

**Submission
No 734**

**INQUIRY INTO THE REDEVELOPMENT OF MELBOURNE'S PUBLIC
HOUSING TOWERS**

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Date Received: 31 March 2025

PARLIAMENT OF VICTORIA
LEGISLATIVE COUNCIL
LEGAL AND SOCIAL ISSUES COMMITTEE
INQUIRY INTO THE REDEVELOPMENT OF MELBOURNE'S
PUBLIC HOUSING TOWERS
SUBMISSION OF HON KEVIN BELL AO KC¹

31 March 2025

On 20 March 2024 the Legislative Council of the Victorian Parliament resolved to require the Legal and Social Issues Committee to inquire into, consider and report on the redevelopment of Melbourne's public housing towers (see the [terms of reference](#) online). The committee has called for submissions. This is my submission in which I focus on human rights issues raised by the development.

The redevelopment is being carried out by the Victorian government which owns the several sites on which the 44 towers are constructed.² They are aging and in various states of disrepair but, as public housing, are the homes of thousands of people (as tenants of the government). Many of these people have serious social, medical and other vulnerabilities and a significant number are Indigenous.

In 2023 the government announced a plan to demolish the towers and redevelop the sites with about three times more housing most of which would be sold on the private market. The government also intends that the redevelopment will result in 10 per cent more social housing being available than at present. Most of the existing residents would be relocated, voluntarily if possible and involuntarily if necessary.

The government did not hold a public inquiry or consultation process in relation to the proposed development.³ It simply announced the decision to carry it out and informed the residents of the towers and the broader community. It decided upon the financing structure, development model, timetable and building program. There is no doubt the redevelopment is for an important public purpose, which is to provide more housing to the community in the context of the chronic access and affordability problems that exist in the Victorian housing system.⁴ However, this is being done in a way that is displacing the thousands of existing residents of the towers.

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² The towers are owned and managed by Homes Victoria pursuant to the [Housing Act 1983](#) (Vic) subject to the direction and control of the Minister for Housing.

³ See [Berih v State of Victoria \(No 2\)](#) [2024] VSC 230 (10 May 2024) (Richards J) [3]-[4].

⁴ See Kevin Bell, [Housing: The Great Australian Right](#) (Monash Publishing, 2024).

As the terms of reference of the inquiry and the submissions already made to the committee reveal, the economic and broader rationale of the redevelopment is contested. Some argue that the existing towers could be renovated and alternative means chosen to increase housing for the community, means which would not result in the displacement of the existing residents. The contest is about both ends and means. Some argue that the means chosen to achieve the end in view involve social costs for the displaced residents that outweigh those ends. Others argue that the same ends can be achieved by other means without the costs of the means presently chosen for the displaced residents. Others argue it is not possible to make any rational judgment about this question of ends and means because the government has not been transparent in its actions and has not conducted a proper consultation process. In my submission, all these questions raise profound issues about the human rights of the residents and the obligations of the government in relation to those rights.

The terms of reference also go to the adequacy of the consultation carried by the government in relation to the redevelopment. Submissions made to the committee in this inquiry reveal that (in the words of the [Somali Community Inc submission](#)):

- No consultation meetings were conducted to discuss redevelopment plans, impacts, or alternatives such as renovations.
- Residents were not given opportunities to express their views, provided legal advice or guidance regarding the implications of the plan, despite its significant impact on their public and private lives.
- Confusing relocation forms were distributed, which many residents filled out out of fear of homelessness rather than as a genuine agreement to move.

I refer also to the many submissions made to the committee by individual residents, most of which are publicly available on the [committee inquiry website](#).

A class action has been commenced in the Supreme Court of Victoria seeking judicial review of the decision to carry out the demolition and redevelopment of the towers on the basis that it is invalid and in violation of s 38 of the [Charter of Human Rights and Responsibilities Act 2006](#) (Vic).⁵ The group members are tenants of towers set for demolition and redevelopment. The proceeding is at the interlocutory (pre-trial) stage.⁶ This submission does not comment on that proceeding. My focus is upon international human rights law, not the Charter.

In my submission, the residents of the towers have the right to housing and home under international human rights law which carries obligations on the part the government. It is obliged to respect, protect and fulfill that right, which has both substantive and procedural elements. People have the right to housing in which to live with security free of interference with their home unless this is soundly justified according to a free and open process through which they are fully consulted. Therefore, where the government proposes to undertake a major development project which will displace thousands of people from their homes, as it does here, it is obliged to carry out a proper consultation process, among other things. This is a binding procedural obligation. It is the right of the residents to be so consulted and the

⁵ See the statement about the proceeding on the information page of the website of the Supreme Court of Victoria: [Public Housing Towers Group Proceeding \(Class Action\)](#). The page contains a link to the amended writ in which the claim is made, filed on 3 July 2024.

⁶ See [Berih v Homes Victoria](#) [2024] VSC 156 (2 April 2024) (Keogh J). [Berih v State of Victoria \(No 2\)](#) [2024] VSC 230 (10 May 2024) (Richards J); [Berih v Homes Victoria \(No 3\)](#) [2025] VSC 30 (10 February 2025) (Keogh J).

obligation of government to carry out this consultation. The government did not fulfill this obligation and in failing to do so violated international human rights law.

The right to housing and home under international law generally

The rights of persons and the obligations of government with respect to large scale developments that affect housing must be understood in the context of the right to housing and home generally.

The purposes and central values of international human rights law are *pro hominem*, which is to say, ‘for the human person’. Human rights are commonly understood as being those inalienable fundamental rights to which a person is inherently entitled in virtue of their humanity. They are widely accepted as being based on generally agreed values and exist to ensure human dignity and the fulfilment of basic human needs. Human rights are seen to be universal and inalienable, meaning that all people have them; indivisible, meaning that they all have equal status and cannot be ranked; and interdependent and interrelated, meaning that the realisation of one right often depends upon the realisation of others.⁷

Reflecting human rights generally, the core value of the human right to housing and home is respect for the equal and inherent dignity of all people. Its philosophical foundation is that human persons are ends in themselves and not means to ends. This has important implications in relation to large scale development projects. The purpose of the human right to housing is to ensure that all people have a decent home because this is indispensable for living in dignity and developing in ways that people chose individually, within families and as citizens in society, and to realise their other human rights. This is related to the role of government in democracy and to the nature of civil participation in society generally. Respecting the dignity of persons in this context also includes giving them a say and listening to them in relation to something in which they have a very high personal stake – their home.

International law

The rights to housing and home are to be found in the *International Bill of Rights*, which comprises the [United Nations Declaration on Human Rights](#),⁸ the [International Covenant on Economic, Social and Cultural Rights](#) and the [International Covenant on Civil and Political Rights](#).

The housing component of the right is specified in the ICESCR as follows:

Article 11.1

The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...

The home component is specified in the ICCPR as follows:

Article 17.1

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence ...⁹

⁷ Lidewij van der Ploeg and Frank Vanclay, ‘A human rights based approach to project induced displacement and resettlement’ (2017) [Impact Assessment and Project Appraisal](#), 35(1), 34-52, 34. This article is available on open access and contains a thorough examination of human rights in the displacement and resettlement context.

⁸ See arts 12 (home) and 25 (housing).

⁹ Section 13(a) of the Charter is based on art 17.1 of the ICCPR.

Australia (and therefore all governments in Australia) is bound by international law to respect, protect and fulfill the right housing and home because it a party to the covenants, and also to a number of other international human rights treaties which specify the same or similar rights.

International law applies to countries with widely varying political, economic and social systems. It does not prescribe the kind of system to be adopted for human rights to be recognised and implemented. In relation to implementing the right to a decent home, the degree of reliance upon market and government mechanisms, and the mix between the two, is a matter for democratic choice in the state concerned, as long as the right is implemented equally for all. This necessarily involves consideration of the link between this right and other human rights, including the distinct rights of Indigenous peoples.

Similarly, the states of the world have divergent internal political, legal and administrative structures. Some have unitary systems while others are federal in nature. Most states have local government of some kind. Responsibility for implementing human rights – including the right to a decent home – can be shared between different levels of government, as it is in Australia.

Main features of the right to housing and home

The Committee on Economic, Social and Cultural Rights is the principal UN oversight authority for ICESCR. One of its responsibilities is producing guidance on the meaning of the right to adequate housing in that covenant, which it has done.¹⁰

As that guidance makes clear, the right to housing is not to be interpreted in a narrow or restrictive way. It is a right to live somewhere in security, peace and dignity. The right to housing in ICESCR is linked with other human rights founded on the fundamental values of the covenant, which reflect the inherent dignity of the human person. The scope of the right to housing encompasses the associated right in the ICCPR to be free of arbitrary or unlawful interference with the home.

The concept of ‘adequacy’ in the right to adequate housing is determined in part by social, economic, climatic, ecological and other factors that are country specific. However, to be adequate, the housing must satisfy certain mandatory elements. These include the following, which have been called the ‘decency principles’:¹¹

- (a) legal security of tenure¹² (which is of critical importance in relation to the redevelopment of the towers)
- (b) availability of services, materials, facilities and infrastructure
- (c) affordability
- (d) habitability
- (e) accessibility
- (f) location, and
- (g) cultural adequacy.¹³

¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No 4: The right to adequate housing*, [UN Doc E/1992/23](#) (13 December 1991).

¹¹ New Zealand Human Rights Commission, [Framework Guidelines in the right a decent home in Aotearoa](#) (2021) 25.

¹² CECSR published more detailed guidance on this subject in [General Comment No 7: The right to adequate housing: forced evictions](#) (20 April 1997). See further below in this submission.

¹³ The Special Rapporteur on the right to adequate housing has published a thematic report on realising the right in the context of Indigenous peoples: [UN Do A/74/183](#) (17 September 2019).

Principle (a) is implemented by laws and practices that protect different forms of tenure. The right to that security of tenure is clearly breached by weak residential tenancy laws in several Australian jurisdictions which allow forced eviction of tenants without cause, including tenants of public housing. I have previously expressed concern about this.¹⁴ I remain concerned about it, although I acknowledge recent improvement in this regard in Victoria and other jurisdictions. The right to security of tenure is also violated by unjustified forced eviction arising from displacement and relocation caused by large-scale development projects (see below).

Principle (b) is supported by Australian laws which commonly specify minimum standards for all dwellings including rented dwellings, private or public. The location and build form of housing, as well as the kinds of services available in the community, need to be rethought in the light of global warming and climate change. The government is entitled to be concerned about the conditions of the towers from this point of view.

Principle (c) is clearly breached in Australia because a feature of the housing system is widespread housing stress due to housing unaffordability. The government is entitled indeed bound to pursue ways of increasing access to affordable housing.

Principle (d) means that sub-standard housing is not permissible, while laws and regulations providing for minimum habitability standards are means of implementing it. Again, the government is entitled to be concerned about the condition of the towers from this point of view.

Principle (e) states a principle of accessibility for all as such. It is not only concerned with physical accessibility. Where affordable or social housing is scarce, it is not accessible. The government is entitled to be concerned about access to housing, and especially affordable housing, in Victoria, which is poor and worsening.¹⁵

Principle (f) applies in the Australia context where people are being forced to buy or rent housing further and further away from employment, essential services and family and social supports. The government is entitled to be concerned about increasing access to housing in good locations and the contribution that redeveloping the towers would make to this achieving objective.

Principle (g) is especially important in relation to First Peoples.

Freedoms and entitlements of people as rights-bearers

The presently dominant conception of people in relation to the home and housing is that the individual is personally responsible for it. If a person fails to find housing themselves, they may have to look to welfare programmes administered by government, which may expand or contract as government chooses. If someone gets that assistance, too often they will be seen to be a personal failure – to be the passive recipient or beneficiary of that welfare.

In the context of public housing, this way of thinking results in stigma and discrimination for many public housing tenants. Stigma and discrimination in relation to public housing tenants has been an institutional feature of public housing administration in Victoria in the past. It has been associated with a paternalistic mindset and also with the idea that the government is the equivalent of private landlord who has the full powers of ownership of the rented homes even though the context is

¹⁴ Kevin Bell, 'Protecting Public Housing Tenants in Australia from Forced Eviction: The Fundamental Importance of the Human Right to Adequate Housing and Home' (2012) 39 *Monash University Law Review* 1. Reforms have since occurred in Victorian, the ACT and Queensland.

¹⁵ See Kevin Bell, [*Housing: The Great Australian Right*](#) (Monash Publishing, 2024).

that of public housing. I believe that this administrative history in part explains how the government has conceived of and implemented the demolition and redevelopment project in relation to the public housing towers.

The human rights conception is different. It sees people in need of housing as active rights-bearers who are empowered to make just claims on government for realisation of their rights which cannot be rejected on purely policy grounds. The administrative and legal systems must be so designed as to give effect to those rights and for holding government to account when they do not do so.

Accordingly, rights-bearers can make claims under the human right to housing and home with respect to certain freedoms and entitlements. These freedoms and entitlements are reflected in the decency principles. An example of a freedom is the right to be free from arbitrary or unlawful eviction, as when the eviction is without just cause, or in retaliation against reasonable complaint or for discriminatory reasons. An example of an entitlement is the right to access emergency accommodation when needed, as when women and children need refuge from violence in their home.

Having the right to a decent home does not necessarily mean that rights-bearers get everything they want when they want it, but it does mean their claim to housing and home when they need it can be made as of right. As long as the rights-based order continues, it is not susceptible to rejection merely because of changes in government policy.

Duties and obligations of government as the duty-bearer

For government as the duty-bearer, the human right to housing and home means that it must respect, protect and fulfill the freedoms and entitlements carried by the right. It must do so as a matter of obligation for the purpose of ensuring the equal dignity of the person: one side of the right is the right of the person as the rights-bearer to the freedom or entitlement; the obverse is the obligation of government as the duty-bearer to uphold it. The obligation cannot be rejected as a matter of policy, unless of course government withdraws from the rights-based order itself. There is still significant scope for political contestation about housing issues, but about how and not whether the right should be implemented.

Government has a certain 'margin of discretion' about how best to implement the right, including in relation to large scale development projects. Managing scarce resources (even in wealthy countries like Australia) and determining priorities and making trade-offs are an inevitable part of doing so. This applies to large-scale development projects. Also, having this duty does not mean that government must act to realise everyone's access to housing immediately and fully. But it does mean that the primary function of the system is to realise the right.

Progressive realisation

While the right to a decent home gives rise to freedoms and entitlements for people as rights-bearers and duties and obligations for government as the duty bearer, people are not entitled to insist on their rights being realised immediately (although there are certain minima). Full implementation of those aspects of the right which involve the allocation of scarce public resources can be progressively realised over time given the availability of those resources and other reasonable constraints. Large-scale redevelopment projects which seek to better utilise government housing resources may fall into this category

However, governments cannot use the principle of progressive realisation as a back-door way of avoiding their human rights obligations. Government must always take steps that are 'deliberate, concrete and targeted as clearly as possible' towards the realisation of the right, and it must 'move as expeditiously and effectively as possible' toward full realisation of the right.¹⁶ Also, the way in which large scale redevelop projects are carried out have profound human rights implication (see further below).

Core obligations of immediate effect

While the right to a decent home can be progressively realised, there are 'minimum core obligations' that must be realised immediately. For example, the government must refrain from direct discrimination against people for prohibited reasons, such as disability, sex or race. Also, it has an obligation to provide 'basic shelter and housing' to people who need it, which includes the obligation to provide temporary emergency housing when needed. This means significant homelessness, as exists in Australia, is a violation of the right to adequate housing in respect of the minimum core obligation. Government has a core obligation of immediate effect to provide emergency housing to women and children fleeing violence in their homes.¹⁷ Prohibition of forced eviction is a core obligation of immediate effect which is not dependent upon the availability of resources. Governments must not evict people from public housing without just cause and then only by law and according to due process, and must prevent third parties such as private landlords from doing so.

Obligations to respect, protect and fulfill human rights

The United Nations has developed principles in relation to the different kinds of obligation that government has when applying human rights, whatever the nature of the right and including the right to housing and home. These principles help in understanding what must be done to give effect to rights, in making claims for rights to be upheld and in designing accountability and governance mechanisms. The principles are supported by a significant body of scholarship.

There are three elements to the obligation of government to give effect to human rights: the obligation to respect, protect and fulfill the right.¹⁸

(1) *The obligation to respect the right.* This obligation places a responsibility on government to refrain from interfering directly or indirectly with the enjoyment of a right by all persons. For example, government must not discriminate in the provision of public housing, forcibly evict tenants from public housing without reason or procedural fairness, provide public housing that is unsafe or charge unaffordable rent for public housing. This obligation applies in relation to large scale projects such as the redevelopment of the towers.

(2) *The obligation to protect the right.* This obligation places a responsibility on government to prevent third parties from interfering with the enjoyment of the right by all persons. For example, government must take reasonable steps to ensure that private landlords do not discriminate in the provision of rental housing, provide sub-standard housing or evict tenants without cause. This obligation imposes on government a responsibility to put in place a legislative and administrative framework

¹⁶ Committee on Economic, Social and Cultural Rights, *General Comment No 3: The Nature of State Parties' Obligations*, [UN Doc E/199/23](#) (14 December 1990), paras 9-12.

¹⁷ Ibid, para 10.

¹⁸ The tripartite obligation schema was expounded by Asbjorn Eide, the UN Special Rapporteur on the right to adequate food: [UN Doc E/CN.4/Sub.2/1987/ 23](#) (7 July 1987).

that guarantees these aspects of the right to a decent home. In most jurisdictions in Australia, no such framework has been put in place to guarantee the right to security of tenure and give protection from eviction without cause.

(3) *The obligation to fulfil the right.* This obligation requires government to take all necessary and appropriate measures to ensure the full realisation of the right by all persons. These include legislative, administrative and public finance measures. For example, government must create a housing system which enables all people to have access to a decent home taking into account the decency principles. This will require a legislative framework, departments of state, public finance and inter-governmental arrangements which reflect divisions of responsibility within the political system in the country concerned. The endemic problems in the housing system in Australia involve many failures by government to fulfill the right to housing and home. It is a legitimate purpose of government to give effect to this obligation through large-scale redevelopment projects as in the case of the towers.

The right to housing and home in large-scale redevelopment projects

The issues raised by the government's failure to consult with the residents of the towers about the redevelopment arise because the project necessarily involves the displacement and relocation of the residents, involuntarily if necessary. This directly interferes with their right to have secure housing and to be free of arbitrary interference with that housing. In human rights terms, unless justified according to strict criteria (see below), the process of involuntary displacement and relocation of a public housing tenant as part of a redevelopment project is a forced eviction and the tenant is an internally displaced person.

Involuntary displacement and relocation of persons is regarded as a gross violation of human rights because of the immediate effects on the individual and their family in relation to their housing and home and because of the flow-on effects in relation to other human rights. The other human rights that might be affected include the right to be free of homelessness, the right to life, the right to be free of cruel, inhuman and degrading treatment, the right to security of the person, the right to be free of arbitrary interference with family and home, the right to work, the rights of the child, the right to health and the right to an effective remedy in cases of alleged breach of human rights. These other rights are very likely to be engaged in such cases because housing and home is the foundation for the enjoyment of virtually all human rights.

However, the right to have secure housing is not absolute. It is accepted that government may legitimately need to redevelop existing housing for the purpose (for example) of ensuring that existing housing is safe and habitable or to increase access to housing where existing housing inefficiently utilises the land concerned.

The Victorian government's redevelopment project for the towers is clearly intended to serve these public purposes. However, this does not mean that, in relation to the project, human rights have no role to play, the government is not obliged to follow due process or it is not accountable for the decisions that it makes. As a leading United Nations publication notes, human rights standards and processes apply in such cases because:

Development-based evictions are often planned or carried out to serve the 'public good' or 'public interest', but do not provide protection for the most vulnerable, procedural guarantees or due process. This is the case of many developments and infrastructure projects, such as large dams or mining or other extractive industries,

large-scale land acquisitions, urban renewal, city beautification, or major international business or sporting events.¹⁹

Because involuntary displacement and relocation of people arising from development and like projects raise profound human rights issues, United Nations scrutiny and monitoring authorities have published authoritative guidance on the standards and procedures that must be followed if human rights are not to be violated. The main publications include [General Comment No 4: The right to adequate housing](#),²⁰ [General Comment No 7: The right to adequate housing: forced evictions](#),²¹ the [Guiding Principles on Internal Displacement](#)²² and [Forced Evictions and Human Rights: Fact Sheet No 25 \(Rev. 1\)](#).²³

Under international human rights law as explained in these and like sources (including judicial decisions), displacement and involuntary resettlement of persons in development projects like the towers project can only be justified when strict criteria are met. In summary, these criteria are that (1) the government substantiates that the project is in the public interest (2) the government establishes that the harm done to the human rights of residents is proportionate and unavoidable having regard to the public purposes of the project, which requires that there are no other reasonable means of achieving those purposes (3) there is an open consultation and accountability process in which all persons who have human rights interests at stake can effectively participate, including sharing of information, access to legal advice and an ability to challenge the decision, and (4) affected people are not worse off overall and fully compensated if they are worse off.²⁴ I submit that the government has not satisfied these criteria in relation to the redevelopment project.

The United Nations advises that, to avoid the kind of problems that have arisen in relation to the project for the redevelopment of the towers, a 'human-rights based approach' be adopted. There is a substantial literature on the subject (see the references referred to above and van der Ploeg and Vanclay²⁵). The Australian Human Rights Commission defines this approach as one that involves implementation of the 'PANEL principles', which are participation, accountability, non-discrimination and equality, empowerment and legality.²⁶ The Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, has produced a report advocating the adoption of this approach in the context of the resettlement of people including in the context of public interest projects involving land.²⁷

¹⁹ UN Habitat and Office of the High Commissioner on Human Rights, [Forced Evictions and Human Rights: Fact Sheet No 25 \(Rev. 1\)](#) (United Nations, 2014) 2.

²⁰ CESCR, (13 December 1991).

²¹ Committee on Economic, Social and Cultural Rights, *General Comment No 4: The right to adequate housing*, [UN Doc E/1992/23](#) (13 December 1991).

²² United Nations (2004).

²³ UN Habitat and Office of the High Commissioner on Human Rights, [Forced Evictions and Human Rights: Fact Sheet No 25 \(Rev. 1\)](#) (United Nations, 2014).

²⁴ See Lidewij van der Ploeg and Frank Vanclay, 'A human rights based approach to project induced displacement and resettlement' ([2017](#)) *Impact Assessment and Project Appraisal*, 35(1), 34-52, 35 citing United Nations and other sources.

²⁵ Lidewij van der Ploeg and Frank Vanclay, 'A human rights based approach to project induced displacement and resettlement' ([2017](#)) *Impact Assessment and Project Appraisal*, 35(1), 34-52, 35 citing United Nations and other sources.

²⁶ Australian Human Rights Commission, [Human rights-based approaches](#) (accessed 31 March 2025).

²⁷ Report of the Special Rapporteur on the right to adequate housing, *Toward guiding principles on resettlement: a review and assessment of current laws, policies and practices* ([UN Doc A/79/317](#)) (22

Conclusion

In the way in which the government has conceived, carried out and sought to justify the project for the redevelopment of the towers, it has not behaved towards the thousands of existing residents as people to whom it owes human rights obligations under international human rights law because this is their home. It has not acted toward the residents in a way that recognises that they have fundamentally important human rights interests at stake. It has acted as if it were just the landlord of public housing tenants in property over which it has the full power of ownership and which it can redevelop as it sees fit according to law without regard to those human rights. It has treated the thousands of residents of the towers as persons who are entitled only to notice of the decision after the fact and who can be required to resettle and relocate in public housing (including involuntarily) that may be far from their present family, social supports and community services. It may have acted as a democratically elected government can, but it has treated the residents of the towers in a way that, in my submission, is an insult to their human dignity and in violation of their international human rights.

August 2024). This report followed an earlier report on the human rights impact of resettlement caused by development projects including urban development projects: Report of the Special Rapporteur on the right to adequate housing, *Resettlement after evictions and displacement: addressing a human rights crisis* ([UN Doc A/HRC/55/53](#)) (25 January 2024).