IN THE SUPREME COURT OF NEW ZEALAND

SC 118/2016
[2017] NZSC 58

IN THE MATTER OF SOLICITOR-GENERAL'S REFERENCE (NO 1 OF 2016) FROM CRI-2015-485-52, HIGH COURT AT CHRISTCHURCH

Hearing: 28 March 2017

Court: Elias CJ, William Young, Glazebrook, O'Regan and Ellen France JJ

Counsel: U R Jagose and Z R Johnston for Referrer
A N Isac and T Mijatov as Counsel Assisting

Judgment: 3 May 2017

JUDGMENT OF THE COURT

A The appeal is allowed. The answers given by the Court of Appeal to the questions on the Solicitor-General's reference are set aside.

B In substitution, the questions of law are answered as follows:

(a) Question One: Was the High Court correct to conclude that the requirements of s 90 of the Land Transport Act 1998 had not been met in this case?
Answer: No.

(b) Question Two: If the requirements of s 90 were not met, was the correct remedy the quashing of the defendant's conviction?
Answer: Does not arise for determination.

REASONS
(Given by Elias CJ)

[1] When a driver accumulates 100 or more demerit points in any two-year period, the New Zealand Transport Agency is required by s 90 of the Land Transport Act 1998 to "give notice in writing" to the person of that fact and that the penalty of three months' suspension or disqualification imposed by the section applies with immediate effect. Suspension is the penalty where the driver has a driver's licence. Disqualification is the penalty if the driver has no driver's licence. There is no discretion as to the suspension or disqualification. It is a penalty imposed by the statute. But it cannot take effect until notice in writing has been given to the driver advising both that the required number of demerit points has been incurred and that the penalty of suspension or disqualification takes effect immediately. The notice advising the driver may be served by the Agency itself, by a person approved for that purpose by the Agency, or by "an enforcement officer". The definition of an "enforcement officer" in s 2 includes a police officer.

[2] The text of s 90 is:

> **90 Suspension of licence or disqualification from driving under demerit points system**
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> (1) If, in any 2-year period, a person has accumulated a total of 100 or more demerit points, the Agency must give notice in writing advising the person that—
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> (a) the person has accumulated 100 or more demerit points; and
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> (b) the penalty specified in subsection (3) or (5) has been imposed and takes effect immediately.
>
> (2) The notice given under subsection (1) may be served by—
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> (a) the Agency; or
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> (b) a person approved for the purpose by the Agency; or
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> (c) an enforcement officer.
>
> (3) If the person holds a current driver licence, the effect of a notice given under subsection (1) is that the licence—

(a) is suspended for a period of 3 months or, if longer than 3 months, the period calculated under section 90A;[1] and

(b) remains of no effect when the period of suspension ends until the person applies to the Agency to have the licence reinstated and the Agency reinstates the licence.

(4) A person whose driver licence has been suspended under subsection (3) may not hold or obtain a driver licence while the suspension is in force.

(5) If the person does not hold a current driver licence, the person is disqualified from holding or obtaining a driver licence for a period of 3 months or, if longer than 3 months, the period calculated under section 90A.

(6) A suspension or disqualification under this section begins on the date specified in the notice, which may not be earlier than the date on which the notice is served on the person.

[3] The police National Intelligence Application database receives automatic alerts from the Agency's database for all drivers recorded by the Agency as having 100 or more demerit points. The alert advises that the driver is "wanted for service of a demerit point suspension". Some police vehicles are equipped with a number plate recognition system which enables vehicles to be matched to owners who have accumulated 100 demerit points.

[4] The drivers in the two cases which have given rise to the present appeal were stopped by police officers. They were given notice of suspension under s 90 after their car registration numbers were matched to them and they were identified in reliance on the Agency's database as having 100 or more demerit points and as being wanted for service of suspension notices. The written notices served were contained in a printed police standard form described on its face as "issued under section 90 Land Transport Act 1998". Blanks in the standard form were completed by the police officers at the roadside from the information obtained electronically from the Agency records. The police officer wrote on the form in each case the driver's name, address, date of birth, occupation and driver licence number. The police officer ticked one of two alternatives provided for in the form: for suspension (if the driver then held a driver licence); or for disqualification from obtaining a licence (if

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1 Section 90A was inserted by s 53(2) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011, but is yet to come into force. If it comes into force, it will introduce a formula for calculating the length of suspension or disqualification based on "the number of lots of 100 demerit points that a person has accumulated".

the driver did not hold a current driver licence). The police officers also entered details of the time and date of service and provided details identifying them as enforcement officers. The drivers were served by the police officers by being given copies of the notice.

[5] Both drivers were subsequently charged with driving during the period of suspension of their licences. Each defended the charge on the basis that the notices of suspension were ineffective because given by the police, not by the Agency as s 90 requires.

[6] It was accepted in each case that the driver had accumulated the number of demerit points which give rise to the statutory penalty of suspension under s 90. There was no omission from the notices given to each driver of the information required to be advised to them under s 90 (their accumulation of the requisite number of demerit points and the consequence of suspension). The notices were served on the drivers by "enforcement officers" with authority under s 90(2) to effect service of the s 90 notices. Despite compliance with the legislation in these respects, it was the case for the drivers that the notices did not comply with the s 90(1) requirement that "the Agency must give notice in writing" advising of the accumulation of sufficient demerit points and of the penalty specified in the Act. The drivers contended that the notices were invalid because they had been put together by the enforcement officers who served them. They maintained that, instead of being "given" by the Agency, it was the enforcement officer who had given the notice by completing the template.

[7] The drivers were successful in the High Court[2] and on the Solicitor-General's subsequent reference to the Court of Appeal[3] of points of law arising out of the High Court interpretation of s 90 and the consequences if the notices had not complied with the statute. The Solicitor-General now appeals from the

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2 *Police v Haunui* [2015] NZHC 2456 (Williams J).

3 *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1 (Wild, Cooper and Kós JJ). The reference formally concerned only one of the drivers: at n 1. This is because the prosecution had no right to appeal the High Court's decision to allow that driver's appeal against conviction.

determination of the Court of Appeal to this Court with leave.[4] In the absence of a respondent, Mr Isac appeared as amicus to assist the Court, as he had done in the Court of Appeal. The appeal raises what Williams J in the High Court described as a "relatively narrow point" as to whether the notices served on the drivers complied with s 90.[5] It turns on the language and structure of s 90 read in the context of the Act of which it is part and in the context of the legislative history.

History of the appeal

[8] As already mentioned, the present appeal arises out of two cases in which drivers served with notices of suspension by police officers defended charges of subsequent driving during the period of suspension of their licences on the basis that the notices served on them had been completed by the police officers and had not been "given" by the Agency, as s 90 requires. In the first case, Judge Mill took the view that the information provided electronically by the Agency and drawn on in the notice given by the police officer was sufficient compliance with the requirement that notice in writing be given by the Agency under s 90.[6] In the second case, Judge Callaghan disagreed with that analysis. He concluded that the notice the enforcement officer was authorised to serve was one that had to be "generated" by the Agency.[7] Since it had not been issued by the Agency, but had been prepared by the police officer, he considered the notice to be invalid.

[9] In the High Court, counsel for the police argued that "giving notice" and service of a notice were treated in s 90 as different functions.[8] It may be noted that in this Court a different approach was adopted by the Solicitor-General, as is later explained.[9] But the approach taken on behalf of the police in the High Court (that s 90 sets up a sequence in which there are distinct steps and responsibilities in the giving of notice and the subsequent service of that notice) provided some support for the argument for the drivers (which also depended on service being a distinct and subsequent process following the giving of notice by the Agency).

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4 Leave was granted by this Court in *Re Solicitor-General's Reference (No 1 of 2016)* [2016] NZSC 168.
5 *Police v Haunui* [2015] NZHC 2456 at [27].
6 *New Zealand Police v Miller* [2015] NZDC 13044.
7 *New Zealand Police v Haunui* [2015] NZDC 9975.
8 *Police v Haunui* [2015] NZHC 2456 at [22].
9 See below at [34]–[35].

[10] Williams J accepted that s 90 as originally enacted and even after later amendment in 2005[10] treated "give notice" as "the physical act of communicating to the driver, in written form, the information required by s 90(1)".[11] But he considered the current form of the legislation, following amendment in 2011 (as is described further at [21]–[22] below), "splits the giving of notice and service of it on the driver":[12]

> Service can be effected by the Agency if it chooses to do so; by a person approved by the Agency; or by an enforcement officer. As [counsel for the police] submitted, this shift in wording must mean that the Agency is no longer solely responsible for physically delivering the suspension notice to the driver. And that must in turn mean that giving notice no longer means effecting such physical delivery.

[11] Williams J treated "give notice" under s 90 as it currently stands as the provision of written notice by the Agency to those in the three classes authorised to effect "service".[13] The "notice" given had to be in writing advising the driver of the matters set out in s 90(1) and had to be "composed" by the Agency and provided to the enforcement officer for service by handing the physical notice to the driver.[14] The fact that the Agency provided the information used by the police in generating the notice was insufficient. The provision of the notice composed by the Agency might have been delegated, but it was common ground there was no such delegation.[15] Williams J considered that the 2011 reforms were designed to remove a specific problem with "service" arising out of the terms in which enforcement officers were empowered to serve notice only after the Agency had been unsuccessful in serving the notice. The amendment, he considered, "did not purport to adjust responsibility for preparing the advice comprising the notice".[16] In the cases under consideration, the responsibility "remained with the Agency" but had in fact been carried out by the police officers. Since Williams J was of the view that the legislation required the notices to be generated by the Agency itself rather than by the police officers, he held they were invalid.[17]

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10 See below at [20].
11 *Police v Haunui* [2015] NZHC 2456 at [31].
12 At [32].
13 At [33].
14 At [34].
15 At [36].
16 At [41].
17 At [43].

[12] The Solicitor-General obtained the leave of the Court of Appeal to refer to it two questions of law:[18]

> (a) Was the High Court correct to conclude that the requirements of s 90 Land Transport Act 1998 had not been met in this case?
>
> (b) If the requirements of s 90(1) were not met under the Land Transport Act 1998 was the correct remedy the quashing of the defendant's conviction?

The Solicitor-General's appeal could not affect the outcome of the charges against the two drivers.[19] They took no part in the appeal and Mr Isac was appointed as counsel to assist the court by arguing against the appeal in the absence of a respondent.

[13] The Court of Appeal approved the decision of the High Court.[20] It rejected the argument of the Solicitor-General that s 90(1) required the Agency to "cause a notice to be generated",[21] rather than to "give" the notice itself.[22]

[14] The Court of Appeal gave four reasons for concluding that s 90(1) did not permit the Agency to "cause" the notice to be generated by the police. First, it considered that Parliament had imposed the duty to give notice on the Agency and that it was an obligation which arose when the demerit points were accumulated, not when a driver happened to be stopped.[23] Secondly, it considered it significant that, although it considered the Agency had general power under the Crown Entities Act 2004 to delegate (despite earlier repeal of an express power to delegate in the Land Transport Act), it had not formally delegated the giving of notice under s 90(1)

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18 Section 313 of the Criminal Procedure Act 2011 allows the Solicitor-General, with leave, to refer to the Court of Appeal questions of law arising "in or in relation to a trial of a person in the District Court or the High Court for an offence" after the completion of that proceeding. The Court of Appeal granted leave to refer in these terms: *Re Solicitor General's Reference (No 1 of 2016)* [2016] NZCA 76 (Ellen France P, Miller and Winkelmann JJ) at [21].

19 Criminal Procedure Act, ss 314(6) and 316(7).

20 *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1.

21 At [24].

22 This interpretation of s 90, it may be noted, was more elaborate than an alternative meaning put forward by the Solicitor-General in oral argument in this Court, as is described below at [34]–[35].

23 *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1 at [28].

to the police.[24] Thirdly, the Court agreed with Williams J that the Land Transport Act "distinguishes between composition of the notice and its communication to the driver".[25] This reflected "the careful choices made by the legislature in allocating the relevant functions between the Agency and others (including the Police)". While the "composition (giving) of the notice" had always been the Agency's duty, there was now express statutory delegation of "service" of the notice in s 90(2). Finally, the Court considered that an argument for a purposive interpretation (to meet a legislative purpose of facilitating service of notice by the police and to restrict the scope for technical objections to be seen in amendment of the legislation in 2011) did not alter the fact that under the statute it was for the Agency to give the notice unless the function of giving the notice was properly delegated (as it had not been).[26]

[15] The Court of Appeal concluded that there was no justification for "judicial subversion of the plain meaning of the statutory provision".[27] It also rejected the Solicitor-General's fall-back position that, if there was an error in the giving of the notice, the error was one of process or form, rather than substance, and that in the absence of any miscarriage of justice the notice was saved from invalidity by s 379 of the Criminal Procedure Act 2011.[28] The Court of Appeal considered that the defect in the giving of the notice made it a nullity and was not the sort of technical error that was protected from invalidity by s 379. It considered it was "of fundamental importance that notices issued by agents of the Executive and intended to have effect under statutory provisions emanate from the agency empowered by Parliament for the purpose".[29] As a result, the two questions posed for the Court in the reference were answered in the affirmative. The Solicitor-General's appeal to this Court is against this determination.

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[24] At [29]. Since the High Court determination, a delegation has been entered into. It was suggested in argument in this Court that the subsequent resort to formal delegation supports the interpretation that, without delegation, notice could be given only by the New Zealand Transport Agency itself. Given the outcome in the High Court, however, formal delegation may have seemed sensible to the Agency irrespective of the outcome in prospect on the Solicitor-General's reference. Whether delegation under the Crown Entities Act 2004 was available is not a matter it is necessary to determine in the present appeal.

[25] At [30].

[26] At [31].

[27] At [31].

[28] Like its predecessor, s 204 of the Summary Proceedings Act 1957 (considered by this Court in *Dotcom v Attorney-General* [2014] NZSC 199, [2015] 1 NZLR 745), s 379 is concerned with defects, irregularities, omissions or want of form in documents.

[29] *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1 at [40].

Section 90 in context

[16] The Agency is set up under the Land Transport Management Act 2003 with functions that include maintaining the records of the licensing of drivers and the accumulation of demerit points.[30] It is charged with the statutorily independent functions of regulating driver licences, and enforcing the provisions of the Land Transport Act.[31] The Agency is under a duty imposed by s 88 of the Land Transport Act to record demerit points on receipt of details of a conviction. Before the Agency was set up, these functions were undertaken by successive agencies, and as a consequence the language in the statute has changed over time in line with the changes to this sector. The record-keeping functions of the Agency are carried out by maintenance of an electronic database of those licensed to drive and details relating to their licensing including any demerit points accumulated by drivers. The Agency has the duty under s 90 of advising drivers that they are suspended or disqualified when they have accumulated the necessary number of demerit points.

[17] Section 90 has gone through several iterations. The original came into effect on 1 March 1999. Under the provision introduced then, the Director of Land Transport Safety[32] was required to suspend the licence of the person against whom the demerit points had been recorded "by notice in writing given to that person".[33]

[18] Section 90, as originally expressed, did not deal separately with service of the notice beyond requiring that it be "given to that person". Section 210, however, which was enacted in 1998 in the form it maintains in the current legislation, provided an elaboration of what constitutes the giving of the notice required:

> **210 Service of notices**
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> (1) A notice required to be given to a person for the purposes of this Act, or a request in writing under section 118, may be given or made by causing it to be delivered to that person, or to be left at the person's usual or last known place of residence or business or at the address

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30 Land Transport Management Act 2003, ss 95(1)(f) and 95(2)(a); and Land Transport Act 1998, s 23.

31 Land Transport Management Act 2003, s 95(2).

32 From 1 December 2004, the position was known as the "Director of Land Transport": Land Transport Amendment Act 2004, s 3(3).

33 As in the current version, suspension of licence for three months applied to licensed drivers, and those who were unlicensed were disqualified from holding or obtaining a licence for the equivalent period.

> specified by the person in any application or other document under this Act or the Transport (Vehicle and Driver Registration and Licensing) Act 1986, or to be posted in a letter addressed to the person at that place of residence or business or address.
>
> (2) If any such notice or request is sent to a person by post, then, unless the contrary is shown, it is to be treated as having been delivered to him or her when it would have been delivered in the ordinary course of post, and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.
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> (3) This section does not apply to an infringement notice or a copy of the notice.[34]

[19] Section 210 therefore made it clear that the Director might "cause" the notice to be delivered as well as giving notice directly. When the Director gave the notice directly he was not of course required to act personally in the delivery: the provisions of the State Sector Act 1988 and the common law make it clear that designated officials can act through departmental officers.[35] The additional authority to "cause" delivery to be made in one of the ways envisaged by s 210 (whether by personal service, post, or leaving the notice at an address) is authority to authorise service by non-departmental officials.

[20] Section 90 was amended with effect from 19 December 2005 to confer direct additional authority on "an enforcement officer" (which included a police officer), "by notice in writing given to that person", to suspend a driver's licence or disqualify a driver where the Director (on whom the duty to give notice remained) had been "unsuccessful in giving notice".[36] Improvements in mobile technology which allowed police access to the Agency database through its interface with the police National Intelligence Application database had made the giving of notice by the police at the roadside an effective way to fulfil the notice requirement of the Act, triggering suspension or disqualification.

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34 Infringement notices can be issued (as an alternative to filing criminal proceedings) if a person is alleged to have committed an infringement offence: s 138. They are thus distinct from suspension notices. For completeness, it is noted that the regime for service of infringement notices itself permits service by post or by attaching the notice to the person's vehicle: ss 139(2) and (3).

35 Section 41 of the State Sector Act 1988 empowers chief executives of state entities to delegate to employees "any of [their] functions or powers". Compare *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560 (CA).

36 Land Transport Amendment Act 2005, s 47.

[21] This version of s 90 remained in force from December 2005 to May 2011, with a minor change in 2008 to reflect the abolition of the position of Director.[37] At the same time s 205, which had permitted the Director to delegate statutory responsibilities, was repealed. The successor agency (the New Zealand Transport Agency) was not given an equivalent power, perhaps because as a Crown entity it was thought able to use the general power of delegation in the Crown Entities Act. Under the current form of s 90, which came into force in May 2011,[38] responsibility continues to remain with the Agency but the manner in which notice is given is shared between the Agency, enforcement officers, and those the Agency has approved for the purposes of service of notice.

[22] The direct legislative authority to allow enforcement officers to give notice of disqualification meant that it was unnecessary for enforcement officers to be specifically authorised by the Agency and overcame possible objections based on whether there had been such authorisation and as to the manner in which notice could be "caused" to be given under s 210. But the direct legislative authority given to enforcement officers was qualified by the requirement that the Director had first been "unsuccessful" in giving the notice. That precondition gave rise to challenges and difficulties of proof which were behind the amendment to introduce the current form of s 90. The Explanatory Note to the Bill which introduced the 2011 amendment indicated that a principal object of the reform was to facilitate police road-side service of notices of suspension or disqualification and prevent defences based on whether the Agency had first attempted to give notice and been unsuccessful.[39]

[23] The ability under s 90(6) to trigger the suspension or disqualification from a date specified in the notice rather than the date on which notice is given to the person is new. The legislation in 1998 and in 2005 provided for the suspension or disqualification to be upon the giving of the notice through delivery. There is some dissonance between s 90(1) and s 90(6) following the 2011 amendment. Section 90(1) does not in its terms seem to leave scope for advice in the notice of a

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37 Land Transport Management Amendment Act 2008, sch 3 pt 1.
38 Land Transport (Road Safety and Other Matters) Amendment Act 2011, s 53(1).
39 Land Transport (Road Safety and Other Matters) Amendment Bill 2010 (213–1) (explanatory note) at 4–5.

later date for the commencement of the suspension or disqualification.[40] This is a matter we are not called on to decide but it does seem to point to some awkwardness in the drafting of the amendments which may also be seen in the changes to ss 90(1) and (2) giving rise to the present controversy.

[24] In the High Court, Williams J took the view that the earlier, pre-2011, version of s 90 had required the Agency to "physically give notice to the driver".[41] He treated it as significant, in the analysis that "giving notice" and "serving notice" were separate transactions, that physical delivery was no longer envisaged in the giving of notice under s 90(1).[42] Section 210 does not seem to have been drawn to Williams J's attention. The position seems to us to be that the Agency discharges its responsibilities under s 90(1) if it "causes delivery" either by providing the notice to the person or by posting or leaving it at the last known address, as s 210 provides. The current legislation has expanded those who may give notice but does not affect the manner in which notice is given under s 210.

[25] The amendments made to the legislation in 2005 and 2011 had the purpose of reducing the scope for technical arguments about who might give notice.[43] The separate references in the current form of s 90 to "giv[ing] written notice" and "service" has however opened the door to the argument made here that giving notice and service are separate transactions and that, while service may be effected by the Agency, by an enforcement officer or by someone properly authorised, giving written notice may be undertaken only by the Agency.

How is notice given?

[26] As amicus, Mr Isac submitted, in support of the decisions in the High Court and Court of Appeal, that s 90 now uses two distinct ideas: that of the giving of

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40 The standard police form used in the present case advised that the licence was suspended (for licensed drivers) or disqualification was imposed (for unlicensed drivers) "from the time this notice is given to you". It did not therefore provide for the opportunity apparently left open by s 90(6) that a period of disqualification might specify a date on which it is to take effect which is later than the date the notice is given. We are not therefore called upon to decide whether it is open to an enforcement officer to specify a later date than the date on which the notice is given.

41 *Police v Haunui* [2015] NZHC 2456 at [21]. See also at [31].

42 At [32].

43 Land Transport Amendment Bill 2004 (112–1) (explanatory note) at 3–4; and Land Transport (Road Safety and Other Matters) Amendment Bill 2010 (213–1) (explanatory note) at 4–5.

notice (the responsibility of the Agency); and that of service (which may be by the Agency, or its delegate, or by an enforcement officer).

[27] The better view it seems to us is that notice is given by service of the required information. That is as s 210 treats it in providing that the notice required by the Act is "given" or "made" by delivery in one of the manners identified. And it is consistent with the effect of the previous versions of s 90. We do not consider that the amendments made in 2011 change that effect. It would be a surprising result if an amendment intended to simplify the manner of enforcement by the police removed the earlier authority granted to law enforcement agencies to effect suspension "by notice in writing given to [the driver]". The effect of the decision of the Court of Appeal is that under s 90(1) it is essential that the Agency itself generate the writing which notifies the person of suspension or disqualification in accordance with the Act. The role of the enforcement officer or delegate is simply to effect service of the writing provided by the Agency. So, writing made by the Agency and posted, faxed, or emailed to the police for service would comply. Putting the enforcement officer in possession of the information used to give written notice, on the other hand, would be fatally defective even if served on the person in accordance with s 90(2).

[28] The Court of Appeal noted that s 90 uses the words "give" and "serve" in different places.[44] We are however unable to agree that they are used in distinct senses. The ordinary meaning of "give" includes "deliver" or "hand over".[45] Any other reading of the section as a whole causes real difficulty. The suspension or disqualification of drivers under s 90(3) is the effect of "notice given under subsection (1)". It is however clear from s 90(6) that the composition of a notice by the Agency (such as is suggested in the Court of Appeal to be required to "give notice in writing" under s 90(1)) does not have the effect of suspension or disqualification provided for in ss 90(3) or (5) because the earliest date on which it takes effect is the date of service. In the same way, a notice generated by the Agency and supplied for service in one of the manners provided for in s 90(2) (such as was

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44 *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1 at [10].

45 See Angus Stevenson (ed) *Shorter Oxford English Dictionary* (6th ed, Oxford University Press, Oxford, 2007).

held in the High Court and Court of Appeal to be required if the Agency is to "give notice in writing") could never be completed by the Agency if it depends on insertion of the date of service by the person effecting service.

[29] The sense of the provision read as a whole is that the Agency has overall responsibility for giving notice which is fulfilled when the person is served by delivery of notice in writing of the essential information required by s 90(1). The responsibility remains with the Agency because no one can serve notice without the Agency's records showing that the requisite number of demerit points has been accumulated by the driver and that he is subject to immediate disqualification once notice is given. Notice in writing can be given by service by the Agency or service by someone else authorised. The sense of s 90 is, as the Solicitor submits, that notice in writing must be given by service in accordance with the provisions of the Act (by providing the information required through service by someone authorised).

[30] We consider that the inquiry into the meaning of s 90 has been over-refined. It was a mistake in approach to treat "giving notice" and service of a notice as different and sequential functions under the legislation, so that it was necessary for the Agency to generate a physical notice to be separately served by itself or by an enforcement officer or someone authorised to effect service. Strict separation between composition of a notice and its service is contrary to the form of s 90 before 2011 and nothing in the legislative history suggests such significant change was intended. On the contrary, the evident policy of the legislation in making the giving of notice of suspension or disqualification by enforcement officers more straightforward and less technical is substantially undermined by the meaning accepted in the High Court and Court of Appeal. Nor does it reflect the sense of the text of the section read as a whole. Under it, notice is given by provision of the information as to demerit points and consequential suspension or disqualification in writing to the person who has incurred the statutory penalty.

[31] Responsibility for giving notice is imposed by s 90 on the Agency. But it does not follow that it has responsibility to prepare itself the written notice provided. That is not what the text of s 90 suggests. The legislation does not prescribe any particular form for the notice or impose a duty to prepare it on the Agency. Notice is

given by service or delivery of the information required to be supplied to the driver in writing. The Agency has overall responsibility for the giving of notice because it is the Agency that records demerit points and is the source of the information to be notified. The provision of the information maintained by it to be served through one of the three methods identified in the Act amounts to the giving of notice under s 90(1) and fulfils the Agency's duty.

[32] The scheme of s 90 is that the duty to give notice in writing is that of the Agency. It may, however be discharged by giving notice in writing of the two matters identified in s 90(1) (the accumulation of 100 or more demerit points and the fact that the penalty specified "has been imposed and takes effect immediately") and that discharge of the Agency's responsibility is achieved by "service" of the notice (a non-technical term that in itself means no more than giving notice in writing to the person affected). Section 90 as enacted in 2011 does not impose a new obligation on the Agency to "give notice" to those authorised to effect service (including itself), as the High Court and Court of Appeal treated it as doing.

[33] We are unable to agree with the High Court and Court of Appeal that the Act "distinguishes between composition of the notice and its communication to the driver".[46] The Act is not concerned with composition or creation of a notice but with the giving of notice containing the information as to demerit points and penalty through its service by the Agency itself, by a person approved for the purpose by the Agency, or by an enforcement officer. The two subsections, read together, describe not a sequence but the single transaction of giving notice which may be effected by service by an agent authorised under s 90. Nor do we consider that the section "reflects the careful choices made by the legislature in allocating the relevant functions between the Agency and others (including the Police)", as the Court of Appeal thought it did.[47] Rather, it provides for the manner in which the single function of giving notice of suspension or disqualification is achieved. No policy reason why there should be a distinction between the functions of composing or generating notices and serving them was suggested in argument.

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[46] *Solicitor-General's Reference (No 1 of 2016)* [2016] NZCA 417, [2017] 2 NZLR 1 at [30].
[47] At [30].

[34] The Solicitor-General in written submissions suggested that the correct interpretation of s 90(1) is that the Agency "gives notice" by "passing critical information that only it has … to the Police for service". The argument was that the police receiving the information exercise no discretion and simply pass on the information provided by the Agency, or the consequences provided for by the statute, although it is acknowledged that there is scope for a date of suspension other than the date of service to be identified. As will be apparent, we take the more direct view, developed by the Solicitor-General in oral argument, that notice is given by the Agency when it is served in accordance with s 90(2).

[35] We agree also with the Solicitor-General's further argument that an approach which separates generation of a physical notice with its service depends on a literal interpretation of s 90(1) which is not warranted by the section read as a whole and leads to strained application which is inconsistent with recent parliamentary attempts to simplify the process. The policy behind s 90 is notification of the driver before suspension takes effect. That policy is met, as the Solicitor-General contends, if notification is "effected by service", as is consistent with s 210.

[36] For these reasons the appeal is allowed. The answers given by the Court of Appeal to the questions on the Solicitor-General's reference are set aside. In substitution, we answer the first question by holding that the High Court was not correct to conclude that the requirements of s 90 had not been met in the present case. The second question posed on the Solicitor-General's reference does not need to be considered because the first answer makes recourse to s 379 of the Criminal Procedure Act unnecessary.

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