

Submission to the Royal Commission into Institutional Responses to Child Sex Abuse

Issues Paper No. 5 Civil Litigation.

From David Hill,

April 2014

1 This submission relates to Issues Paper No. 5 ('Civil Litigation') and No 6 (Redress Schemes) and the terms of reference that require the Royal Commission to inquire into what institutions and governments should do to address or alleviate the impact of past and future child sex abuse in institutional contexts, including and ensuring justice for victims.

2. I am an interested individual and also the representative and advocate of a number of former child migrants who were the victims of sexual abuse while at the Fairbridge Farm School at Molong that operated from 1938 and 1974. I was at the Farm School between the age of twelve and fifteen years of age and before that spent time in children's institutions in England, including Barnardos Home in Barkingside, Essex. However, I am not making a submission or making any claim on my own behalf but as a public advocate of the former residents. I am also a member of the executive of the Old Fairbridgians Association. In 2007 I wrote a book about Fairbridge called *The Forgotten Children* and in 2010 participated in the production of a TV documentary titled *The Long Way Home*, which was shown on ABC TV. The book and the documentary told the story of some of the children's experiences.

3. In 2007 a number of former Fairbridge children made claims against the Fairbridge Foundation for abuse they had suffered at the school. After attempts to negotiate the matter failed the claimants brought a class action against the Fairbridge Foundation, the Federal Government and New South Wales State Government in 2009.

4. The civil litigation has already been five years before the New South Wales Supreme Court. In the fourteen times that the matter has been before the court only procedural matters have been dealt with, including arguments relating to further and better particulars, strike out applications, discovery, limitations, whether the matter can proceed as a class action, applications for the determination of separate questions, and the scheduling of all these matters. It was not until March 2014 that the court agreed the matter can proceed to a hearing.

5. I am advised that the matter could take another five years, or even longer, depending on whether issues are appealed during the process. It is unlikely we will get a trial date until mid-2015 at the earliest, if the court proceedings go as planned and without further procedural disputes. The first trial will deal with the two lead claimants and will then be followed by trials for each of the other victims, dealing with issues specific to those victims, including limitations issues.

6. Ten or more years to determine claims of sexual abuse of children are, by any reasonable measure, totally unacceptable.

7. Since the process started five of the original claimants have died. A number of others are in poor health. Most are in the in their late 60's and 70's. Some are in their 80's.

8. The protracted nature of the proceedings is very distressing to many of the claimants, some of whom are contemplating withdrawing because they are finding the process too traumatic.

9. This protracted civil litigation is extremely costly for all the participants, including taxpayers, as both the New South Wales and Commonwealth Governments are defendants. (The New South Wales Government has told the Supreme Court that the cost of discovering material required by the plaintiffs will cost in excess of \$100 million)

10. Even if it is a waste of resources, the defendants currently have the right to engage in this sort of protracted litigation. It is difficult to see what improvements might have been made to the civil litigation to produce an earlier resolution of the matter without denying the rights of the defendants.

11. Even if the civil litigation proceeds to a point of a negotiated settlement there are concerns among the abuse victims about any confidentiality provisions that might attach to any negotiated settlement. For many a public apology and a public acknowledgement of the wrong that was done to them is very important.

12. In 2011 I approached the relevant Commonwealth Government Minister and the relevant New South Wales Government Minister asking them to consider introducing an appropriate redress scheme as an alternative to the protracted and costly civil litigation. Both Ministers have since replied to say that their Governments propose to continue with the civil litigation. (Copies of the correspondence are available).

13. In view of the above I submit that the Royal Commission should:

(a) Note the civil litigation process has failed to produce a resolution of the claims of abuse within a reasonable time and at a reasonable cost.

(b) Recommend the introduction of an appropriate redress system. The redress system should have the features proposed by Care Leavers Australia Network (Clan) in 2010, including, accessibility to all, a quicker resolution of claims, fair and reasonable compensation, consistency of compensation payments, that mistakes are admitted, and a sincere and meaningful apology offered.

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