

SUPREME COURT OF QUEENSLAND

CITATION: *Morrison Construction v Commissioner of Police Service & Ors* [2020] QSC 191

PARTIES: **MORRISON CONSTRUCTION SERVICES PTY LTD**
(Applicant)
v
COMMISSIONER OF THE QUEENSLAND POLICE SERVICE
(First Respondent)
D.I.G. EARTHWORKS AND CIVIL PTY LTD ACN 167 435 332
(Second Respondent)
DANIEL JAMES BOYD
(Third Respondent)
WARREN PATRICK BRUGGY
(Fourth Respondent)
KATHLEEN GATES
(Fifth Respondent)
DAVID MICHAEL TIMSON
(Sixth Respondent)
JOHN HOUGHAM ABRAHAMSON
(Seventh Respondent)
RAYMOND MA, AS LEGAL REPRESENTATIVE OF STEVEN MA
(Eighth Respondent)

FILE NO/S: BS No. 13697 of 2019

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court Brisbane

DELIVERED ON: 26 June 2020

DELIVERED AT: Brisbane

HEARING DATE: 28 May 2020

JUDGE: Brown J

- ORDER:
1. **That the order by which the proceedings were to be stayed pending a determination of jurisdiction is vacated.**
 2. **The application is otherwise to be relisted on three days' notice.**
 3. **Costs are reserved.**

CATCHWORDS: PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – DECLARATIONS – JURISDICTION – MATTER WITHIN JURISDICTION OF ANOTHER COURT – where applicant seeks declaration from Supreme Court of ownership over property seized by police – where PPRA stipulates procedure to determine ownership in Magistrates Court – whether Supreme Court has jurisdiction to make declaration as to lawful possession or ownership – whether the Magistrates has exclusive jurisdiction over things in possession of police – whether PPRA implied limitation on superior courts jurisdiction

Police Powers and Responsibilities Act 2000 (Qld), ch 21, pt 3

Justice Act 1886 (Qld), s 39

Forster v Jododex Australia Pty Ltd (1972) 127 CLR 421, cited

James v Body Corporate Aarons Community Titles Scheme 11476 [2002] QSC 386, cited

McCullough v Otto [1996] QCA 507, considered

PAV v Director of Child Protection Litigation [2017] QCA 97, considered

Ranger v Giffin (1967) 87 WN (Pt 1) NSW 531, considered

Re: Totalisator Administration Board of Queensland [1989] 1 Qd R 215, considered

Stephens v Williams [2008] QDC 320, considered

COUNSEL:

D Topp for the Applicant
M O'Brien for the First Respondent
A Marinac for the Third and Fourth Respondents
The Sixth Respondent appeared on his own behalf
D Skennar QC for the Eighth Respondent

SOLICITORS:

Priala Legal for the Applicant
Queensland Police Service Legal Unit for the First Respondent
Pacific Maritime Lawyers for the Third and Fourth Respondents

The Sixth Respondent appeared on his own behalf
K2 Law for the Eighth Respondent

- [1] Various sums of money were found buried on a site in Brisbane in late 2019. Those monies were handed into the police who banked them for safe custody. An originating application was issued by the owner of the property, Morrison Construction Services Pty Ltd (**Morrison**), in January of this year, seeking a declaration that, as they are the lawful owner of the property where the monies were found, they are entitled to the monies. Morrison also seeks an order from the Court for the return of the monies held in safe custody by the First Respondent. Whether the entitlement to the return of the monies is on the basis of Detinue or some other tort is unclear. The Commissioner of Police was joined as the First Respondent as the police presently have possession of the monies. As a number of people had made claim to the monies on varying bases, they were joined as Respondents. That includes the Third and Fourth Respondents, Mr Boyd and Mr Bruggy who found the money, the Sixth Respondent, Mr Timson, who appears to think he may have a claim to the money on a basis which is unclear, and Mr Ma, as administrator of his father's estate, who contends that his father buried the money in question and that the monies are therefore part of the estate.
- [2] The action originally was commenced by way of originating application, that was subsequently ordered to proceed by way of claim. Directions have been made and generally complied with to that end. Notwithstanding that, the question that falls for determination by this Court is whether the Supreme Court has jurisdiction to hear the matter or whether the dispute falls exclusively within the jurisdiction of the Magistrates Court.
- [3] The issue arose in an unusual way. When the matter was previously heard by Dalton J on 9 April 2020 her Honour ordered a stay of the proceedings. That was initially because of her Honour's concern that Mr Timson may lack capacity to pursue these proceedings. Subsequently, her Honour raised with the parties why the matter was not before the District Court given the amount of money concerned. The Commissioner's representative, at that time, contended that the matter should in fact be determined by the Magistrates Court pursuant to the *Police Powers and Responsibilities Act 2000 (Qld)* (the **PPRA**), particularly Chapter 21, Part 3, Division 2, which deals with the return of "relevant things" which applies to lost property turned into, or items seized by the police. Her Honour imposed a stay so that whether Mr Timson needed a litigation guardian could be explored and the parties could further consider whether the Supreme Court has jurisdiction.

Background

- [4] In the application before me, the Applicant seeks to have the stay ordered by Dalton J on 9 April 2020 lifted, to have the Fifth and Sixth Respondents "removed", and have orders for disclosure and mediation. The Applicant contends that this Court has jurisdiction and that the Court should find that Mr Timson has capacity such that a litigation guardian does not need to be appointed. The Applicant further contends that Mr Timson should be summarily "removed" as a party on the basis that he has failed to provide a defence in accordance with Court Orders or that summary judgment should be entered.

- [5] The First Respondent and Eighth Respondent contend that this Court does not have jurisdiction as the matter falls within the exclusive jurisdiction of the Magistrates Court under the *PPRA*. The Third and Fourth Respondents submitted orally that the Court's jurisdiction was not excluded by the *PPRA*.
- [6] The Third and Fourth Respondent contends that Mr Timson has capacity but has not articulated any legal basis for making a claim and that his claim should be summarily dismissed. The Commissioner's representative and Mr Ma's counsel, Ms Skennar QC, made no submissions in relation to Mr Timson.
- [7] Mr Timson attended the hearing. I adjourned the question of his capacity and other matters raised by the Applicant's amended application, pending the Courts determination of the jurisdiction issue and to also allow Mr Timson to seek assistance, if available, from LawRight.

Police Powers and Responsibilities Act 2000 (Qld)

- [8] The *Police Powers and Responsibilities and Other Acts Amendment Bill 2000* provided for the police to be given powers to deal with seized goods, property handed to the police as apparently lost property, or property which otherwise came into the possession of a police officer in the course of performing an officer's function.¹ The provisions are contained in Part 3 of Chapter 21 of the *PPRA*.
- [9] Section 687 of the *PPRA* provides that the object of Part 3 is to ensure, as far as practicable, that a relevant thing is retained by the police service only for as long as is reasonably necessary and handled in an efficient, safe and accountable way.
- [10] As part of the procedures to be adopted by police taking possession of a "relevant thing", the Commissioner must:
- (a) Ensure reasonable enquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and
 - (b) Facilitate its lawful disposal or its return to its owner or the person who had lawful possession of it before it came into possession of the police service.²
- [11] Section 691(1) of the *PPRA* provides for a police officer to return a relevant thing to the owner of the thing or the person who had lawful possession of the thing before it came into the possession of the police service, if the police are satisfied it is not required to be retained and it is lawful for the person to have possession of the thing. That is however subject to a justice making an order to the contrary.
- [12] Pursuant to s 692 of the *PPRA*, a person who claims to have a legal or equitable interest in the relevant thing may apply in writing to the Commissioner of Police for the return of the relevant thing, if it has been in the possession of the police for 30 days and it has not been the subject of an application under s 693. Section 692(3)

¹ *Police Powers and Responsibilities Act 2000 (Qld) (PPRA)*. Those powers were expanded in 2006. *Police Powers and Responsibilities and other Legislation Act 2006*, No 57.

² *PPRA* at s 688(4).

empowers the Commissioner to require the Applicant to provide additional information which the Commissioner considers necessary to enable the Commissioner to properly consider the application. Under s 692(4) of the *PPRA* the Commissioner, after considering the matter and any additional information may, relevant to the present case, return the relevant thing to the Applicant or refuse to return the relevant thing. The Commissioner may only return the relevant thing to the Applicant if satisfied that the Applicant may lawfully possess the thing and it is appropriate that the thing be returned to that person.³

- [13] Section 693 of the *PPRA* provides for an application to be made to a Magistrate by a person who claims to have a legal or equitable interest in the relevant thing for an order that it be returned to the person. The Applicant is required to give that application to the Commissioner and anyone else who the person reasonably believes has a legal or equitable interest in that thing.⁴ Section 693(5) provides for a Magistrate to order that the relevant thing be returned to a person including on conditions, the Magistrate considers appropriate, if satisfied that the person may lawfully possess the thing and it is appropriate that the thing be returned to that person.⁵
- [14] Section 694 of the *PPRA* provides for an application to be made by a police officer for an order from a Magistrate declaring who is the owner of a thing in the event that there is a dispute between two or more persons, each of whom claims to be the owner of the thing. The police officer is obliged to give a copy of the application to anyone who they reasonably believe had a legal or equitable interest in the thing. If the Magistrate cannot decide who owns the thing, the Magistrate may make orders that the Magistrate considers appropriate for the disposal of the thing.⁶
- [15] Section 695 provides for a procedure to be adopted where an order can be sought from a Justice of the Peace or a Magistrate in relation to a thing seized in the circumstances set out in that section. Section 696 provides that the Justice of the Peace or Magistrate can make a number of orders including that the thing be kept in the possession of the police pending investigation or proceedings, that it be returned to a person who they believe is lawfully entitled to possess it.
- [16] In the present case, the Commissioner had proposed making an application under s 694 of the *PPRA*, however the Applicant advised that they would be initiating proceedings in the Supreme Court. In that regard, the Applicant seeks a declaration that it is entitled to possession of the property on the basis that it is the owner of the land. A case bearing similarity to the present was determined by the New South Wales Supreme Court in *Ranger v Giffin*,⁷ questionably brought before the Court

³ *PPRA* at s 692(5).

⁴ *PPRA* at s 693(4).

⁵ *PPRA* at s 693(5).

⁶ *PPRA* at s 694(5).

⁷ (1967) 87 WN (Pt 1) NSW 531.

“by way of feigned issues under s 4(iv) of the *Interpleader Act*”.⁸ His Honour proceeded to determine the answers to the questions nevertheless. In that particular case, McClemens J determined that the owners of the fee simple of the freehold where the money was found were entitled as against all the other parties to the action to the money, on the basis that the possession of land carries with it in general possession of everything which is attached to or under the land and in the absence of a better title elsewhere, the right to possess it also.⁹

Contentions

- [17] The Applicant contends that the matter is properly within the jurisdiction of the Supreme Court being a superior court of record of unlimited jurisdiction. It also emphasises the use of the word “may” in s 693 or s 694 of the *PPRA* in respect of making an application to a Magistrate as supporting the fact that the proceeding in the Magistrates Court was the only available proceeding for a determination in a matter such as the present. The Applicant further contends that because the money was banked by the police, it ceased being a “relevant thing” under the *PPRA*, as the bank as a debtor is not under a common law duty to pay specific notes and coins to its creditor but money of its own, its obligation being merely personal, not relating to any particular property.¹⁰
- [18] It was submitted on behalf of the Commissioner that given the regime that exists under the *PPRA* is specifically to enable a determination of who is entitled to a relevant thing where there is a dispute to enable the Commissioner to know to whom he or she can return the relevant thing lawfully and that it would be undermined if proceedings could be brought in other jurisdictions. The Commissioner contends that the claim of the Applicant should be struck out so that the Commissioner can proceed to commence an application in accordance with s 694 of the *PPRA*.
- [19] The Eighth Respondent submits that by implication, the regime established under the *PPRA* is a carve out of the Supreme Court’s unlimited jurisdiction. Ms Skennar QC submitted that Part 3 of Chapter 21 the *PPRA* provides for an exclusive process for dealing with the property in the possession of the police service and that the effect of s 693 and 694 of the *PPRA* is to limit the jurisdiction of the Supreme Court. She contends that the use of “may” upon its proper construction is not intended to provide that compliance with the provisions is discretionary, but merely gives the person who claims to be entitled to the “relevant thing” or a police officer a choice as to whether to make an application. In her submissions there is no case for drawing a distinction between “may” and “must” or “shall” in the context of the provision. In her submission, s 693 could not have been drafted to provide that a person who claimed to own a thing must make an application to a Magistrate. To draft the provision in that way would remove the entitlement of the person to

⁸ *Ranger v Giffin* (1967) 87 WN (Pt 1) NSW 531 at 534.

⁹ (1967) 87 WN (Pt 1) NSW 531 at 539.

¹⁰ *Cases and Material of Equities and Trust*, 3rd Ed, Heydon, Gummow and Austin, p 477; Applicant’s Supplementary Submissions at [13].

abandon the thing. Similarly s 694 in her submission could not have been drafted on the basis that the police officer must make the application because that would be inconsistent with the owner of the thing making an application under s 693. Ms Skennar QC contends that the regime under the PPRA is analogous with the jurisdiction of the Children's Court which has been held to impliedly exclude the jurisdiction of the Court.

- [20] In the case of *PAV v Director of Child Protection Litigation (PAV)*,¹¹ Morrison JA analysed the *Children's Court Act 1992 (Qld)* and concluded that the Children's Court was established by the legislature as a specialist court for children's matters and that while the jurisdiction of the Supreme Court was unlimited, statutory provision can limit it and he found that was the case in relation to child protection orders sought under the *Child Protection Act 1992 (Qld)*.¹² Under s 54 of the *Child Protection Act 1992 (Qld)*, jurisdiction was conferred on the Children's Court in respect of applications for a child protection order.¹³

Consideration

- [21] In *Forster v Jododex Australia Pty Ltd*,¹⁴ Gibbs J while acknowledging the jurisdiction of a Court to make a declaration may be ousted by statute stated that "*the right of a subject to apply to the court for a determination of his rights will not be held to be excluded except by clear words.*"¹⁵
- [22] In *Re: Totalisator Administration Board of Queensland*,¹⁶ McPherson J (as he then was) determined that the Supreme Court was not deprived by the provisions of the *Sales Tax Assessment Act (No 1) 1930 (Cth)*. In that case, the TAB sought a declaration from the Supreme Court rather than adopting any of the procedures provided under the *Sales Tax Procedure Act 1934 (Cth)* for challenging assessments. His Honour having reiterated the fact that Supreme Court was a superior court of general jurisdiction noted that it attracted the traditional presumption that nothing shall be intended to be out of the jurisdiction of a Superior Court but that which specially appears to be so.¹⁷ His Honour found that there was no statutory provision expressly excluding the jurisdiction of the Supreme Court, nor that there was a provision generally vesting the Federal Court with jurisdiction or making it exclusive. Nor did his Honour find that there was an implied exclusion of jurisdiction of the Supreme Court. His Honour referred to examples of decisions where there had been such an implied exclusion such as where a statute created a new right which is enforceable only by the means and before the tribunal in

¹¹ [2017] QCA 97.

¹² [2017] QCA 97 at [25].

¹³ *PAV v Director of Child Protection Litigation* [2017] QCA 97 at [22]–[26].

¹⁴ *Forster v Jododex Australia Pty Ltd* (1972) 127 CLR 421.

¹⁵ *Forster v Jododex Australia Pty Ltd* (1979) 127 CLR 421 at 435-6.

¹⁶ [1989] 1 Qd R 215.

¹⁷ [1989] 1 Qd R 215 at 217.

question. In my view, that situation is analogous to the position of the Children’s Court under the *Children’s Court Act* considered in *PAV*. His Honour declared that the jurisdiction of the Supreme Court was not excluded but made further comment of the fact that whether the Court would exercise its jurisdiction as a matter of discretion to make declarations would take into account the fact that there were other remedies available under the *Sales Tax Procedure Act* and whether they ought to have been pursued by the particular party.

- [23] In *James v Body Corporate Aarons Community Titles Scheme 11476*,¹⁸ Holmes J (as she then was) held that s 184 of the *Body Corporate and Community Management Act* did provide exclusive jurisdiction to the adjudicator on proper analysis of the Act stating at [17]–[18] that:

“[17] Chapter 6, as already outlined, creates the positions of commissioner, adjudicators and mediators, and provides for case management and for management and adjudication in such a way as to constitute, in my view, a comprehensive code for dispute resolution. The existence of such a code for dealing with the subject matter is at least an indication of exclusivity. As Lunn AJ observed in *Hemruth Advertising v Karafotias*,

"The efficient operation of a specialist tribunal with powers to conciliate and to resolve disputes in an expeditious and inexpensive way would be partly defeated if parties to such a dispute could resort to other courts as they saw fit."

The combined functions of commissioner, mediator and arbitrator under chapter 6 constitute a specialised mechanism peculiarly suited to speedy, cheap and relatively informal resolution of community titles scheme disputes.

- [18] The conclusion that exclusivity is intended in respect of the disputes to which s184(2) applies is reinforced by the existence of provisions which have the effect of allowing recourse to other remedies (including court orders) in specified situations: subsection 184(3), which removes the dispute from the purview of s184(2) if the commissioner dismisses the application, and s201(2), which entitles the commissioner to dismiss an application if he or she is satisfied that it should be dealt with in a court of competent jurisdiction.” (footnotes omitted)

- [24] In *James’ case*, in contrast to the present case, the Act relevantly referred to an order of the adjudicator as being “the only remedy for the dispute”, and the heading for the section was “Exclusivity of dispute provisions”.

¹⁸ [2002] QSC 386.

- [25] There is no doubt that the process provided under the *PPRA* is intended as a cost effective and simplified process for the police service to deal with property in its possession. It is unclear why the Applicant would not have chosen to use that process rather than to issue proceedings in the Supreme Court. Be that as it may, the present question for determination is not whether it would have been more appropriate to adopt that process, although that may become relevant in determining whether it is appropriate to grant declaratory relief and perhaps costs, but whether the present proceeding fails in this Court for want of jurisdiction.
- [26] There is no express statutory provision in the *PPRA* excluding the Supreme Court's jurisdiction in relation to matters to be determined under Part 3 of Chapter 21 of the *PPRA*. Nor is there any statutory provision expressly conferring exclusive jurisdiction on the Magistrates Court. Any exclusion of the Supreme Court's jurisdiction can only be implied.
- [27] A precursor to the *PPRA* regime for dealing with the return of property seized by or handed in to the police was the procedure provided in s 39 of the *Justices Act* 1886 (Qld).¹⁹ *McCullough v Otto*,²⁰ the Court of Appeal heard an appeal from a person aggrieved by a disposal order made by a Magistrate for delivery of property to two individuals. According to the Chief Justice in *McCullough v Otto*,²¹ s 39 of the *Justices Act* and its equivalent provisions in other jurisdictions existed for the protection of police officers and certain other public servants as a provision to facilitate the carrying out of public duties and to regularise their dealings with goods coming into their possession. The objects of Part 3 set out in s 687 of the *PPRA* support the fact that Part 3 is intended to be of similar purport in relation to police officers. Macrossan CJ noted that in the absence of such provisions, officers who retained goods against the demands of someone entitled to their return could be liable for unlawful detention, and in a case that is less than clear, if they mistakenly return them to someone not entitled to receive them, they may be liable for conversion at the suit of the owner.²² His Honour further commented that there can be circumstances where conflicting claims are made which are difficult to resolve which should be left to the civil courts (with perhaps reliance on interpleader) but that the *Justices Act* had such practical utility and relative inexpensiveness that if situations can be reasonably dealt with under it, there were obvious advantages in using it. It may be inferred from his Honour's comment that he did not regard the procedure under s 39 of the *Justices Act* as conferring any exclusive jurisdiction upon the Magistrate Court to the exclusion of other courts.
- [28] The procedure in the *PPRA* is more detailed than that contained in the s 39 of the *Justices Act*.²³ Section 39 provided for a Magistrate on application by a police officer, the clerk of the Court or by a claimant of the property to make an order for

¹⁹ *Police Powers and Responsibilities and Other Acts Amendment Bill* 2000 Explanatory Notes, p 33.

²⁰ *McCullough v Otto* [1996] QCA 507.

²¹ [1996] QCA 507, who was in the minority but not relevantly in this regard.

²² Pincus J made similar observations.

²³ *Stephens v Williams* [2008] QDC 320 at [28].

the delivery of the property to a person who appeared to be the owner, or if the owner could not be ascertained, such other order as was considered appropriate. Section 39(2) provided that an order did not prevent a person from recovering the property by action from the person to whom the property is delivered under the order. Section 39(3) provided that an action for the recovery of property may only be brought within six months after the making of the order.

- [29] Under s 693 of the *PPRA*, a person may make claim on the basis of either a legal or an equitable interest. The Magistrate under s 693(5) may order that the relevant thing be returned to a person if satisfied “a person may lawfully possess the thing”. Under s 694 a police officer may apply for an order declaring who is the owner of a thing and where there is a dispute about ownership of a relevant thing, the Magistrate may make the order that the Magistrate considers appropriate. If the Magistrate is unable to determine who owns the relevant thing, the Magistrate may make orders they consider appropriate for the disposal of the thing,²⁴ provision for which is made under s 702 of the *PPRA*.
- [30] Both s 693 and s 694 of the *PPRA* provide that the applicant must give notice to anyone they reasonably believe has a legal or equitable interest in the thing. That may result in people who have a relevant interest not being given notice because they are unknown, such as the true owner. The Magistrate determines whether the person may lawfully possess the relevant thing in the case of s 693. Section 694, however, contemplates that there is a dispute of “ownership” of the relevant thing.²⁵ If the Magistrate cannot determine who owns the thing, the Magistrate may order disposal of the thing. That power is not provided to the Magistrate under s 693 of the *PPRA*.
- [31] Unlike the previous provision under the *Justices Act 1886 (Qld)*, there is no specific provision in the *PPRA* providing for a person to bring an action for recovery of the property the subject of the order of the Magistrate. There is nothing in the *PPRA*, however, which precludes a person from making a claim that they are the true owner of the property who has a better title than the person whom the person that the Magistrate has ordered is entitled to possession.²⁶ That is consistent with the fact that the process under the *PPRA* is a process which may be based on incomplete information in some cases insofar as the police or the party concerned

²⁴ *PPRA* at s 694(5).

²⁵ In *Otto*, Macrossan CJ noted that a good possessory title can often be the practical equivalent of ownership. Robertson J in *Stephens v Williams* [2008] QDC 320 at [30] – [32] considered that same approach should apply to “owner” in s 694(2) of the *PPRA*. Cf Pincus J (with whom Thomas J agreed) in *Otto* considered “owner” was to be given its “ordinary popular meaning” and did not mean the person having the best right to possession. His Honour considered the Magistrate’s decision was in error in finding that it was sufficient to show, as to any item in issue, that they had been in de facto possession of it at the time of seizure by police and that there was no other claimant. Thomas J was of the view that the words “appears to be the owner” provide a lower standard of proof.

²⁶ In *Otto* Pincus J considered the provision limiting an action for recovery to six months supported the fact that the Magistrate was to determine who the owner was as opposed to who was entitled to the best possession.

may not be aware of another party's claim. To construe it otherwise could result in interference with the true owner's property rights.

- [32] The regime in Chapter 3 of the *PPRA* provides expanded procedures in relation to property coming into the Police Service's possession and for a Magistrate to determine a person's claim based on both legal or equitable interests to the property in question or conflicting claims. Those matters suggest that Part 3 of Chapter 21 of the *PPRA* is intended to be the statutory regime which Parliament has created to deal with such property. However the question is whether it impliedly excludes the jurisdiction of this Court.
- [33] I do not consider that there is a sufficiently clear expression of legislative intent to exclude the jurisdiction of the Supreme Court in respect of property that is lawfully in the possession of the Police Service for the following reasons:
1. The language used in the *PPRA* does not suggest any exclusivity in the jurisdiction or the remedies available, nor does it create a new right.
 2. The objects set out in s 687 provide "as far as practicable" that a relevant thing is to be retained by the Police Service only for so long as reasonably necessary and is handled in an efficient, safe and accountable way, not to provide a statutory regime to deal solely with the dealing of property in the possession of the police.
 3. The Explanatory Memorandum of the *PPRA* amendments in 2000²⁷ does not suggest Part 3 of Chapter 21 was intended to be a code. It stated that the predecessor to s 693 of the *PPRA* "consolidates s 39 of the *Justices Act* 1886 (Qld) so far as it applies to police officers and things retained by the Police Service" rather than being intended to provide a statutory regime where the Magistrates Court has the only jurisdiction to determine a party's entitlement to property held by the police. In that regard, the Court of Appeal in *Otto* impliedly recognised that s 39 of the *Justices Act* which provided a similar, albeit simplified, statutory regime to the *PPRA*, did not create an exclusive jurisdiction.
 4. The statutory regime under the *PPRA* is intended to provide a simple, inexpensive means by which the Commissioner can determine to whom a "relevant thing" should be given or if he cannot or there are competing claims for it to be determined by a Magistrate and to that end:
 - (a) Section 692 provides for the Commissioner to return a thing to a person who the Commissioner is satisfied may "lawfully possess" the thing after the person who claims to have a legal or equitable interest has applied in writing to the Commissioner for the return of the same;
 - (b) Section 693 permits a person who claims to have a legal or equitable interest in the thing to apply to a Magistrate for an order that the thing be returned to the person which has not been returned under s 692.

²⁷ Further amendments were made in 2006, however the Explanatory Notes in relation to the Amending Bill do not cast light on Parliament's intention.

Pursuant to which the Magistrate may order that the relevant thing be returned if satisfied that the person may lawfully possess the thing; and

- (c) Section 694 provides for a police officer to make an application to a Magistrate for a determination where there are competing claims by individuals for ownership.
5. The reference to a party satisfying the Commissioner or the Magistrate in s 692 and s 693 that the party is entitled to lawful possession of the thing in question contemplates the relevant thing may be given to a person who may only have an entitlement to lawful possession rather than being the true owner. Clear words would be required if the legislative intent was to interfere with a true owner's legal rights to the possession of the thing as against someone who may have a right to possess but not against the true owner. The fact that s 693 of the *PPRA* provides for a determination of something less than ownership suggests that the *PPRA* is not an exclusive jurisdiction to determine a party's entitlement to possession of the relevant thing.
 6. Both s 692 and s 694 of the *PPRA* refer to the used of the word "may". There is merit in Ms Skennar QC's argument that mandatory language would not have been appropriate because it would lead to a claimant not being able to abandon a thing or a police officer having to make an application when a claimant had already made such an application under s 693 if there were competing claims. However, the language is also consistent with providing a simple inexpensive statutory means for a determination of lawful possession or ownership but not to the exclusion of action being taken in a superior court to recover possession under a tortious action or obtaining a declaration where there are a number of competing claimants.
 7. While a claim for ownership or lawful possession of the relevant thing can be on the basis of either an equitable or legal interest the provisions in the *PPRA* are not broad enough to cover all potential actions that may be taken by an individual to recover possession of the relevant thing whether it is based on an entitlement arising out of ownership or and possession in tort. For instance a party may seek to recover property which has been seized by the police unlawfully.²⁸ That is not a circumstance to which the *PPRA* would apply.
 8. While the First Respondent contends that the Commissioner would be left, in effect, in legal limbo if the scheme under the *PPRA* was not utilised in determining whether and who to return a relevant thing in the possession of police, that is not so. In proceedings such as the present, the Commissioner would be a necessary party having possession of the goods in question, and therefore would have the benefit of a Court determination as to a party's entitlement to provide a lawful basis for the return of the relevant thing to the person in question.

[34] While I have determined that this Court does have jurisdiction, that is not a determination as to whether such declarations should be made, as opposed to can be made. As was noted by McPherson J in *Re: Totalisator Administration Board of*

²⁸ See discussion in *Gollan v Nugent* (1988) 166 CLR 8.

Queensland, the existence of an alternative available remedy to a party will be a matter which will be taken into account by this Court in determining whether or not to make the declaration sought.²⁹ That is a matter to which the Applicant should give consideration.

- [35] The amount of money which is the subject of the declaration sought is an amount that would normally mean the proceedings would more properly be heard by the District Court. No submissions have been made to me addressing whether the District Court would have jurisdiction in relation to this matter,³⁰ although I note that it was previously raised by Dalton J. While it could be a more cost effective mechanism to remit the matter to the District Court in the absence of any submissions as to whether the District Court would have jurisdiction to determine the matter having regard to s 68 and s 69 of the *District Court of Queensland Act 1967*, it is not appropriate for me to remit the matter to the District Court. I also consider that it would be inappropriate to do so in any event as the Applicant may wish to consider whether it wishes to continue with these proceedings or to take advantage of the process available in the Magistrates Court. If any of the parties wish to have the matter remitted, that can be the subject of a separate application by them.
- [36] Insofar as it was submitted, the action should be struck out for want of jurisdiction. I reject that submission. I do not consider that the matter should continue to be stayed on the basis that this Court lacks jurisdiction, however, the matter should be relisted to determine whether or not a litigation guardian is required to be appointed for Mr Timson, or whether he has capacity and the Court can proceed to determine whether the proceedings may be discontinued against him.

Orders

- [37] The orders of the Court are that:
1. That the order by which the proceedings were to be stayed pending a determination of jurisdiction is vacated.
 2. The application is otherwise to be relisted on three days' notice.
 3. Costs are reserved.

²⁹ [1989] 1 Qd R 215 at 220–221.

³⁰ Although the Applicant addressed whether it should be done as a matter of discretion.