

***GEG Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd* [2003] FCA 688; BC20030 .**

[7.10] [7.12] [7.13] [10.4]

In the principal proceedings, [2003] FCA 50; BC2003 , BHP-IT obtained verdicts for damages against GEG Marconi and its parent company. BHP-IT obtained a small award against the Commonwealth for extras. Questions of interest and costs were reserved for subsequent argument. The present note relates to the decision of the interest questions by Finn J.

The suit was originally set down for hearing in Sydney but the venue was changed to Canberra. Finn J followed the usual procedure of allowing pre-judgment interest at the rate of the jurisdiction where the case was heard, rather than that where it had been set down for trial.¹ The case “was substantively a Canberra matter.”

His honour declined to take statutory notice of the borrowing rates that would have been available to BHP-IT.²

Evidence was tendered to prove that the statutory rate of 9% would over compensate BHP-IT. Finn J exercised the discretionary power under the Evidence Act 1995 to exclude it on the basis that it was misleading or confusing and wasteful of time.³ He was of the view that the calling of such evidence should be discouraged.⁴ However that discretion may not be available in jurisdictions which have not adopted that Act.

The proceedings were commenced in 1997. BHP-IT’s claim against the commonwealth had never been formally pleaded. It was acknowledged by the Commonwealth in correspondence in January 1999. It first became apparent that it was pursued in June 2001 when a witness statement was served. Particulars of the claim were provided in November 2001. However, though the Commonwealth did not dispute the claim it did not pay it but on the delay in making the claim as a discretionary defence to the claim for interest. Finn J recognised the existence of the power and awarded interest from November 2001.

D I Cassidy QC.

¹ At [8].

² At [22].

³ At [18].

⁴ At [19].