

Article Information

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Brutal Time Limits and Repository Links in Security of Payment

A link to a file-sharing repository might get your documents into a recipient's inbox - but does it satisfy the statutory requirement to "give" them the documents? What is the consequence of failure to serve a Western Australian review adjudication application within one business day of filing it?

These issues are addressed in *Reward Interiors Pty Ltd t/s Reward Group v Tackelly No 8 Pty Ltd atf Tackelly No 8 Trust* [2026] NSWCA 133 (*Tackelly*), another instance of NSW courts meddling in the WA security of payment space, but with useful guidance for all.

Background

Reward Interiors Pty Ltd (**Claimant**) was engaged by Tackelly No 8 Pty Ltd (**Respondent**) to undertake design and construction works at a hotel in Perth, WA. The Claimant took a payment claim to an adjudication under the *Building and Construction Industry (Security of Payment) Act 2021* (WA) (**WA SOP Act**), the adjudicator determined in favour of the Claimant. The Respondent then applied for a review of the adjudication determination under the WA SOP Act's unique review provisions.

On 2 December 2024, the Respondent's solicitors emailed the Claimant, purporting to serve the many any varied documents required in a review adjudication application. That email did not attach the review application itself, but rather a further email containing a Mimecast link from which the application could be downloaded. The Claimant did not click through the layered email and link until 4 December 2024.

Section 42(3) of the *WA SOP Act* requires an applicant for review to give a copy of the review application to the other party **within one business day after the application is made**. Yes, it is brutal.

The Claimant argued that the review adjudicator lacked jurisdiction because the documents had not been validly "given" in time, i.e. within the one business day required under s 42(3). The review adjudicator agreed with the Claimant and determined that he lacked jurisdiction.

The aggrieved Respondent/review applicant unsuccessfully applied, in the NSW Supreme Court of NSW, to have the review determination set aside. Her Honour, Peden J, held that whilst there was no strict compliance with s 42(3)'s one business day for service, that requirement was not a jurisdictional precondition - meaning the review adjudicator had wrongly declined jurisdiction - and accordingly, she quashed the review determination.

The Respondent did not accept that outcome and appealed Her Honour's findings.

Issues

Two questions came before the NSW Court of Appeal:

1. The jurisdiction issue - is s 42(3)'s requirement for service of the review a jurisdictional precondition, such that non-compliance results in the review adjudicator being denied jurisdiction to determine the review application?
2. The service issue - did an email containing a link to a Mimecast repository amount to "giving" the review application "by email" within the meaning of s 113(3)(d) of the *WA SOP Act*?

Decision

Jurisdiction issue

On the jurisdiction issue, and somewhat surprisingly, three judge bench of the NSW Court of Appeal unanimously held that s 42(3)'s one business day for service of the review application is a jurisdictional requirement, given:

- the mandatory language i.e. use of the term “must” in s 42(3) (contrasted with permissive language elsewhere in the Act, though not determinative on its own);
- the deliberate inclusion of a one business day time limit signalled Parliament’s intention to expedite the WA review process; and
- the uncertainty a directory (as opposed to mandatory) application of the time limit would create uncertainty as to when the balance of the statutory timetable (including the ten business day period for a review response) begins to run. This would undermine the intentionally and brutally fast determination review scheme the *WA SOP Act* was designed to deliver.

Service issue

On the service issue, the majority (Free JA, with McHugh JA agreeing) held that the Respondent had not validly given the review application by email. Ward P, in dissent, found that it had.

The Court referred to two clauses in the parties’ contract: one clause deeming a notice or communication “given under the contract documents” to have been given and received if sent in accordance with that clause; and another clause deeming the date on which such service occurred.

The Respondent contended that the manner of services documents was “provided” for in the contract, as permitted in s 113(2)(a). The majority held that the adjudication review application was not a notice or other communication “given under the contract documents” (as phrased in the contract).

The majority’s reasoning turned on the proper construction of s 113 of the *WA SOP Act*, which defines “give” to include “serve, send or otherwise provide”, and sets out five methods of “giving” a document, including “by email to an email address specified by the person” (s 113(3)(d)). Those do include the use of “an electronic database, document system or any other means by which a document can be accessed electronically” (s 113(3)(e)), but only those “authorised by the Regulations”. The Regulations to the *WA SOP Act* currently provides no such authorisation, so s 113(3)(e) has not been activated, and service by providing a link in an email is therefore unreliable.

The majority drew a distinction between “giving/providing” a document,^[1] and providing a means by which a person “can access” a document.^[2] A document attached to an email is received, and therefore given, once it arrives at the recipient’s email service. A document sitting in an online document repository is not given until the recipient clicks through and downloads it, and even then, the sender may retain the ability to alter or remove what is held in the repository in the meantime.

On this analysis, the Respondent’s email did not give the review application “by email”. It only gave the Claimant a means of accessing it electronically.

The Court held that since the Respondent’s documents were not validly “given” within one business day, and that as that requirement is jurisdictional, the review adjudicator was correct to decline jurisdiction.

Key takeaways

Despite being a decision based on the Western Australian legislation, the issues decided in *Tackelly* rely largely on principals applicable to almost all East Coast Models. The lessons in *Tackelly* have much wider application than Western Australia alone.

- **A link is not a document** – emailing a link to a Mimecast, Dropbox or similar online document repository does not, without more, constitute “giving” a document “by email” for the purposes of the *WA SOP Act*’s service provisions. This is also the case in many other states and territories.^[3] If your process relies on sending large materials via a file-sharing link rather than as an attachment, that practice may not satisfy statutory service requirements – regardless of how quickly, or whether, the recipient could theoretically retrieve the files.
- **Volume is not an excuse** – the impracticality of attaching hundreds of megabytes of material to an email will not cause a court to read “giving... by email” (s 113(3)(d)) expansively. Where parties expect to put on large documents, the contract should include a provision to allow service by way of an online document repository.
- **Service of SoP documents by email is generally unreliable.**
- **Timing matters, and mistakes are unforgiving** – the *WA SOP Act*’s one business day service requirement for review applications is jurisdictional. Being even a few hours late – let alone almost two days, as occurred here – will

cause an adjudicator to lack jurisdiction to determine a review adjudication application.

[1] Which results in the recipient having the document in its possession once the sender's task is complete, as occurs when a document is attached to an email.

[2] Which leaves the document in the sender's possession and control until the recipient takes further steps to retrieve it.

[3] In Queensland, the use of repository links does not satisfy s 11 of the *Electronic Transactions (Queensland) Act 2001* (Qld) – see *Tackelly* at [110].

In New South Wales, service of documents via an online platform is only effective if it is permitted under the contract, pursuant to *Building and Construction Industry Security of Payment Act 1999* (NSW) s 31(e) – see *Tackelly* at [86]. See our insight article on *Roberts Co (NSW) Pty Ltd v Sharvain Facades Pty Ltd (Administrators Appointed)* [2025] NSWCA 161 for further guidance on the application of deeming provisions where documents are served via email:

<https://piperalderman.com.au/insight/a-bad-weekend-for-deemed-service-roberts-co-nsw-pty-ltd-v-sharvain-facades-pty-ltd-administrators-appointed/>

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