

Hon Aupito William Sio
Associate Minister for Courts

Proactive release – Interest on Money Claims Regulations 2019

Date of Issue: 17 April 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Interest on Money Claims Regulations 2019 <i>Cabinet paper</i> Office of the Associate Minister of Justice	The Cabinet paper has been released in full. <i>Note that the copy of the regulations provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the OIA to maintain legal professional privilege.</i> <i>The Interest on Money Regulations 2019 are publicly available from www.legislation.govt.nz</i>
2	Interest on Money Claims Regulations 2019 <i>Cabinet minute</i> Cabinet Office	Released in full.
3	Interest on Money Claims Regulations 2019 – Approve Cabinet Paper <i>Key advice</i> Ministry of Justice 4 February 2019	Some information has been withheld in accordance with section 9(2)(a) of the OIA to protect the privacy of natural persons. <i>Note that the final page of the briefing has been annotated to indicate the Minister's decisions.</i>

In Confidence

Office of the Associate Minister for Courts

Chair, Cabinet Legislation Committee

Interest on Money Claims Regulations 2019

Proposal

1. I propose that the Cabinet Legislation Committee authorise the submission of the Interest on Money Claims Regulations 2019 (“the Regulations”) to the Executive Council.

Background

2. The Interest on Money Claims Act 2016 (“the Act”) standardised the award of interest on money claims. It generally abolished the distinction between pre- and post-judgment interest and requires a money judgment to include interest from the date the cause of action arose (or date the debt was quantified) to the date the judgment debt (including interest under the Act) is paid in full.
3. It also prescribes a scheme for the calculation of interest depending on whether the contract specifies an amount of interest and when the contract was entered into.

Policy

4. The Regulations specify what interest rate should be used to determine pre-judgment interest where a contract was entered into prior to 1 January 2018.
5. Section 24 of the Act is a form of transitional provision and allows for judgments relating to contracts entered into prior to the law coming into effect to award interest in a manner and at a rate approximating the previous law.
6. Immediately prior to the Act coming into force the maximum rate at which pre-judgment interest could be imposed by courts was 5% per annum, so this rate is continued by the Regulations.¹
7. These regulations are routine and administrative in nature and do not require any new policy decisions.

¹ Clause 4 District Courts (Prescribed Rate of Interest) Order 2011 and cl 4 Judicature (Prescribed Rate of Interest) order 2011.

Timing and 28-Day Rule

8. The Regulations will come into effect on 12 April 2019 in compliance with the 28-day rule.

Compliance

9. The Regulations comply with the:
 - 9.1. the principles of the Treaty of Waitangi;
 - 9.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 9.3. the principles and guidelines set out in the Privacy Act 1993;
 - 9.4. relevant international standards and obligations;
 - 9.5. Legislation Advisory Committee Guidelines
10. There are no statutory prerequisites requiring compliance.

Regulations Review Committee

11. There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

12. The Regulations have been certified by Parliamentary Counsel as being in order for submission to Cabinet.

Impact Analysis

13. The Treasury Regulatory Quality Team has determined that the Regulatory Impact Analysis requirements do not apply to the proposal as it has no or only minor impacts on businesses, individuals or not-for-profits.

Publicity

14. The Regulations will be published on the New Zealand Legislation website and notified in the New Zealand Gazette, in accordance with the usual process for notifications of legislative instruments.
15. A communications approach will inform all interested parties and the public of the changes made to the Regulations and where to find the relevant rate.

Proactive release

16. I propose to proactively release this paper in full once the Regulations have been gazetted and published on the New Zealand Legislation website.

Consultation

17. The regulations are a form of transitional provision; therefore no consultation has been undertaken.

Recommendations

18. I recommend that the Committee:
 1. **note** that the Interest on Money Claims Regulations 2019 prescribe an interest rate of 5% p.a. for pre-judgment amounts when the contract was entered into prior to 1 January 2018 and the contract does not specify an interest amount;
 2. **authorise** the submission to the Executive Council of the Interest on Money Claims Regulations 2019;
 3. **note** that the Interest on Money Claims Regulations 2019 will come into force on 12 April 2019.

Authorised for lodgement

Hon Aupito William Sio
Associate Minister for Courts



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Interest on Money Claims Regulations 2019

Portfolio **Courts**

On 5 March 2019, the Cabinet Legislation Committee:

- 1 **noted** that the Interest on Money Claims Regulations 2019 prescribe an interest rate of 5 percent per annum for pre-judgment amounts when the contract was entered into prior to 1 January 2018 and the contract does not specify an interest amount;
- 2 **authorised** the submission to the Executive Council of the Interest on Money Claims Regulations 2019 [PCO 21706/2.0];
- 3 **noted** that the Interest on Money Claims Regulations 2019 come into force on 12 April 2019.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Andrew Little (Chair)
Hon Stuart Nash
Hon Damien O'Connor
Hon Tracey Martin
Hon Kris Faafoi
Hon Aupito William Sio
Hon Julie Ann Genter
Hon Eugenie Sage
Hon Ruth Dyson (Senior Government Whip)

Officials present from:

Officials Committee for LEG

Hard-copy distribution:

Associate Minister for Courts

Hon Aupito William Sio
Associate Minister of Justice and for Courts

Interest on Money Claims Regulations 2019 – Approve Cabinet Paper

Date	4 February 2019	File reference	
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Action sought	Timeframe
Approve the attached Cabinet paper and send it out for Ministerial consultation.	11 February 2019
Agree to submit it to Cabinet if relevant Ministers have approved the paper; and	28 February 2019
Agree that the Cabinet paper and this briefing will be proactively released by the Ministry once the Regulations have been gazetted and published on www.legislation.govt.nz	11 February 2019

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	First contact
Wayne Newall	Manager, Implementation	04 462 6711	Section 9(2)(a)	<input checked="" type="checkbox"/>
Sam Rosenberg	Senior Advisor	04 524 9243		<input type="checkbox"/>

Minister's office to complete

Noted Approved Overtaken by events
 Referred to: _____
 Seen Withdrawn Not seen by Minister

Minister's office's comments

In Confidence

RELEASED BY THE ASSOCIATE MINISTER FOR COURTS

Interest on Money Claims Regulations 2019

Purpose

1. This paper seeks your agreement to lodge the attached draft Cabinet Legislation Committee (LEG) paper on 28 February 2019 for the LEG meeting on 7 March 2019.
2. The attached draft LEG paper seeks approval to submit the Interest on Money Claims Regulations 2019 (“the Regulations”) to the Executive Council. The Regulations prescribe an interest rate for judgments made under s 24 of the Interest on Money Claims Act 2016 (“the Act”).
3. Responsibility for progressing the Regulations was delegated to you in a briefing approved by Hon Andrew Little, Minister of Justice and for Courts on 10 October 2018.

Background

4. The Act came into force on 1 January 2018, standardising the award of interest on money claims. It generally reflects the recommendations of the Law Commission in its 1994 report *Aspects of Damages: The Award of Interest on Money Claims*.¹
5. Prior to the Act coming into force, different provisions applied to interest up to and after the date of judgment. Section 62B of the District Courts Act 1947 and s 87 of the Judicature Act 1908 provided that, unless interest was payable as of right (for example, pursuant to a contractual provision), the court had discretion to award interest up to the ‘prescribed rate’ on all or part of a debt or damages for all or part of the period between the date when the cause of action arose and the date of judgment.
6. Section 65A of the District Courts Act 1947 and r 11.27 of the High Court Rules 2016 (as originally enacted) provided that interest was payable at the ‘prescribed rate’ on judgment debts from the date of judgment until the debt was satisfied.² In effect, interest at the prescribed rate was mandatory from the date of judgment by operation of law.
7. The Act has generally abolished the distinction between pre and post-judgment interest. Subject to certain exceptions, the Act requires a money judgment to include interest from the date the cause of action arose (or date the debt was quantified) to the date the judgment debt (including interest under the Act) is paid in full.
8. Most money claims relate to contracts. If the contract specifies that interest is payable at a particular rate, the Act requires the court to award interest at that rate (if that is what the judgment creditor has claimed) rather than under the standard regime. If the contract does not specify a rate, different rules apply depending on when the contract was entered into.

Discussion

9. In cases where contracts were entered into prior to the Act coming into force, the Law Commission recommended that the law allow for interest in a manner and at a rate approximating the previous law, as a form of transitional provision.

¹ Law Commission *Aspects of Damages: The Award of Interest on Money Claims* (NZLC R28, 1994).

² r 11.27 provided that the court could fix a lower rate, but it appears that this seldom, if ever, happened.

10. Section 24 is intended to do this. It applies to the pre-judgment interest and provides that the Court may not award mandatory interest under the standard regime but may award interest or a lump sum up to the maximum rate prescribed where the contract was entered into before the Act came into force.
11. Regulations under s 27(1)(d) are required to set the maximum prescribed rate for the purpose of s 24, allowing the section to function as intended.
12. Immediately prior to the Act coming into force, the maximum rate at which pre-judgment interest could be imposed by the courts was 5% p.a.³ That rate was set on 1 July 2011 and applied to every judgment given on or after that date, regardless of when the proceedings commenced.
13. In line with the intention that s 24 approximate the previous law, we recommend that the Regulations prescribe that 5% p.a. be the maximum rate.

Next Steps

14. We propose the following timeframes to enable commencement on 12 April 2019:

Ministerial consultation	11 February 2019
Submission to Cabinet Office	28 February 2019
Consideration by LEG	7 March 2019
Confirmation by Cabinet	11 March 2019
Notification in the Gazette	14 March 2019
Entry into force in compliance with the 28-day rule	12 April 2019

15. We have prepared and attached all the documents necessary for you to submit this matter to the Cabinet Office. Parliamentary Counsel Office will provide the signature copy of the Regulations to be submitted to the Cabinet Office directly to you.

Proactive Release

16. From 1 January 2019 all Cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay release.⁴
17. The Ministry does not consider there to be any reason to not publish in full or to delay release of this Cabinet paper. This is a routine and administrative matter and the matters addressed in the paper will become public as soon as the regulations are gazetted and published on www.legislation.govt.nz.
18. This briefing provides additional background and context to the need for the new regulation, so we propose that it also be released in full at the same time.
19. Key stakeholders, like the judiciary and the New Zealand Law Society, will be informed of the changes by the Ministry as soon as possible after the regulations are made.

³ cl 4 District Courts (Prescribed Rate of Interest) Order 2011 and cl 4 Judicature (Prescribed Rate of Interest) Order 2011.

⁴ CO (18) 4 - Proactive Release of Cabinet Material: Updated Requirements.

Publishing the Cabinet paper and this briefing will provide additional background information to support that process.

Recommendations

20. It's recommended that you:

1. **Approve** the attached Cabinet paper and send it out for Ministerial consultation; and YES / NO
2. **Agree** to submit it to Cabinet once relevant Ministers have approved the paper; and YES / NO
3. **Agree** that the Cabinet paper and this briefing will be proactively released by the Ministry once the Regulations have been gazetted and published on www.legislation.govt.nz. YES / NO

[SIGNED – WAYNE NEWALL]

Wayne Newall
Manager, Implementation
Commissioning and Service Improvement

APPROVED SEEN NOT AGREED

[SIGNED – HON AUPITO WILLIAM SIO]

Hon Aupito William Sio
Associate Minister of Justice and for Courts

Date / / [DATED – 11 FEBRUARY 2019]