T R A N S C R I P T

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

Inquiry into the adequacy and future directions of public housing in Victoria

Melbourne — 9 February 2010

Members

Mr B. Finn
Ms M. Kairouz
Mr W. Noonan
Mr J. Perera
Mrs E. J. Powell
Mr J. Scheffer
Mrs H. Shardey

Chair: Mr J. Perera
Deputy Chair: Mrs E. J. Powell

Staff

Executive Officer: Dr J. Bush
Research Officers: Dr T. Caulfield, Ms T. Roy

Witnesses

Justice Kevin Bell, president, Victorian Civil and Administrative Tribunal, and
Mr B. Chen, senior associate to Justice Bell.

The CHAIR — Good morning and welcome to this hearing of the inquiry being conducted by the Family and Community Development Committee. This inquiry is investigating the adequacy and future directions of public housing.

All evidence taken at this hearing is protected by parliamentary privilege as provided in the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and where applicable, the provisions of reciprocal legislation in other states and territories. Any comments you make outside this hearing will not be afforded such privilege.

We are recording these proceedings and you will be sent a copy of the transcript. You will be able to make minor adjustments to the transcript if necessary. We have 45 minutes and I hand over to you to make opening comments, which will be followed by our questions.

Justice BELL — My name is Kevin Bell. I am a justice of the Supreme Court of Victoria and the President of the Victorian Civil and Administrative Tribunal. I have with me my associate, Mr Bruce Chen.

The CHAIR — You are most welcome.

Justice BELL — I trust that is enough by way of introduction.

The CHAIR — Yes, thank you.

Justice BELL — I feel personally engaged in this subject because I grew up in public housing. My young parents, of whom I was the first child, were allocated a house in 1954 or thereabouts in Broadmeadows and I spent the first couple of years of my life there, I am told, although I have no memory of it. I am told that I frequently got lost in the streets of Broadmeadows and that was perhaps enough to convince my parents to move back with my father's parents who were themselves living in public housing in Highett in the southern suburbs.

We moved into a bungalow out the back of that public house and at that time my father who was the eldest of his family, as I am of mine, had brothers and sisters. So you have a perfect picture of a multigenerational family and a very good example of the use of public housing. One wonders in those days what might have become of my parents and indeed of me had I not had that opportunity.

But it did not end there because at about four years of age my parents — by that time having, I think, three children; they went on to have eight — moved not far away to Moorabbin, to public housing there. My mother was not working and my father was a lowly clerk — I think he would say that — in the public service. They had very little money and no chance at all of buying a house.

I grew up in that public house in Burt Crescent, Moorabbin, though it is now called East Hampton, I am told: I make no comment about that. Again, my parents allowed my mother's parents, my grandparents on that side, to live in a bungalow out the back, that was built for them. Again you have the perfect example of one generation supporting the next and public housing working in the way that it should.

Again I contemplate what might have happened to them had that not been so. The eight children who comprised my brothers and sisters grew up in that small three-bedroom house, four to a room, until regretfully my grandparents died and then the two older boys, me and my brother, moved into the bungalow out the back. So it was until I was aged 18 and moved out of home in the first year of my university life leaving my then family to live in those premises.

I reflect on all of that and emphasise the significance of public housing to the growth of my own life personally and to the opportunity for housing which was given to a number of generations of people. Therefore I feel very engaged in this particular subject.

Moving on: I am speaking to you in terms of the position I hold as the president of the tribunal. In that regard our Residential Tenancies Act 1997 is important, because it gives the tribunal the responsibility to hear and determine disputes in Victoria between landlords and tenants relating to rented premises. This of course includes the director of housing who as a landlord provides social housing, as I prefer to call it, to a large number of Victorian residents.

It is important, however, to note, as you will realise, that the director is not the only social housing provider. We now have a most interesting pattern of providers that range from business providers for profit right through to social housing providers that are NGOs and charities of various kinds. We engage with all of these social housing providers in various ways, making no distinction, though of course the director is the chief among them.

The legislation was first enacted in 1980. Over 30 years VCAT and its predecessors have developed various ways to deal with the special issues that are generated by applications to the tribunal in social housing cases. Some statistics might be useful. In the year between 1 July 2008 and 30 June 2009 there were — I will round up — 12 000 residential tenancy cases to which the director of housing was a party. Almost all of those were applications made by the director as the landlord and almost all of those were applications for possession of the premises against the tenant. I will give details of that in a moment.

I do not have the figures with respect to applications by other social housing providers but they would be, I think, in the number of about 1000, having regard to the number of providers there are and to their spread throughout the community. But do not take that as gospel, shall I say; that is a best guess by me.

I am not sure how much the committee will be aware of the terms of the Act, but I will make a few points by way of introduction. If you need to know more, I can answer questions or tell you later.

The Act makes no distinction between public and private housing and gives all landlords the right to regain possession when the statutory criteria are met. The orders that could be made for possession are triggered by these conditions: where the tenant has breached a provision of the Act, including by causing damage to premises or a danger to neighbours; where rent is unpaid for 14 days after it is due; where the landlord is changing the use of the premises — that is, to demolish, renovate or sell the premises; or indeed where there is no reason at all, which is on six months notice usually.

There are a whole host of policy issues that arise with regard to the content of these provisions. It is not my purpose here today to go into any of that, but rather to deal with this interface between social housing and the tribunal as the regulator of the system.

The time given in the notice to vacate, by which the tenant is to vacate, depends on those circumstances I have just described. Notice to vacate can be immediate in cases of danger to property or people, 14 days where the rent is unpaid, or 120 days when the notice is given for no reason — so it is not six months, it is 120 days.

The majority of cases heard where the landlord is the director and in other social housing provider cases are for rent arrears. We made about 6000 orders in possession applications last year, and most of those were triggered by rent arrears issues. The legislation covers this subject specifically. It gives in section 246 an entitlement to the landlord to serve a notice where the rent is overdue for 14 days, and then there is an entitlement in other provisions of the Act for the landlord to make application for possession.

When such an application gets to the tribunal, the tribunal must — I repeat 'must' — make an order for possession except in certain circumstances. They are very limited; the one that needs to be mentioned is that in section 331 there is the capacity on the part of the tribunal to dismiss or adjourn an application where the tribunal in case of rent arrears considers that, and I quote:

> … satisfactory arrangements have been or can be made to avoid financial loss to the landlord …

So you can see that there is a statutory moderation of the compulsive requirement to make an order for possession but strictly regulated by the condition that the tribunal must be satisfied that there are satisfactory arrangements that have been or can be made to avoid financial loss to the landlord.

The first point I would want to make to you is that this is a very important provision both in the private and the public sector. But coming to the point here, in the public sector this is a very important provision. It is the chief means by which the strict operation of this possession recovery system is moderated in favour of tenants, who can be given another chance to regulate their affairs and to catch up with the rent.

Just think about what would happen if this was not so — you would have tenants on the street, you would have permanent housing problems converted into short-term housing problems, which would then be converted into

emergency housing problems. So you certainly would not be avoiding any problem; you would just be creating a problem or re-characterising a problem. Regrettably that sometimes has to happen because you have tenants who just do not pay the rent.

But this system that we have at the present allows the tribunal, with the director, who of course fully engages in these discussions, to try to reach a satisfactory arrangement and therefore avoid the eviction of the family, as it usually is.

In terms of rent arrears cases, there is an issue that arises because of the calculation of rent in respect of social housing. As you will be aware, rent rebates are applicable, depending upon whether, for example, more than one person is living in the house. Because a child may be born or because of the number of children that are there already, because a child becomes eligible for a Centrelink allowance or because one or other of the household members gets income from work — all of these things impact on the calculation of the rent rebate.

The tribunal understands that the director of housing tenants pay rent equal to 25 per cent of the household income to a maximum of the cost rent — that is, the market rent to the director. All of these issues I have just described impact on what that 25 per cent figure may be. It can go up and down, I guess like a buoy on the sea of life, going up and down as the family's circumstances may change, so the rent may change.

The tribunal is required to know what the rent is, because if the rent is in arrears, then there is a statutory requirement to order possession, and we have to be sure that arrangements can be made to repay amounts of rent arrears because of this moderating provision to which I have referred. But it is not quite so easy in public housing cases, because it is quite difficult to work out what is the rebated rent and what is not. Often it is unclear because of the rapidity with which a family's circumstances may change.

So that is an issue that concerns us. I am not suggesting that there be any change; I am just bringing to your attention an element of the working of the system that does impact on us.

I point out to the committee that for rent owed, due to rebate calculation, problems can sometimes amount to several thousand dollars, particularly if the tenant is late in providing the required information. That may be because the tenant has a partner who has moved in and the tenant has not told the director or it may be for other reasons.

The rent arrears cases generally fall into two categories. The first is the category where tenants have simply not paid the rent, and the second is because of rent arrears that have occurred because of a change in circumstances and therefore a recalculation of the rebate was necessary, in the way that I have just described.

Can I go now to what the tribunal does in these kinds of cases. Firstly, as to the venue, we try to hear cases throughout the state at the venue closest to the rented premises. I am personally strongly in favour of the regionalisation of the tribunal to improve its accessibility to people in both the outlying suburbs of Melbourne and the country regions of Victoria. We do our best in regard to the premises to which we have access to take our form of justice to the community but I would like to see us greatly improve in that regard, and I have made certain recommendations to the government in this respect.

I must say to you that it was because of the inaccessibility of the tribunal to tenants generally and social housing tenants in particular that I had this recommendation particularly in mind. I am not saying that only their circumstances informed that recommendation, but I had it very much in mind. Our rate of appearance by tenants was so low that there seemed to me to be a real access issue. Thus the issue of regionalisation is one that I think is important. It is a recommendation that I think would be welcomed by the director and other social housing providers, although they can speak for themselves, because the closer we are to them and the place of administration of their business or agency, then the better it is for them from a lot of points of view, including efficiency.

The vast majority of cases in social housing applications are applications for possession, usually for non-payment of rent, and 80 per cent of those are not defended by the tenant. So the vast majority of our work in this area is done with only one party present. That is a disturbing fact of life, and not just for the tribunal in Victoria. I have witnessed tribunals elsewhere in the world and in this country and it is the same story. As a community we need to think about the access barriers that produce that result.

Mr SCHEFFER — How does that compare with the private market?

Justice BELL — I think probably a few more public tenants appear than tenants in the private market, for one reason or another. The figures are not quite so bad in public housing, but they are still bad and of concern.

What do we consider? When the tenant attends the hearing there is quite a lot we can consider and do. The tenant is encouraged to tell their story and outline the reasons the rent has not been paid and what is their likely future situation. We are then able to determine the likelihood of a repayment order being successfully made, taking into account the considerations I mentioned earlier. Then we can make an order under the Act that requires the rent to be repaid but dismissing or adjourning the application for possession.

If a tenant appears at the hearing, then the order that might be made could be and typically would be small. No-one, certainly not the provider, is after blood here, and $10 a week to repay the rent is a typical order that might be made — at least progress is being made and the tenant is being called to account for non-payment. In the vast majority of cases all is well and the matter is resolved. It does not concern us that the order for repayment might be made with respect to a lengthy period of time. You cannot get blood out of a stone. If the tenant is living on social welfare, then there is only so much money to go around, and if the tenant is able to pay $10 a week and does, then it does not matter that it takes three years to pay an amount of money. That is the position of most providers, certainly the director. That is the position that the tribunal generally takes, and it is a position that works. We would not want to see any change to that sort of flexibility. We think it would be deleterious to the regulation of the scheme.

All is well therefore when a tenant appears — something can be done. But when they do not appear, that is when the wheels really fall off. Because the tenant is not there, there is nobody to deal with, no promises can be made and no discussions can be had and no ADR can be carried out — there is just nobody. You have a landlord wanting the premises back. Of course there is a waiting list. We do not want premises occupied by people who are not paying their due rent when other people will. There is a priority issue that needs to be addressed, so there can be no question that the statutory scheme for the recovery of the possession will not be administered according to its letter. The result that normally follows the non-payment is an order for possession is made in circumstances where the tribunal has no idea of what are the family circumstances back at the home. We do not know even why the tenant has not come. There may be good reason for that. I have no doubt that in many cases there would be and that the very fact of non-attendance is due to the family circumstances which have produced the non-payment. So you have this cycle of disadvantage feeding on itself and resulting, in many cases, in orders for possession, leading to eviction, leading to emergency housing or short-term housing problems and so on.

Today I am here to advocate to try to do more to get tenants into the tribunal in order that we can avoid these deleterious social and downstream economic consequences arising from non-attendance by the tenant. We should be doing more, I think, to produce that result. In the review I look at a range of options. The government is considering the release of the review document. If and when that happens, it will be a public document so that these issues, as I discuss them there, can be examined.

Here I say to you that taking justice to the people is an important concept in this regard. We need to get the tribunal out into the community, into country communities and metropolitan communities. Lots of families struggling along just put the notices on top of the fridge and do not even open the letter, and there the notices pile up one after the other. There are bills going through various colours to red and then notices to vacate, notices of hearings and all the rest of it, and they just sit there due to the stress involved in confronting the issue. I am sure that happens, and it is a pity.

I envisage a system which takes more account of the realities of life from the point of view of tenants in that position. I am not forgiving of tenants who just ignore things for no reason because they are thumbing their noses at the system, who have been given lots of chances and just keep refusing to participate — there are a hard core of people in that category — but there are many other families who are not and for whom we can do better.

Things like telephoning tenants before the hearing to inform them of when the hearing is on is something worth trying, but there is a cost. There are 10 000 cases a year, so if we telephone every tenant, remembering that most of them do not turn up, that is 8000 calls a year, and there would be a few staff involved in that as you can see

straight away. We do not have those staff. We could try hearings not just in regional offices — which I hope to see established — but in other venues local to communities such as churches and community centres. We could have VCAT mobile so we could send a mobile facility into local communities and have hearings there. We could maybe have telephone hearings because a lot of these things are not defended, so why not have a telephone hearing in a non-defended case so then you have the discussion happening by phone? Often the tenant will not talk to the director at all and the application for possession is frustrating for the director — just having to do something — and maybe a telephone hearing would at least get the tenant to speak to the director.

Alternative dispute resolution is another aspect of this. I would like to see the tribunal be a centre of excellence for ADR, and we have a real opportunity to improve access to justice through adopting this means within the residential tenancies area. Why not have telephone mediation and all the other forms of ADR? Let us think about that and keep tenants in housing where they are able to demonstrate a capacity to satisfy the statutory criteria. This means you have not got people going on to another kind of waiting list. They are in housing already so they are not going onto an emergency waiting list or a medium-term waiting list; they are not on any waiting list — they are in housing. That seems to me to be an important part of the issue.

When an order for possession is made the landlord takes control of the process and has a statutory right to make application for the warrant, and the police have a statutory obligation to execute the warrant, normally in conjunction with the landlord. The police will attend the premises, change the locks, remove the tenant physically if necessary, and such is as you would expect.

There is some humanity in the way the process is carried out because some little time can be given for tenants to get their possessions together and leave, but if physical possession needs to be taken, it definitely will be. The warrant of possession is issued after the request by the landlord, and that can be done at any time within six months of the order. If the warrant is not requested within six months, it lapses. So there is a six-month window within which the landlord may request the order.

What happens in the meantime — we are not aware of. In director of housing cases it is our understanding — and we applaud this — that the landlord normally gives the tenant another chance to pay off the arrears, and no doubt in many cases the fact that the warrant is hanging over the tenant's head is the reason they actually do in the end cooperate. There seems to be no reason to change any of these arrangements so as far as we can see, and we have not seen any submissions to that effect.

With respect to the making of orders for rent arrears, I think I have covered a few of the reasons we might make orders, but in view of the significance of the subject I will develop that, and then I will need to stop for questions. I have said the weekly amount to be paid is normally modest. I do want to emphasise that sometimes we see tenants who want to pay unrealistic lump sums and we refuse to allow them to do so. Some tenants are really scared of losing their houses and we sometimes get other people — families and friends — wanting to make weekly or monthly payments and so on. We normally do not allow that because the experience of the tribunal is that it leads to disaster, so we try and deal personally with the tenant because it is their household income that is normally the only viable income source for the tenant. Other income sources are normally temporary and promises to make weekly repayments are often not kept.

Cultural and medical issues are always taken into account. There may be family reasons, medical reasons and the other vicissitudes of life that might lead to the reasons for non-payment. So, in effect, where there is a repayment order it is as if the director is loaning the tenant the money and it is being repaid back to the director. We are happy to cooperate with those sorts of arrangements; we see them as appropriate exercises of the statutory power that we have. I think I have probably covered enough of the other issues that I have in the submission. Of course if there is default, then there can be recovery action and so on.

I have some statistics for you: I spoke before about the number of applications being about 6000 — that is in the case of possession by the director. Actual possession orders between 1 July 2008 and 30 June 2009 — and I will round down — were 2200. The majority of those applications were rent arrears. Of those, only 580 warrants of possession were issued, and of those only 110 were executed. So you can see the brake on the system. You have pre-negotiation between the director and the tenant before the application for possession is issued; you have about 6000 applications issued; then you have all manner of discussions inside and outside the tribunal about the issue. Then you have repayment orders resulting in the adjournment or dismissal of applications but about 2200 possession orders were actually made out of about 6000 applications for possession orders. Of those, only

580 warrants for possession were actually issued and 110 were executed. So we are down to a low number, but it is a number reserved for those cases where possession and recovery is really required.

There are other reasons for possession applications, which are quite serious. Malicious damage is sometimes a problem, with tenants trashing or damaging premises. It is a terrible problem. The tribunal is empowered to authorise recovery of possession of the premises in such instances. Another problem is disturbance and nuisance to neighbours, which is also something that comes to our attention and which we have to resolve.

Can I finalise on the issue of tenant attendance and support so that might lead into discussion? We are disturbed by the fact that there are so few tenants attending both private and public hearings, as I have already said. We have adopted a number of initiatives to try to address that. One has been to send an SMS reminder message to tenants whose mobile numbers we have, to remind them of the need to attend the hearing. That has resulted in only a 1 per cent increase in the number of tenants.

Although it is a small percentage it does mean in total that 130 more tenants actually attend. We are not laughing at that. This is a pilot scheme, and we are hoping to implement it more effectively over time. At the present time only 30 per cent of applications contain details of the tenant's mobile phone number, and we are working with all users of the tribunal's system to try to improve that, including the director of housing.

You can see the scope there to increase the number from 1 up, though 130 people actually coming in addition is an important thing in itself. It cannot be emphasised enough how important it is for this to happen. The experience of the tribunal, as I have explained, is that tenants get a better outcome when they attend. Tenants who do not attend get a much worse outcome when compared with those who do attend.

I think I will leave the rest for discussions. One thing I would like to stress is the importance of tenants' advocacy groups. In the country these are pretty well established and funded, I think, by Consumer Affairs Victoria — not so well in the city. I would like to see tenants advocacy to be a stronger feature of the system. We welcome tenant advocates.

They do not have to be legally qualified. If there are real legal issues in the case, it is better that they are, of course, but they do not have to be. There are many very good tenant advocates in the community. When I conducted the review for the tribunal I engaged in an extensive community consultation. I began in Mildura. The first speaker was a tenant advocate; I remember it well. She spoke very movingly about issues of access to justice by tenants in social housing in the regions. That is very much present to my mind.

I will make two quick points in conclusion. ADR is fundamental. The tribunal has a commitment to ADR. You have heard me say I wanted to be a centre of excellence in this regard. I think we have got scope to expand in this field — that is to say in the field of social housing provision. Why not have telephone ADR? Why not point of contact before the hearing? Why not roving mediation at hearings so we have got mediators in the waiting room plucking cases out for mediation when appropriate so they do not get to the hearing room?

I emphasise that in this area hearings are virtually mini-mediations anyway. If you went to a hearing, as I think I have been informed you wish to do, then you would see really a mini-mediation with discussion about how matters can be resolved and whether there are alternatives and so on, even at the point where the member is hearing the case.

I want to mention the Charter. The director and other social housing providers are public authorities under the Charter. I do not think that it is in dispute. My decision in the Sudi case stands for that proposition. There are several human rights possibly engaged by the director of housing and other social housing provider decisions, including eviction decisions, but most such decisions would probably be justified according to the limitation test in the Charter.

Nonetheless it is necessary to consider the implications of the Charter in terms of the administration of the social housing scheme. In other countries — for example, in the United Kingdom — the protection of human rights has been the saviour of the social housing schemes, because it has provided a rational framework for the making of decisions with respect to tenants and other social housing receivers in a complex environment where there is a mix of factors involved and you really do need a mechanism for resolving and adjusting the rights that turn on the disputes that occur in that setting.

We are only just learning about how the Charter can be of assistance in the regulation of administration of social housing schemes. It all sounds very scary, I know, but in fact it is a mechanism that I think has tremendous potential to assist the scheme in managerial terms.

The question of the failure to consider the human rights of tenants when making a decision with respect to social housing is a question that is currently reserved before me, and I will not be entering into discussion in relation to that subject. I think I have spoken a little over time. I am sorry, but I am very grateful for the attention which the members of the committee have given to me.

The CHAIR — Thank you very much, Justice Bell, for that detailed presentation and also the very impressive account of your personal life. I have a quick question: I gather that one of the major issues is tenants not presenting themselves for hearings. You were going to make a recommendation about regional hearings. Is that a permanent feature of VCAT or is it just for housing anywhere?

Justice BELL — No, it is a permanent feature of VCAT. I see a regional office however, Chair, as being a point of social engagement between the tribunal and the broader community. If we take, for example, Shepparton — I know Mrs Powell comes from Shepparton; I have got the issue in my hands about whether a regional office should be in Bendigo or Shepparton.

Mrs POWELL — Shepparton.

Justice BELL — I know that! I have been to Shepparton; you have strong advocates in Shepparton. I have looked carefully at possible options. But if it be Bendigo — and of course it is to be the government's decision, not mine — then maybe we can articulate the tribunal from Bendigo to Shepparton and have an outreach; I am talking about a physical presence there. You have a substantial migrant community there and I think a big Horn of Africa community — —

Mrs POWELL — Yes.

Justice BELL — And a Muslim community. Shepparton, if I might say so, is a shining light of multiculturalism in this country, and I really mean that. That has attracted me to the possibility of using Shepparton as a point of engagement, but I am not sure that the numbers there actually warrant a permanent physical presence of the kind that would be constituted by a regional office.

The answer to your question, Chair, is yes, I am talking about a permanent presence of the tribunal in all its jurisdictions, but with the capacity to engage in areas where there might be specialised need — for example, Shepparton.

Mrs POWELL — Justice Bell, could I just touch on your personal story about growing up in public housing? I also grew up in public housing from the age of 10 as a migrant right through until I left home to get married at 21. There are a lot of good news stories, because they were then public housing estates and we all mixed really well. Usually a low-income mum or dad worked or they were migrants.

The proposition we have now with people in public housing is usually chronic homelessness or people with complex needs, so we have a bit of a different group going into public housing, if you like. There are some significant issues with public housing and with people presenting to VCAT. One of those issues could be that they are migrants, and you have touched on that before. They may not speak English very well. Particularly some areas such as Shepparton have refugees. We have a lot of Aboriginal people who may not go before VCAT because they see it as very formal.

I ask the question: should we do mediation beforehand and maybe tenants would be encouraged to go, because I was heartened by your comments that it gives VCAT a chance of finding out why they are either not paying their rent or why they are being antisocial and of hearing the two sides of the story? But just as importantly it gets the tenant to hear the other side's views of why they are being evicted or why they have to pay back, so hopefully we will stop this cycle of moving on and moving on.

Justice BELL — Absolutely.

Mrs POWELL — Because while they have their rights, they also have responsibilities in public housing.

Justice BELL — They do.

Mrs POWELL — I was heartened to hear you talk about the phoning of tenants, but you talked about the cost. I think the cost of not doing something like that is far more outreach, because these people move from one new home to another new home, so the problem escalates from there to somewhere else. Did you say you were doing some research into how we can get tenants to go to these hearings?

Justice BELL — We are. I think we have actually moved beyond research to action. It is just the plain fact that Koori use of the tribunal is minimal. Tenant attendance at the tribunal is minimal, but it is minimal across the board, and we need to do something about that. We are underutilised by the migrant community; by CALD communities generally the tribunal is underutilised, and we need to adopt proactive measures in order to address that. But this involves a completely different mode of operating a justice institution to what we are accustomed.

We are used to thinking of welfare institutions operating on an outreach basis, but we are not so comfortable yet with justice institutions operating in that way. I am really advocating for a different model of justice institution which involves proactive measures to engage as a facilitator of access. I do not think we are likely to see an increase in tenant, CALD, Koori or any other disadvantaged group use without taking the sort of proactive measures that I have explained to you, but we have a very tight budget; we do what we can with it, and it needs to be funded.

I did not come here to make a plea for funding; that is not my purpose, but I am just explaining that I can list a number of measures which would really be worth doing pretty much now, and I think I have. But we need to get the resources to do it. Regionalisation, however, is critical. We have to be in the communities before we can engage. You cannot engage in Shepparton from Melbourne; it is just not possible.

Mrs POWELL — And the refugee community will not go before a court like yours because they are fearful of authority, and they are fearful that you will remove their children from their care.

Justice BELL — Correct; they are. The cultural barriers are intense as shown at the local council in Shepparton by a black African who spoke to me. I said, 'Do you know what VCAT is?', and I saw his eyes glaze over. It was very clear to me that we really need to do things in a different way. It is not the only region where this happens. We have Dandenong where there is a large community, and it is not just Africans; it is an issue generally.

I am concerned about our lack of material in other languages. We do not have much translated material, but a lot of these people are not good readers anyway, and we need to work with other mediums. As a start we have produced a video which is a how-to video — about how to engage in the tribunal — but it is in English and the actors are white, middle-class people. They do a good job, and I think it would be very accessible by most members of the community, but a substantial proportion of the community I think would not be able to learn much from the video because it is not their way of speaking, and the mode of delivery is not sensitive to their situation. We need to do more in order to reach them.

Mr NOONAN — Thanks for your presentation; it is very enlightening. I wonder how the listings you have in this area compare in terms of quantum with the overall listings that VCAT has to deal with each year? That is the first part of the question. The second part is really about whether you can expand on this centre of excellence concept, because in sitting here thinking through all this I just wonder what happens to the 110 where the possession order is executed. I suppose they go back to the start of the system, and then you might see them again in 12 or 24 months when they have worked their way back through the public housing system.

Justice BELL — They do, and that is an enlightened remark, with respect. They do not cease to become your problem or the system's problem; they just become a problem in the other part of the system. That is the philosophy underlying much of what I have said to you. Therapeutic jurisprudence is an immensely important new concept in the administration of justice and involves the idea of justice institutions doing the least harm and most good, consistent with the administration of the law.

Some people must be sent to jail for serious crime, and are, but that might be accompanied by certain orders with respect to rehabilitation, so that is an example of therapeutic jurisprudence. With respect to your example, therapeutic jurisprudence involves the idea of trying to build the capacity of the tenant so that they can negotiate

with the system and reach a resolution of the issues that might result in their eviction. That is why it is so important for the tenant to be there so that the tribunal can encourage them to enter into this negotiation process.

The barriers are often human, social, emotional, cultural. It is not a question of blame. It is not that they do not want to. Bills are often put on the fridge and ignored unopened just because of the sheer pressure of life being experienced by people. It is not that they do not want to pay them, so I am very strongly of the view that we should try to use the tribunal in a manner that helps to build capacity so that the tenant knows, for example, next time it might happen, that if early contact is made, if the phone call from the director is not ignored, if the knock at the door from the director is not ignored, if the letter from the tribunal giving notice of the case is not ignored, then it would be better for everybody.

Another aspect of this which I should have mentioned is: what is justice but trying to resolve problems so that people can get on with their lives and make a positive contribution to the community? There is nothing positive about worrying to death about eviction. That impacts on family care, it impacts on personal wellbeing, it impacts on family life; it has so many consequences. So it is an aspect surely of justice itself if we can reach those people and build their capacity to negotiate an outcome and a solution with their landlord, then we have restore them to the ordinary state of life where they can enjoy wellbeing and make a positive contribution to the community.

So you can see, I hope, that I see this tiny issue of an eviction, or this tiny issue of the relationship between a landlord and a tenant, in a much broader social consequence. I am trying to articulate an issue to the tribunal that responds to that and which empowers us to do more than what we presently do to deal with such cases.

Mr NOONAN — And just the first part of the question: if all of VCAT's listings — —

Justice BELL — Yes, I can give you the facts. We do about 90 000 cases. About 60 000 of those are residential tenancies cases; about 10 000 are civil claims; about 10 000 are guardianship cases; about 3500 are planning cases; and the rest are about 30 or 40 jurisdictions, many more than 30 or 40, but many jurisdictions we have do not generate a significant case load, but this other 30 or 40 do, including freedom of information, incidentally.

Of that 60 000 residential tenancies cases, you have heard that about 10 000 are possession applications by the director. Add to that about another 1000 by other social housing providers.

Mrs SHARDEY — Thank you very much for your presentation, Justice Bell. It was very interesting, particularly the elements around mediation. I wanted to ask a couple of things: I understood in the past there had been a process undertaken prior to a tenant getting to that point where they have to present at VCAT. I wonder if you can enlighten us as to what that process is because I am sure that the VCAT process is an expensive process by comparison to something that can be done prior to it?

Justice BELL — Yes.

Mrs SHARDEY — The other small question I had was in relation to the cost of malicious damage. Who bears that cost?

Justice BELL — With respect to your first question, what we know and applaud is that the director does engage in a process, and if they did not, then that would push the process into the tribunal. There would probably be 20 000 applications or more and that would be a disaster for everybody, but I do not have the details, I am afraid, of the process actually followed by the director.

It was interesting that during the consultation that I undertook, many parties in the position of the director were saying that they would benefit from assistance from the tribunal about how to engage in the mediation process pre-tribunal, and the trend in the courts is for pre-action protocols to be necessarily followed as a condition to being able to issue reports, and there are reports of committees of this Parliament on that subject.

I think there is probably a bit of work to be done around that, but I think of all the parties in the tribunal, the director would probably be the best in terms of its commitment to try to negotiate first and then issue later. There would be regional differences in respect of this issue, and there would be staff attitude issues which would impact upon the success of the director's commitment in this regard, but they would be exceptions to the

rules. Across the board I would think the director would probably be the best in terms of its capacity to do so. And your second question?

Mrs SHARDEY — About malicious damage.

Justice BELL — Almost without exception, proved damage would be the tenant's responsibility to pay according to an order made by the tribunal. It must be proved, but that is not difficult. But if there is no money to pay, then it is not paid, and probably the actual cost of malicious damage by tenants falls back onto the community through the director of housing.

Mr SCHEFFER — Justice Bell, you said at the outset when you talked about the Act that you take the personal factors and circumstances of a tenant who faces possible eviction into account, but I took it from what you said that most of the concern was about rent arrears, which you did mention, malicious damage and disturbance and nuisance and so north. But what I am asking is whether, when you make an order, you can take into account in that order the care of a person in more personal ways — for example, if a person had a property and they were a keeper of 20 or 30 cats or they were hoarders and the property was fire damaged, and clearly it had a psychological aspect to it, do you — —

Justice BELL — Yes, we can and we do, and there are such cases, regrettably. Now that does not mean that the person who is the hoarder, or has the cats or the dogs or the horses or all the other things they can have, does not deserve the tribunal's attention.

The way we try to deal with that kind of case and the many, many others in that category is through another initiative which we have instituted, which is the community directory. We now have online access to a community directory which enables the tribunal to refer hard cases such as that to appropriate agencies. That is a step in the right direction, but it is not the same as having a social worker at the tribunal, which I strongly support; we do not at the moment, at least not for the general run-of-the-mill tenancy cases, and it worries me that we do not. I think it would be better that we did.

The CHAIR — Thank you very much for your time.

Justice BELL — Thank you very much, Chair. I am sorry to have gone over time.

The CHAIR — That is fine. Thank you.

Witnesses withdrew.