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Fairbridge Farm case shows we must change the way child abuse claims are handled

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American political scientist Wallace Sayre once observed that the bitterest disputes are those with the least at stake. But after six years of legal action, 21 court hearings and 50,000 pages of historical documents, litigation involving institutional child abuse seems the exception that proves the rule.

The stakes – and the bitterness – could not have been higher for the former residents of Fairbridge Farm School in Molong, in the NSW central west, who endured sexual and physical abuse as children. Many of them were child migrants from the United Kingdom who had no family in Australia to protect them. Almost every single one was forced to work in slave-like conditions; some were beaten until they couldn't walk and those brave enough to speak up were either disbelieved or subjected to further abuse.

This week marked a major milestone in the acknowledgement of their suffering: we reached an in-principle agreement between the Fairbridge Foundation and the NSW and Commonwealth Governments. A $24 million compensation fund will now be established – which is believed to be the largest settlement for child abuse in Australia.

Eight former residents started the action with us, but died before its resolution. For them justice delayed was justice denied.

Of the time we spent in court, not a single day was spent debating abuse. The Fairbridge class action did not go to trial. Litigation was concerned with technical legal arguments – raised by the defendants – about whether the case should proceed as a class action or proceed at all given the limitation period. The court ultimately ruled against these arguments.

It is ridiculous to apply a limitation period to survivors of child sexual abuse, when all available research shows that it will take decades for most survivors to even be able to talk about what happened to them, much less investigate their legal rights.

Absurdly, one of the limitations periods in this case gave claimants only six months after they left Fairbridge to bring a claim. It's inconceivable that a 16 or 17-year-old who is finally leaving an institution after years of abuse would have the wherewithal to seek legal advice and act on it.

The survivors of Fairbridge waited a lifetime for people to listen to them. These are people whose first experience of authority was the grossest possible breach of trust. It takes unimaginable courage for them to be able to trust authorities like lawyers and the courts. Some were in their 70s before they were able to come forward.

As part of the settlement, the state of NSW publicly apologised to the survivors. Deidre Mulkerin, deputy secretary of the NSW Department of Family and Community Services, delivered a heartfelt, genuine and unqualified apology. It brought some survivors to tears to finally have their experiences acknowledged.

That is the way child abuse claims should be handled. They should not be bitterly contested in courts for years, while survivors become increasingly disillusioned.

The Royal Commission into Institutional Responses into Child Sexual Abuse has proposed a redress scheme as an alternative to costly and psychologically damaging litigation. It has proposed legislative amendments to ameliorate the impact of limitations defences. And it has proposed that the commonwealth government take the lead in these reforms.

These reforms have long been recommended to federal governments on both sides of politics. The commonwealth's formal response to this proposal is that it's up to the institutions – who it says bear responsibility for the abuse – to

appropriately respond.

The Fairbridge litigation highlights the urgency for reform. The commonwealth's own legislation made it the guardian of unaccompanied child migrants, who lacked any family support and were exquisitely vulnerable. But the commonwealth's response was to run technical procedural points, rely on the limitation period and let the case drag on for years before a settlement was reached.

It has been an honour and a privilege to represent these survivors of child abuse. But there must be another way. If appropriate systems were in place, like a national redress scheme that curtailed well-resourced defendants and their courtroom tactics, then surely that would be better for everyone.

Then perhaps we could live in a world where the bitterest disputes are those with the least at stake.

Roop Sandhu is a lawyer with Slater and Gordon who represented many of the former residents of Fairbridge Farm School.