

Pre-judgment Interest Rates

Section 84 of the Supreme Court Act (NT)

Alistair Wyvill SC,
Barrister,
William Forster Chambers

On 1 August 2011, the Federal Court issued practice note CM16 on pre-judgment interest in the following terms:

1. Section 51A(1)(a) of the Federal Court of Australia Act 1976 (Cth) provides for the making of orders for the inclusion of interest in judgments.
2. Practitioners and litigants should expect that where, pursuant to section 51A(1)(a), interest in respect of a pre-judgment period is to be included in a judgment, the Court will have regard to the following rates, being rates agreed upon by the Discount and Interest Rate Harmonisation Committee established following a referral by the Council of Chief Justices of Australia and New Zealand:
 - (a) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by

the Reserve Bank of Australia before that period commenced, and

- (b) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

I wrote to the Chief Justice recently drawing his attention to CM16 and suggesting that he may wish to consider issuing a similar practice direction for the Territory in relation to awards under s.84 of the Supreme Court Act. I received a response from the Master on behalf of the Court in the following terms:

The Court is of the view that pre-judgment interest should be treated differently from interest on judgment. The current high rate of interest set for the latter is seen to provide an incentive to paying parties to promptly pay judgment sums.

Pre-judgment interest differs in that respect. Moreover the appropriate rate of pre-judgment interest can vary according to the circumstances of the case. That no doubt accounts for the broad range of interest rates that have been adopted in awards of pre-judgment interest in recent times.

The members of the Court are of the view that the fixing of the rate for pre-judgment interest should be a matter to be determined according to the facts and circumstances of each case rather than by an arbitrary fixed rate applying across the board. Hence it is not proposed to alter the current position.

As it appeared to me to contain matters of relevance for practitioners, I sought and received the Court's permission to draw this correspondence to the attention of the profession. ●



follow us on
twitter

Head to the Law Society Website, www.lawsocietynt.asn.au, and click on the links.