



HIGH COURT OF AUSTRALIA

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

BETWEEN:

ADNA HASSAN
Appellant

and

HOMES VICTORIA
Respondent

APPELLANT'S AMENDED REPLY

PART I — CERTIFICATION

1 This reply is in a form suitable for publication on the Internet.

PART II — INTRODUCTION¹

2 By its submissions in this Court, the respondent seeks to recast the decision under review
and to minimise its effects on the tenants of the Towers. Contrary to the respondent’s
case, the Decision was to implement the Redevelopment Program (**Program**) to retire
and redevelop all 44 public housing towers, commencing with the Towers. It resulted in
every tenant in the Towers being told that they would have to leave their home, and almost
all doing so after receipt of those representations. Any subsequent engagement “on the
10 timing and impacts of relocation” (RS [62]) could not cure the failure to afford procedural
fairness before the Decision was made. That failure met any threshold of materiality.

PART III — THE DECISION

3 By its Notice of Contention at [1], the respondent seeks to recharacterise the decision
under review as a decision to “begin implementing” the Program that “did not and will
not ‘remove the tenants from their “castle and fortress”’ or ‘deprive them of their
“sanctuary”’”: RS [43].² The respondent then seeks to mis-attribute the effects on tenants’
rights or interests from the Decision to “subsequent decisions”: RS [10], [45]. That
recharacterisation is contrary to:

3.1 the unchallenged findings of the courts below, both of which found that the
20 Decision was to implement — not merely begin implementing — the Program,
which “was a decision to retire all of Melbourne’s public housing towers and
redevelop the land on which they are located, commencing with towers in
Flemington, North Melbourne and Carlton”: TJ [3]-[4]; CA [1];³ and

3.2 how the respondent represented the Decision to tenants of the Towers, including
Mr Berih (the plaintiff at trial).⁴ Tenants were told that the Government had

¹ Definitions adopted in the appellant’s submissions dated 2 July 2026 are continued here.

² See, e.g., RS [2], [10], [21], [61]-[63].

³ See also TJ [94], [235] and CA [13], [131], [198], referring to the “implementation decision” or “decision to implement”. While the trial judge found at [27] that the Decision “was the necessary first step towards implementing the Redevelopment Program, a large and complex exercise that will involve many other decisions and will take decades to complete”, that finding indicates that the execution of the intention to demolish the towers that the Decision crystallised would also necessarily (and obviously) require other decisions to be made in the decades that it would take to implement the Decision.

⁴ CA [39], citing the letter from Mr Newport to Mr Berih’s solicitors dated 27 November 2023, in which Mr Newport twice (in the second and fourth paragraphs) referred to “the policy decision to retire and redevelop the ageing towers”.

announced a plan that “all 44 older high-rise public housing buildings”⁵ including the Towers would be “retired”, and “that they will have to move home”: TJ [190].⁶

4 This appeal should be determined on the basis of the decision identified by the courts below: i.e., the decision to implement the Program. Even were the respondent permitted at this late stage to seek to disturb the findings of the trial judge left unchallenged in the Court of Appeal and to recharacterise the decision under review, it would not assist the respondent. It may be accepted that the Decision required subsequent steps to be taken, including “communicating [it] to residents, planning for their relocation, and entering into [demolition] contracts”: CA [128]. But the respondent does not identify, and has never
10 identified any “subsequent decision” which afforded (or will afford) tenants an opportunity to be heard on whether their homes would be demolished and whether they would be required to leave those homes.

PART ~~III~~ IV — THE DUTY TO AFFORD PROCEDURAL FAIRNESS

A THE PRESUMPTION IS NOT COMPLICATED OR QUALIFIED

5 The respondent’s submissions seek to avoid the application of the strong common law presumption of procedural fairness in respect of s 15(1)(a) by using “distracting complication[s]”⁷ to qualify a principle this Court leaves relevantly unqualified. The question is whether the exercise of the power in s 15(1)(a) is apt directly (in the sense described in AS [22] fn 7) to affect individual rights or interests.⁸

20 6 ***By force of the statute.*** There is no requirement that the adverse effects on a person’s rights or interests must arise “by force of the statute”: cf RS [29]. The asserted qualification (which is said to be supported by a single dissenting judgment⁹) is inconsistent with the seminal decision of *Ainsworth*,¹⁰ where the adverse effects of the

⁵ Affidavit of Louisa Bassini affirmed 30 August 2024 (**Second Bassini Affidavit**), Exhibit LB-06 (**ASBFM 4**).

⁶ The finding at TJ [190] was not disturbed on appeal. The attempt to disturb and recast that finding (see RS [35]) should therefore be rejected. In any case, the finding accurately identified the gravamen of the representation made by the respondent. See also TJ [82]; Second Bassini Affidavit, Exhibit LB-06 (**ASBFM 4**); Second Newport Affidavit at [39]–[41] (**ABFM 74–75**).

⁷ *Bread Manufacturers of NSW v Evans* (1981) 180 CLR 404 at 416 (Gibbs CJ).

⁸ See, e.g., *Saeed* (2010) 241 CLR 252 at [11]–[14] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ); *Plaintiff S10* (2012) 246 CLR 636 at [97] (Gummow, Hayne, Crennan and Bell JJ); *SZSSJ* (2016) 259 CLR 180 at [75] (the Court); *BVD17 v Minister for Immigration and Border Protection* (2019) 268 CLR 29 at [30] (Kiefel CJ, Bell, Gageler, Keane, Nettle and Gordon JJ); *Disorganized Developments* (2023) 280 CLR 515 at [33]–[34] (Kiefel CJ, Gageler, Gleeson and Jagot JJ); *Badari* (2025) 100 ALJR 30 at [17] (the Court).

⁹ *CNY17 v Minister for Immigration and Border Protection* (2019) 268 CLR 76 at [16] (Kiefel CJ and Gageler J).

¹⁰ (1992) 175 CLR 564.

report on reputation did not arise “by force of the statute”. The other authorities cited at RS [29] confirm that the only relevant qualification is directness.¹¹

7 ***Policy decisions and multi-stage processes.*** Nor is there an exception to the presumption because the power involves implementing policy¹² (see RS [30]) or forms part of a process involving further steps (see RS [29]).¹³

B THE PRESUMPTION APPLIES

8 ***The nature of the power in s 15(1)(a).*** As the heading to s 15 indicates,¹⁴ s 15(1)(a) confers a power capable of affecting rights and interests,¹⁵ not a “bare legal capacity”: cf RS [19], [30].¹⁶ That the power’s exercise is also subject to the general law does not
10 displace procedural fairness: cf RS [19]. Many powers are subject to the general law,¹⁷ yet remain subject to procedural fairness requirements.¹⁸ *Griffith University v Tang* does not assist the respondent: cf RS [30], citing CA [109]-[110].¹⁹ An exercise of the legal capacity to contract does not affect rights because its effect is derived from “agreement ... between the parties”.²⁰ By contrast, the Decision was not consensual.

9 ***Objects of the Housing Act.*** The objects of the *Housing Act* reinforce the engagement of the presumption. By s 6(2), “every power, authority, discretion, jurisdiction and duty” conferred by the Act must be exercised “so as by design and intent to promote and achieve those objects”; and the Court is obliged to interpret s 15(1)(a) “so as to further” those objects. The objects therefore apply to the respondent’s exercise of power under
20 s 15(1)(a), and cannot be dismissed as merely “general, aspirational terms”: cf RS [24].

¹¹ *R v Ludeke, Ex parte Customs Officers’ Association of Australia* (1985) 155 CLR 513 at 520-521 (Gibbs CJ; Dawson J agreeing), 528-529 (Brennan J), 530 (Deane J); *Saraceni v Australian Securities and Investments Commission* (2013) 211 FCR 298 at [6]-[16] (North J), [122]-[136] (Jacobsen J; Gilmour J agreeing).

¹² *Disorganized Developments* (2023) 280 CLR 515 at [39]-[43] (Kiefel CJ, Gageler, Gleeson and Jagot JJ). See also *Badari* (2025) 100 ALJR 30 at [42]-[43] (the Court).

¹³ *Ainsworth* (1992) 175 CLR 564, where the report’s author was obligated to afford procedural fairness even though persons affected could later challenge recommendations of the report before a parliamentary committee.

¹⁴ The heading may be used as an aid to interpretation: *R v Rolfe* (2021) 273 CLR 413 at [18] (the Court).

¹⁵ See *Davis v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2023) 279 CLR 1 at [235] (Steward J).

¹⁶ The respondent is given the legal capacities of a body corporate by s 9(2) of the *Housing Act*.

¹⁷ See generally *Plaintiff M68/2015 v Minister for Immigration and Border Protection* (2015) 257 CLR 42 at [135] (Gageler J), citing *Clough v Leahy* (1904) 2 CLR 139 at 155-156 (Griffith CJ). This reflects “the normative complexity of the legal system, with the interaction between the rules of law, principles of equity, requirements of statute”: *Bankstown City Council v Alamo Holdings Pty Ltd* (2005) 223 CLR 660 at [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

¹⁸ For example, a decision by an agency to publish a report may be subject to the law of defamation yet nevertheless attract procedural fairness requirements: see, e.g., *Ainsworth* (1992) 175 CLR 564.

¹⁹ (2005) 221 CLR 99.

²⁰ *Tang* (2005) 221 CLR 99 at [82] (Gummow, Callinan and Heydon JJ). See also *King v Ombudsman* (2020) 137 SASR 18 at [93] (Doyle J; Parker J and Tilmouth AJ agreeing).

Further, they establish that the decision maker was entitled (even if not required) to take the interests of tenants into account.²¹

10 ***Effect on individual rights and interests.*** Procedural fairness is an “essentially practical” concept.²² Its concern “is to avoid practical injustice”.²³ It follows that the question of affectation must be approached in a practical way. The practical impact of the Decision was that: **(a)** tenants were “told that they will have to move home” (TJ [190]); and **(b)** one year after the Decision 59% of households in the Towers had moved or been matched to a new home (TJ [191]), and by January 2026, that figure was approximately 95%.²⁴ These effects were substantially different from the effects on the public at large:²⁵ cf RS [45],
10 [53]. That the same Decision affected 484 households does not make its effect on each tenant any less individual. For example, Barry Berih, the plaintiff at trial, first moved to the Tower at 33 Alfred St in 2000 when he was six years old; his “family, friends, work, religion” and medical care were based around the Tower; and the Decision resulted in the loss of his community and all his supports.²⁶

11 ***Security of tenure.*** The Decision was apt to do more than merely “alter[] the factual background against which” tenants enjoy property rights: cf RS [34]. It had the result that tenants were told they had to leave their homes and almost all tenants subsequently did so. To describe these tenants as having chosen to leave (RS [12], [35], [52]) — as if that alleged choice were made independently, and not as a consequence, of the making of the
20 Decision — is to ignore the reality that public housing tenants, many of whom suffer from “multiple and intersecting forms of disadvantage” (TJ [174]), received representations from their public authority landlord that the Towers would be retired and that they would “have to move home”: TJ [190]. That communication had the practical effect of a notice to vacate. If tenants had a choice, it was Hobson’s choice. The fact that no formal notices to vacate have been issued (RS [15]) reflects nothing more than the practical effect of the Decision on public housing tenants and that the Court of Appeal restrained the respondent from issuing notices to vacate pending the determination of this appeal.²⁷

²¹ See *Badari* (2025) 100 ALJR 30 at [36] (the Court).

²² *HT v The Queen* (2019) 269 CLR 403 at [18] (Kiefel CJ, Bell and Keane JJ), citing *Ex parte Lam* (2003) 214 CLR 1 at [37] (Gleeson CJ) and *Condon v Pompano Pty Ltd* (2013) 252 CLR 38 at 99 [156] (Hayne, Crennan, Kiefel and Bell JJ).

²³ *Ex parte Lam* (2003) 214 CLR 1 at [37] (Gleeson CJ).

²⁴ *Mallard v Homes Victoria [No 2]* [2026] VSCA 23 at [14] (the Court).

²⁵ See *Badari* (2025) 100 ALJR 30 at [38] (the Court).

²⁶ Berih Affidavit at [6], [18]-[22], [58], [62] (**ABFM 23-25, 29-30**).

²⁷ *Mallard v Homes Victoria [No 2]* [2026] VSCA 23.

12 The effect on security of tenure does not depend on s 91ZY(1) of the RT Act. In any
 event, the Decision engaged s 91ZY(1)(a). In the context of that provision, “immediately”
 denotes “a relatively short interval” after the last renter vacates or the termination date:
 cf RS [38].²⁸ The requisite intention for the purposes of that provision had been formed
 when the Decision was made: TJ [190]; cf RS [39]. The need for steps before demolition
 does not negate that intention; the question is the intended interval between the last renter
 vacating and demolition. As subsequent events, including the extensive “communications
 program” (see TJ [207]) directed to informing renters that they would need to move
 home,²⁹ demonstrate, the respondent’s intention at the time of the Decision was to
 10 demolish the Towers “immediately” after the Towers were vacated.

13 ***Maintenance of home.*** An individual’s interest in the security and continued enjoyment
 of their home is not confined to property rights: cf RS [43]. The common law principle
 that a person’s home is their castle protects “personal security, personal liberty and private
 property”.³⁰ Section 13(a) of the Charter provides further statutory recognition. If legal
 recognition of a right or interest is required, the appellant adopts the proposed amicus
 curiae’s submissions in relation to the Charter and procedural fairness.

14 ***Maintenance of community.*** There is no difficulty in identifying the relevant
 communities, being the communities of people living in each Tower at the time of the
 Decision: TJ [196]; AS [39]; cf RS [51]. The Decision affected each tenant’s individual
 20 interest in maintaining their communities “in a way that is substantially different to the
 interests of the public at large”,³¹ so as to attract the presumption: cf RS [53].

15 ***Dignity.*** The appellant maintains that **(a)** the presumption applies whenever the directness
 requirement is satisfied; and alternatively **(b)** if any additional criterion is needed, it
 applies whenever those interests, if directly affected, would undermine a person’s dignity
 and integrity. Contrary to RS [57], ideas underlying the concept of dignity have been of
 assistance in decisions of this Court. For example, in *J v Lieschke*, Deane J held that
 parental rights and authority, whether expressed as the right to family life or the “natural
 instincts and functions of an adult human being”, “have been properly recognized as

²⁸ *Macquarie Health Corp Ltd v Federal Commissioner of Taxation* (1999) 96 FCR 238 at [100] (the Court). See also *Loizos v Carlton & United Breweries Ltd* (1994) 117 FLR 135 at 138-139 (Kearney J; Angel J agreeing).

²⁹ See also T55.29-56.15 (5 February 2026) (**ASBFM 7-8**); *Mallard v Homes Victoria [No 2]* [2026] VSCA 23 at [15], [17] (the Court).

³⁰ *Boyd* (1886) 116 US 616 at 630 (Bradley J for the Court) (emphasis added), quoted with approval in *Smethurst* (2020) 272 CLR 177 at [125] (Gageler J).

³¹ See *Badari* (2025) 100 ALJR 30 at [36] (the Court).

fundamental”, citing the Universal Declaration of Human Rights, so that “they cannot properly be modified or extinguished by the exercise of administrative or judicial powers otherwise than in accordance with the basic requirements of natural justice”.³² Brennan J (Mason, Wilson and Dawson JJ agreeing) similarly referred to interests touching the “deepest human sentiments”.³³

16 As a common law principle of statutory construction, the presumption of procedural fairness has “contemporary interpretative utility to the extent that [it is] reflective and protective of stable and enduring structural principles or systemic values which can be taken to be respected by all arms of government”.³⁴ Dignity is the appropriate “systemic value” and criterion, consistently with the “underlying common law norm” that “each person has a unique dignity which the law respects and which it will protect”.³⁵ Respect for dignity has been identified as the “most basic rationale” of procedural fairness.³⁶ Interests in maintaining one’s home and community satisfy that criterion.

17 **Legal recognition.** The respondent does not identify any reason why it is necessary or desirable for the common law to “identify[] and delimit[] why certain interests do not attract the presumption of procedural fairness” beyond the directness requirement: RS [56], [58]. The respondent is therefore unable to identify the work that any “distinguishing criterion, in addition to directness of effect” is needed to do.

C THE CONTENT OF THE DUTY

18 The Decision to implement the Redevelopment Program was an application of a policy formulated by the Victorian Government: TJ [3]; CA [1]; cf RS [60]. That the Decision had a policy element does not entail the content of procedural fairness being nil.³⁷ The respondent’s reliance on *O’Shea*,³⁸ which concerned procedural fairness at successive stages of a decision-making process before the operative decision was made, is misplaced: cf RS [62]-[63]. The subsequent consultation identified by the respondent

³² (1987) 162 CLR 447 at 463-464. See also *Annetts v McCann* (1990) 170 CLR 596 at 599 (Mason CJ, Deane and McHugh JJ), 612 (Brennan J).

³³ *Lieschke* (1987) 162 CLR 447 at 458.

³⁴ *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd* (2018) 264 CLR 1 at [58] (Gageler J).

³⁵ *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at [15] (Gageler CJ, Gordon, Gleeson and Jagot JJ), quoting *Secretary, Department of Health and Community Services v JWB and SMB (Marion’s Case)* (1992) 175 CLR 218 at 266 (Brennan J).

³⁶ *SDCV v Director-General of Security* (2022) 277 CLR 241 at [230] (Edelman J) and the authorities cited therein. See also *ABT17 v Minister for Immigration and Border Protection* (2020) 269 CLR 439 at [107] (Gordon J); *Nathanson v Minister for Home Affairs* (2022) 276 CLR 80 at [81] (Gordon J).

³⁷ See, e.g., *O’Shea* (1987) 163 CLR 378 at 388-389 (Mason J); *Disorganized Developments* (2023) 280 CLR 515 at [39] (Kiefel CJ, Gageler, Gleeson and Jagot JJ).

³⁸ (1987) 163 CLR 378.

concerned implementation: RS [11], [14], [62]. The respondent does not suggest that tenants would later be afforded an opportunity to be heard on whether their homes would be demolished.³⁹ Subsequent engagement therefore could not supply the procedural fairness required in respect of the Decision. The respondent's contention in the last sentence of [1] of the Notice of Contention remains unaddressed and unsubstantiated.

D MATERIALITY

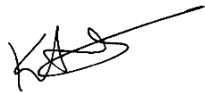
19 The respondent's procedural objection to the appellant's materiality argument should be rejected: cf RS [70]-[72]. Materiality "does not require demonstration of how" the appellant might have used an opportunity to be heard;⁴⁰ it assumes that, given the opportunity, a party would take it and "could achieve a favourable outcome".⁴¹ Mr Newport accepted that the respondent "might have learned things" had it consulted tenants before the Decision: TJ [125]. Sequencing is one example of how the Decision realistically could have differed; it was unnecessary to identify that example at trial.⁴²

PART IV V — RELIEF

20 The appellant presses for the relief set out in AS [63], which is tailored to the nature of the Decision. The respondent's contention that the Decision has no legal force (RS [73]) assumes the correctness of the respondent's construction submissions.

21 This case seeks to vindicate interests of a public character, rather than simply the private interests of the appellant and Group Members.⁴³ The respondent, who has no private interest in the litigation, will benefit from this Court finally resolving the questions of public importance which warranted the grant of special leave.⁴⁴ It follows that no costs order should be made in the respondent's favour if the appeal is dismissed (cf RS [73]); but they should be awarded in the event that the appellant succeeds.

Dated: 21 25 August 2026



Kateena O'Gorman Leigh Howard Tim Farhall Shawn Rajanayagam Katie O'Byrne

³⁹ At RS [61], the respondent gives issuance of a notice to vacate as an example of a further decision that may need to be made. Given its position before the courts below was that any effect on rights and interests occurs only at the point that a possession order is made by VCAT, the respondent would presumably deny that it must afford procedural fairness before issuing a notice to vacate.

⁴⁰ *Nathanson* (2022) 276 CLR 80 at [33] (Kiefel CJ, Keane and Gleeson JJ).

⁴¹ *Nathanson* (2022) 276 CLR 80 at [33] (Kiefel CJ, Keane and Gleeson JJ). See also *LPDT* (2024) 280 CLR 321 at [15] (Gageler CJ, Gordon, Edelman, Steward, Gleeson and Jagot JJ; Beech-Jones J agreeing).

⁴² *Cf Whisprun Pty Ltd v Dixon* (2003) 77 ALJR 1598 at [51] (Gleeson CJ, McHugh and Gummow JJ).

⁴³ See *Northern Territory v Sangare* (2019) 265 CLR 164 at [33] (the Court), discussing *Oshlack v Richmond River Council* (1998) 193 CLR 72 at [20], [49] (Gaudron and Gummow JJ), [143]-[144] (Kirby J).

⁴⁴ See *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* (2024) 425 ALR 224 at [26] (Mortimer J).