

5 July 2020

Alison Thompson
Australian Government Solicitor
DX 5678
CANBERRA

URGENT

By email: [REDACTED]

Without prejudice save as to costs

Dear Colleagues

Various claims by former child migrants against the Commonwealth

We write further to our call on 18 June 2020 in which we discussed the anticipated timescale for the response from the Australian Government Solicitor (**AGS**) to the Trust's settlement proposal.

Our client was extremely concerned to learn that the AGS is not yet in a position to respond, and that you did not anticipate having instructions from the Attorney-General until the end of July at the earliest.

The history of the negotiations bears repeating. The Trust's settlement proposal was sent to you on 20 August 2019, more than 10 months ago. In the months that followed, there was some engagement on the terms and rationale for that proposal, culminating on 5 December 2019 with our provision of further information about the underlying figures. We had hoped to finalise the agreement shortly after but unfortunately, in the 6 months since then, there has been no response from the AGS at all, as a result of which it has not been possible to make any progress in the negotiations.

The Trust has done what it can in the meantime to put Fairbridge in a position whereby it can participate directly in negotiations and ultimately implement any settlement, principally by arranging for it to be restored to the register of companies and appointing an administrator. However further progress is now almost entirely dependent on the AGS and Attorney-General engaging; unless that happens, we are stymied.

This is source of considerable concern for the Trust, but not simply because it wishes to draw a line under the claims which have been intimated by the AGS, but also due to the potential impact on the victims and survivors of Fairbridge. The Trust is also extremely conscious of the possibility that, once a settlement has been agreed with the AGS under which the Trust agrees to make a contribution to Fairbridge, Fairbridge may be able to participate in the National Redress Scheme. The continued delay is therefore impacting not only the Trust and the AGS, but also risks delaying a settlement that would be of benefit to the victims and survivors who might ultimately have access to redress once the settlement has been agreed. Any delay has a disproportionate impact on the victims and survivors of Fairbridge due to their age and, in many cases, poor health, and so we urge you to consider this matter as a matter of urgency.

We understand that Fairbridge is coming under some pressure from the Minister for Families and Social Services to confirm its willingness to participate in the National Redress Scheme. Furthermore, and as we have discussed, there has also been speculation in the press about the possibility of

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Fairbridge being funded so that it is in a position to make a meaningful contribution to the National Redress Scheme.

Whilst the Trust is not unsympathetic to the demands which must have been placed on the AGS and the Attorney-General in recent months, and in particular the impact of COVID-19, we have reached a point at which we must insist that these negotiations are prioritised. In circumstances where the continued delay is potentially prejudicial to the victims and survivors, it is not acceptable for the AGS to indicate that there is no certainty about the timing of its response, whilst at the same time Fairbridge and the Trust are coming under considerable, and understandable, pressure from the National Redress Scheme.

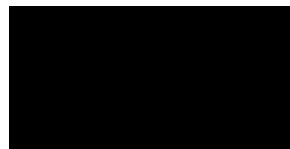
We ask that you draw this letter to the personal attention of the Attorney General so that he is made aware that this matter requires his urgent attention and of the implications of further delay. We then invite the AGS to respond substantively to the Trust's settlement offer by Friday 17 July 2020 at the latest.

In the meantime, we also propose to pass a copy of this letter to the Minister for Families and Social Services so that she understands the reasons why Fairbridge cannot progress its discussions about potential participation in the National Redress Scheme, and to invite her office to discuss this with the AGS directly.

We look forward to hearing from you by no later than Friday 17 July 2020.

Yours faithfully

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Communications between AGD/AGS and the Prince's Trust/Sparke Helmore	
Date	Description
12/09/2018	Letter from AGS to Prince's Trust notifying of 9 Fairbridge claims and providing background to child migration scheme
12/09/2018	Letter from AGS to Prince's Trust providing details of litigated Fairbridge claims
12/09/2018	Letter from AGS to Prince's Trust providing details of unlitigated Fairbridge claims
19/09/2018	Letter from Sparke Helmore (SH) to AGS re Prince's Trust considering whether it is a proper respondent to Fairbridge claims
27/09/2018	Letter from SH to AGS re Prince's Trust not a proper respondent to Fairbridge claims with attachments:
	<ul style="list-style-type: none"> • Incorporation of the Child Emigration Society
	<ul style="list-style-type: none"> • Fairbridge Articles of Association March 2008
	<ul style="list-style-type: none"> • Deed of Merger
	<ul style="list-style-type: none"> • Deed of Transfer of Assets and Liabilities
	<ul style="list-style-type: none"> • Gazette Entry
	<ul style="list-style-type: none"> • Fairbridge Accounts
	<ul style="list-style-type: none"> • Prince's Trust Accounts
3/10/2018	Letter from AGS to SH requesting Fairbridge and Prince's Trust documents to assist with considering bringing claim against Fairbridge's proper legal successor
23/10/2018	Letter from SH to AGS responding to AGS's request for documents, with attachments:
	<ul style="list-style-type: none"> • The Prince's Trust Royal Charter
	<ul style="list-style-type: none"> • Fairbridge Articles 2011
	<ul style="list-style-type: none"> • AGM minutes 2011
	<ul style="list-style-type: none"> • Fairbridge Board minutes March 2012
	<ul style="list-style-type: none"> • Fairbridge Board minutes September 2010
	<ul style="list-style-type: none"> • Fairbridge Board minutes Nov 2010
	<ul style="list-style-type: none"> • Fairbridge Board minutes Nov 2011
	<ul style="list-style-type: none"> • Fairbridge Board minutes Dec 2011
29/10/2018	Letter from AGS to SH re Prince's Trust, as holder of Fairbridge's assets and successor to its charitable works, inviting the Trust to accept a responsibility in relation to claimants' claims
29/11/2018	Letter from AGS to SH re why the Commonwealth considers the Prince's Trust to be a proper respondent to Fairbridge claims and requesting documents relevant to claim against Prince's Trust

19/12/2018	Letter from AGS to SH re not having received a response to letters of 29 October and 29 November and seeking consent to provide copies of communications to state of WA
19/12/2018	Email from AGS to SH (covering email to letter of same date)
20/12/2018	Letter from SH to AGS re Prince's Trust requiring time to consider matters raised in AGS's earlier correspondence
20/12/2018	Email from SH to AGS (covering email to letter of same date)
31/01/2019	Letter from SH to AGS re Prince's Trust proposed settlement structure (without prejudice)
31/01/2019	Letter from SH to AGS responding to potential bases of claims against the Prince's Trust
16/02/2019	Letter from SH to AGS re having received a response from Charity Commission of England & Wales in regard to the proposed settlement structure (without prejudice)
20/03/2019	Letter from AGS to SH re Commonwealth interested in discussing proposed settlement structure but unable to commit to such a process until satisfied that doing so accords with legal principle and practice (without prejudice)
20/03/2019	Letter from AGS to SH responding to points re legal claims raised in SH's letter of 31 January.
22/03/2019	Letter from AGS to SH putting Prince's Trust on notice of the Commonwealth's intended approach to upcoming mediations
8/04/2019	Letter from AGS to SH regarding approach to mediation – Baxter
9/04/2019	Letter from AGS to SH regarding approach to mediation – O'Brien
9/04/2019	Letter from AGS to SH regarding approach to mediation - McLennan
9/04/2019	Letter from AGS to SH regarding approach to mediation - Connop
9/04/2019	Email from AGS to SH (covering email to letter of same date) (confidential, without prejudice, subject to common interest privilege)
9/04/2019	Email from AGS to SH (covering email to letter of same date) (confidential, without prejudice, subject to common interest privilege)
10/04/2019	Letter from AGS to SH regarding approach to mediation - Stephen Hinch
10/04/2019	Letter from AGS to SH regarding approach to mediation - HR
10/04/2019	Email from AGS to SH (covering email to letter of same date) (confidential, without prejudice, subject to common interest privilege)
10/04/2019	Email from AGS to SH (covering email to letter of same date) (confidential, without prejudice, subject to common interest privilege)
22/04/2019	Email from SH to AGS re request for information on outcomes of mediations and awaiting instructions re AGS's letters of 20 March
28/07/2019	Phone call between SH and AGS re number of claims
18/07/2019	Email from AGS to SH re agreeing to identity of liquidator (without prejudice)
18/07/2019 to 4/08/2019	Email from SH to AGS re value of claims for contribution sought by the Commonwealth (without prejudice)

18/07/2019 to 8/08/2019	Emails between SH and AGS re proposed liquidator and providing open correspondence to State of WA
18/07/2019 to 8/08/2019	Email from AGS to SH
5/08/2019	Letter from AGS to SH providing details of quantum of current claims (without prejudice)
5/08/2019	Letter from AGS to SH proposing to include the state of WA in without prejudice communications (without prejudice)
7/08/2019	Letter from SH to AGS re appointment of liquidator (without prejudice)
7/08/2019	Email from SH to AGS re appointment of liquidator
12/08/2019	Letter from AGS to SH re identity of liquidators (without prejudice)
19/08/2019	Email from AGS to SH and WA attaching index of correspondence passing between AGS and SH re Fairbridge claims and requesting without prejudice phone call (without prejudice)
20/08/2019	Letter from SH to AGS re further details of proposed settlement structure, (without prejudice)
21/08/2019	Email from SH to AGS attaching draft settlement agreement and letter of 20 August 2019 (without prejudice)
21/08/2019	Email from SH to AGS re responding to proposed teleconference after Commonwealth has had time to consider Prince's Trust offer (without prejudice)
21/08/2019	Email from SH to AGS confirming Commonwealth can forward Prince's Trust's offer to WA State Solicitor's Office (without prejudice)
21/08/2019	Email from AGS to SH seeking confirmation of whether Commonwealth can forward Prince's Trust's offer to WA State Solicitor's Office (without prejudice)
4/09/2019	Letter from AGS to SH re settlement structure (without prejudice)
09/09/2019	Letter from AGS to SH re Commonwealth consenting to Fairbridge being restored to UK companies House Register
09/09/2019	Email chain from AGS to SH re need to restore Fairbridge and attaching correspondence of same date (without prejudice)
25/09/2019	Email from AGS to SH re progress of application to have Fairbridge restored to companies register (without prejudice)
25/09/2019	Email from SH to AGS re progress of application to have Fairbridge restored to companies register (without prejudice)
26/09/2019	Email from SH to AGS confirming application to have Fairbridge restored to companies register has been filed
26/09/2019	Email from AGS to SH requesting update on whether an application has been filed to have Fairbridge restored to companies register
30/09/2019	Email from AGS to SH requesting confirmation on when relevant parties to application to have Fairbridge restored have been served and providing a copy of supporting affidavits to the Commonwealth and State of WA

08/10/2019	Email from SH to AGS (covering email to letter of same date) (without prejudice)
08/10/2019	Letter from SH to AGS responding to AGS's letter of 4 September 2019 re settlement structure (without prejudice)
30/10/2019	Letter from AGS and State Solicitor's Office to SH re providing evidence in support of application to have Fairbridge restored, providing evidence in support of Prince's Trust valuation of assets transferred from Fairbridge, providing findings of insurance archaeologist (without prejudice)
30/10/2019	Email from AGS to SH (covering email to letter of same date)
07/11/2019	Email from SH to AGS confirming service of restoration application on various entities and attaching affidavit in support of restoration application
15/11/2019	Letter from SH to AGS re application for restoration of Fairbridge and insurance archaeologist (without prejudice)
5/12/2019	Letter from SH to AGS re financial position of Fairbridge had transfer to Prince's Trust not taken place (without prejudice)
24/12/2019	Letter from SH to AGS re insolvency process to be entered into by Fairbridge on restoration (without prejudice)
07/02/2020	Letter from SH to AGS providing update on application to restore Fairbridge (without prejudice)
19/02/2020 to 02/03/2020	Emails between AGS and SH re update on outcome of restoration application
3/03/2020	Letter from SH to AGS re Court making orders for restoration of Fairbridge (without prejudice)
03/03/2020 to 23/03/2020	Email between AGS and SH re time to discuss following restoration of Fairbridge
23/03/2020	Phone call between AGS and SH re timing of response to Trust's offer
08/04/2020	Letter from AGS to SH re notification of new claim - Morrish
08/04/2020	Letter from AGS to SH re approach to mediation in Andrews matter
08/04/2020	Letter from AGS to SH re approach to mediation in Bennett matter
21/04/2020	Letter from SH to AGS re SH acting for the Prince's Trust, not Fairbridge Restored
19/05/2020	Phone call between AGS and SH re Trust's position re National Redress Scheme
26/05/2020 to 18/06/2020	Emails between AGS and SH re update on Trust's current financial position and arranging time to speak.
18/06/2020	Phone call between AGS and SH re insurance and timing of Commonwealth response to Trust's offer
26/06/2020	Email from AGS to SH (covering email to letter of same date) (without prejudice)

26/06/2020	Letter from AGS to SH requesting update on inquiries made by Prince's trust's insurance archaeologist (without prejudice)
5/07/2020	Letter from SH to AGS re concerns over delay in responding to settlement proposal and pressure from National Redress Scheme (without prejudice)
27/07/2020	Phone call between AGS and SH regarding letter dated 5 July 2020
31/07/2020	Email from AGS to SH (covering email to letter of same date)
31/07/2020	Letter from AGS to SH re Home Affairs working to obtain approvals needed to provide a substantive response to Trust's offer (without prejudice)
05/07/2020 to 22/09/2020	Emails between AGS and SH re SH's request for a specific timeframe in which Commonwealth will respond to the Trust's offer, and request from AGS to receive a response to insurance questions raised in letter of 26 June 2020.
17/08/2020	Phone call between AGS and SH regarding timing of Commonwealth response to Trust's offer
8/10/2020	Letter from SH to AGS requesting a substantive response to the Trust's settlement proposal within 14 days (without prejudice)

Communications between AGD/AGS and Grant Thornton (Fairbridge UK administrators)		
Item No.	Date	Description
1.	04/05/2020	Letter AGS to Grant Thonton re Morrish, Bennett and Andrews matters
2.	04/05/2020	Email AGS to Grant Thonton (covering email to letter of same date)
3.	05/05/2020	Email Grant Thonton to AGS re not being joined to proceedings
4.	09/06/2020	Letter AGS to Grant Thonton re claim for contribution in 7 earlier settled matters
5.	09/06/2020	Email AGS to Grant Thonton (covering email to letter of same date)
6.	11/06/2020	Email Grant Thonton to AGS requesting teleconference to discuss matters raised in letter of 9 June
7.	15/06/2020	Email AGS to Grant Thonton re proposed time for teleconference
8.	15/06/2020	Email Grant Thonton to AGS proposing date/time for teleconference
9.	15/06/2020	Email Grant Thonton to AGS correcting earlier email re date/time for teleconference
10.	15/06/2020	Email AGS to Grant Thonton confirming proposed time for teleconference
11.	15/06/2020	Email Grant Thonton to AGS acknowledging details for teleconference
12.	16/06/2020	Calendar invitation AGS to Grant Thonton with details for teleconference
13.	16/06/2020	Teleconference AGS and Grant Thonton
14.	17/06/2020	Email Grant Thonton to AGS requesting update on progressing a settlement with Prince's Trust
15.	22/07/2020	Email AGS to Grant Thonton re awaiting further information from client
16.	22/07/2020	Email Grant Thonton to AGS acknowledging earlier email
17.	25/08/2020	Email Grant Thonton to AGS requesting update on progressing a settlement with Prince's Trust
18.	08/09/2020	Email AGS to Grant Thonton re awaiting further information from client
19.	08/09/2020	Email Grant Thonton to AGS acknowledging earlier email
20.	05/10/2020	Email Grant Thonton to AGS requesting update on progressing a settlement with Prince's Trust
21.	08/10/2020	Email AGS to Grant Thornton re expecting instructions shortly that will likely advance settlement negotiations, and clarifying that AGS' correspondence with Trust has been concerned with common law claims not the National Redress Scheme.
22.	15/10/2020	Email Grant Thonton to AGS re administration of Fairbridge UK likely ending on 5 March 2021 in absence of funding from Prince's Trust.