



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

BETWEEN:

JASON MALLARD
Appellant

and

HOMES VICTORIA
Respondent

SUBMISSIONS OF THE APPELLANT

PART I — CERTIFICATION

1 These submissions are in a form suitable for publication on the Internet.

PART II — ISSUES

2 On 18 September 2023, the respondent decided, under s 15(1)(a) of the *Housing Act 1983* (Vic), to implement a policy of the Victorian Government (the **Decision**), known as the “Redevelopment Program”. The questions on appeal are: (1) Was the power in s 15(1)(a) conditioned by the obligation to afford procedural fairness? (2) If so, did the respondent err by failing to afford procedural fairness in making the Decision? (3) If materiality is an element of the jurisdictional error in (1), was that error material? The answer to all
10 three questions is: “Yes”.

PART III — SECTION 78B NOTICES

3 No notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

PART IV — DECISIONS BELOW

4 The decision of the Supreme Court of Victoria (Richards J) is *Berih v Homes Victoria* (No 4) [2025] VSC 169 (TJ) (**CAB 5**).

5 The decision of the Court of Appeal of the Supreme Court of Victoria (Niall CJ, Kennedy JA and J Forrest AJA) is *Mallard v Homes Victoria* [2025] VSCA 339 (CA) (**CAB 105**).

PART V — FACTUAL BACKGROUND

20 6 This is a representative proceeding under Pt 4A of the *Supreme Court Act 1986* (Vic). The appellant and group members are public housing tenants who have rental agreements continuously to occupy and exclusively to possess apartments in one of three public housing towers in Melbourne, respectively situated at 33 Alfred St, North Melbourne; 120 Racecourse Rd, Flemington; and 12 Holland Ct, Flemington (together, the **Towers**). The Towers are owned and managed by the respondent pursuant to the *Housing Act*: CA [6] (**CAB 110**).

7 At the time of the Decision, the Towers were home to 484 households living under public housing tenancies: TJ [191] (**CAB 70**). The Towers were the centre of established and

vibrant multicultural communities, including First Nations residents¹ and communities of migrant and refugee backgrounds, particularly African and Asian communities.² Residents included children, older persons, people living with disability (TJ [156] (**CAB 60**)) and individuals with complex health, social and economic needs,³ who experienced “multiple and intersecting forms of disadvantage”: TJ [174] (**CAB 64**). Approximately 60% of residents of the Towers had lived there for more than six years (TJ [190] (**CAB 70**)); some for many more. Daily life in the Towers was closely connected with the surrounding neighbourhood: children attended nearby schools, and residents accessed local health and community services and participated in religious and cultural activities within walking distance: TJ [156] (**CAB 60**). Over time, these connections gave rise to “highly sophisticated systems of mutual aid, community support, thick social bonds and community-organised services” (TJ [193] (**CAB 72**))⁴ that were “part and parcel” of group members’ homes: TJ [196] (**CAB 72-73**).

8 Section 9(2) of the *Housing Act* establishes the respondent as a body corporate constituted by the Chief Executive Officer, Housing Victoria (the **CEO**), being an office established by s 9(1) of that Act.

9 In 2021, the respondent established an “empowered resident decision-making model” for the Towers under the Paving the Way Forward Initiative (**PTWF**): TJ [208]-[216] (**CAB 76-78**). The PTWF Local Action Plans “were developed in the aftermath of the
20 lockdown of the Flemington and North Melbourne towers during the COVID-19 pandemic” (TJ [120] (**CAB 49**)) and “gave a commitment that residents would be involved in the key decisions that affect their home, neighbourhood, and services”: TJ [83(b)] (**CAB 36**). PTWF meetings occurred on a fortnightly or monthly basis: CA [9] (**CAB 110**).

10 In September 2023, the Victorian Government decided to progressively “retire all 44 of Melbourne’s public housing towers and redevelop the land on which they are located” by 2051, “commencing with towers in Flemington, North Melbourne, and Carlton”: TJ [3], [30] (**CAB 8, 18**); CA [1] (**CAB 109**). That policy, known as the **Redevelopment**

¹ The evidence of the respondent’s Chief Executive Officer, Simon Newport, was that approximately 12 per cent of the tenants of the Towers were First Nations: T75.29-76.4 (28 October 2024) (**ABFM 155-156**).

² Affidavit of Barry Berih affirmed 23 August 2024 (**Berih Affidavit**) at [24]-[25] (**ABFM 25**); Affidavit of Louisa Bassini affirmed 15 February 2024 at [11] (**ABFM 5-6**).

³ The appellant, Jason Mallard, is a disability support pensioner: *Mallard v Homes Victoria [No 2]* [2026] VSCA 23 at [12], [28] (the Court).

⁴ This evidence was accepted “without reservation as compelling evidence”: TJ [195] (**CAB 72**).

Program, was one of a number of policies relating to housing supply and affordability set out in *Victoria's Housing Statement: The decade ahead 2024-2034*: TJ [3] (**CAB 8**). Together, the 44 towers are home to around 10,000 public housing tenants: TJ [30] (**CAB 18**). The Redevelopment Program entails demolition of the existing public housing estates and redevelopment of the sites to provide social housing, affordable housing and market housing: CA [15], [45] (**CAB 111, 120-122**).

11 On 18 September 2023, the respondent made the Decision under s 15(1)(a) of the *Housing Act* to “implement” the Redevelopment Program, commencing with the demolition of the Towers: TJ [4] (**CAB 8**). On 20 September 2023, the then-Premier announced the
10 Redevelopment Program at a televised press conference: TJ [29], [33] (**CAB 17, 19**).

12 Group members were given no prior notice of, and were not consulted in respect of, either the Redevelopment Program or the Decision. At no time was the Decision raised in PTWF meetings: CA [9] (**CAB 110**). Barry Berih (the plaintiff at trial⁵) first discovered that the Towers were to be demolished on 20 September 2023, “when watching the Premier’s press conference on television”: TJ [33] (**CAB 19**).

13 Following the Decision, the respondent began taking steps to implement it: CA [128] (**CAB 143**). Starting in October 2023, the respondent told every tenant that the Decision meant that they would have to leave their home (TJ [190] (**CAB 70**)) and that they would be moving home: TJ [82] (**CAB 35**). Faced with that apparent *fait accompli*, many tenants
20 acceded to the respondent’s requests to terminate their tenancies in the Towers. One year after the Decision, 59 per cent of households in the Towers had either moved or were awaiting relocation: TJ [191] (**CAB 70**). A foreseeable consequence of the Decision was the wide geographic dispersal of residents, including relocation to homes at significant distances from their existing neighbourhoods and communities: TJ [194] (**CAB 72**).

14 The Decision was made under s 15(1)(a) of the *Housing Act*. Section 15 is headed “Power to develop and manage land”. Section 15(1)(a) provides: “Homes Victoria may for the purposes of this Act and for all purposes ancillary to those purposes— ... (a) develop any land which is vested in Homes Victoria or in respect of which Homes Victoria has a leasehold estate”. “Development” is relevantly defined in s 4(1) to mean: (a) “the

⁵ Mr Berih was replaced as representative plaintiff by the appellant before the application for leave to appeal was heard by the Court of Appeal: CA [4] fn 4 (**CAB 109**). The appellant resides at 120 Racecourse Rd.

construction or demolition of a building on the land”; (b) “the carrying out of works in, on, over or under the land”; and (e) “the redevelopment of the land”.

15 Section 6(2) of the *Housing Act* states the Parliament’s intention that the provisions of that Act, including s 15(1)(a), be interpreted so as to further the objects set out in s 6(1); and that “every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act shall be exercised and performed so as by design and intent to promote and achieve those objects”. Relevant objects include: “to promote security and variety of tenure”; “to seek the participation of tenants and other community groups in the management of public housing”; “to promote consultation on major housing policy issues with all persons and groups of persons involved in housing”; and “to co-ordinate the provision of all necessary community services and amenities ancillary to public housing”: ss 6(1)(f), (g), (h), (j).

16 Section 29A of the *Housing Act* contains the Parliament’s ratification and approval of the Agreement between the Commonwealth of Australia, the States and the Northern Territory relating to Housing (1984–1993) (the **1984 Agreement**), which is set out in Sch 3A. Recital (D) to the 1984 Agreement records the “primary principle” of the agreement, which is:

to ensure that every person in Australia has access to adequate and appropriate housing at a price within his or her capacity to pay by seeking to:

- alleviate housing-related poverty; and
- ensure that housing assistance is, as far as possible, delivered equitably to persons resident in different forms of housing tenure ...

17 Recital (D) goes on to state that “in implementing this principle, assistance provided under the agreement will also reflect the following detailed principles”. Under heading (b), “Public Rental Housing”, the following principle is recorded: “public housing authorities should ensure that tenants have maximum opportunity to participate in the management of their dwellings and estates and in the development of public housing policies”.

PART VI — ARGUMENT

18 The **first question** is whether the power in s 15(1)(a) is conditioned upon the observance of procedural fairness. For the reasons in **Part VI(A)**, it is. The **second question** is what procedural fairness required in this particular case. Because no procedural fairness was afforded to the appellant, this question can be approached by asking whether the content

of the duty of procedural fairness was reduced to nothing in this case. For the reasons in **Part VI(B)**, it was not. The **third question** is whether the statute incorporated a threshold of materiality and, if so, what that threshold was and whether any failure to afford the appellant procedural fairness was material. For the reasons in **Part VI(C)**, no threshold of materiality applied; in the alternative, the threshold of materiality was met.

A THE OBLIGATION TO AFFORD PROCEDURAL FAIRNESS

19 The power in s 15(1)(a) is conditioned upon the observance of procedural fairness for either of two reasons.

A.1 Conditioned on construction of the *Housing Act*

10 20 **First**, even without the aid of the common law presumption, it is clear that the statutory power in s 15 of the *Housing Act* to demolish housing is conditioned by a requirement to provide affected tenants with an opportunity to be heard before the decision is made, having regard to its text, context and purpose. Whether a statutory power is conditioned by procedural fairness “is a question of statutory construction”.⁶ The power in s 15(1)(a) may be exercised only “for the purposes of this Act” and “for all purposes ancillary to those purposes”, which expressly “include the provision of all necessary community services and amenities”: s 15(2). The purposes of the Act include the objects identified in s 6(1), including “to promote security ... of tenure” (s 6(1)(f)), “to seek the participation of tenants ... in the management of public housing” (s 6(1)(g)) and “to promote
20 consultation on major housing policy issues” (s 6(1)(h)).

21 The Decision to implement the Redevelopment Program in respect of the Towers engaged each of those statutory purposes. Through the exercise of statutory power, it commenced implementation of a major housing policy which directly affected the homes, security of tenure and established communities of the tenants of the Towers. A construction permitting the respondent to make that decision without first hearing from those affected would be inconsistent with the express purposes of promoting security of tenure, tenant participation and consultation.

⁶ *Badari v Minister for Territory Families and Urban Housing* (2025) 100 ALJR 30 at [17] (the Court).

A.2 Impliedly conditioned on construction of the *Housing Act*: the common law presumption

22 **Second**, the common law presumption of procedural fairness applies to s 15(1)(a) of the *Housing Act* by reason that an exercise of that power is capable of directly⁷ affecting any of the following rights or interests of the tenants (which, to the extent it is necessary in order to enliven the presumption, are “legally recognised”): (a) the right to security of tenure; (b) the interest in continued, stable occupation of their home; and (c) the interest in maintaining the thick social communities that the housing structures enabled and of which tenants were members.

10 The presumption was engaged

23 There is a “‘strong’ common law presumption, generally applicable to any statutory power the exercise of which is capable of having an adverse effect on legally recognised rights or interests, that the exercise of the power is impliedly conditioned on the observance of procedural fairness”.⁸ The presumption “may be excluded only by ‘plain words of necessary intendment’”.⁹ The presumption is protected by the principle of legality.¹⁰

Legally recognised rights and interests

24 An exercise of power under s 15(1)(a) to demolish a building in which a tenant’s home is located is capable of adversely affecting, and in respect of group members living in the
20 Towers did directly affect, at least the following rights and interests.

⁷ A decision that “directly” affects a person’s rights or interests may be contrasted with one that affects a person as a member of the public or a class of the public: *Disorganized Developments Pty Ltd v South Australia* (2023) 280 CLR 515 at [34] (Kiefel CJ, Gageler, Gleeson and Jagot JJ). The test is not “direct and immediate”: cf CA [103], [112], [126]–[132] (**CAB 138, 140, 142–144**). All that is necessary is that the tenants of the Towers were affected “to a significant degree” by the Decision, and “in a manner markedly different from” other persons who might have been affected by the Decision: *Disorganized Developments* (2023) 280 CLR 515 at [35] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), citing *Kioa v West* (1985) 159 CLR 550 at 584 (Mason J), 619 (Brennan J), 632 (Deane J). As *Badari* (2025) 100 ALJR 30 illustrates, the fact that the Decision affected a large number of people does not mean that those people were not affected directly. In any event, the Decision did both directly and immediately affect the rights and interests of the appellant and group members because, as explained below, it resulted in the loss of their homes and the dispersal of their community.

⁸ *Disorganized Developments* (2023) 280 CLR 515 at [33] (Kiefel CJ, Gageler, Gleeson and Jagot JJ) (citations omitted). See also *Badari* (2025) 100 ALJR 30 at [17] (the Court).

⁹ *Disorganized Developments* (2023) 280 CLR 515 at [33] (Kiefel CJ, Gageler, Gleeson and Jagot JJ); *Annetts v McCann* (1990) 170 CLR 596 at 598 (Mason CJ, Deane and McHugh JJ).

¹⁰ *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252 at [15] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).

25 **Right to security of tenure.** An exercise of power under s 15(1)(a) is capable of diminishing tenants' property rights: specifically, their "security ... of tenure" (referred to in s 6(1)(f) of the *Housing Act*):¹¹ see TJ [190], [262] (**CAB 70, 94**). As observed in *Disorganized Developments*:¹²

Decisions made in the exercise of statutory powers that affect the rights of individuals with respect to property are a category of cases that has a long history of attracting a duty of procedural fairness as a matter of "fundamental justice", "long-established doctrine" and a "deep-rooted principle of the law", subject to displacement by Parliament through express words or necessary implication in the relevant statute.

10 26 Consistent with the fact that "the concern of the law [of procedural fairness] is to avoid practical injustice",¹³ the question of affectation must "be approached as a matter of substance rather than form".¹⁴ Thus, in *Plaintiff M61/2010E v Commonwealth*, the Minister's decision to consider whether a statutory power should be exercised "directly affected the rights and interests of those who were the subject of" the assessment or review that constituted that consideration because the effect of that consideration being undertaken was that their detention was "prolonged ... for so long as the assessment and any necessary review took to complete".¹⁵ In this case, the affectation occurred in two ways.

27 **First**, the right to security of tenure is, as a matter of substance, directly affected when a
20 tenant is informed by their landlord that they will have to vacate their home. The Decision determined that the buildings in which they lived would be demolished and "resulted in every renter being told that they will have to move": TJ [190] (**CAB 70**). As noted above, one year later, and after the respondent had told tenants that the Decision meant that they would have to leave their homes, 59 per cent of households in the Towers had either moved or were awaiting relocation: TJ [191] (**CAB 70**). As the trial judge observed, "[f]acing the eventual demolition of the Towers, it is unsurprising that many renters have chosen to relocate without waiting to be evicted from their homes": TJ [191] (**CAB 70-71**). On those factual findings, the trial judge and the Court of Appeal ought to

¹¹ See also *Residential Tenancies Act 1997* (Vic) (**RT Act**), ss 3A(b), 91B.

¹² (2023) 280 CLR 515 at [33] (Kiefel CJ, Gageler, Gleeson and Jagot JJ) (citations omitted). See also *Badari* (2025) 100 ALJR 30 at [17] (the Court); *Sydney Corporation v Harris* (1912) 14 CLR 1 at 14 (Isaacs J); *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180; 143 ER 414.

¹³ *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1 at [37] (Gleeson CJ). See also *HT v The Queen* (2019) 269 CLR 403 at [18] (Kiefel CJ, Bell and Keane JJ), [64] (Gordon J).

¹⁴ See *TCXM v Minister for Immigration and Multicultural Affairs* [2025] FCA 540 at [154] (Moshinsky J).

¹⁵ (2010) 243 CLR 319 at [76] (the Court).

have concluded that the Decision's effect on rights was sufficient to entitle group members to be heard: cf TJ [114(b)], CA [106]-[120] (**CAB 46-47, 139-141**)).

28 **Second**, the legal consequence of the Decision was that the respondent satisfied: (a) a necessary statutory precondition to the issue of a notice to vacate (which of itself affected the right to security of tenure¹⁶); and (b) a necessary statutory precondition for the future termination of the appellant's tenancy (which affected the right to security of tenure). As a consequence, those who did not agree to relocate and terminate their tenancies would in due course be subject to possession proceedings to evict them from their homes.¹⁷ Once the necessary permits and consents were obtained, upon, and by reason of, the making of the Decision, the respondent became entitled to commence the formal process of eviction by issuing notices to vacate under s 91ZY(1) of the RT Act to any remaining tenants. Section 91ZY(1) provided:

A residential rental provider may give a renter a notice to vacate rented premises if—

- (a) the residential rental provider intends to demolish the premises—
 - (i) in the case of a building owned by a residential rental provider containing 5 or more rented premises, immediately after the last renter vacates; or
 - (ii) in any other case, immediately after the termination date; and
- (b) the residential rental provider has obtained all necessary permits and consents to demolish the premises.

20 29 By supplying the intention required by s 91ZY(1)(a), the Decision enlivened the statutory process to terminate the appellant's tenancy that would complete upon: (i) issuance by the respondent of a notice to vacate; (ii) if the renter did not comply, possession order proceedings in the Victorian Civil and Administrative Tribunal (the **Tribunal**);¹⁸ and, (iii) if necessary, the issue of a warrant of possession.¹⁹

30 The existence of those further steps does not detract from the effect of the Decision on the appellant's security of tenure (cf CA [129] (**CAB 143**)), for three reasons. **First**, those steps are the mechanism by which the effects of the Decision will be implemented and by which, ultimately, the tenants' right to exclusive possession will be extinguished.

¹⁶ See *Mallard v Homes Victoria* [2026] HCATrans 30 at lines 458-469, 709-712.

¹⁷ The Court of Appeal's statement that "as a practical matter, the likelihood of the applicant being able to remain in the tenancy was reduced" therefore significantly understated the true position: CA [132] (**CAB 143**).

¹⁸ See generally RT Act, Pt 7 Div 1.

¹⁹ See generally RT Act, Pt 7 Div 4.

However, the right to security of tenure is distinct from the right to exclusive possession. The former right was affected just upon the satisfaction of a significant statutory precondition to the extinguishment of exclusive possession. Security of tenure is undermined when a tenant must fight a notice to vacate in VCAT in order to remain in occupation, and has only narrow grounds on which to fight that notice. While a possession order would extinguish and thereby affect the appellant's right to exclusive possession, the Decision, of itself, affected his discrete right to security of tenure, regardless of whether any possession order was ultimately made or not.

- 10 31 **Second**, rights and interests are capable of being directly affected even before they are, as a matter of law, finally extinguished. The directness requirement²⁰ asks whether the exercise of power affects the right or interest in a way that differentiates the person from the public at large. It does not ask whether the exercise of the power itself effects the final deprivation of legal right or interest. For example, in *Plaintiff M61*, the conduct of an assessment, which did not determine or affect any legal right,²¹ attracted procedural fairness even though the operative ministerial decision remained to be made.²² The Court of Appeal therefore erred by finding at CA [120] (**CAB 141**) that s 15 “is concerned with the internal authority of the agency rather than arming Homes Victoria with powers that, by force of statute, affect external rights or interests of third parties”.
- 20 32 **Third**, that the Tribunal was required to provide procedural fairness before making a possession order does not displace the obligation to afford procedural fairness in relation to the Decision: cf CA [129] (**CAB 143**). A subsequent hearing may, in some circumstances, render unnecessary an earlier opportunity to be heard. However, that can be so only where the later hearing affords a “full and comprehensive” opportunity to contest the substance of the earlier decision.²³ A possession order proceeding provides no such opportunity. The respondent and the Tribunal perform “separate and distinct”

²⁰ See fn 7 above.

²¹ *Plaintiff M61* (2010) 243 CLR 319 at [77] (the Court).

²² *Plaintiff M61* (2010) 243 CLR 319 at [76] (the Court).

²³ *Twist v Randwick Municipal Council* (1976) 136 CLR 106 at 113-114, 116 (Mason J); see also at 109, 111-112 (Barwick CJ), noting that an appeal displacing the “fundamental and universal” rule of procedural fairness should be an appeal “de novo” to a “court of law” and “calls for an examination of the facts and for the exercise of a primary discretion whether or not an order for demolition should be made”. A hearing in the Tribunal meets none of these criteria.

functions²⁴ and are not “engaged in the one decision-making process”.²⁵ The Tribunal would not determine whether the Towers should be demolished or whether the respondent should have formed the intention required by s 91ZY(1)(a). By the time of any Tribunal hearing, those matters would have been decided. As the Court of Appeal held, “the Decision demonstrated the resolve of Homes Victoria to take those steps necessary for implementation”: CA [132] (**CAB 144**). The only question before the Tribunal would be whether, in those circumstances, it was “reasonable and proportionate” to make a possession order having regard to the matters in s 330A.²⁶ A hearing before the Tribunal in respect of a possession order therefore could not provide the appellant with a meaningful opportunity to be heard in respect of the Decision.

Further, possession order proceedings in the Tribunal would only be initiated in respect of those tenants who did not agree to leave and refused two offers of relocation, thereby jeopardising their priority eligibility for public housing.²⁷ In these circumstances, the cost of tenants obtaining procedural fairness in the Tribunal (i.e., losing priority eligibility) of itself constitutes a direct affectation of rights to or interests in priority eligibility for public housing. The Court of Appeal thus erred in finding that the opportunity to be heard before the Tribunal, “even if limited, reduces any impact of the Decision and allows some participation in the decision to evict each tenant” (CA [156] (**CAB 148**)), and also in concluding that this meant that procedural fairness was not engaged in relation to the Decision: CA [129]-[130] (**CAB 143**).

Interests in maintaining home and community. The common law presumption applied to the exercise of the power in s 15 to decide to demolish housing towers by reason that that exercise directly affected tenants’ interests in: (a) the continued occupation of a home; and (b) maintaining the thick social communities that the housing estates enabled.

There is an “almost infinite variety of interests which are protected by the principles of natural justice”.²⁸ “It is not the kind of individual interest but the manner in which it is

²⁴ See *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564 at 579 (Mason CJ, Dawson, Toohey and Gaudron JJ).

²⁵ *Ainsworth* (1992) 175 CLR 564 at 578 (Mason CJ, Dawson, Toohey and Gaudron JJ). Cf *South Australia v O’Shea* (1987) 163 CLR 378 at 389 (Mason CJ).

²⁶ RT Act, s 330(1)(f).

²⁷ Affidavit of Louisa Bassini affirmed 30 August 2024 at [9]-[11], Exhibits LB-05 at p 6, LB-27 at p 113, LB-44 at p 2 (**ABFM 33-34, 45, 54-55, 57**).

²⁸ *Kioa v West* (1985) 159 CLR 550 at 617 (Brennan J). See also Aronson, Groves and Weeks, *Judicial Review of Administrative Action and Government Liability* (7th ed, 2023) at [8.60]: “The sheer variety of matters that

apt to be affected that is important in determining whether the presumption is attracted”.²⁹ Where Parliament “creates regimes for the regulation of social interests” — such as the *Housing Act* — it does not intend “that the interests of individuals which do not amount to legal rights but which are affected by the myriad and complex powers conferred on the bureaucracy should be accorded less protection than legal rights”.³⁰

10 36 **Home.** The appellant has a legally recognised interest in maintaining his home. The common law has long recognised that the interest in not having one’s “house pulled down” requires the provision of procedural fairness.³¹ Furthermore, the common law has long recognised a person’s interest in their home beyond its status as property. “In the Australian way of thinking, a home is a sanctuary.”³² That way of thinking is founded on “the tradition of the common law” that may be traced to the resolution of the Court of King’s Bench in *Semayne’s Case* that “the house of every one is to him as his castle and fortress”.³³ That case, and those that have followed it,³⁴ recognise the fundamental values of privacy and personal security that attach to a person’s home.³⁵ While those statements were made in the context of unlawful entry and search of premises, they apply to “all invasions on the part of the government and its [officers] of the sanctity of a man’s home”³⁶ and recognise the sanctity of home as a significant individual interest.

have been recognised as interests for the purposes of natural justice confirms that the notion of interest is broad and not confined by any formal taxonomy ... the key question is usually one of whether a person is affected”. The Court of Appeal’s reference to “qualified” interests of proprietary and financial interests and reputation (CA [104] (**CAB 139**)) was based on a non-comprehensive reading of Brennan J’s reasons in *Kioa v West* (1985) 159 CLR 550. The Court referred to a passage of his Honour’s reasons (at 618) in which he identified a “qualification” as to the kinds of interests capable of attracting the principles of procedural fairness in his reasons in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 412 and *R v Ludeke; Ex parte Customs Officers’ Association of Australia* (1985) 155 CLR 513 at 528. But the Court of Appeal neglected to observe that Brennan J went on (at 619) to describe that qualification as “erroneous”.

²⁹ *Kioa v West* (1985) 159 CLR 550 at 619 (Brennan J) (emphasis added).

³⁰ *Kioa v West* (1985) 159 CLR 550 at 616 (Brennan J), quoted in *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2011) 246 CLR 636 at [66] (Gummow, Hayne, Crennan and Bell JJ).

³¹ *Hopkins v Smethwick Local Board of Health* (1890) 24 QBD 712 at 714-715 (Wills J), cited in *Municipal Council of Sydney v Harris* (1912) 14 CLR 1 at 5-6 (Griffith CJ), in a case where the occupant was also an owner of the home.

³² *Roy v O’Neill* (2020) 272 CLR 291 at [31] (Bell and Gageler JJ).

³³ *Semayne’s Case* (1604) 5 Co Rep 91a at 91b; 77 ER 194 at 195.

³⁴ See, e.g., *Entick v Carrington* (1765) 2 Wils KB 275 at 291; 95 ER 807 at 817 (Lord Camden); *Halliday v Nevill* (1984) 155 CLR 1 at 11-12 (Brennan J); *Smethurst v Commissioner of Police* (2020) 272 CLR 177 at [24] (Kiefel CJ, Bell and Keane JJ), [124]-[126] (Gageler J).

³⁵ *Smethurst* (2020) 272 CLR 177 at [124]-[126] (Gageler J); *New South Wales v Corbett* (2007) 230 CLR 606 at [89] (Callinan and Crennan JJ, Gleeson CJ and Gummow J agreeing).

³⁶ *Boyd v United States* (1886) 116 US 616 at 630 (Bradley J for the Court), quoted with approval in *Smethurst* (2020) 272 CLR 177 at [125] (Gageler J).

37 Like the common law, s 13(a) of the *Charter* provides legal recognition of an individual's interest in non-interference with their home.³⁷ Sections 1(2)(a) and 7(1) of the *Charter* state that the rights in Part 2 of the *Charter*, including the right to home in s 13, are rights "that Parliament specifically seeks to protect and promote". Both the trial judge (TJ [204] (**CAB 75**)) and the Court of Appeal accepted that the Decision, "including the dispersal of the community and the severing of social bonds that exist within the community in and around the towers, limited the rights of the applicant and group members, under s 13 of the *Charter*": CA [158] (**CAB 148**). The appellant submits that the interests of group members were thereby affected, notwithstanding that there was no breach of s 38(1).

10 38 The Decision to demolish tenants' home directly affected their interests in maintaining their home, which interests were "legally recognised" (if required³⁸) by both the common law and statute. The Decision will remove the tenants from their "castle and fortress"; and to deprive them of their "sanctuary". It affected their interests in privacy, security, stability, autonomy, identity, family life and community that converge on the home.

39 **Community.** The appellant has a legally recognised interest in the maintenance of the established communities that the Towers house, which the Decision stands to directly affect. The communities are the communities of people living in the Towers, described at paragraph 7 above. The holders of the interest were the people living in the Towers, including all members of the 484 households living there at the time of the Decision
20 (including tenants, and children and family members living with them).

40 The *Housing Act* recognises the appellant's interest in maintaining the community of residents in public housing estates in at least five respects.

41 **First**, s 6(1)(g) identifies as an object of the *Housing Act* "to seek the participation of tenants and other community groups in the management of public housing". This reflects a statutory conception of tenants not only as individual occupiers of dwellings, but as members of community groups with a collective role in the management of public housing estates.

42 **Second**, s 6(1)(h) identifies as an object of the *Housing Act* "to promote consultation on major housing policy issues with all persons and groups of persons involved in housing".

³⁷ It provides that "[a] person has the right ... not to have that person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with".

³⁸ Cf paragraphs 47 to 51 below.

This provision likewise recognises that public housing engages collective and group-based interests, and specifically contemplates consultation as part of the statutory approach to those interests.

43 **Third**, s 6(1)(j) identifies as an object of the *Housing Act* the co-ordination of “provision of community services and amenities ancillary to public housing”. That object contemplates the provision of services and amenities relied upon by the communities formed at public housing estates.

44 **Fourth**, s 6(1)(f) identifies as an object of the *Housing Act* the promotion of “security and variety of tenure”. In the context of established public housing estates, security of
10 tenure is what permits the development and then the maintenance over time of relationships between residents, neighbours and surrounding services that constitute a settled community.

45 **Fifth**, these statutory objects are reinforced by s 29A, which ratifies the 1984 Agreement contained in Sch 3A. The principle recognised in recital (D) of that Agreement under heading (b), that “public housing authorities should ensure that tenants have maximum opportunity to participate in the management of their dwellings and estates and in the development of public housing policies” (emphasis added), expressly contemplates tenants as a collective body with an interest extending beyond individual dwellings to the management and future of estates as shared living environments.

20 46 The interest in non-interference with home extends beyond physical occupation of premises to encompass “the individual’s ... maintenance of relationships with others and a settled and secure place in the community”.³⁹ The Decision directly affected the community interests of group members because it necessarily “disperse[d] the community that is an intrinsic part of their homes”: TJ [9(f)] (**CAB 11**).

Integrity and dignity

47 As outlined above, the interests affected by the Decision are legally recognised interests. However, legal recognition is not a prerequisite to the engagement of the presumption of procedural fairness. Although some decisions of this Court refer to the presumption being engaged where a power is capable of adversely affecting “legally recognised ...

³⁹ *Connors v United Kingdom* (2005) 40 EHRR 9 at [82]; *Yordanova v Bulgaria* (Unreported, European Court of Human Rights, 24 April 2012) at [118(ii)], [121].

interests”,⁴⁰ the presumption is not so limited. In *Kioa v West*, Brennan J referred to “interests” *simpliciter*.⁴¹ More recently, in both *Minister for Immigration and Border Protection v SZSSJ* and *Plaintiff M61*, this Court unanimously referred to “interests” without qualification.⁴²

48 This Court delimits the rights and interests that enliven the presumption by way of the directness requirement (so as to require that the exercise of the power directly affects the rights or interests of an individual).⁴³ There is therefore little need for a supplementary criterion that further delimits the rights and interests whose direct affectation enlivens the presumption. As Joseph Raz explained, “respecting people is giving proper weight to their interests”.⁴⁴ The common law has good reason to presume that Parliament intended the exercise of a statutory power to be attended by an obligation of procedural fairness whenever *any* interest of an individual stands to be directly affected — and thereby possibly disrespected — by the executive.

49 To the extent that any additional criterion is necessary, the criterion that most coherently⁴⁵ delimits the rights and interests that enliven the presumption concerns dignity;⁴⁶ i.e., “the idea of a certain status that ought to be accredited to all persons and taken seriously in the way they are ruled”.⁴⁷ Aspects of dignity and integrity that enliven the common law presumption are distinguishable from a person’s interests that do not by asking this question: would determining the interest without hearing the person deny the person standing as the author of their own life, and “the ability to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her”?⁴⁸ That

⁴⁰ See, e.g., *Disorganized Developments* (2023) 280 CLR 515 at [33] (Kiefel CJ, Gageler, Gleeson and Jagot JJ); *Badari* (2025) 100 ALJR 30 at [17] (the Court).

⁴¹ (1985) 159 CLR 550 at 617.

⁴² *SZSSJ* (2016) 259 CLR 180 at [82] (the Court), quoted in *Badari* (2025) 100 ALJR 30 at [34] (the Court); *Plaintiff M61* (2010) 243 CLR 319 at [74] (the Court). See also *Annetts v McCann* (1990) 170 CLR 596 at 599 (Mason CJ, Deane and McHugh JJ) (parents found to have a sufficient interest in protecting the reputation of their deceased son in a coronial inquest into his death).

⁴³ See fn 7 above.

⁴⁴ Raz, *The Morality of Freedom* (1986) at 188.

⁴⁵ See *Badari* (2025) 100 ALJR 30 at [43] (the Court)].

⁴⁶ The connection between dignity and procedural fairness has been noticed in other jurisdictions: *R (Osborn) v Parole Board* [2014] AC 1115 at [68]-[70] (Lord Reed JSC; Lord Neuberger PSC, Lady Hale DPSC, Lords Kerr and Clarke JJSC agreeing); *R (Citizens UK) v Secretary of State for the Home Department* [2018] 4 WLR 123 at [82] (Singh LJ; Asplin and Hickinbottom LJ agreeing). See also Barak, *The Judge in a Democracy* (2006) at 87 (noting that under the Israeli Basic Law, “the right to human dignity cannot be infringed without an appropriate procedure”); Waldron, “How Law Protects Dignity” (2012) 71 *Cambridge Law Journal* 200 at 208-210; Edelman, “Why Do We Have Rules of Procedural Fairness?” (2016) 23 *Australian Journal of Administrative Law* 144 at 149-150.

⁴⁷ Waldron, “How Law Protects Dignity” (2012) 71 *Cambridge Law Journal* 200 at 202.

⁴⁸ Waldron, “How Law Protects Dignity” (2012) 71 *Cambridge Law Journal* 200 at 202.

is, is the interest so bound up with the person's capacity to shape the course of their own life that to override it without their participation would treat them not as an autonomous, responsible agent who is "capable of explaining" themselves⁴⁹ but as a mere object of the administration of power?

50 In a passage that the United Kingdom Supreme Court approved,⁵⁰ Jeremy Waldron explains that "[a]pplying a norm to a human individual is not like deciding what to do about ... a dilapidated house. It involves paying attention to a point of view [a view or perspective of their own ... on the application of the norm to their conduct and situation] and respecting the personality of the entity one is dealing with"; and thus "respecting the
10 dignity of those to whom the norms are applied as beings capable of explaining themselves".⁵¹ In contrast, the exercise of a power that stands only to directly affect the interest of a person not to have their feelings hurt,⁵² or their legitimate expectations disappointed,⁵³ or perhaps also a person's bare commercial interest,⁵⁴ without seeking the person's participation, does not necessarily (without more) deny the person the ability to author her own life, and "to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her".⁵⁵ That is, the failure to afford procedural fairness before exercising a power that hurts a person's feelings or dashes her legitimate expectations does not entail any failure to treat the person as autonomous and responsible.⁵⁶ i.e., a person "capable of explaining themselves"⁵⁷ and the matters of law
20 and fact that stand to affect the authorship of her life.

⁴⁹ Waldron, "How Law Protects Dignity" (2012) 71 *Cambridge Law Journal* 200 at 210, cited in *Osborn* [2014] AC 1115 at [68] (Lord Reed JSC; Lord Neuberger PSC, Lady Hale DPSC, Lords Kerr and Clarke JJSC agreeing). See also Gardner, "The Mark of Responsibility" (2003) 23 *Oxford Journal of Legal Studies* 157 at 161, who explains responsibility as "an ability to respond". He explains that "the value of basic responsibility ... is the value of being able to offer an account of oneself as a rational being" and "is instantiated in, rather than instrumentally served by, the legal process" in that legal processes that provide an opportunity to be heard provide are intrinsically valuable by providing "structured explanatory dialogues in public, in which the object of explanation is ourselves": at 166, 167, 168.

⁵⁰ *Osborn* [2014] AC 1115 at [68] (Lord Reed JSC; Lord Neuberger PSC, Lady Hale DPSC, Lords Kerr and Clarke JJSC agreeing), examined in Edelman, "Why Do We Have Rules of Procedural Fairness?" (2016) 23 *Australian Journal of Administrative Law* 144 at 149-150.

⁵¹ Waldron, "How Law Protects Dignity" (2012) 71 *Cambridge Law Journal* 200 at 210.

⁵² As distinct from the interest in the protection of reputation: see generally *Ainsworth* (1992) 175 CLR 564.

⁵³ *Minister for Immigration and Border Protection v WZARH* (2015) 256 CLR 326.

⁵⁴ See, e.g., *Kong v Minister for Health* (2014) 227 FCR 215 (special leave refused: [2015] HCATrans 91).

⁵⁵ Waldron, "How Law Protects Dignity" (2012) 71 *Cambridge Law Journal* 200 at 202.

⁵⁶ That is, able to respond (see the Gardner article cited in fn 48) by providing a "view or perspective of their own ... on the application of the norm to their conduct and situation": Waldron, "How Law Protects Dignity" (2012) 71 *Cambridge Law Journal* 200 at 202.

⁵⁷ Waldron, "How Law Protects Dignity" (2012) 71 *Cambridge Law Journal* 200 at 210, cited in *Osborn* [2014] AC 1115 at [68] (Lord Reed JSC; Lord Neuberger PSC, Lady Hale DPSC, Lords Kerr and Clarke JJSC agreeing).

51 A person's interest in continued, stable occupation of their home, and in maintenance of
the established communities of which a person is a member, are each interests that are so
bound up with the person's capacity to shape the course of their own life that to override
them without their participation would treat them not as an autonomous and responsible
agent but as a mere object of the administration of power. The link between housing,
home and community and individual security, integrity and dignity is recognised in
international human rights law.⁵⁸ For example, the United Nations Committee on
Economic, Social and Cultural Rights in its general comment on the right to adequate
housing recognised "the right to live somewhere in security, peace and dignity",⁵⁹ that
10 dignity requires that housing is ensured to all persons irrespective of income, and that
measures to confer security of tenure should be implemented "in genuine consultation
with affected persons and groups".⁶⁰

52 Thus, as the Court of Appeal recognised, the failure of the respondent to consult with the
tenants of the towers before it made the Decision was not simply a procedural irregularity,
but "disrespectful^[61] and lacking in decency": CA [176] (**CAB 152**). The essence of the
disrespect and lack of decency referred to was this: by making the (unilateral and
unannounced) Decision without affording any procedural fairness, the respondent treated
the tenants of the Towers as mere objects of the administration of the s 15 power and
Cabinet's housing policies, rather than as persons with "the ability to control and regulate
20 [their] actions in accordance with [their] own apprehension of norms and reasons that
apply" to them, including the norms in the *Housing Act* and the PTWF policy and the
matters of fact about their lives and communities in the Towers that were reasons to apply
those norms. The presumption that procedural fairness applied was therefore engaged.

⁵⁸ See, e.g., *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC) at [82]-[83] (Yacoob J for the Court): "All levels of government must ensure that the housing program is reasonably and appropriately implemented ... It is fundamental to an evaluation of the reasonableness of State action that account be taken of the inherent dignity of human beings"); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA 217 (CC) at [17] (Sachs J for the Court): "A home is more than just a shelter from the elements. It is a zone of personal intimacy and family security"; *Connors v United Kingdom* (2005) 40 EHRR 9 at [82]: the right to respect for home "concerns rights of central importance to the individual's identity, self-determination, physical and moral integrity, maintenance of relationships with others and a settled and secure place in the community"; *Gamzu v Yeshayahu*, 55(3) PD 360 at 375 (Barak P), quoted in Barak, *The Judge in a Democracy* (2006) at 87: "A person living in the street, with no home, is a person whose human dignity is infringed".

⁵⁹ Committee on Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991) at [7].

⁶⁰ Committee on Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant)*, 6th sess, UN Doc E/1992/23 (13 December 1991) at [8(a)].

⁶¹ See Joseph Raz's explanation of respect at paragraph 48 above.

A.3 The presumption was not rebutted

53 Consistent with its status as a “strong” presumption, the presumption of procedural fairness “operates ‘unless clearly displaced by the statutory scheme’”.⁶² Far from displacing the presumption, as explained at paragraph 20 above, the statutory context is positively affirming of the conclusion that s 15(1)(a) is subject to procedural fairness.

54 Contrary to the Court of Appeal’s reasoning, neither the fact that the Decision involved the application of policy⁶³ nor the breadth of the statutory power⁶⁴ means that the presumption was displaced: cf CA [121]-[122] (**CAB 141-142**).

B PROCEDURAL FAIRNESS WAS NOT REDUCED TO NOTHINGNESS

10 55 “[C]ompliance with an implied condition of procedural fairness requires the repository of a statutory power to adopt a procedure that is reasonable in the circumstances to afford an opportunity to be heard to a person who has an interest apt to be affected by exercise of that power”.⁶⁵ The appellant and group members were afforded no procedural fairness at all. It follows that the respondent can only succeed if it can establish that the content of procedural fairness was reduced to “nothingness”⁶⁶ in the circumstances of this case. The Court of Appeal correctly held that the respondent cannot do so: CA [136] (**CAB 144**).⁶⁷

C MATERIALITY

20 56 Once error is established, whether that error is jurisdictional ultimately turns on the statute under which the decision is made. That is because the statutory limits of decision-making authority, and whether non-compliance has exceeded the limits of that authority, are determined as an exercise in statutory construction.⁶⁸ In that context, statutes are ordinarily interpreted as incorporating a “threshold of materiality” in the event of

⁶² *Disorganized Developments* (2023) 280 CLR 515 at [33] (Kiefel CJ, Gageler, Gleeson and Jagot JJ) and the authorities cited therein. See also *Potter v Minahan* (1908) 7 CLR 277 at 304 (O’Connor J).

⁶³ See *O’Shea* (1987) 163 CLR 378 at 389 (Mason CJ); *Disorganized Developments* (2023) 280 CLR 515 at [43] (Kiefel CJ, Gageler, Gleeson and Jagot JJ); *Badari* (2025) 100 ALJR 30 at [42]-[43] (the Court).

⁶⁴ See *Disorganized Developments* (2023) 280 CLR 515 at [41] (Kiefel CJ, Gageler, Gleeson and Jagot JJ), citing *Jarratt v Commissioner of Police (NSW)* (2005) 224 CLR 44.

⁶⁵ *SZSSJ* (2016) 259 CLR 180 at [82] (the Court), quoted in *Badari* (2025) 100 ALJR 30 at [34] (the Court).

⁶⁶ *Kioa v West* (1985) 159 CLR 550 at 615-616 (Brennan J), quoted in *Badari* (2025) 100 ALJR 30 at [26] (the Court).

⁶⁷ See also *Badari* (2025) 100 ALJR 30 at [35]-[36] (the Court).

⁶⁸ *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506 at [27]-[30] (Kiefel CJ, Gageler, Keane and Gleeson JJ).

non-compliance.⁶⁹ On its proper construction, a statute “might set a higher or lower threshold of materiality”.⁷⁰ But sometimes an error is jurisdictional regardless of whether it deprives a party of the realistic possibility of a different result.⁷¹

57 A construction of the *Housing Act* that incorporated a materiality threshold would be inconsistent with the statutory scheme. As set out above, the objects of the *Housing Act* relevantly include to seek the participation of tenants and other community groups in the management of public housing, and to promote consultation on major housing policy issues with all persons and groups of persons involved in housing: ss 6(1)(g) and (h). And the *Housing Act* expressly states Parliament’s intention that its provisions be interpreted
10 to further those objects, and that every power under the Act be “exercised and performed so as by design and intent to promote and achieve those objects”: s 6(2). In that way, tenant participation was a necessary precondition to the validity of a decision under s 15(1)(a). It is the fact of that participation that determines the validity of the exercise of the power to make the decision; not the possible consequences that could have flowed from specific kinds of participation. Those features of the statutory scheme point strongly against a conclusion that a failure to afford procedural fairness in respect of a decision under s 15(1)(a) must be material.

58 The Decision was therefore vitiated by jurisdictional error irrespective of the effect that the appellant’s representations might have had on its outcome.

20 59 In the alternative, even if the *Housing Act* incorporated some threshold of materiality, the threshold was simply this: was there a realistic possibility that the tenants could have had “something to say which is relevant to the decision to be taken”?⁷² This is by reason of the features of the *Housing Act* identified above in paragraph 57 above, in particular the fact that Parliament intended the respondent “to seek the participation of tenants and other

⁶⁹ *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [7] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing); *Hossain v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at [29] (Kiefel CJ, Gageler and Keane JJ).

⁷⁰ *Hossain* (2018) 264 CLR 123 at [30] (Kiefel CJ, Gageler and Keane JJ).

⁷¹ *LPDT* (2024) 280 CLR 321 at [6] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing); *MZAPC* (2021) 273 CLR 506 at [100] (Gordon and Steward JJ); *Hossain* (2018) 264 CLR 123 at [40] (Nettle J), [72] (Edelman J). See also *Miller v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 278 CLR 628 at [28] (the Court), discussing *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 294 at [77] (McHugh J), [166] (Gummow J), [206] (Hayne J).

⁷² *Osborn* [2014] AC 1115 at [68] (Lord Reed JSC; Lord Neuberger PSC, Lady Hale DPSC, Lords Kerr and Clarke JJSC agreeing). This reasoning did not concern the issue of materiality but the issue of why dignity requires the provision of procedural fairness in some circumstances.

community groups in the management of public housing” (s 6(1)(g)) regardless of whether any individual’s participation could realistically change the outcome of any specific management decision. In this case, the answer to this materiality question is “yes” for the reasons identified in paragraph 60 below.

60 Even if the *Housing Act* did incorporate the same threshold of materiality as applied in *LPDT*, that threshold was met. The question would be “whether the decision that was in fact made *could*, not *would*, ‘realistically’ have been different had there been no error”.⁷³ That threshold is “not demanding or onerous”.⁷⁴ The question is answered by reference to the decision that was made and how the decision was made.⁷⁵ The requirements of procedural fairness may be of “added importance” when a different outcome seems unlikely, because they enable matters that are “not already obvious” to the decision-maker to be raised.⁷⁶

61 The Decision in this case was to implement the Redevelopment Program: to retire and redevelop all 44 public housing towers and redevelop the land on which they are located. The “multifactorial evaluative” nature of the Decision means that it is inherently difficult to affirmatively conclude that the outcome would inevitably have been the same had procedural fairness been afforded.⁷⁷ The appellant and group members were affected both as occupiers of the land and buildings, and as members of their community. Mr Newport “readily accepted” that, if it had asked, the respondent “might have learned things it did not already know” (TJ [125] (**CAB 51**)): e.g., as to how an individual member of the First Nations or Eritrean and Ethiopian communities could “give an account of herself”, her communities, and the ability of her membership of that community to form part of “the way in which she is regulating her actions and organising her life”.⁷⁸

62 There was a realistic possibility that group members could have made representations that could have affected the reasoning of the respondent and hence the content of the Decision or the decision-making process. For example, the respondent selected the Towers to be

⁷³ *LPDT* (2024) 280 CLR 321 at [14] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing) (emphasis in original).

⁷⁴ *LPDT* (2024) 280 CLR 321 at [14] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing).

⁷⁵ *LPDT* (2024) 280 CLR 321 at [10] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing).

⁷⁶ See, e.g., *Kioa v West* (1985) 159 CLR 550 at 633 (Deane J).

⁷⁷ Compare *AJN23 v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 304 FCR 586 at [51] (the Court).

⁷⁸ Waldron, “How Law Protects Dignity” (2012) 71 *Cambridge Law Journal* 200 at 202.

demolished first, based on its evaluation of a range of factors,⁷⁹ without hearing from the people who lived there. Had group members been given an opportunity to be heard, they might have raised factors the respondent was not otherwise aware of (as accepted by Mr Newport), or which may have caused it to weigh those factors differently — such as differential impacts flowing from the lockdowns during the COVID-19 pandemic (which Mr Newport acknowledged were relevant to the Decision⁸⁰) or vulnerabilities of particular Tower communities that heightened the adverse consequences of displacement or affected the timing or sequencing of demolition.

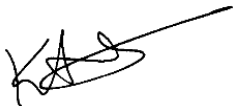
PART VII — ORDERS SOUGHT

- 10 63 The appellant seeks the following orders: (a) Appeal allowed, set aside the orders of the Court of Appeal and in their place declare that the Decision is invalid; (b) The respondent pay the appellant's costs of the appeal in this Court, the costs of the appeal to the Court of Appeal fixed in the agreed sum of \$10,000, and the costs of the trial in the Supreme Court of Victoria as agreed or assessed.

PART VIII — ESTIMATE OF TIME

- 64 The appellant requires 120 minutes for oral argument and 15 minutes for reply.

Dated: 2 July 2026



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⁷⁹ Affidavit of Simon Newport sworn 30 September 2024 at [25] (**ABFM 72**).

⁸⁰ T74.7-75.4 (28 October 2024) (**ABFM 154-155**).

**IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY**

BETWEEN:

JASON MALLARD
Appellant

and

HOMES VICTORIA
Respondent

ANNEXURE TO THE SUBMISSIONS OF THE APPELLANT

No.	Description	Version	Provisions	Reasons for providing this version	Applicable date(s)
1	<i>Housing Act 1983</i> (Vic)	080	ss 6, 9, 15, 29A, Sch 3A	Version in force when the Decision was made	18 September 2023
2	<i>Residential Tenancies Act 1997</i> (Vic)	112	ss 3A, 91B, 91ZY, Pt 7 Div 1, Pt 7 Div 4	Current version, which would apply to any notices to vacate issued by the respondent and subsequent possession order proceedings	N/A