

IN THE SUPREME COURT OF VICTORIA (COMMON LAW DIVISION)

BETWEEN

X

Plaintiff

And

Homes Victoria

Defendant

OUTLINE OF SUBMISSIONS

Date of document: 19 September 2025

Filed on behalf of: X

Prepared by: Nathaniel Louey SC, Dion Cai and Ananya Goswami

Name of moot team: VLF 1

OVERVIEW AND RELIEF SOUGHT

1. In September 2023, the Defendant announced its decision to retire select high-rise public housing towers under its Redevelopment Plan. Following an announcement by the Victorian Government in October 2023 that the North Melbourne tower would be demolished, the Defendant immediately began the process of informing residents that they would be relocated.
2. The Plaintiff submits the following in relation to Homes Victoria's decision:
 - a. That the Defendant denied X natural justice by making a decision that would adversely affect X's rights without giving X an opportunity to be heard, and
 - b. That the decision is inconsistent with X's rights under the *Charter of Human Rights and Responsibilities Act* (2006).
3. The Plaintiff seeks the following relief:
 - a. A declaration that the decision made by Homes Victoria was invalid and unlawful,
 - b. An injunction restraining the Defendant from implementing the decision, and
 - c. An order requiring the Defendant to consult with X and other residents before further decisions concerning demolition are made.

Procedural Fairness

1. The Plaintiff submits that, as a matter of procedural fairness, Homes Victoria should have provided her the right to be heard before making the demolition decision.
2. Where a decision by a public authority is likely to affect the rights of an individual, it is presumed that the exercise of that power is conditional on it being exercised consistent with procedural fairness, which includes the right to be heard.¹
3. The demolition decision is made under s 15(a) of the *Housing Act*. Under s 6(2) of the *Housing Act*, any exercise of power under the *Housing Act* must be consistent with the objects found in s 6(1). The objects of the *Housing Act* in s 6(1)(g)-(h) clearly evince Parliament's intention that Homes Victoria consult with affected parties when considering major development decisions.
4. An obligation to hear X also arose due to the demolition decision affecting X's legal rights and interests, namely:
 - a. The right to security of tenure,²
 - b. X's ability to live in housing tailored to the unique requirements necessary to sustain her quality of life in relation to her disabilities,³
 - c. The right to not have one's home unlawfully or arbitrarily interfered with,⁴ and
 - d. The right of First Nations Australians to maintain kinship ties and maintain their spiritual, material and economic connection to traditional land.⁵
5. X's rights under the *Residential Tenancies Act* (1997) do not have the ability of negating any obligation held by Homes Victoria to offer residents natural justice, security of tenure would and disruption to the community would have already been undermined.⁶
6. Such consultations would have revealed the challenges X and her community faced as both residents facing the prospects of forced ejectment, and also as members of a tightly knit First Nations community who rely on the proximity of the towers to an Indigenous community centre and kinship networks. Such statements would have encouraged Homes Victoria to properly consider conducting a feasibility assessment for retrofitting.

¹ *Minister for Immigration and Border Protection v SZSSJ* (2016) 259 CLR 180, [75].

² *Burgess v Director of Housing* [2014] VSC 648, [156]–[157].

³ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 13(a).

⁴ *Ibid.*

⁵ *Ibid.*, s 19(b); cf *Berih v Homes Victoria* (No 4) [2025] VSC 169.

⁶ *Residential Tenancies Act 1977* (Vic) s 330.

7. Homes Victoria made no effort to consult with X following the decision to demolish the North Melbourne towers, instead informing the residents of the tower after the decision had already been made. X was therefore denied procedural fairness through being prevented from being heard.

Charter of Human Rights and Responsibilities

1. As a public authority,⁷ s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter') sets dual obligations for Homes Victoria: to give proper consideration to relevant human rights; and to act in a way that is compatible with human rights.
2. The Decision engaged X's *Charter* rights to a greater extent than *Berih*, including:
 - a. s 8(2) – the right to enjoy human rights without discrimination, as the decision indirectly discriminates against X's disabilities, including autism, cerebral palsy, and wheelchair mobility.⁸
 - b. s 13(1) – arbitrary or unlawful interference with home and family, consistent with the finding in *Berih*.⁹
 - c. s 19(2)(c) and (d) – the right of X, as an Aboriginal person, to maintain their distinctive spiritual relationship with the land, as well as their kinship ties, which are of particular importance for children.¹⁰
3. These rights are to be construed in the broadest possible way.¹¹

Proportionality

4. The Plaintiff submits that the decision made under s 15 of the *Housing Act* disproportionately limits the Plaintiff's rights.
5. s 7(2)(e) of the *Charter* requires Homes Victoria to consider any less restrictive means reasonably available to achieve the purpose. We submit that:
 - a. Retrofitting the buildings is a less disruptive means to achieve the purpose.
 - b. While Mr Garg has presented several justifications for the Decision, the relief sought will not have a disproportionate effect on the broader public.

Obligation to provide proper consideration

⁷ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 4(1)(b) ('Charter').

⁸ *Equal Opportunity Act 2010* (Vic), s 9.

⁹ *Berih* (no 5), [205].

¹⁰ *Children, Youth and Families Act 2005* (Vic), ss 10(3)(c), 176.

¹¹ *Kracke v Mental Health Review Board* (2009) 29 VAR 1.

6. The procedural limb of s 38(1) requires Homes Victoria to provide proper consideration of human rights.¹²
7. ‘Proper’ consideration is more stringent than the common law requirements of ‘relevant’ considerations,¹³ and objectively requires the decision maker to:¹⁴
 - a. Understand which rights are relevant and how they will be interfered with;
 - b. Seriously turn their mind to the possible impact and implications;
 - c. Identify countervailing interests or obligations;
 - d. Balance the competing public and private interests at hand.
8. The plaintiff submits that Homes Victoria did not carry out this obligation, as a reasonable decision maker would have given notice and an opportunity to be heard had they given proper consideration to the plaintiff’s rights and circumstances.
9. While Mr Garg has evidently turned his mind to these considerations, his behaviour is inconsistent with the undertaking of a proper consideration.

Obligation to act compatibly with the *Charter*

10. The substantive limb of s 38(1) requires Homes Victoria to act compatibly with the rights set out under the *Charter*. The court must determine whether any limitations imposed on X’s rights was reasonable, justified, and proportional, which would be permissible under s 7(2) of the *Charter*.¹⁵
11. In *Berih*, the court did not determine the question of whether the limitation of rights was justified, as the defendant was found to have given proper consideration.
12. As more of X’s rights are affected compared to *Berih*, the plaintiff submits that *Berih* should be distinguished, and the use of s 15 of the *Housing Act* was unjustified.
13. To interpret s 32(1) of the *Charter*, the Court of Appeal has adopted French CJ’s approach in *Momcilovic v The Queen*,¹⁶ requiring courts to interpret legislation in a manner that does not limit or least limits *Charter* rights,¹⁷ especially regarding provisions that are ambiguous, unclear, or open to interpretation.
14. s 15 of the *Housing Act* is a broad, discretionary power to develop the land, including the power of construction, demolition, and undertaking works or changes.

¹² *Thompson v Minogue* [2021] VSCA 358, [79].

¹³ *Bare v IBAC* (2015) 48 VR 129, [235], [275]–[276] (Tate JA).

¹⁴ *HJ v IBAC* [2021] VSCA 200, [155].

¹⁵ *Berih* (n 5) [155].

¹⁶ (2011) 245 CLR 1, [43] (French CJ).

¹⁷ *R v DA & GFK* [2016] VSCA 325, [44]–[48].

15. The objectives of restoring the tower's habitability and livability can be achieved with minimal disruption to X's rights, including measures such as staged, staggered renovation of the apartments.
16. Therefore, the plaintiff submits that the use of s 15 to demolish the towers is unlawful under the s 38(1) obligations to act compatibly with *Charter* rights, as there were viable alternatives that would not limit rights available to the decision maker.¹⁸

International Human Rights Obligations

17. Section 32(2) of the *Charter* allows the consideration of international law and jurisprudence.¹⁹
18. The Decision is inconsistent with article 11.1 of the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'), and article 10 of the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP').

¹⁸ *Charter* (n 7), s 38(1).

¹⁹ *Ibid*, s 32(2).