



HIGH COURT OF AUSTRALIA

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Details of Filing

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Important Information

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

BETWEEN:

NURTO SALEH

Appellant

and

HOMES VICTORIA

Respondent

APPELLANT'S OUTLINE OF ORAL SUBMISSIONS

Part I: INTERNET PUBLICATION

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

Part II: PROPOSITIONS TO BE ADVANCED IN ORAL ARGUMENT

Outline

2. The appeal concerns the respondent's decision of 18 September 2023 under s 15(1)(a) of the *Housing Act 1983* (Vic) to implement the Redevelopment Program, retiring Melbourne's 44 public housing towers, starting with demolition of five towers including the three occupied by group members (**Towers**) (CA [1], [15]; TJ [3], [26]). Tenants of the three Towers were not heard before the Decision was made (TJ [207]).

The Decision

3. The Decision was "to implement" the Redevelopment Program (CA [1]; TJ [3]-[4]). The respondent's characterisation of the Decision as to "begin implementing" the Program (NoC [2]; RS [2], [63]) is contrary to the findings below and inconsistent with the respondent's own conduct (TJ [86], [190], [207]; ASBFM 4). In any event, even if the Decision was to begin implementation, procedural fairness was required.

Procedural fairness was owed

4. *Statutory construction.* The text and context of the Housing Act demonstrate Parliament's intention that tenants participate in decisions affecting the management of public housing. Section 6(1)(f)-(h) identifies security of tenure, tenant participation in

management and consultation on major housing policy issues as objects. Those objects are not merely aspirational: s 6(2) directs that provisions “shall be interpreted” to further those objects and that every power “shall” be exercised “so as by design and intent to promote and achieve” them. Conditioning s 15(1)(a) by an obligation to hear tenants before deciding to demolish occupied public housing gives effect to both directions (cf **RS [24]-[25]**).

5. This construction is confirmed by the second reading speech, which rejected “insensitive paternalism” in favour of giving residents “a voice”, participation, dignity and choice (**JBA tab 34**).
6. ***The common law presumption.*** The Decision was apt to affect (a) tenants’ security of tenure; (b) their interest in continued occupation of their homes; and (c) their interest in the established communities within the Towers. The presumption seeks to avoid practical injustice (e.g. *HT v The Queen* (2019) 269 CLR 403 at [18]).
7. Tenants had contractual **rights** to occupy and exclusively possess their homes. The respondent represented that tenants would have to move; 59% of households had moved or were awaiting relocation within a year (**TJ [191]**). The Decision also supplied the intention to demolish required by s 91ZY(1)(a) of the *Residential Tenancies Act 1997* (Vic) (**RTA**). Subsequent notices to vacate and possession proceedings do not provide a hearing on the s 15(1)(a) decision (RTA, ss 330, 330A; *Twist v Randwick Municipal Council* (1976) 136 CLR 106 at 113-114). The fact that a decision has consequences by reason of subsequent steps does not preclude direct effect on interests (*Plaintiff M61/2010E v Commonwealth* (2010) 243 CLR 319 at [70]-[71], [76], [78]).
8. The stable occupation of home is an **interest** recognised by the common law and the ***Charter of Human Rights and Responsibilities Act 2006*** (Vic), s 13(a). Both courts below held that the Decision limited the Charter right (**TJ [204]; CA [158]**). The established social communities in the Towers were an intrinsic aspect of tenants’ homes, and were necessarily dispersed by the Decision (**TJ [192], [196]**). Tenants’ dignity supports recognition of their interests in those communities (*Badari v Minister for Territory Families and Urban Housing* (2025) 100 ALJR 30 at [43]; *Annetts v McCann* (1990) 170 CLR 596; *J v Lieschke* (1987) 162 CLR 447).
9. Accordingly the presumption applies. No clear words displace it (*Disorganized Developments Pty Ltd v South Australia* (2023) 280 CLR 515 at [33]).

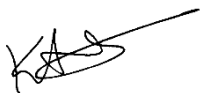
Content of the duty

10. The duty required reasonable advance notice of the proposed Decision and an opportunity for tenants to provide information within their knowledge concerning its effects on their homes and communities (*Disorganized Developments* at [45]).

Jurisdictional error

11. ***No materiality requirement.*** The denial of procedural fairness to existing tenants before deciding to demolish their homes was jurisdictional error irrespective of any effect on outcome. The nature of the error and the statute govern the materiality inquiry (*LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [4]-[7]). In the context of ss 6(1) and 6(2), the respondent exceeded the jurisdiction conferred by the power in s 15(1)(a) of the Housing Act by failing to afford procedural fairness.
12. ***Alternatively, the error was material.*** Alternatively, there was a realistic possibility of a different decision had tenants been heard (*LPDT* at [13]-[14]). The appellant need not identify precisely what the tenants would have said or demonstrate how they would have taken advantage of the lost opportunity (*Nathanson v Minister for Home Affairs* (2022) 276 CLR 80 at [33]). The Court may draw inferences from the evidence (*LPDT* at [13]-[14]; *Badari* at [45]; *Disorganised Developments* at [44]).
13. The Decision was a multifactorial evaluative decision. Even accepting the findings about retrofitting (**TJ [262]**), the respondent had a choice not to commence with the Towers. A realistic possibility that the timing of a decision might be different can be sufficient for materiality purposes (*Badari* at [46]). The respondent selected the Towers in part because of its view that nearby replacement housing would meet tenants' needs and keep communities together (**TJ [244]; RS [9]**), but tenants were not consulted about this. That such consultation could have affected the selection and timing of the Towers was advanced at trial (RBFM 136, T220.14-20; see also ABFM 170, T90.17-91.20), including in the respondent's evidence (ABFM 71-72).

Dated: 7 October 2026



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