



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 07 Oct 2026 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M56/2026
File Title: Saleh v. Homes Victoria
Registry: Melbourne
Document filed: Form 27F - Respondent's outline of oral submissions
Filing party: Respondent
Date filed: 07 Oct 2026

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN:

NURTO SALEH

Appellant

and

HOMES VICTORIA

Respondent

RESPONDENT'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

2. The Decision made by Homes Victoria was a decision to implement the Government's Redevelopment Program: a policy to demolish and redevelop Melbourne's 44 public housing towers by 2051, beginning with the three Towers and two others in Carlton. It was "the necessary first step" in "a large and complex exercise that will involve many other decisions and will take decades to complete": TJ [27]; see also TJ [4], [21]-[32], [189]; ABFM 72-78; RBFM 21.

First submission: Section 15(1)(a) of the *Housing Act* is not conditioned by an obligation to afford procedural fairness.

3. Section 15(1)(a) of the *Housing Act* (**JBA 1/4**) ensures that Homes Victoria has the power or capacity to develop land, subject to the general law. It is a power or capacity which any landowner has: RS [19], [30]; CA [111]-[112], referring to *King v Ombudsman* (2020) 137 SASR 18 at [93] (**JBA 5/33**).
4. A decision under s 15(1)(a) is not capable of directly affecting individuals' legally recognised rights or interests: CA [116]-[120]; cf *Badari v Minister for Territory Families and Urban Housing* (2025) 100 ALJR 30 at [17] (**JBA 5/29**); *Disorganized Developments Pty Ltd v South Australia* (2023) 280 CLR 515 at [33] (**JBA 3/13**). In particular, it does not confer any power to affect the rights of renters under their residential rental agreements and the *Residential Tenancies Act* (**RT Act**) (**JBA 1/5**): RS [37], [61].
5. Section 15(1)(a) must therefore be distinguished from the powers at issue in the foundational cases on procedural fairness and property rights: RS [20], [30]; *Badari* at [17] (**JBA 5/29**); *Disorganized Developments* at [28] (**JBA 3/13**).
6. The **objects in s 6(1)** of the *Housing Act* do not alter the nature and effects of the power in s 15(1)(a): RS [23]-[25]; CA [122]; cf *Housing Act*, ss 14, 16, Sch 2 Pts I-II (**JBA 1/4**).

7. **A renter's security of tenure** is secured by their rights under their residential rental agreement and the RT Act: RS [33]-[34]. A decision under s 15(1)(a) is not capable of affecting those rights.
 - 7.1. The appellant's reliance on **s 91ZY** of the RT Act is misplaced: it focuses on a provision in a different statute; the Decision did not satisfy s 91ZY(1)(b); and under the RT Act a renter would have a full opportunity to be heard before there was any effect on their tenancy: RS [38]-[41]; RT Act, ss 330-330A (**JBA 1/5**).
 - 7.2. Homes Victoria's **subsequent communications** with renters, and the fact that many have since accepted offers of alternative accommodation, do not shed light on the question of statutory construction of whether s 15(1)(a) is conditioned by procedural fairness: RS [35]; *Housing Act*, s 14(1)(g) (**JBA 1/4**); RT Act, s 91C (**JBA 1/5**).
8. Section 15(1)(a) is not apt to affect **a renter's interest in maintaining their home**.
 - 8.1. Cases involving unlawful interference with property rights do not support treating the sanctuary of home as an interest separate from those rights: RS [43].
 - 8.2. The appellant's submission that any decision which engages the right in **s 13(a) of the Charter** attracts an obligation to afford procedural fairness would be fundamentally inconsistent with the scheme established by the *Charter*: RS [45]-[48]; *Charter*, ss 1, 6(2), 7(2), 13(a), 38(1), 39(1) (**JBA 1/3**).
9. The asserted **interest in maintaining the community in the Towers** is not a legally recognised interest: RS [50]-[51]. In any event, any interference with that interest would not affect renters as individuals: RS [52]-[53].
10. **A direct effect on legally recognised rights or interests** is required. It provides the appropriate delimiting criteria to determine whether a statutory power engages the presumption of procedural fairness: RS [27]-[29], [54]-[58]; CA [102]-[104].

Second submission: If s 15(1)(a) is subject to procedural fairness, then in the exceptional circumstances of this case procedural fairness did not require renters to be given an opportunity to be heard before the Decision was made.

11. The Decision was the adoption of a general policy, was not based on considerations personal to any particular renter, and did not affect individual renters differently from each other: RS [60]; *Badari* at [18], [34], [37]-[38], [43] (**JBA 5/29**); *Botany Bay City*

Council v Minister for Transport and Regional Development (1996) 66 FCR 537 at 555 (**JBA 5/30**).

12. Renters have had, and will have, an opportunity to be heard on issues relevant to their interests during the ongoing implementation of the Redevelopment Program: RS [61]-[63].

Third submission: Any failure to afford procedural fairness was not material.

13. The usual threshold of materiality applies, and has not been met: RS [64]-[67].
14. The plaintiff at trial, Mr Berih, had to prove the “historical facts necessary to satisfy the court that the decision could realistically have been different had the breach not occurred”: *MZAPC v Minister for Immigration and Border Protection* (2021) 273 CLR 506 at [38]-[39], [45]-[49], [60] (**JBA 4/22**); *LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2024) 280 CLR 321 at [10]-[16], [36] (**JBA 4/19**).
15. Mr Berih’s case at trial was that Homes Victoria could realistically have decided to **retrofit the Towers**, not redevelop them. The trial judge held that, on the evidence, that was not a realistic possibility: TJ [123]-[128].
16. The appellant should not be permitted to run a new case on appeal (ie, that Homes Victoria could realistically have decided to demolish the towers in **a different sequence**), because that case could have been met by further evidence: RS [67]-[72]. In any event, in light of the issues agitated and the evidence led at trial, the appellant has not discharged her onus to establish that the Decision could realistically have been different with respect to sequencing: ABFM 71-73, 170-171.

Fourth submission: Any declaratory relief should be in the terms set out at RS [73].

Dated: 7 October 2026



Alistair Pound SC

Liam Brown SC

Edwina Smith

Jack Maxwell