



DISPUTE RESOLUTION SERVICE

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 Mr ANDREW STONE J.C.
 Received by
 HELEN HONG
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* with redactions

REPORT OF FIRST TELECONFERENCE

Issued in accordance with cl 7.110 of the *Motor Accident Guidelines*

Claimant

Insurer

Applicant

Date of Accident

February 2018

DRS Reference

Insurer Claim Number

Decision Maker

DRS Claims Assessor

Date of Teleconference

July 2018

A teleconference was conducted between:

Claimant's representative

Insurer's representative

BACKGROUND

This determination relates to a Miscellaneous Claim, which is a reviewable decision under Schedule 2(3)(k) of the *Motor Accident Injuries Act 2017*, about whether the Insurer is entitled to refuse payment of weekly payments of statutory benefits in accordance with s.6.13 of the *Motor Accidents Injuries Act 2017*.

1. The parties at the telephone conference agreed on the following chronology:
 - i. The Claimant, _____ was involved in a motor vehicle accident on February 2018 (Sunday).
 - ii. The Claimant served on the Nominal Defendant, his personal injury benefits form via email on March 2018.
 - iii. On March 2018, SIRA wrote to the Claimant advising him that they had received his claim form and that the matter had been allocated to acting on behalf of the Nominal Defendant.

- iv. The parties agree (although the document was not put before me), that on April 2018, the Insurer wrote to the Claimant advising him that the Insurer was unable to pay his wage loss benefits for the period of February 2018 to March 2018 on the basis that the Claimant's personal injury benefit form was not served within 28 days of the motor vehicle accident.
- v. On April 2018 the Claimant requested an internal review of the Insurer's decision.
- vi. On April 2018, the Insurer wrote to the Claimant and acknowledged receipt of his request for the internal review. On May 2018, the Insurer wrote to the Claimant advising him that the Insurer had determined that as his claim was not made within the 28 days' time limit, the Insurer was unable to make a payment of statutory benefits before the date that his claim was made.
- vii. The Claimant has lodged the application before me to determine if the Claimant had made his claim within 28 days.

2. The Claimant relies on the *Interpretation Act 1987 NSW*.
3. At the telephone conference, submitted that in his opinion the *Interpretation Act* does not apply to the *Motor Accidents Injuries Act 2017* and if the claim form was not lodged within the 28 days as required by the Act, then the Insurer has no duty to pay weekly wages for the 28 days prior to that period – pursuant to s.6.13(2).

STATUTORY LAW

4. Section 6.13 of the *Motor Accidents Injuries Act 2017* states as follows:
 - (1) A claim for statutory benefits must be made within 3 months after the date of the motor accident to which the claim relates. The regulations may amend this subsection to change the date within which the claim must be made.
 - (2) If a claim for statutory benefits is not made within 28 days after the date of the motor accident, weekly payments of statutory benefits are not payable in respect of any period before the claim is made.
5. The parties agree that the Claimant was injured on February 2018 – Sunday.
6. The Claimant emailed his personal injury benefits form on March 2018 – Monday.
7. The *Interpretation Act 1987 NSW* states as follows at s.5 – 'Application of Act':
 - (1) This Act applies to all Acts and instruments (including this Act) whether enacted or made before or after the commencement of this Act.
 - (2) This Act applies to an Act or instrument except in so far as the contrary intention appears in this Act or in the Act or instrument concerned.

8. Section 36 of the *Interpretation Act 1987* notes as follows – ‘Reckoning of Time’:
- (1) *If in any Act or instrument a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall be reckoned exclusive of that day or of the day of that act or event.*
 - (2) *If the last day of a period of time prescribed or allowed by an Act or instrument for the doing of anything falls:*
 - (a) *on a Saturday or Sunday, or*
 - (b) *on a day that is a public holiday or bank holiday in the place in which the thing to be or may be done,*
the thing may be done on the first day following that is not a Saturday or Sunday, or a public holiday or bank holiday in that place, as the case may be.
 - (3) *If in any Act or instrument a period of time is prescribed or allowed for the doing of any thing and a power is conferred on any person or body to extend the period of time:*
 - (a) *that power may be exercised, and*
 - (b) *if the exercise of that power depends on the making of an application for an extension of the period of time – such an application may be made, after the period of time has expired.*
9. The Claimant in its correspondence to the Insurer dated June 2018, relying on the above sub-section noted as follows:
- Claimant's motor vehicle accident – Sunday, February 2018.
 - 28 days post-accident (not including date of accident), or, the last day of a period of time prescribed or allowed by the *Motor Accidents Injuries Act*, for the service of a personal injury benefits form – Sunday, March 2018.
 - The first day following that is not a Saturday or Sunday – Monday, March 2018.
10. The Insurer replied to the above correspondence by letter dated June 2018 noting as follows:
- “It remains NRMA's position that entitlement to statutory benefits for any period prior to claim lodgement only applies to those claims received by NRMA within the first 28 days in accordance with s.6.13(2) of the Motor Accidents Injuries Act (the Act).”*
11. The Insurer notes that the matter had been referred to me to make a final determination on the issue.

MY FINDING

12. I find that pursuant to s.36 of the *Interpretation Act 1987 NSW* – that the Claimant has made his claim within the 28 days as prescribed by s.6.13(2) of the *Motor Accident Injuries Act 2017*.
13. I therefore find that the Insurer is not entitled to refuse payment of weekly payments of statutory benefits in accordance with s.6.13(2) of the Act.

COSTS

14. The parties agree that if the Claimant is successful in this application then it is entitled to costs. The parties agree that the costs is \$1,600.00 plus GST. I therefore allow the Claimant its costs of \$1,600.00 plus GST.

**Decision Maker, Delegate of the Principal Claims Assessor
Dispute Resolution Services**