

Public housing class action against the Victorian Government

The High Court of Australia will sit on Wednesday, 7 October, to consider an appeal by residents represented by Inner Melbourne Community Legal against the demolition of public housing towers in Melbourne. IMCL will argue that the state government was required to afford procedural fairness to those living in the towers and it failed to do so.

The appeal is the culmination of almost three years of legal action by IMCL. This document provides background to case.

The announcement

On 20 September 2023, Victorian Premier Daniel Andrews announced the government had decided to retire (i.e. demolish) and redevelop all 44 public housing towers across Melbourne by 2051 (the decision to redevelop the towers was made by the state Cabinet on 18 September). At the time, these buildings were home to about 10,000 tenants.

The first five towers to be demolished were at 33 Alfred Street, North Melbourne, 12 Holland Court, Flemington, 120 Racecourse Road, Flemington, and two unoccupied Elgin Towers in Carlton. Within days of the government announcement, Homes Victoria staff began a process to relocate residents in these buildings but communication with residents did not start until October.

On 25 January 2024, Inner Melbourne Community Legal filed a class action against Homes Victoria over the decision. The lead plaintiff was Barry Berih, who was a resident of 33 Alfred Street.

The class action trial

IMCL argued in the Supreme Court of Victoria that Homes Victoria's decision to demolish the public housing towers in Flemington and North Melbourne was made without regard to the policies and procedures it was required to follow.

It was also argued that Homes Victoria did not properly consider the residents' human rights before it made the decision and that it was incompatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The case was heard on 28-29 October 2024 and 27-28 February 2025 before Justice Melinda Richards.

In its defence, Homes Victoria said its proposal for the redevelopment of 44 public housing towers across Melbourne was based on the understanding that the towers could not be refurbished. They said the documents upon which that conclusion was based could not be shared with the Court or public because they were claiming Cabinet privilege over the documents.

On 4 April 2025 the Court ruled that the government did not have a legal requirement to consult prior to making the decision to demolish the towers and that the interference with the human rights of the residents was reasonable and justified.

The appeal to the Victorian Court of Appeal

IMCL lodged an application to appeal the Supreme Court decision on 13 June 2025. The new lead plaintiff was Jason Mallard, a disability pensioner who lived at 120 Racecourse Road.

The appeal was made on six grounds, including that the judge erred in finding that Homes Victoria had discharged its responsibilities under the *Charter of Human Rights and Responsibilities Act*, and that it wasn't required to provide residents with an opportunity to be heard.

It was heard by Chief Justice Richard Niall, Justice Maree Kennedy and Justice Terence Forrest on 27 October 2025.

Despite acknowledging the disruption that has been caused to lives of residents, the Victorian Court of Appeal ruled in favour of the original decision on 19 December 2025.

The same Court did, however, make an order restraining Homes Victoria from evicting any residents until such time as any appeal High Court of Australia was fully determined.

High Court Appeal

The final avenue to overturn the Supreme Court decision is by appealing to the High Court of Australia.

On Thursday, 14 May 2026, the High Court granted special leave to appeal. The date for the hearing has been set for 7 October.

The appellant is Nurto Saleh, a resident of 120 Racecourse Road, with her family since 1999.

She is seeking a declaration that the decision of the Victorian Court of Appeal on 19 December 2025 was invalid and should be set aside.

IMCL will argue that the Court of Appeal erred in concluding that the Victorian Government was not required to afford procedural fairness to tenants living in the three public housing towers in North Melbourne and Flemington before deciding on 18 September 2023 to demolish 44 housing towers.

If successful, this would in effect halt the demolition and redevelopment program in its current form.

Victorian Equal Opportunity and Human Rights Commission intervenes

On the 14 August 2026 Victorian Equal Opportunity and Human Rights Commission intervened in the matter as an *amicus curiae*, or “friend of the court”.

The VEOHRC submitted: “There is a strong common law presumption that a statutory power which is capable of having an adverse effect on legally recognised rights or interests of individuals is impliedly conditioned on the observance of procedural fairness”.

The Commission contends that the “human rights” set out in Pt 2 of the Charter are “legally recognised rights or interests of individuals” for the purpose of that presumption.

Other inquiries

The government’s plans to redevelop Melbourne’s public housing towers has been examined by the Parliament of Victoria, the United Nations Special Rapporteur on adequate housing, and an ongoing inquiry by the Victorian Ombudsman.

The **Legislative Council’s Legal and Social Issues Committee** conducted an inquiry during most of 2024 and 2025, including public hearings in mid-2025. Its final report was tabled on 5 December 2025. It made 36 findings and 21 recommendations, including halting the redevelopment program until alternatives to demolition are properly investigated; providing relocated residents with a guaranteed right to return after estates are redeveloped; retaining public ownership of land at the 44 high rise estates; and increasing the proportion of social housing at the redeveloped sites Parliamentary inquiry. A minority report by the three government MPs on the committee was also tabled.

The **UN Special Rapporteur** examined the redevelopment program in response to a submission prepared by the Castan Centre for Human Rights at Monash University with assistance from IMCL. Its report – which was publicly released on 4 September 2026 – found potential violations of the right to adequate housing as enshrined in the International Covenant on Economic, Social and Cultural Rights. It also raised concerns over a lack of meaningful participation, consultation and transparency about the relocation of residents whose homes are to be demolished.

The **Victorian Ombudsman** is investigating the experience of residents who have been required to relocate due to the demolition of public housing towers, following a referral by the Legislative Council on 17 June 2026.

What has happened to the residents?

At the commencement of the public housing towers redevelopment, there were 484 tenants in the four towers in North Melbourne, Kensington and Carlton that made up tranche 1 of the program. By 3 August 2026, 458 had relocated.

Two further tranches of redevelopment have been announced made up of two towers at Richmond and South Yarra (announced on 20 September 2024) and seven ‘older persons’ towers at Flemington, Kensington, North Melbourne, Prahran, St Kilda and Albert Park (announced on 29 January 2026).

In total in the first three tranches of the program, 859 households out of 1458 have relocated.

On 5 February 2026, the Victorian Court of Appeal granted an injunction preventing Homes Victoria from moving to evict the remaining residents from tranche 1 until the High Court appeal was heard.

Timeline

18 September 2023	Victorian Cabinet approves public housing towers redevelopment program
20 September 2023	Premier Daniel Andrews announces the redevelopment program and names the first five towers to be demolished.
28-29 October 2024, 27-28 February 2025	Trial before Justice Melinda Richards in the Victorian Supreme Court (<i>Berih v Homes Victoria</i>)
4 April 2025	Justice Richards rules in favour of Homes Victoria
27 October 2025	Hearing before the Victorian Court of Appeal (<i>Mallard v Homes Victoria</i>)
5 December 2025	Tabling of report of inquiry by Legislative Council Legal and Social Issues Committee into redevelopment of Melbourne’s public housing towers.
19 December 2025	Court of Appeal dismisses appeal
5 February 2026	Court of Appeal makes orders restraining Homes Victoria from serving notices to vacate on any tenant currently residing at the towers until the determination of an appeal to the High Court
14 May 2026	Three High Court justices grant special leave to appeal
17 June 2026	Referral by Legislative Council to Victorian Ombudsman
4 September 2026	Public release of findings by UN Special Rapporteur on adequate housing to investigate experiences of residents required to relocate
7 October 2026	High Court of Australia hearing of appeal (<i>Hassan v Homes Victoria</i>)

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