



Our ref: 20/10

19 October 2020

The Hon Kevin Andrews MP
Chair
Joint Select Committee on Australia's Family Law System

By email: familylaw.sen@aph.gov.au

Dear Chair

Interim Report of the Joint Select Committee on Australia's Family Law system

I refer to the Interim Report of the Joint Select Committee, which was tabled on 7 October 2020. I write on behalf of the New South Wales Bar Association (**the Association**) to request clarification of a reference to the Association's testimony in the Interim Report.

The evidence of the Chair of the Association's Family Law Committee, Mr Michael Kearney SC, to the Joint Select Committee is paraphrased at [5.8] of the Interim Report as follows:

A fair fee for service

5.8 Some submitters and witnesses argued that legal fees reflected the value of a necessary service. Mr Michael Kearney SC, Chair, Family Law Committee, NSW Bar Association explained that legal professionals charged a broad range of fees depending on their level of expertise and experience and noted that fees for barristers **in his chambers ranged from \$800 up to \$20 000 per day**. Mr Kearney argued that fees are not an impediment to representation.⁷ (**emphasis added**)

...

⁷ Mr Michael Kearney SC, Chair, Family Law Committee, NSW Bar Association, Proof Committee Hansard, 13 March 2020, p. 32.

This description of the Association's evidence is inaccurate as it conflates Mr Kearney's testimony in answer to a question from the Chair about the daily fee of a leading silk at the NSW Bar in Sydney with Mr Kearney's subsequent testimony in answer to a later question by the Deputy Chair about the range of fees charged within his own chambers, Waratah Chambers.

Hansard records Mr Kearney's evidence in answer to the Chair's initial question as follows:

Mr Michael Kearney SC, Chair, Family Law Committee, NSW Bar Association, Committee Hansard, 13 March 2020, p. 29

CHAIR: ...Mr Kearney, what's the **daily fee of a leading silk such as you in Sydney?**

Mr Kearney: It varies in a band from about \$7,000 a day up to, for barristers who appear in the family law court, over \$20,000 a day.

(emphasis added)

In contrast, Hansard records Mr Kearney's evidence in answer to a later question by the Deputy Chair as follows:

Mr Michael Kearney SC, Chair, Family Law Committee, NSW Bar Association, Committee Hansard, 13 March 2020, p. 32

Senator HANSON: But you're leaving people vulnerable now, because they can't afford you, so you're doing it anyway.

Mr Kearney: We're not. When we focus on someone in my position, you ignore, as Ms Christie said, that in my chambers of some 20 barristers you can get barristers that charge from \$800 a day upwards.

Senator HANSON: You said in your opening statement between \$7,000 to \$20,000.

Mr Kearney: No. I was asked by the chair for the top silks who appear in the jurisdiction. That is what I was asked, not for the barristers.

Senator HANSON: Well, \$800 a day: point me in their direction, because I've never been quoted that money.

Mr Kearney: I can tell you as the head of our chambers, you can get barristers that cost that. You can get barristers, including me, who do extensive pro bono work. You can get barristers who do it at legal aid rates extensively. You can get barristers, including me, who do work at government rates. The idea that people cannot get a barrister as a matter of course because of the charges of a certain nature of barrister who deals with cases involving hundreds of millions and billions of dollars in the Family Court—and they're the cases I deal with—is just not correct.

(emphasis added)

The Association writes to request the Joint Select Committee's assistance to correct paragraph [5.8] as soon as possible. We also ask that this letter be published on the Joint Select Committee's website.

If you would like to discuss this letter further, please have your office contact the Association's Director of Policy and Public Affairs, Ms Elizabeth Pearson _____

Thank you for your consideration, I look forward to hearing from you.

Yours sincerely

Tim Game SC
President