

75. This left claimants with no option other than litigation. Many were extremely wary about taking this step. Slater and Gordon initiated proceedings in the New South Wales Supreme Court in December 2009 as a class action brought against the NSW Fairbridge Foundation, the New South Wales Government and the Australian Federal Government. By this time, the case was being handled by Slater and Gordon's specialist class actions department. The claimants and I dealt mostly with Roop Sandhu and Brett Spiegel, employees of Slater and Gordon.
76. I attended most of the more than 25 hearings in the Supreme Court between 2009 and 2015, and organised for other former Fairbridge children to attend as well.
77. During the proceedings I was on many occasions invited into discussions between Mr Sandhu and Mr Spiegel and the plaintiff's barristers, which was helpful in me being able to explain the situation to the former Fairbridge children. Again, the solicitors and barristers were careful to ensure individual client confidentiality was maintained.
78. My observation about most of the Court hearings I attended was that the defendants were primarily concerned with procedural issues rather than the substance of the claims. The defendants raised a variety of technical issues which arrested the progress of the claims, including applications to dismiss the claims, applications to prevent their being prosecuted as class actions, applications which contested the claimants' rights to discovery, and other procedural matters.
79. I found the defendants' conduct frustrating (ten plaintiffs died while this matter was before the court) and lodged two submissions with the Australian Royal Commission into Institutional Responses to Child Sex Abuse. [Exhibits 4 and 5] The submissions pointed out that the civil litigation process had failed to produce a resolution of the claims of abuse within a reasonable time and at a reasonable cost. I also made representations to the responsible ministers of the State and Federal Governments, seeking that they take a more constructive approach to the claim, such as by agreeing to mediation or at least abandoning the procedural issues which were slowing the claimants' progress.
80. In February 2014, the claimants had an important procedural 'win' when the Court ruled in the claimants' favour on most of the then-outstanding procedural disputes (see *Giles v Commonwealth of Australia* [2014] NSWSC 83). That meant the matter could continue as a class action, and that the issue of whether the claims of the two lead claimants in the class action were time-barred was deferred to trial (rather than run as a separate pre-trial question as sought by the defendants).