Fairbridge Farm School child migrant class action

By Anthony Cheshire

Between 1937 and 1974, a large number of children was sent from their homes in England to Fairbridge Farm School near Molong in NSW. Many of these migrant children became guardians of the Commonwealth and then the state; and many never saw their parents again. Some were as young as four years old when they arrived. Many suffered terrible physical and sexual abuse at the hands of the staff at the school, and have suffered serious psychiatric and lifelong injuries.

There have been Senate Inquiries into the system that allowed this to happen and governments in both Australia and England have recently proffered apologies. No compensation has, however, been paid.

On 18 December 2009, representative proceedings were commenced in the Supreme Court of NSW against the Commonwealth, the state of NSW and the Fairbridge Foundation. The plaintiffs are represented by Slater & Gordon. The essence of the case is that the defendants allowed a system of institutional abuse to develop and persist in what was designated as an educational establishment, and continued to allow the child migration scheme to operate in these circumstances.

Although discovery has not yet taken place, there is sufficient evidence in the documentation already publicly available to show that the authorities were aware of complaints of abuse and yet did nothing to address those issues and, indeed, continued to give their approval to the child migrant scheme.

The proceedings have been brought on behalf of all the child migrants who suffered in this way, although the plaintiffs include nearly 100 identified clients of Slater & Gordon.

The relevant statutory provisions straddle several areas, in particular covering migration, guardianship and education, over a period of nearly 40 years.

The Federal Court has an extensive regime set out in Part IVA of the *Federal Court Act* that governs representative proceedings and there is an extensive body of case law showing the practical application of that regime. The Supreme Court of NSW, however, has little beyond what is set out in UCPR rules 7.4 and 7.5, which do little more than allow such actions to be brought. There is, then, considerable uncertainty as to how these proceedings will be dealt with and progressed.

Furthermore, given the time that has elapsed since these events occurred, it seems inevitable that limitation issues will also loom large.

To date, there have been two directions hearings and the case is awaiting input from the new Commonwealth government. Further updates are anticipated! ■

Anthony Cheshire *is a barrister practising from 8th Floor Wentworth Chambers, Sydney.*
PHONE *(02) 9221 5302*
EMAIL *acheshire@wentworthchambers.com.au*