



# Payment Claims Under SOPA Deemed Served When Capable of Retrieval

**Case Note: Sharvain Facades Pty Ltd (Administrators Appointed) v Roberts Co (NSW) Pty Ltd [2025] NSWSC 606**

## Facts

Sharvain (the **Contractor**) sent a payment claim via the agreed payment system (Payapps) at 7:17pm on Friday, 28 February 2025. The payment claim was submitted in accordance with the Building and Construction Security of Payment Act 1999 (NSW) (**SOPA**). The contract had a Deeming Clause that stipulated notices sent after 5pm on a business day were deemed received at 9am the next business day. Roberts Co (the **Principal**) served its payment schedule on 17 March 2025. This was outside 10 business days from 28 February 2025, but within time if the claim was deemed served on 3 March.

## Issue

Whether the payment claim was deemed to be served on 28 February 2025.

## Decision

The payment claim was served on 28 February 2025.

## Supreme Court Reasoning

A "Business Day" is defined by s 4(1) of SOPA to be "any day" other than a number of nominated exceptions, and a document can be served at any time during those days.

The intention of the Deeming Clause was to define a "Business Day" as to end at 5pm of that day. Thus, the clause was held to modify the operation of SOPA and invalid pursuant to s 34 of SOPA:

### **s34 No contracting out**

*(1) The provisions of this Act have effect despite any provision to the contrary in any contract.*

*(2) A provision of any agreement (whether in writing or not)--*

*(a) under which the operation of this Act is, or is purported to be, excluded, modified or restricted (or that has the effect of excluding, modifying or restricting the operation of this Act), or*

*(b) that may reasonably be construed as an attempt to deter a person from taking action under this Act,*

*is void.*

Where the clause was deemed void by the Court, the Electronic Transactions Act 2000 (2000) was held to have precedence. Thus, the claim

was "received" when it became capable of being retrieved (i.e., when it hit the inbox at 7:17pm on 28 February 2025).

## Takeaway

When serving a payment claim, parties cannot contractually postpone the time of service of a payment claim.

A payment claim sent through an agreed electronic platform is served when it becomes capable of being retrieved.

The operation of SOPA always takes precedence over any clauses that may be in your construction contract

Reach out to the team at Construction Legal if you require SOPA compliant contracts to be drafted for your project, or if you require any advice on SOPA payment claims, payment schedules or adjudications.

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