

# Local Court Interest: *Hungerfords v Walker*

rates in the absence of evidence.

These damages will not be awarded as a matter of course simply because a plaintiff asks for them, as interest under statute might be. They are a separate and distinct head of damage. As such, they must be proved like any other head, eg loss of earnings, property damage.

## Statutory interest

The piece in *Balance* stated that the Law Society had written to the Chief Magistrate seeking an amendment to the rules to allow for interest to judgment.

Were it not for s21(2)(f) of the *Local Court Act*, it would not be possible for a rule to allow for interest to judgment. That subsection allows the Chief Magistrate to make rules to "provide for interest to be paid on the amount of a *claim or judgment* and the rate of that interest" (my emphasis).

Clearly, I think, the use of the word "claim" juxtaposed with the word "judgment" indicates that parliament intended to allow rules to be made for interest *to judgment* (ie on a claim) in addition to interest *on judgment*.

In the absence of that subsection, the amendment would have had to have been to the Act, not the rules. Procedural rules cannot amend the substantive law (Pearce, *Delegated*

(continued from page 9)

*Legislation*, 1977, par 218; Williams, *Supreme Court Civil Procedure, Victoria*, 1987, par 1.11). It is a substantive common law rule that interest cannot be awarded to judgment. Therefore, it can only be altered by statute, not simply by delegated legislation.

This, as I understand it, was the reason for enacting the *Supreme Court Rules* in statutory form, rather than simply by the judges in pursuance of a rule making power in the *Supreme Court Act*. By the *Supreme Court (Rules of Procedure) Act 1987* (NT), the *Supreme Court Rules* were "ratified, validated and approved." They thus obtained statutory status, elevated from the level of delegated or subordinate legislation.

It was necessary to so elevate the rules since the rules relating to delivery of experts' and medical reports arguable altered the substantive law of evidence. Those rules made evidence inadmissible where certain procedural steps had not been taken. Under the general law, evidence from experts and medical practitioners is admissible provided only it is relevant and the witnesses are properly qualified. The rules therefore purported to alter the general law by adding a procedural precondition to

the reception of the evidence. That could only be done by statutory mandate, not by subordinate legislation (this is the basis of my argument, rejected by Ms Deland SM but tacitly accepted by Mr McGregor SM, that r19.01(3) of the *Local Court Rules* is invalid as being ultra vires the rule making power of the Chief Magistrate).

Be that as it may, the power is there and let us hope it will be used. If it is, that does not mean the right to claim under *Hungerfords* will be lost. The majority there held that statutory provision for interest to judgment was not a code and did not oust the right to damages by way of interest. Obviously, a properly drafted statutory provision could override the common law and abolish the recovery of these damages.

## Summary

Damages for loss of use of money in the nature of interest to judgment is available where the court would order restitution in integrum. That should be the majority of cases. It is available whether or not there is independent statutory provision for interest to judgment (unless the statute clearly excludes it). Consideration should be given to amending proceedings already commenced to include such a claim, and to pleading it in actions yet to be commenced. This applies equally

## Practising Certificate Renewal Time

Practitioners are reminded that  
practising certificates are renewable  
at 30 September 1992  
(see page 6 for details of PI).