

TRANSCRIPT

FAMILY AND COMMUNITY DEVELOPMENT COMMITTEE

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

Melbourne — 11 February 2010

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Mr J. Farrell, Manager/Principal Lawyer, and

Mr C. Povey, Senior Lawyer, Public Interest Law Clearing House (**PILCH**) Homeless Persons Legal Clinic.

The CHAIR — Good afternoon, everybody, and welcome to the public hearing. This is a parliamentary inquiry, not a government inquiry. All evidence taken at this hearing is protected by parliamentary privilege as provided in the Constitution Act 1975 and is further subject to the provisions of the Parliamentary Committees Act 2003 and the Defamation Act 2005 and, where applicable, the provisions of reciprocal legislation in other states and territories. Any comments you make outside the hearing will not be afforded such privilege. We are recording the proceedings, and you will be sent a copy of the transcript, to which you can make adjustments if necessary.

The allocated time for this session is 45 minutes. I invite you to make a verbal presentation, which will be followed by questions from the committee. Before making your presentation please introduce yourselves so that your names and your terms of reference can be recorded in the Hansard transcript.

Mr FARRELL — My name is James Farrell. I am the manager and principal lawyer of the PILCH Homeless Persons Legal Clinic.

Mr POVEY — My name is Chris Povey. I am a senior lawyer with the Homeless Persons Legal Clinic.

Mr FARRELL — Mr Chairman, we have also invited along a couple of public housing tenants to put their stories to the committee, and we have asked that their testimony be confidential. Is it appropriate at this stage that they introduce themselves to the committee, or should that wait until evidence is taken in camera?

The CHAIR — We will do it in two sessions. Once you have finished, we will take evidence from the witnesses in camera.

Mr FARRELL — We did not intend to make a detailed presentation to the committee because we feel that the important focus of our presentation today is for the committee to hear directly from public housing tenants, because the purpose of the inquiry is to ascertain how people are experiencing public housing. That was the focus of our written submission, which was sent to you today, and it will be the focus of our testimony today.

The approach that we took with our written submission was to prepare six detailed case studies of tenants who have had experiences of homelessness and experiences in public housing. They are the six detailed case studies appended to the submission. Those stories I think really highlight the issues that come up repeatedly in our practice at the Homeless Persons Legal Clinic and in the lives of people experiencing homelessness and cycles of homelessness, which at times can include cycles through public housing.

I did not propose to go into the written submission, as I say, in any detail, but rather I will invite questions from the committee of Chris and me and later from the tenants who are here with us today.

Mr POVEY — One thing I might just add to James's overview of our submission is that we have also, perhaps out of left field, included in our submission a section about high-risk public housing tenancies. Our view is that high-risk tenancies — tenancies that are likely to fail for reasons of substance abuse, mental health issues or past trauma — are important parts of security of tenure. It is important to look at that, because that affects homelessness and whether public housing is doing its job. Our advocacy at VCAT and in other forums indicates that it is important to pay attention to securing high-risk tenancies in keeping people in housing.

Mrs POWELL — You deal obviously with the tenants firsthand, so you hear the stories firsthand. Is it your view that the segmented waiting list as it is at the moment is appropriate, given that many years ago it used to be that low income was also part of the criteria to get into public housing? The criteria now is the number of segments in the segmented waiting list. What is your view on the segmented waiting list or how to get access to public housing?

Mr FARRELL — I think our view is that it is a necessary evil, given the short supply of public housing and the volume of people on the waiting lists. The volume of people who continue to be on the waiting list demonstrates that supply is a key issue that in many ways necessitates having segmented waiting lists. That, of course, is expounded by the affordable housing crisis Australia-wide. Low-income Victorians and vulnerable Victorians have difficulty accessing housing, and so there is great demand on public housing but not enough houses to put those people into.

Mr POVEY — To that I would add that segmented housing lists and our discussions with tenants appear to indicate that to get priority housing a great amount of detail and documentation is required, which for people in a vulnerable or disadvantaged situation can be quite difficult to obtain. Add to that the fact that some workers are better than others; some workers are dramatically better than other workers. This means that some people have drastically different experiences of the segmented housing application process. We have to talk to people — and these stories are represented in the appendices to our submission — who obtained housing notwithstanding the fact that an application was not put in. It just took so long. They never heard from their workers again. To run segmented waiting lists you need an efficient, well-trained housing worker force which understands the issues and is able to quickly turn around these applications, and I do not know that that is what we have at this stage.

The CHAIR — You spoke about security of tenure in public housing. My understanding is that it is secure unless an exception takes place — for example, if a tenant is accepted into public housing, if he or she pays the rent, does not reach the threshold of income and lives harmoniously in the neighbourhood, he or she will not be evicted.

Mr POVEY — That is correct.

The CHAIR — So when you speak about security, what do you mean?

Mr POVEY — That is a great question. When we talk about security of tenure, what we are referring to is security of tenure for people who struggle to maintain a tenancy. For people who may have experienced chronic homelessness for 15 or 20 years, who may have been born into homelessness, who do not have the skills to maintain a tenancy like other people who might have had different opportunities, the Charter of Human Rights and Responsibilities in Victoria requires the Office of Housing, when making a decision about issuing a notice to vacate, to think about the personal circumstances of each and every tenant. In the experience of the HPLC, this does not occur. The Office of Housing workers appear to only look at their rights under the Residential Tenancies Act. Section 38(1) of the Charter says that public authorities, of which the Office of Housing is one, need to consider human rights when making decisions which could affect human rights. In evicting someone, particularly clients with high needs, you are absolutely affecting their human rights — a range of human rights. That has been our experience, and we have to push uphill to make the Office of Housing workers see this.

The Charter gives people a mechanism to consider the personal circumstances of tenants, to try to keep them in housing, to develop empathy. It is not an easy situation, because quite often people in these situations have challenging behaviours, but just ignoring human rights and ignoring personal circumstances is not going to develop security of tenure in the context in which we are referring to it — that is, for people with high needs.

Mr SCHEFFER — I know you touched on it a bit earlier, but could you give us a sense of the kinds of issues that you bring to VCAT?

Mr POVEY — In relation to the security of tenure issue, illegal use, and I take you to page 42 of our submission that refers to a couple of examples. I think perhaps on page 44 is the best example. It talks about a reported decision of the *Director of Housing v. TP*. This decision involved a decision, firstly, of the Director of Housing to issue eviction proceedings involving a woman in a domestic violence relationship. The Office of Housing was on notice that it was a domestic violence relationship. They had actually lodged a transfer request, in part, to get her out of those premises.

Notwithstanding that, the partner put pressure on her to move back into the premises. He moved back in with two cannabis plants. Two days later there had been a tip-off to the police. The police arrested him and removed him from the premises, and after that she was issued with a notice to vacate for illegal use. I think she had two small children — she did — and so that was fine, she was evicted.

At the tribunal it went to the Supreme Court. I think it was agreed that there was an error. It was returned to VCAT, and at this point the Office of Housing continued to press on, notwithstanding that there had been no suggestion that this woman, who had been the victim of domestic violence and had two small children, had been in any way involved in the illegal use. Also it was acknowledged that she had been part of a domestic violence relationship, and yet the Office of Housing persisted in trying to evict her.

Our argument would be — and there are a whole range of arguments — that the fact is it did not even meet the Residential Tenancies Act test for illegal use, in our humble view, but it also did not look at the facts that here were two cannabis plants, she was not impinging necessarily on the rights of anyone and there was no allegation that she had been trafficking; they just found these cannabis plants there. The result for her and her children, it was also accepted, was that she would be evicted into homelessness, reliant on rooming-house accommodation. That does not solve anything; in fact it creates a lot more problems for both her and her children going forward into the future.

We have seen cases like this. In my view that was a very extreme case, and it is symbolic of deeper deficiencies. When you look at the Office of Housing policy in relation to tenancy breaches and evictions, it says that in November 2008 it was reviewed to be compliant with the Charter of Human Rights, and then when you look for a single reference to human rights or to the Charter in the rest of the document there is not a single reference that I could find. When making decisions about evicting vulnerable, high-needs tenants, the Office of Housing needs to — must, in fact, according to the Charter — consider the human rights of public housing tenants. It is a key policy lever on homelessness.

Mr SCHEFFER — If I could just pursue that a bit further. I accept what you say; from what we have seen it is an extreme case. What is the breadth of cases that are not extreme that you normally would deal with — the bread-and-butter ones?

Mr POVEY — In relation to public housing, we often see illegal-use matters. There is a policy of the Office of Housing to try to evict people where there is a range of illegal activity alleged. We are familiar with rent arrears matters, and James, if required, can give you some background on the sorts of matters that we see. Again there seems to be a reluctance to negotiate, a reluctance to consider the broader issues. There are also compliance procedures. Compliance procedures are a way of managing challenging or difficult behaviour. Generally the procedure is to give notices of breach and then to potentially give a notice to vacate to apply for possession.

Mr SCHEFFER — Would they be the three big ones?

Mr POVEY — Yes.

Mr SCHEFFER — Substance use, rent arrears and non-compliance.

Mr FARRELL — Illegal use rather than substance use necessarily. We are seeing a widening of the scope of those provisions to include going far beyond both the legislative and common-law meaning of the illegal use of those premises, and that is another concerning trend in the way that the Office of Housing is dealing with public housing tenants.

Mrs POWELL — That story is actually worse because the lady had four children.

Mr POVEY — There we go; thank you.

Mrs POWELL — There are issues with people's human rights as tenants, and you deal with those on a fairly regular basis, as you should, but the sorts of things coming to members of Parliament's offices are also those sorts of issues, but there are the other issues of antisocial behaviour and the human rights of the neighbours.

Mr POVEY — Absolutely!

Mrs POWELL — And that is an issue that we grapple with, where we are being told of really bad behaviour. I could — I will not, but I could — cite lots of bad behaviour, including threatening, life-threatening and dreadful things happening to neighbours, from people in public housing.

Most public housing people have a lovely time — I am from public housing myself — and they have a great time there, but there are some, probably a very small percentage, who make it very difficult for all public housing tenants because of their antisocial behaviour, their violence and intimidation in making the people who live next door to them feel threatened and fearful for their own lives.

What do you think should happen in that instance? If the Office of Housing does not remove their tenancy, even if they have worked with them, and they cannot provide enough support to help them keep that security of tenure, what do you think they should do then?

Mr POVEY — That is an excellent question.

Mrs POWELL — I am hoping you have got an answer.

Mr POVEY — No, and certainly we do not gild the lily. We do not say that all public housing tenants are angels or anything like that. In fact what you refer to is part of a broader problem that we refer to in our submission as social residualisation; by which we mean that the way in which public housing has been targeted — and your discussion paper refers to this as well — people with high needs increasingly are the only people who become eligible for housing, and indeed the segmented housing list has that particular affect.

If you have a high-rise with a lot of people with mental health issues, a lot of people with chronic substance abuse issues and so on and so forth, all these sorts of issues; putting all these people in together with each other — and I am not a housing construction expert — does not seem like a great idea. It creates problems in relation to antisocial behaviour and those sorts of things.

In relation to the way in which you resolve those problems, one basic comment would be that support works. We have dealt with the Office of Housing in relation to these issues, and my understanding, from my perspective doing litigation in these sorts of things, is that the Office of Housing seems to think if it handpases through to the housing support agency, that is its responsibility done.

I think there is more to it. We have talked to housing workers and they say, ‘We have made a referral to somebody to get an assessment or to get treatment, and they are going to have to wait for 18 months for that treatment to occur’. By that stage they are long gone. Also, treatment or support often has a six-month cut-off date, and you have got an agency that is supporting someone who is not making decisions about their tenancy. Also, you have got some kind of tenants’ areas that become like ghettos, so people move through and then nobody wants to stay because there are all these other problems, so other people keep moving through and you do not have any sense of community, any sense of belonging, and there are broader issues. So try to fix the problems you have got, rather than evicting people and moving people through these difficult environments. I think it is a complex equation, and it is certainly something we are looking at as we go on. I do not have a solution for you in relation to that.

Mrs POWELL — I was hoping you would.

Mr NOONAN — I have a two-part question. Firstly, I am intrigued by the title of your submission, ‘We can’t go private’; you might want to elaborate on why you are trying to send us that message. Secondly, my eye was drawn to recommendation 8 in your submission, which goes to the issue of high-rise. We understand that at least 10 per cent of the public housing stock is high-rise across about 40 properties, mainly around inner Melbourne. Your recommendation is that no-one of senior age should be considered appropriate for high-rise. My experience is very different. I have two high-rises in my electorate of Williamstown, and the high-rise that predominantly houses people over the age of 55 works very well, because there is a strong sense of community and security amongst those people living together. In addition, they are pretty much all single.

We have heard other submitters talk about the difficulty of finding accommodation for single people. My experience with the two towers is that in the one that is predominantly housing people over the age of 55, where they have set up a community garden and there is a strong sense of community in that facility, they would be horrified at your recommendation — as they were when another member of Parliament suggested very strongly that what should happen is that that facility should be sold for private investment and all of those people who are over the age of 55 should move out to the suburbs somewhere into their own single dwelling.

Can you address the two issues for us?

Mr FARRELL — If I could start with the title of the submission, ‘We can’t go private’. A lot of the issues that we see in public housing arise because this is the last opportunity people have to maintain secure housing. They are not in a position, particularly with the housing situation at the moment, to enter into private rentals. Public housing or homelessness are their options.

Mr NOONAN — Okay, that is fine. I was not sure whether it was about private investment in public housing. But that is clear. Thank you. The other issue?

Mr POVEY — Just quickly in relation to the other issue, I think that is a very good point, and you are correct in saying that. We spoke to one respondent — and his story is attached — in relation to just that sort of housing, and he did say there was a sense of community. I think what this particular recommendation is referring to is mixed housing. The particular gentleman that this recommendation comes from was an older gentleman. I think he might have been in the Carlton high-rise and that was not age-specific accommodation. He was effectively in with some people who have behavioural issues, and he knows other people in that development who did feel quite fearful. The experience of the other gentleman in age-dedicated housing, as far as community and those sorts of issues are involved, was a far different experience which was similar to your comments.

Mr NOONAN — Thank you.

Mr FARRELL — If I could just pick up on that point too. The experience of the person whose story is in our submission was someone who also had strong community ties with his local area in the southern suburbs of Melbourne. He was then transferred into high-rise accommodation in the inner north, completely removed from those community links that you talked about being so important in public housing. That is a key concern, particularly for ageing Victorians in public housing. In this case the man had been living in St Kilda for 40 years and then got shipped off to Carlton, and his connection to community was completely lost because of the way the housing allocation worked in his case. That is a real concern — that there often is not that sense of community.

Mr NOONAN — I suppose the case you make, though, is about appropriateness, and appropriateness does not necessarily just go to the facility or the building that someone might be housed in. Appropriateness can mean so much more. I do not want to be confused in terms of your recommendation that we should be making a recommendation broadly as part of our findings that if you are of a senior age, high-rise should be deemed not appropriate. But I think in your answer you have that broadened now. Thank you.

The CHAIR — I think at this point in time we will give the two tenants the opportunity to speak about their experience.

Witnesses withdrew.

Proceedings in camera follow.