

Interest on Judgments

Terms of Reference

In 1977 the Commission was asked to consider whether the law and practice relating to interest on judgments was adequate or whether it was in need of reform.

Background of Reference

At the time of the reference, the law in Western Australia governing the recovery of interest on judgments was a complex mix of common law, equity, admiralty and statute law which permitted interest to be recovered in some deserving cases but not in others. At common law, in the absence of mercantile usage or agreement, interest could not be claimed on debts. However, under the *Supreme Court Act 1935 (WA)* provision had been made for the payment of interest in certain circumstances at various rates. Since the advent of high inflation it had appeared that interest, even where payable, sometimes did not provide sufficient compensation to creditors for being kept out of their money. This led to a tendency by some individuals and firms to delay payment of debts as long as possible.

At the time that this reference was given, the Commission had a great number of current references which were completed according to the level of priority assigned to each one. When in May 1981, the Attorney-General asked the Commission to furnish a priority report on pre-judgment interest, the Commission divided the reference into two parts. The report on Part I, which dealt with pre-judgment interest, was delivered in August 1981. The report on Part II of the reference was listed as a non-priority project.

Reference Withdrawn

By agreement between the Commission and the Attorney-General, Part II of the reference was withdrawn in 1987. The Commission was of the view that the report on Part I had addressed the primary problem underlying the reference. This decision was influenced by the fact that, in the United Kingdom, the Government had decided not to implement the recommendations of the UK Law Commission's report¹ on the same subject.

¹ Law Commission (UK), *Law of Contract: Report on Interest*, Law Com No 88 (1978).