Form 3A (version 7)

UCPR 6.2

AMENDED STATEMENT OF CLAIM

COURT DETAILS	
Court	Supreme Court of NSW
Division	Common Law
List	General
Registry	Sydney
Case number	2024/00472956

TITLE OF PROCEEDINGS	
Plaintiff	**David Kinsella**
First Defendant	**Commonwealth of Australia**
Second Defendant	**State of New South Wales**

FILING DETAILS	
Filed for	**Plaintiff**
Legal Representative	Georgia Sneddon
Legal Representative reference	325103
Contact name and telephone	Georgia Sneddon – 03 9614 1433
Contact email	gsneddon@arnoldthomasbecker.com.au

TYPE OF CLAIM

Personal Injury – Institutional Abuse

RELIEF CLAIMED

The Plaintiff claims:

1. Damages;
2. Interest;
3. Costs.

PLEADINGS AND PARTICULARS

Group Members

1. The Plaintiff brings this representative proceeding under Part ~~4A~~ 10 of the ~~*Supreme Court Act 1984* (Vic)~~ *Civil Procedure Act 2005 (*NSW) on behalf of himself and all persons (**Group Members**) who:

   a. as children, were residents of the Fairbridge Farm School at Molong in the state of New South Wales ("**Fairbridge**") between 1937 and 1974;

   b. are persons who were subject to "serious physical~~ly~~ abuse" and/or "sexual~~ly~~ abuse", within the meaning of s 6A of the *Limitation Act 1969* (NSW) ~~abused~~ whilst resident at Fairbridge; and

   c. are persons who have suffered injury as a consequence of the physical and/or sexual abuse.

2. At the time of commencement of this proceeding there are more than seven Group Members.

The Parties

3. The Plaintiff:

   a. was born on 17 June 1953 in Dublin, Ireland;
   b. arrived in Australia as an "immigrant child" as defined in section 4 of the *Immigration (Guardianship of Children) Act 1946 (Cth)* in or about 1954; and
   c. was resident at Fairbridge Farm School ("**Fairbridge**") between 1963 and 1968 **("the period").**

4. The First Defendant is sued pursuant to sections 56 and 64 of the *Judiciary Act 1903 (Cth).*

5. The Second Defendant is sued pursuant to section 5 of the *Crown Proceedings Act 1988 (NSW).*

Fairbridge Farm School

6. Fairbridge was:

a. operated by The Fairbridge Foundation; and

b. established in 1937.

7. Fairbridge was established to:

a. house children from the United Kingdom;

b. enable and encourage child emigration to Australia; and

c. provide care and schooling to children.

8. Fairbridge was established and operated with funds provided by the First or Second Defendants.

Abuse of the Plaintiff

9. Whilst residing at Fairbridge the Plaintiff was:

a. allocated to a cottage known as “Brown”;

b. allocated a cottage mother named Mrs Hart.

10. During the period:

a. Mr Jack Newberry (“**Newberry**”) was the deputy Principal of Fairbridge;

b. Mr Begley supervised the dairy and poultry sheds;

c. Mrs Lamb was a cottage mother.

11. From 1965 Newberry and Begley abused the Plaintiff as follows:

a. Newberry would direct the Plaintiff to masturbate and/or perform oral sex on him at Glouster House located outside Brown Cottage. The abuse occurred near a woodpile in the morning after the Plaintiff showered once or twice per week.

b. In approximately 1966 Begley would frequently beat the Plaintiff without reason. On one occasion when the Plaintiff was sitting on a milk stool Begley approached him from behind and struck the Plaintiff with a fist against his head. Begley would beat the Plaintiff when Begley was drunk or upset about a horse racing badly. On one occasion the Plaintiff was summonsed to Begley from egg

collection and he was grabbed by his collar and punched with an open hand to his face many times, fell to the ground and kicked to the back causing him severe injury and needing nursing treatment.

c. In about 1967 Mrs Lamb would take the Plainitff to her living quarters and give him wine and fondle his genitals.

d. In about 1967 older trainees would corner the Plaintiff on the farm property to beat him up and sexually assault him. On one occasion the Plaintiff was called to the dormintory where three trainees were sitting and Raymond Halliday was present. The Plaintiff was hit on the ground and raped by Halliday.

e. The Plaintiff was forced to masturbate and perform oral sex on older trainees. This often occurred in the dormitory.

f. Mr Kinnaston was married to a cottage mother in Brown cottage. He would take the Plaintitff near the laundry and whip him with an electrical cord. This occurred over several years.

Duty of Care – First Defendant

12. At all material times the Minister of State for the Interior was the Plaintiff's legal guardian.

Particulars

a) Refer to regulation 3(1) of the *National Security (Overseas Children) Regulations 1940 (Cth) ("the Regulations")*

13. The First Defendant:

a. is and was at all material times the successor in law to the Minister for Immigration who, pursuant to section 6 of the *Immigration (Guardianship of Children) Act 1946 (Cth)* was the legal guardian of the Plaintiff and the Represented Persons; and

b. by section 6 had the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have;

c. had the power pursuant to section 7 of the *Immigration (Guardianship of Children) Act 1946 (Cth)* to remove the Plaintiff from Fairbridge;

d. by clause 6 of the *Assisted Passage Agreement between the Government of the Commonwealth of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland signed at London on 28 May 1962* was obliged to arrange for the appropriate authorities in Australia to make adequate administrative arrangements for the reception, placement and aftercare of all migrants upon arrival, and to secure the cooperation of approved voluntary organizations in this connection.

14. The First Defendant owed a common law and/or statutory duty to:

a. ensure that immigrant children were provided with appropriate accommodation and care when placed in Australia;

b. exercise it functions with reasonable care to prevent reasonably foreseeable risks of injury.

Duty of Care – Second Defendant

15. The Second Defendant:

a. is and was at all material times the successor in law to the Director of Child Welfare for the State of New South Wales, in whom, pursuant to regulation 3(2) of the *National Security (Overseas Children) Regulations 1940 (Cth)* legal guardianship became vested in respect of each of the Group Members ~~Represented Persons~~ who arrived as "overseas children" within the meaning of regulation 2 of those Regulations;

b. is and was at all material times the legal guardian of each of the Plaintiff and Group Members ~~Represented Persons~~ resided at Fairbridge; and

c. by regulation 3(2) thereof had as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have and also had the rights and powers exercisable in relation to a child committed to the custody or care of any person or authority or in relation to a ward or child of the State or any department or authority thereof;

d. had the power pursuant to regulation 4 of the *National Security (Overseas Children) Regulations 1940 (Cth)* to make all such arrangements and do all

such things as thought necessary or expedient for receiving the child into the State, for placing a child with a custodian and for the welfare and care of the child in the State;

e. had the power pursuant to regulation 6 of the *National Security (Overseas Children) Regulations 1940 (Cth)* to approve an application from an applicant to be a custodian and pursuant to regulation 7 to place children with that applicant, but such approval could only be given, pursuant to regulation 5, after satisfying itself that the applicant was a suitable person;

f. was at all material times the successor in law to the Director of Child Welfare for the State of New South Wales, to whom, pursuant to section 5 (1) of the *Immigration (Guardianship of Children) Act 1946 (Cth),* the Minister for Immigration had delegated the legal guardianship of each of the Plaintiff and those of the Group Members ~~Represented Persons~~ who arrived as "immigrant children" within the meaning of section 4 of that Act during the period of their residence at Fairbridge Farm School;

g. was at all material times the delegated legal guardian of each of the Plaintiffs and those of the Group Members ~~Represented Persons~~ who arrived as "immigrant children" within the meaning of section 4 of that Act during the period of their residence at Fairbridge Farm School;

h. by section 6 of the *Immigration (Guardianship of Children) Act 1946 (Cth)* had as guardian, the same rights, powers, duties, obligations and liabilities as a natural guardian of the child would have;

i. had the power pursuant to section 7 of the *Immigration (Guardianship of Children) Act 1946 (Cth)* to remove a child to whom it was legal guardian from the custody of his or her custodian, including from Fairbridge;

j. was the relevant licensing body for Fairbridge pursuant to section 29 of the *Child Welfare Act 1923 (NSW)* with the power to impose conditions (section 29), enter and inspect the premises (section 30) and cancel the licence (section 31);

k. was the relevant licensing body for Fairbridge Farm School pursuant to section 28 of the *Child Welfare Act 1939 (NSW)* with the power to impose conditions (section 28), enter and inspect the premises (section 30) and give directions and apply for the licence to be cancelled (section 31);

l. granted a licence to Fairbridge Farm School under section 28 of the *Child Welfare Act 1939 (NSW)* subject to conditions that included,

by virtue of regulation 41 of the *Child Welfare Regulation 1940 (NSW)* a condition: "*Each child shall be cared for to the satisfaction of the Minister".*

m. had the power pursuant to section 135 of the *Child Welfare Act 1939 (NSW)* to take any child or young person, in respect of whom there was reason to believe that an offence has been committed, to a shelter and there detain him or her.

16. The Second Defendant owed each of the Plaintiff and Group Members ~~Represented Persons~~ a:

a. Non-delegable common law duty; and/or

b. Statutory duty pursuant to the *Immigration (Guardianship of Children) Act 1946 (Cth)* and/or *Child Welfare Act 1939 (NSW)* to ensure that:

(i) reasonable care was taken to prevent foreseeable injury;

(ii) immigrant children were provided with appropriate accommodation and care in Australia; and

(iii) ensure that the operators or Fairbridge were exercising reasonable care to prevent injury to children.

Content of Duty of Care & Breach of Duty

17. At all material times the Plaintiff and the Group Members ~~Represented Persons~~ were vulnerable because of:

a. their age;

b. their separation from their biological parents;

c. the absence of any parental figures at Fairbridge;

d. their inability to protect themselves from abuse by adults;

e. the prevalence of abusive adults engaged to work at Fairbridge;

f. the lack of supervision at Fairbridge; and

g. their inability to report abuse at Fairbridge by reason of their not being a dedicated person to receive complaints and the inevitable abuse that would be

perpetrated by adults at Fairbridge Farm School in the event of a complaint being received.

18. The risk of harm to the Plaintiff was known or ought to have been known to the Defendants and was "foreseeable" within the meaning of s 5B(1)(a) of the *Civil Liability Act 2002* (NSW) (**Act**).

19. The risk of harm to the Plaintiff was "not insignificant" within the meaning of s 5B(1)(b) of the Act.

20. It was reasonably foreseeable that if the Defendants:

    a. failed to exercise their powers and functions at all; or

    b. exercised their functions negligently;

    the Plaintiff and Group Members ~~represented person~~ may suffer injury.

21. The First and Second Defendant directly, or on a vicarious basis for the conduct of their agents or employees, breached their duty to the Plaintiff and Group Members ~~represented persons~~ by reason of the following:

    a. Failing to exercise their power as a guardian of the Plaintiff at all.

    b. Failing to exercise their power as a guardian of the Plaintiff properly.

    c. Failing to inspect Fairbridge sufficiently or at all.

    d. Failing to confer with children at Fairbridge sufficiently or at all as to their welfare.

    e. Failing to provide children at Fairbridge with a mechanism to notify the Defendants about abuse.

    f. Failing to assess whether Fairbridge was suitable to accommodate children.

    g. Failing to remove children from Fairbridge upon becoming aware of the risk that they might be exposed to abuse if such awareness eventuated.

    h. Failing to ensure that there was a dedicated person/s with whom children could confidentially consult in the event of abuse.

i. Failing to ensure that complaints or notification or suspicions of abuse was communicated to the Defendants by Fairbridge staff.

j. Failing to act on information or complaints or suspicions of the occurrence of abuse at Fairbridge if it was received, by:

(i) conducting a proper, independent and thorough investigation to determine the validity of any such information or complaint or suspicion brought to its attention; and

(ii) referring the information to NSW Police.

k. Failing to remove from Fairbridge all persons reasonably suspected of perpetrating physical and/or sexual abuse.

l. Failing to assess whether the Fairbridge Foundation (and its staff) were capable of caring for children and were fit to have a licence with respect to Fairbridge.

m. The First Defendant's failure to ensure that the Second Defendant was assessing Fairbridge to ensure that it was safe for children.

Injuries and Disabilities

22. As a consequence of the breaches of duty by the Defendants the Plaintiff and Group Members ~~Represented Persons~~ were physically and/or sexually abused and suffered personal injury.

23. As a result of the personal injury suffered by the Plaintiff he has incurred loss and damage in the form of:

a. Pain and suffering;

b. Pecuniary loss; and

c. Medical and like expenses;

Full particulars of which will be provided in accordance with Court orders.

Substantial Common Interest and Issues

24. The claims of each of the Plaintiffs and Group Members ~~Represented Persons~~ are against the same entities.

25. The claims of the Plaintiff~~s~~ and Group Members ~~Represented Persons~~ are in respect of, or arise from the same, similar or related circumstances, namely the sexual and/or physical abuse of each of them, during their residence as immigrant children at Fairbridge Farm School.

26. The claims of the Plaintiff~~s~~ and Group Members ~~Represented Persons~~ give rise to substantial common issues of law and fact which are identified in paragraph 27 of this Statement of Claim.

Common Questions

27. The questions of fact or law common to the claims of Group Members are:

(a) Did the First and/or Second Defendant owe to the Plaintiff and Group Members ~~Represented Persons~~ a duty of care?

(b) If the First and/or Second Defendant did owe a duty of care to the Plaintiff and Group Members ~~Represented Persons~~, was the duty a common law duty and/or statutory duty?

(c) If the First and/or Second Defendant owed the Plaintiff and Group Members ~~Represented Persons~~ a statutory duty which Acts or Regulation formed the statutory basis for the duty?

(d) If the First and/or Second Defendant did owe a duty of care to the Plaintiff and Group Members ~~Represented Persons~~ what was the content of that duty of care?

(e) Was the First and/or Second Defendant the legal guardian of the Plaintiff and Group Members ~~represented persons~~?

(f) What, if anything, did the First and/or Second Defendant do to exercise its powers with respect the welfare of children at Fairbridge?

(g) During the period did the First or Second Defendant adopt a system, and if so what was that system, for discharging its obligations, as legal guardian of the

Plaintiff and Group Members ~~Represented Persons~~, to take reasonable care for their welfare at Fairbridge?

(h) Did the First and/or Second Defendant breach their duty of care to the Plaintiff and Group Members ~~Represented Persons~~?

(i) During the period:

i. What system was adopted by the First and Second Defendants for inspecting the Fairbridge Farm School?

ii. What, if any, system was adopted by the First and Second Defendant for ensuring that the Plaintiffs and Group Members ~~Represented Persons~~ were properly cared for at Fairbridge?

iii. What, if any, system was adopted by the First and Second Defendants for ensuring that any complaints made by children with respect to their welfare were properly investigated and acted upon and how was it enforced?

iv. What, if any, system was instituted by the First or Second Defendant to ensure that the Plaintiffs and the Group Members ~~Represented Persons~~ might safely complain of abuse without fear of inappropriate retribution and how was it enforced?

(j) Did the conduct of the First and/or Second Defendant to which the Plaintiff and the Group Members was subbected constitute 'serious physical abuse', 'sexual abuse' and/or 'connected abuse' within the meaning of s 6A of the *Limitation Act 1969* (NSW)?

SIGNATURE

I acknowledge that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature	
Capacity	Solicitor for the Plaintiff
Date of signature	~~19 December 2024~~ 3 June 2025

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1 **If you intend to dispute the claim or part of the claim,** by filing a defence and/or making a cross-claim.

2 **If money is claimed, and you believe you owe the money claimed,** by:

Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.

Filing an acknowledgement of the claim.

Applying to the court for further time to pay the claim.

3 **If money is claimed, and you believe you owe part of the money claimed**, by:

Paying the plaintiff that part of the money that is claimed.

Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Law Courts Building, 184 Phillip St, Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	**David Kinsella**
Address	442 Burwood Hwy Vermont South, VIC 3133

Legal representative for plaintiff

Name	Georgia Sneddon
Practising certificate number	P0051114
Firm	Arnold Thomas & Becker Lawyers
Contact solicitor	Georgia Sneddon
Address	573-577 Lonsdale Street Melbourne VIC 3000
DX address	11515 Sydney Downtown
Telephone	03 9614 1433
Fax	
Email	gsneddon@arnoldthomasbecker.com.au
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANTS

First defendant

Name	**Commonwealth of Australia**
Address	Level 10 60 Martin Place SYDNEY NSW 2000

Second defendant

Name	**State of New South Wales**
Address	60-70 Elizabeth Street SYDNEY NSW 2000