of the offence of habitually consorting."

[81] The present case deals with written warnings and the test, is in terms of s 53BAA, whether exhibit 1 satisfies the requirement for an official warning for consorting. Section 53BAA will be satisfied if the warning given to Mr Barbaro provides that a stated person is a recognised offender and warns the accused that consorting with the stated person on a further occasion may lead to the commission of the offence of habitually consorting. With reference to exhibit 1 and the three recognised offenders, Jenkins, Barnes and Mortimer, each person is identified by name, photograph and date of birth directly below the official warning in the following terms:

"Official Warning:

YOU ARE OFFICIALLY WARNED THAT THE STATED PERSON(S) IS A RECOGNISED OFFENDER, AND CONSORTING WITH THE STATED PERSON(S) ON A FURTHER OCCASION MAY LEAD TO THE COMMISSION OF THE OFFENCE OF HABITUALLY CONSORTING."

[82] The approved form uses the precise words of the section 53BAA definition of official warning with the exception that it twice adds "(s)" after the word person. I cannot see how the approved form can be read in any manner other than distributively, that is, a warning that is specific to each stated recognised offender. I therefore consider that the approved form is in accordance with legislation.

[83] I agree with the reasons of McMurdo JA at [19] that the first referral question contains an ambiguity as to what is meant by the expression "a separate official warning for consorting". I agree with McMurdo JA that if that means that the recipient must be warned against the risk of an offence by consorting with a certain person, then clearly the first question would be answered "yes" and the second question answered "unnecessary to answer". However, as the arguments proceeded, the intended question was whether the words of warning must be repeated, offender by offender, as in the first example given by McMurdo JA. For the reasons I have set out above, which accord with the reasons of McMurdo JA, that is not required. Furthermore, I agree with the reasons of McMurdo JA at [20], accordingly, I would answer the questions as follows:

(a) No.

(b) No.