

T R A N S C R I P T

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Redevelopment of Melbourne's Public Housing Towers

Melbourne – Tuesday 5 August 2025

MEMBERS

Joe McCracken – Chair

Michael Galea – Deputy Chair

Ryan Batchelor

Anasina Gray-Barberio

Renee Heath

Ann-Marie Hermans

Rachel Payne

Lee Tarlamis

PARTICIPATING MEMBERS

Melina Bath

John Berger

Georgie Crozier

Jacinta Ermacora

David Ettershank

Sarah Mansfield

Tom McIntosh

Aiv Puglielli

Sonja Terpstra

Richard Welch

WITNESSES

Dr Bill Swannie, Member, Human Rights Committee, and

Anne Nielsen, Member, Property Law Committee, Law Institute of Victoria; and

Kevin Bell AO KC.

The CHAIR: Welcome back to the next session of the Legal and Social Issues Committee. We will go through and introduce our committee. I am Joe McCracken, the Chair.

Anasina GRAY-BARBERIO: Good morning. Anasina Gray-Barberio, Northern Metro.

Aiv PUGLIELLI: Hi. Aiv Puglielli, North-Eastern Metro.

Rachel PAYNE: Good morning. I am Rachel Payne from the South-Eastern Metropolitan Region.

Ryan BATCHELOR: Ryan Batchelor, Southern Metropolitan.

John BERGER: John Berger, Southern Metropolitan.

The CHAIR: And online –

Michael GALEA: Michael Galea, South-Eastern Metropolitan.

The CHAIR: All evidence that is taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information that you provide during the hearing is protected by law. You are protected against any action for what you say during the hearing, but if you go elsewhere and repeat those same things, those comments may not be protected by that same privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded. You will be provided with a proof version of the transcript following the hearing. You will get a chance to make any minor changes if you need to, but ultimately those transcripts will be made public and put on the website.

Just for the Hansard record, could you state your full name and the organisation you are appearing on behalf of, please. I will start with Anne.

Anne NIELSEN: I am Anne Nielsen. I am a Member of the Property Law Committee of the Law Institute of Victoria.

Bill SWANNIE: I am Dr Bill Swannie. I am a Member of the Human Rights Committee at the Law Institute of Victoria.

Kevin BELL: I am Kevin Bell, and I am here for myself.

The CHAIR: Thanks very much. I understand that you would like to have your own opening statement and then Kevin, you would as well.

Kevin BELL: Sure.

The CHAIR: All right. Is it okay if we allow about 5 minutes for each of those?

Anne NIELSEN: Only Bill is going to read the opening statement, to save time.

The CHAIR: Only Bill? Okay. Thanks very much. I might start with Bill first and then I will go to Kevin. So, Bill, over to you. Welcome.

Bill SWANNIE: Thank you. The law institute welcomes this opportunity to appear before the Legal and Social Issues Committee in relation to the inquiry into the proposed redevelopment of Melbourne's public

housing towers. From the outset, the LIV wishes to emphasise the profound impact the redevelopment will have on around 10,000 people living in public housing located across Melbourne. The LIV and this committee have observed the compelling evidence and submissions provided by residents and their representatives, which have detailed the fear and anxiety felt across the community, particularly due to the lack of consultation and clarity regarding the redevelopment, uncertainty as to where residents may be relocated, the impact this will have on their community ties, employment, access to health and other services and whether they will be able to move back to their homes once the redevelopment has been completed which, according to Homes Victoria, will likely not be until 2051 in some precincts.

The decision by Homes Victoria to demolish and redevelop 44 public housing towers directly impacts the rights of residents protected under the Victorian *Charter*, specifically the right to freedom from arbitrary and unlawful interference with home and family, the protection of the family and the right to security. Homes Victoria, as a public authority, has a duty under the *Charter* to give proper consideration to these rights and to act compatibly with these rights. These rights can be limited, but only if this is demonstrably justified and proportionate. The rights protected under the Victorian *Charter* are based on international human rights standards found in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which Australia has ratified. These treaties seek to protect the fundamental principles of human dignity, equality and freedom. Any decision limiting these rights must be justified and proportionate, and it must consider less restrictive options to achieve any legitimate goals. These rights must be considered by government entities, such as Homes Victoria, when making decisions that limit rights protected under the *Charter*. Considering this, the LIV makes the following three submissions to the inquiry.

Firstly, the Victorian government must take a human rights based approach and consult with residents throughout the proposed redevelopment given its direct impact on residents' rights as protected under the Victorian *Charter* and under international law. Secondly, the Victorian government must communicate with residents in an appropriate manner, in methods and in languages that can be readily understood. The decision to redevelop the towers should have been communicated to residents in the first instance prior to publication in the housing statement. Moving forward, people living in the proposed development must be clearly and properly informed of the policy which will govern the relocation process so they are fully informed about the process and any implications on their rights, particularly their rights to return once the redevelopments are finalised. Lastly, the LIV is concerned that the redevelopment project may have the effect of significantly reducing the availability of public housing in Victoria and that the transition from direct government tenants to community housing means that residents are likely to have less security of tenure in terms of protections from eviction and significantly higher rents.

We welcome the opportunity to discuss this submission with the committee, and we welcome further questions from the committee in relation to our submission on the redevelopment of the public housing towers. Thank you.

The CHAIR: Thank you very much. I am going to hand over to Kevin.

Kevin BELL: I support the submission that has been made by the law institute. I am here as somebody who has had a lifetime of experience in the law but who also grew up in public housing. So when the government, unannounced, told 10,000 people that their homes were to be demolished, I was personally shocked and not just professionally shocked. I am coming at this issue with skin in the game from two different perspectives. I want to say that I think what was done was deplorable. It was deplorable because it offended standards of common decency. It is not the way that government should behave towards anybody. And it is deplorable because it involved what I consider to be very clear human rights breaches. It is not at issue in my own mind that the government was acting for what it considered to be important public purposes. I have not seen any evidence to suggest that it was acting in bad faith or that it did not think that this was a good idea, but the question of the ends involved is only one side of the equation. The real question in my mind here is the way that this was done and the failure of the government to engage with the residents and indeed with the broader community about how this project should be done, whether it really did involve the demolition of all of the towers, whether there were alternatives, and what guarantees should be given to the existing tenants in the course of carrying out the project.

Now, one thing that I think is really important, and I want to stress, is that the consent of the tenants should have been sought, and that seeking of consent should have been the foundation of the government's project. That does not mean that an unreasonable refusal of that consent would end the projects – quite the contrary. As has already been said, human rights can be limited in a proportionate way for proper ends, and possibly the government might have needed to go ahead anyway. But the history of following the human rights based approach, which has been mentioned, when the consent of the tenants or the persons affected is treated as the foundation for going forward, is that the job ultimately gets done. The good is achieved by means that are acceptable, with minimum impact upon those concerned.

Bill has mentioned the *Charter*. As a former judge of the Supreme Court of Victoria and having regard to the fact that one of my fellow judges decided the case at first instance and it is now going on appeal to the Court of Appeal, I will not say anything about that. I will say that nobody in Victoria, a tenant or anybody else, should have to go to the Court of Appeal to have their human rights clarified. I think the fact that that has had to happen in this instance is unfortunate. I have advocated before committees like this on previous occasions for the right to housing to be incorporated in the *Charter*. If the right to housing were incorporated in the *Charter*, then I do not think there would be any doubt that the government would have to go about this kind of project differently, and that is a very good thing. I therefore repeat the submission I have made previously that the right to housing, expressed in terms of the international law rights, should be incorporated in the *Charter*.

I heard the Prime Minister last week speaking about important international matters and making express reference to human rights. He did that from the position of saying that this is the way that things should be done. He was talking about extraordinarily important matters of international concern. I heard the foreign minister last night also stress the importance of human rights in relation to the same extraordinarily important matters of international concern. If Australia wants to make a claim against others to follow human rights, then we have to have our own house in order. You cannot pick and choose which rights you choose to assert should be followed by others if you are not following those rights yourself. Our reputation internationally and within the region is strengthened when we do the right thing by human rights, and we should do so in this instance.

I will finish with one final thing that is to happen, and that is that I, as you know, was a former director of the Castan Centre for Human Rights Law and a professor of international human rights law at Monash University. The Castan centre has established a human rights clinic through which students studying human rights assist persons wishing to take action to protect their rights, have them vindicated or otherwise to make a complaint. I will be working with that clinic and with the inner-city community legal service, which has done an excellent job representing the residents of the towers, to make a complaint to the United Nations about what has occurred. As you know, my view is that there has been a breach of the housing right in the International Covenant on Economic, Social and Cultural Rights, although that is a matter for the complaint authority to determine. There are a number of ways through which such a complaint could be made. One of them is to the special rapporteur on the right to adequate housing, and that is the mechanism that has been chosen. So over the course of the next couple of months there will be prepared a complaint with tenants of the towers through which it is their hope and my hope that the human rights issues that are raised here can be properly addressed and ventilated. Thank you.

The CHAIR: Thanks very much. I will start off with questions and then we will go through committee members. It is a question for both parties. There has been a question mark raised in previous evidence given about a tenant's right to return. I want your comment on that as to – does the right to return exist in a very strong form or is it a bit flimsy? Do you know what I am trying to get at? There appears to be some concern from people that, as much as they say the right of return exists, there are strict eligibility criteria which sort of suggest that it is a very narrow gap to get through. I am interested in your comment on that first.

Bill SWANNIE: We understand that residents have been told, more or less, that they do have a right to return, more or less, to the place where they were living previously. We can only speak to the issue about whether they do have a right to return in terms of the department's publicly available policy. I understand the policy, the relocation manual – at least the one that is publicly available – is dated October 2017. That provides a very qualified right to return. It does depend on several matters. It depends on matters involving the tenant's income and their assets at the point of return. It depends on the availability of a suitable size house at the point of return. It depends on there being no outstanding charges at that point and no warrant of possession being executed for rental arrears or other breaches. So our understanding from the department's publicly available policy is the right to return is a very qualified right.

The CHAIR: Okay.

Kevin BELL: I agree.

The CHAIR: You agree?

Kevin BELL: I agree.

The CHAIR: Do you think for people that are in public housing – some are in very vulnerable positions – that that is a fair way of approaching the situation when you are saying to someone, ‘You’ve got a right to return, but –’? Is that a fair way of going about business?

Kevin BELL: No. It is not a fair way of going about things. The tenants who have been living in these homes, many for a very long period of time, should be dealt with with dignity. The starting point should be one of open negotiation between the government or the representative of the government and them. That should be done on the basis of sharing of information, not assuming that the project is to happen, and exploring options whereby the same ends can be achieved through other means. And if the project is to happen, then it should be on the basis that they are guaranteed in writing to be able to return. The only way to equalise the imbalance of power between the government on the one hand and the tenants on the other is to respect their dignity by seeking their consent in a real way. If they are to go somewhere else, then they may agree to go somewhere else. If they refuse to do so, the question immediately arises, ‘Is it reasonable for them to do so?’ The government is forced by that dynamic to treat with them in a way that respects their humanity, the history of their residence in the towers and other matters. Can I point out that a large number of the tenants are vulnerable elderly people who are in absolutely no position to be bargaining with a government department. The inequality of bargaining power is manifest. So this kind of project therefore has to build in guardrails which recognise that inequality and which try to bring about a result through which the important public purposes behind the project can be achieved but in a way which respects the dignity of those who will be affected by it.

Anne NIELSEN: Can I just add a practical issue? If, for example, you had an elderly lady who was living in an apartment she lived in for many, many years with her family and was then no longer eligible for, say, a 2- or 3-bedroom apartment, it would be devastating for her to be removed from her community. It would be really wonderful to hear whether the government actually carried out some kind of analysis as to how many people were like that and would be able to be rehoused in smaller apartments, if that is the policy, within the same community. That is the sort of thing that I think the LIV would very much like to see.

The CHAIR: Just lastly – I have got about 15 seconds left – that has been a broader aspect of the consultation. People have been told, ‘Oh well, you’ve got the right to return.’ Can you make any quick comments about the consultation process from your understanding?

Bill SWANNIE: The consultation process seems to be completely inadequate from a human rights perspective and from a legal perspective. It is a very flawed process.

Kevin BELL: I think that is true. There are different conceptions of the role of government in contest here. What has been done is based on the idea that the government has authority. It is the owner of the land. It possesses all the power of ownership that a landlord would have, and it is within its power, indeed within its democratic right, to conceive of a project like this and then simply implement it. Now, I argue that that is a paternalistic way of going forward, and I argue for a different conception of democracy, one where people are respected, one where human rights are taken into account and one where meaningful consultation happens not just after the decision has been made but well prior.

The CHAIR: Thank you. I am going to hand over to Mr Galea, who is online now. Michael.

Michael GALEA: Thank you. Thank you, Chair, and thank you all for joining us. I would just like to pick up on something that has just been mentioned in terms of elderly and vulnerable people having meetings with the relocations team. My understanding is that they have been invited and indeed encouraged to have support people for those meetings. Do you have evidence that that has not happened?

Kevin BELL: I do not, but I am aware of submissions that have been made to this committee by elderly residents where they have made very clear that they are unhappy about the way that they have been treated. If

there are support people made available then that is a good thing; I could not criticise that, but I do not know whether that has not happened.

Michael GALEA: Thank you. I will put this to all of you as well. I am curious about where the Law Institute of Victoria and you, Mr Bell, view the government's duty of care and the government's responsibility to provide social and public housing that is of a high standard that meets disability requirements and that is a healthy and safe place to live in, and what responsibilities the government has in that space.

Kevin BELL: Can I answer that question?

The CHAIR: Please.

Kevin BELL: I think this goes to the heart of the question on which I ended, which is: what is the conception of democracy that you bring to this project? Now, I want to say to Mr Galea: this debate does not begin and end with the important public purpose of providing housing. It does not begin and end with the idea that affordable housing is short and therefore we need to provide more of it. It does not begin and end with the idea that run-down older housing may not be compliant with modern disability laws. It starts there, but it does not end there. If you want to address those matters in a way which is compliant with international human rights law – and indeed, as the Court of Appeal may decide, Victorian law – then it is necessary to adopt a human rights based approach which involves the residents from the get-go and treats them with respect and consults with them about the way things are to be done and shares information with them about whether it is really necessary for that to be done or something else to be done. Now, I am aware, and it was reported recently, that the government has put out a tender for a campaign to bring to public notice the benefits of the project. In my view that is a waste of money, because the project has benefits; the question is: what benefits? Do the benefits outweigh the disbenefits for the people affected? Are there different ways of going about this which will bring about the same benefits but not at the same cost? And so on.

Michael GALEA: Thank you. So just to go back to my question, you would agree that the government does have a responsibility to provide housing that is safe?

Kevin BELL: Well, yes, of course – the right to housing and the ordinary democratic responsibility of government is one which, I have argued elsewhere, involves the provision of housing or the creation of a housing system through various structures which bring about that result. But that is not the only responsibility of government. It is possible to have two ideas in one's mind; indeed it is legally necessary to have two ideas in one's mind.

Michael GALEA: You referenced a desire for a consent-led process. Do you define consent as being required to be unanimous by tenants, or a majority? How would you define that, and if there was a majority that were happy to move to newer accommodation but a minority were not, how would you then address that?

Kevin BELL: The history of projects like this being done in other jurisdictions, and I have in mind Finland, Italy and parts of Africa where similar issues have been raised, is that the best way to go forward is to set up representative organisations among the people affected and to work with those representative organisations towards getting an agreed result. Things such as disagreement within the organisation are a matter really for the organisation itself to resolve. But the government in this instance has nowhere to go, because it has not created those organisations. The tenants themselves quickly organised in response to the events that happened, which demonstrates their capacity to organise in response. All this should have happened earlier, through which the kind of issues that you, Mr Galea, have raised could have been addressed.

The CHAIR: I think your time is up, Mr Galea. Apologies. I am going to hand over to Ms Gray-Barberio now.

Anasina GRAY-BARBERIO: Thank you very much, Chair. I am going to ask my first question to LIV. Homes Victoria and Minister Shing have repeatedly said that residents have a right to return to the redeveloped sites. In your submission you say that the Department of Families, Fairness and Housing policy does not guarantee a right to return. Could you provide some examples that would rule out a resident from being able to return?

Bill SWANNIE: Looking at the department's policy, there are numerous situations where a person would not have a right to return. For example, the eligibility criteria in the relocation manual say a tenant cannot move back to the redeveloped housing where, firstly, they no longer meet the department's income or asset limits. So if a person's income increases or if they need to get a new job to meet the cost-of-living situation, then that could potentially mean that they are ineligible to return to the redeveloped location. They are no longer eligible if the housing size guidelines do not comply. Picking up the example that was given earlier, if originally the family that was living in the property was a three-person family and it is reduced to a two-person family, they may not be eligible to return to a similar property that they lived in before. If there is a warrant for possession that has been executed for rental arrears – for example, due to a circumstance outside the person's control – then that could be an example of when they would not be entitled to return. If there is a breach of the tenancy agreement – for example, a nuisance caused by children making noise or something like that – that would be a possibility in which they would not be eligible to return to the property.

Anasina GRAY-BARBERIO: Thank you. I appreciate that. In your opinion, has the government used misleading language?

Bill SWANNIE: There is the potential for residents to be confused, to be unclear and to be uncertain. If they were advised that they had a clear or certain right to return to the property, then that is certainly not what is spelt out in the department's relocation manual. As I mentioned before, it is a very qualified right to return. It depends on various factors. So there is at least cause for uncertainty and confusion amongst residents who were advised that they did have a right to return.

Anasina GRAY-BARBERIO: Given that the majority of public housing residents are from multicultural communities, is this relocation manual available in any languages – community languages?

Bill SWANNIE: We understand that it is only available in English, and again, it is not available in any other language as far as we are aware, so it would not be readily available or understood by many residents in the housing development.

Anasina GRAY-BARBERIO: Therefore would it be fair to draw a conclusion that it is not an accessible policy for public housing residents, especially those with English as a second language?

Bill SWANNIE: It is fair to say that it is not an accessible policy.

Anasina GRAY-BARBERIO: Thank you. I appreciate that. Honourable Kevin Bell, my question to you is: in your opening statement, you said a complaint is being escalated to the United Nations regarding the demolition plan. This comes after cases to the Victorian Ombudsman and the High Court, and now it is the United Nations. Do you think this should be sending alarm bells to the government that this plan should be cancelled?

Kevin BELL: I do not call for the cancellation of the plan, because I do not have the information available to be able to make a decision about which way we should go forward. What I submit should happen is that there should be a pause. There should be a regroup. A human rights based approach should be adopted. The applicability of the human right to housing to the circumstances should be recognised. And lastly, and going directly to your question, information should be shared with those interested about the rationale for the project, whether there are alternative means for achieving the same end, and that information should be shared with the representatives of the tenants and the broader community, because submissions to this committee have demonstrated that the broader community is interested in that issue.

Anasina GRAY-BARBERIO: Thank you. Still on you, Honourable Bell, your submission says that under international human rights law people can only be displaced or relocated in projects like this if certain strict conditions are met. Can you explain what those conditions are, and in your view, has the Victorian government met any of them?

Kevin BELL: No, I do not think it has. You say 'any', which means 'is there one that it's met?' – I do not think so. The development model which the government has applied is the model of the private developer, which is that the developer owns the land and can implement a development project in whatever way it sees fit. It has not adopted a human rights-based approach, which brings it into direct collision with its international and, possibly, its domestic human rights obligations.

Anasina GRAY-BARBERIO: Thank you. I have run out of time.

Kevin BELL: Yes.

The CHAIR: Thank you. I will hand over to Mr Batchelor.

Ryan BATCHELOR: Thanks, Chair. Mr Bell, thank you for your very thoughtful submission. Reading it recently, I thought it was very thoughtful and considered. Given something you said in your opening remarks, I am going to direct my question to the law institute.

Kevin BELL: Sure.

Ryan BATCHELOR: Mr Swannie, Ms Nielsen, your submission makes reference to the proceedings that were before the Supreme Court. At the time of writing your submission those proceedings were still on foot, the justice had not finalised the decision – that was handed down. Are you able to supplement your submission by way of oral evidence to tell us what the judgement found?

Bill SWANNIE: Well, we should clarify that we are not involved as lawyers in that proceeding. We simply relied on that proceeding to make certain points in our submission, and those –

Ryan BATCHELOR: Yes. You referred to it and it had not been finalised, so the committee would benefit from some evidence about what the Supreme Court found at first instance in this matter.

Bill SWANNIE: Well, in our written submission we have referred to certain findings which were made as part of that proceeding, and what is most relevant for the purpose of this inquiry and this committee is the finding that there was not consultation with residents prior to the announcement being made. So –

Ryan BATCHELOR: You think that is the most relevant consideration for the committee?

Bill SWANNIE: If there is a point that –

Ryan BATCHELOR: The issue I have is that we have had a lot of submissions about the case, but people have not given us submissions on what the justice actually said in the final decision. So it is a little difficult for the committee to be told what people said to the court without actually hearing what the court said in and of itself. The justice had to weigh up these issues – it was presented with all of this evidence in a very similar way to the way that evidence is being presented to this committee – and had to consider whether there was adequate consideration given to the human rights of the claimants and the class members that were before the court, whether there were alternative options that the CEO of Homes Victoria could have undertaken in making the decisions that were being challenged. And ultimately my understanding and my reading of the case – and I am happy for your perspective – is the Supreme Court basically said that having made all these considerations, the CEO of Homes Victoria did consider the issues associated with the renters and their rights; did consider issues associated with the applicability of undertaking an alternative course of action, such as a retrofit; did consider the benefits of additional housing that was being proposed for the sites; and in the end, balancing all of those considerations, found the decision to be reasonable. Would that be a fair summary?

Bill SWANNIE: I think it is unfair to comment on this decision at the moment because it is under appeal. The issue being dealt with by that particular proceeding was a much narrower issue than the issue being dealt with by this committee. It was dealt with in the technical way in which courts have to deal with those types of proceedings. But because that decision is under appeal – we know it is under appeal, and neither of us was involved as counsel or lawyers in that proceeding – we will let that decision speak for itself. It is available to this committee to read. We will not summarise that decision, but I think the two important points to make are that that proceeding was dealing with a much narrower issue than the issue before this committee. That decision itself is subject to the appeal process, and that will play out in the way that it does.

Ryan BATCHELOR: But surely the committee should have regard to what the court found.

Bill SWANNIE: Of course. The decision is publicly available to this committee.

Ryan BATCHELOR: Mr Bell, one of the things that we are grappling with – we have talked about what the government should do as a landlord. It is the manager of a significant capital estate. It is also –

Kevin BELL: I grew up in one of them.

Ryan BATCHELOR: Yes, exactly. But it has also got broader obligations as part of our democracy. I think those points are really well made. Part of the challenge that we have had obviously is that we have had an instance in the last couple of years where there was a set of circumstances that required the evacuation of two of the buildings in pretty quick time. The Elgin –

Kevin BELL: Are you talking about COVID-19?

Ryan BATCHELOR: No, I am talking about the Elgin Street towers in late 2022 when there was a catastrophic failure of the sewer stacks and the residents needed to be relocated within a 24 to 48-hour period.

Kevin BELL: Yes.

Ryan BATCHELOR: First of all, I think that was probably a reasonable action for the government to have to relocate people in those instances. Through that sort of incident, being made aware of the potential deficiencies that existed in the buildings, do you think it is reasonable for the government to then embark upon a long-term assessment of the adequacy and have a plan to deal with potentially similar issues that might appear given everything was built at the same time, with the same materials and with same construction methodology, the government should be taking a long, hard look at the long-term viability of the capital?

Kevin BELL: Unequivocally, yes. Unequivocally.

Ryan BATCHELOR: Thanks. Thanks, Chair.

The CHAIR: Thank you. I will hand over to –

Kevin BELL: But that is not the only thing.

Ryan BATCHELOR: Exactly. I am not saying it is.

The CHAIR: I am going to hand over to Ms Payne now.

Rachel PAYNE: Thank you, Chair. Thank you to you all for your submissions and for presenting before us today. I want to move back to the discussion around human rights. Your emphasis in your submission is for a human rights approach. That obviously should have been adopted through the decision-making process, so I would like to know, in your view, what should a human rights based approach look like, and what would indicate decision-makers fulfilled this process?

Bill SWANNIE: Sorry, what was the last part of your question?

Rachel PAYNE: What would a human rights approach look like, and what would indicate decision-makers have fulfilled this?

Bill SWANNIE: A human rights based approach would inherently and necessarily involve ongoing consultation with the people impacted by the decision. It would require that full information is provided to them in terms of the potential impact of the various options on them, on their living circumstance, on their home and on their family and it would involve giving full, detailed information about what options they have in terms of options to stay and options to relocate. It would necessarily involve the government and all government entities receiving feedback from impacted people and taking that information into account in terms of reconsidering decisions that were made. So it would involve necessarily an ongoing and cyclical process where information would be provided, there would be feedback provided to the decision-maker and there would be various iterations I think. It would necessarily not happen just once in terms of consultation but would be an ongoing process as the process unfolded. We know that renovating a house takes time. Renovating high tower buildings takes a long time. It is likely to take longer than expected. It is likely to be more complicated than expected, but it would necessarily be an ongoing process where the government provides information, receives feedback from affected individuals, takes that impact into account and makes that publicly available as well, where it is a very transparent process.

Rachel PAYNE: So no surprises.

Bill SWANNIE: No surprises and particularly no nasty surprises.

Rachel PAYNE: Just on consultation, how could a lack of meaningful consultation impact residents? How has it impacted residents in your experience?

Bill SWANNIE: I have seen some of the evidence that has been presented to this committee in the last hearings. There seems to be a palpable sense of fear and anxiety amongst residents about the fact that they were not consulted before an initial decision was made, which is completely understandable considering the very major and severe impacts which this has on their lives; on their family; on their home circumstance; on their ability to access essential services, health services and other services; and on the relationships and communities that they have built up over such a long period of time.

Rachel PAYNE: Thank you.

Kevin BELL: Can I just add that in my written submission to this committee I go into what that approach would involve. In a subsequent law journal article, which I wrote on the basis of that submission – which I understand has been distributed – I also go into it at somewhat greater length.

Rachel PAYNE: Mr Bell, in your submission you refer to housing stock and that progressive realisation. Do you think that is enough of a justification for what the government is proposing?

Kevin BELL: No, it is not. It comes back to the question that was asked by Mr Batchelor before. Of course the government has a responsibility progressively to realise for everybody the right to housing. Housing and security of tenure in particular are the foundation of human life and flourishing. Without that, every other human right – participation in society, work, family, participation in culture and everything – is destroyed. The progressive realisation of that right is absolutely fundamental. So is absolutely fundamental the way that projects are carried out which have serious implications for people's homes. Therefore the two things must run together. Progressive realisation needs to be done in a way that respects human dignity.

Rachel PAYNE: Thank you. Thank you, Chair.

The CHAIR: Thank you, Ms Payne. I will now hand over to Mr Berger.

John BERGER: Thank you, Chair, and thank you all for your appearance this morning. I have heard a lot this morning about process, and I want to rationalise it in terms of what an outcome could be. Bill, if I could direct this question to you. Some of the outcomes, whether it is retrofitting or reconstructing a whole new facility, would be for people with disabilities. If we were to retrofit a building with the modern requirements for people with disability these days, I do not think it would cut it in some of these older facilities given some of the work that would have to take place. What is your view on that type of work or retrofitting an old building as opposed to a new facility that would provide modern and up-to-date facilities for people with disabilities?

Bill SWANNIE: That does sound to me like an architectural question, which I am not really well placed to answer.

John BERGER: It is more about an outcome – people having the ability to have more facilities that are usable and workable for them – given that the people we are talking about are elderly, vulnerable people that will be affected by these outcomes. Would they be far better served by the government putting in place better facilities for them?

Bill SWANNIE: Absolutely. People with a disability deserve and have the right to the proper accommodations and the proper supports in their house. If that is possible through retrofitting, then that is the ideal outcome because that would involve less impact on their right to a home. If they did not need to be relocated at all or if they could be relocated temporarily and be able to move back into their home after those accommodations were made, then that would be an ideal outcome. From a human rights approach, that would be an ideal outcome. Of course vulnerable people need the supports which they need to live their lives to the full extent. If retrofitting is possible, then that is fully supported by a human rights approach such as the one we have outlined.

John BERGER: Retrofitting an older building such as the ones that we are talking about, you are talking about 40- to 50-year old buildings that might not have the structural capacity to be able to take such changes to

their environment. I just do not see how it follows that you would want to do that if you want to provide people with disabilities a better outcome.

Bill SWANNIE: I cannot speak to architectural questions. Obviously, the law institute is presenting human rights and legally based arguments, but we cannot –

John BERGER: I am talking about outcomes – you know, what is going to be a better outcome for people into the future, as opposed to a legal argument.

Bill SWANNIE: Well, in terms of outcomes, it really comes back to the question earlier about consultation with the residents. The residents need to be fully involved on an individual level and through representative groups, as we have discussed, in what is the best outcome for them. I cannot predict that outcome, and it is only through a proper consultation process that the best outcome for individuals and for communities could actually be determined.

John BERGER: Thanks, Chair.

The CHAIR: Okay. Thank you, Mr Berger. I will now hand over to Mr Puglielli.

Aiv PUGLIELLI: Thank you. Good morning. I am going to begin with questioning for the Law Institute of Victoria. The committee has heard now from four community legal services assisting residents through relocation processes. All of them have shared with us examples of residents being provided with either incomplete or misleading information from Homes Victoria staff. We have heard examples of people lacking provision of interpreters, people being provided with only the contract signing page and people being told they would need to pay their own moving costs if they did not sign by an arbitrary date. Do any of these points align with an approach that most people in our state would expect from the government in dealing with often vulnerable and marginalised residents?

Bill SWANNIE: Those examples that you have given are terrible; they are shocking examples. They certainly do not correspond with the human rights based approach which we have outlined. As Kevin mentioned before, those examples are deplorable. They do not represent fairness, and they do not treat residents with dignity.

Aiv PUGLIELLI: Thank you. Given those points, is this current relocation process that we are seeing in Victoria genuinely a voluntary one or is it more akin to forced displacement?

Kevin BELL: It is a forced displacement situation.

Aiv PUGLIELLI: Which is horrible to think –

Kevin BELL: I think that is really clear. This is not a process based upon seeking the consent of the persons affected. It is a process based on the assertion of power by a government towards people in positions of extreme vulnerability, many of them elderly, who have been resident in their homes for a very long time. It is certainly not voluntary. It is backed up by the threat of eviction. Unjustified eviction is forced displacement where it is directed at populations; this is a population of 10,000 people. Of course it is forced. That is the threat. Of course it is a forced displacement.

Aiv PUGLIELLI: If what we hear going forward is that this behaviour is more widespread, do we expect that these contracts would hold up legally?

Bill SWANNIE: We could not comment on that issue, but those sorts of contracts could be open to legal challenge. To reaffirm the point made earlier, for it to be a voluntary relocation, it would have to be based on accurate, full information, and what we have heard, the evidence that this committee has heard so far, is that people are choosing to move out based on incomplete or inaccurate information; it is not a voluntary process.

Aiv PUGLIELLI: Thank you. Mr Bell, in your submission, you talked about the difference between a lawful eviction and an eviction that interferes with someone's rights, or arbitrary interference. Based on international law, where do you think the government's actions fall, currently?

Kevin BELL: They fall on the wrong side of the line. The reason for that is that they have not sought the consent of the tenants. They have not shared information with the tenants or with their representatives or the broader community. They informed the residents after the decisions were made and consulted them only about the implementation of the decision. They did not treat with the tenants and their representatives about what options might be available. I do not believe there is a guaranteed right of return. I am confused about that. I believe that the residents will be confused about that. I think that confusion feeds into a fear which deprives them of negotiating power, and that is an unequal situation in which to be consulting people about their future. There are many, many aspects of this. There is just no question in my mind that what is being done in the manner it is being done is in violation of human rights, but that is for others to decide, and that issue will be taken to the United Nations, as I have said.

Aiv PUGLIELLI: Thank you. What does it mean, legally and practically, if public housing tenants who are relocated as part of this project fall under a legal definition of ‘internally displaced persons’? What rights would apply to them in that situation?

Kevin BELL: That is an international law question at the moment. That is the problem with the *Charter*. The *Charter* is weak in certain respects, and that is one of them. The right to housing is not included, nor is there a right of private action in the *Charter*. That is another problem which should be fixed. In international law terms, the fact that there has been this breach and that they are being displaced means that they have a right to a remedy against the government. The special rapporteur and other UN processes would determine what that right of redress is, but there is a right of redress in circumstances where that kind of violation happens.

Aiv PUGLIELLI: Thank you.

Kevin BELL: It is not one that Australian law currently recognises. But I earlier mentioned the important ways in which the Prime Minister and the foreign minister referred to human rights in the current situation and the significance of not picking and choosing which rights you choose to refer to and obey.

Aiv PUGLIELLI: Thank you. That is my time.

The CHAIR: Thank you. We have a little bit of time left for a few more questions, so instead of having 5 minutes per person, we are going to just go one line of questioning each. I will go to Mr Batchelor.

Ryan BATCHELOR: Thanks. Just very quickly, it builds a little bit on what Mr Berger was asking, but one of the challenges we have got is we have got to balance a whole lot of stuff. We have got to balance people’s rights to have housing, to be engaged, to be consulted, people with disabilities’ rights to have doors that are big enough for their wheelchairs to get through, which currently, if you live in any apartment in any of the towers, does not exist. How do we go about balancing those rights? And at what point does the government have an obligation to ensure that all of the housing that it is providing is meeting contemporary standards rather than standards that existed when the buildings were designed in 1963?

Kevin BELL: Human rights is not a kind of basket into which you throw this consideration and that consideration, shake it all up and see where the balance lies. It involves balancing, but it involves balancing of a particular kind. Human rights does not tolerate disproportionate effects on people enjoying current interests in order to achieve generalised outcomes through flawed processes.

Ryan BATCHELOR: Generalised outcome being compliance with the *Disability Discrimination Act*?

Kevin BELL: That is an important outcome. You asked me something like that before, and I said unequivocally governments should be interested in improving housing quality, and I would say to the other question yes in making sure that housing is fit for occupation by disabled people. But those outcomes can be achieved in all sorts of ways, and they should not be achieved at the expense of people’s process rights, because those process rights will inform the way that things can be done, possibly in a way that protects their security of tenure. The idea of it just being a question of one big, enormous balance, I want to submit to you –

Ryan BATCHELOR: Last question on that point. The process – everyone’s process rights individually or the process right collectively?

Kevin BELL: It is both. If this were a planning issue involving 10,000 people in a suburb, I can say to you as a former president of the Victorian Civil and Administrative Tribunal that had responsibility – that is the state planning tribunal – that would have been done through a planning panel and anybody interested, individually and collectively, affected by the redevelopment would have had the entitlement to come and speak to that committee or to that planning panel. So both – individually and collectively.

Ryan BATCHELOR: Consent?

Kevin BELL: Seeking consent.

Ryan BATCHELOR: Right. Sorry. I was not clear on that.

Kevin BELL: Seeking consent. I am not suggesting to you that a tenant has the right unreasonably to refuse consent to a development which may be necessary in the public interest for all sorts of reasons – the one that you have mentioned, sir, or the one that you mentioned before. But in order to create a situation in which there is some amelioration of the inequality of bargaining power between tenants on the one hand and government on the other, their consent should be genuinely sought.

Ryan BATCHELOR: Thanks, Chair.

The CHAIR: Thank you. I will hand over to Ms Payne.

Rachel PAYNE: Thank you, Chair. Mr Batchelor did touch on some of the things that I did want to raise, but I just want to go back to the *Human Rights Charter* and that attribute of a protection around the right to housing. As a committee, we make recommendations, and a report will be established and recommendations handed to government. We have been here before where recommendations have been made for the *Charter* of human rights to be amended to include housing as a human right and that attribute to be quantified. Do you feel as though if the *Charter* was rigorous enough to establish that right to housing that we would be in this position now?

Bill SWANNIE: If the government was required to consider the right of everyone to adequate housing, this potentially could have resulted in a very different situation – I mean, different terms of reference in terms of this inquiry if there was an explicit right to adequate housing. All the rights in the *Charter* are rights which government and government entities have to take into account whenever they make a decision which potentially impacts on peoples whose rights are infringed. So if there was a right to adequate housing, that would be something which the government and all public authorities would have to take into account.

Rachel PAYNE: I know as legislators each piece of legislation that we review goes through a committee process which establishes its connection to the *Charter* and makes sure that it is in line with the *Charter*. In this instance, what is happening is it is not coming through Parliament, so that is where I am just wanting to clarify: if there was the establishment of the protections and that attribute within the *Charter* of human rights, would there be something that could be done not inside Parliament but potentially within a law court?

Kevin BELL: Yes. The Supreme Court proceeding would have been different. The right to housing would have been expressly at issue. The right to home was the one at issue before the Supreme Court; that is a different and smaller right. The right to housing expressly includes rights which cover this situation. I call for the right to housing, again, to be included. I call for the strengthening of the *Charter*. The *Charter* is not fit enough for purpose anymore in all sorts of ways, and for peoples' human rights to be protected it needs to be strengthened significantly in that respect at least.

Rachel PAYNE: Thank you. Thanks, Chair.

The CHAIR: Ms Gray-Barberio.

Anasina GRAY-BARBERIO: Thank you, Chair. This select committee over the course of a number of hearings has heard evidence from multiple public housing residents of examples where they have not given their consent, they have not been made aware of Homes Victoria staff in relation to relocation, their rights – they have made it very clear to the committee there has been a lack of trust and meaningful engagement, as you spoke to. You have also spoken about the history of stigma and discrimination against public housing residents in Victoria and that the mindset of the government is like that of a private landlord who has full powers of

ownership over public housing, and the exercise of that power imbalance has been very clear. Do you think the tower redevelopment plan shows that same kind of attitude?

Kevin BELL: Are you directing that question to me?

Anasina GRAY-BARBERIO: To anybody, or both.

Kevin BELL: Bill?

Bill SWANNIE: The process that this committee has heard about in terms of how the residents were advised about this decision demonstrates that a human rights approach is not being taken at the moment. It indicates unfortunately that although the *Charter* has been around – it will be 20 years next year – that human rights approach has not been adopted widely by government and by government institutions. Unfortunately it shows that Homes Victoria is not demonstrating a human rights-based approach and that education is needed, a change of culture is needed, in terms of how government approaches these issues, in terms of respecting people's rights, when it is making such huge decisions as the one we see here which impacts 10,000 people and it impacts them on a very intimate and on a very personal level in terms of the security of their house and their living circumstance.

Anasina GRAY-BARBERIO: Thank you. Would you like to add anything?

Kevin BELL: I agree, and I otherwise rely on what is in the article.

Anasina GRAY-BARBERIO: Thank you.

The CHAIR: Okay. I want to thank everyone for their evidence today. It is really much appreciated. That brings this session to a close. You will be given a proof version of the transcript.

Kevin BELL: I thank every member of the committee for their time.

The CHAIR: Thank you very much. Have a good day. Appreciate it.

Witnesses withdrew.