



**Victorian Equal Opportunity  
& Human Rights Commission**

# **Submission to the Inquiry into the redevelopment of Melbourne's public housing towers**

**Legal and Social Issues  
Committee, March 2025**



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# 1. Why the Commission is making this submission

The Victorian Equal Opportunity and Human Rights Commission (the **Commission**) welcomes the opportunity to contribute to the Legal and Social Issues Committee's (the **Committee's**) Inquiry into the redevelopment of Melbourne's public housing towers (the **Inquiry**).

The Commission's overarching role is to protect and promote human rights and equal opportunity in Victoria. We fulfil this role in many ways, including by overseeing the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the **Charter**) and the *Equal Opportunity Act 2010* (Vic) (the **EO Act**). As part of our range of functions, we intervene in cases raising human rights and equal opportunity issues,<sup>1</sup> we provide education and training,<sup>2</sup> and we produce guidelines to assist organisations in upholding their duties under the EO Act.<sup>3</sup>

These laws are directly relevant to the rights of public housing residents. The importance of these laws is amplified in the context of compulsory relocation processes. As with all people in Victoria, public housing residents hold rights that are protected under the Charter. When a public authority, like a government department or entity, makes a decision that affects public housing residents, that decision must involve proper consideration of relevant Charter rights and must be compatible with relevant Charter rights.<sup>4</sup> Public housing residents also hold the same right to be protected from discrimination as others in Victoria under the Charter and EO Act. This includes being protected from discrimination while receiving a service and in the provision of accommodation<sup>5</sup> – both areas of public life that may be relevant to compulsory relocation processes.

The Commission has a history of advocating for and supporting public housing residents to uphold their rights. Back in 2012, the Commission made a submission to the *Pathways to a Fair and Sustainable Social Housing System* public consultation discussion paper<sup>6</sup>, highlighting how and why policy frameworks for public housing must comply with the EO Act and the Charter. More recently, the Commission swiftly produced factsheets in several different languages on the rights of residents who were suddenly and unexpectedly locked down in three public housing towers during the COVID-19 pandemic.<sup>7</sup>

The intersection between disadvantage, discrimination and limitations on human rights is well known. Public housing residents, whose security of home is tied to the decisions of government, sit within this intersection. It is therefore even more vital that active steps are taken to preserve and promote their rights.

The Commission makes this submission to assist the Committee in understanding how the Charter and the EO Act can frame relocation processes of public housing residents to

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<sup>1</sup> The Commission's intervention functions arise under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Charter') s 40(1) and the *Equal Opportunity Act 2010* (Vic) ('EO Act') s 159.

<sup>2</sup> The Commission's education functions arise under the Charter s 41(d) and the EO Act s 156.

<sup>3</sup> The Commission's guideline function arises under the EO Act s 148.

<sup>4</sup> Charter s 38(1).

<sup>5</sup> EO Act ss 44, 53.

<sup>6</sup> Submission to the *Pathways to a fair and sustainable housing system* discussion paper, Victorian Equal Opportunity and Human Rights Commission, 31 July 2012, accessible [online](#).

<sup>7</sup> *Factsheet: Your rights in full lockdown*, Victorian Equal Opportunity and Human Rights Commission, July 2020, accessible [online](#).

reduce the negative impacts of such a process – addressing term (h) of the Inquiry’s Terms of Reference.<sup>8</sup>

## 2. The relevance of the Equal Opportunity Act

The *Equal Opportunity Act 2010* (Vic) (the **EO Act**) provides protection from discrimination based on certain personal characteristics (referred to as **protected attributes**), in particular areas of public life – including employment, education, accommodation and the provision of goods and services.

Discrimination can be both direct and indirect. Direct discrimination occurs when a person is treated unfairly because of one or more of their protected attributes (for example, their race). Indirect discrimination occurs when some kind of policy, requirement or procedure is both unreasonable and has a discriminatory effect on people with certain protected attributes (for example, a requirement that all public housing residents attend a meeting in a building without wheelchair ramps, which may disadvantage residents with a mobility-related disability).

The EO Act also contains specific obligations to do certain things to prevent discrimination from occurring. For example, the EO Act requires the making of reasonable adjustments for people with a disability in the provision of services.

As mentioned above, discrimination under the EO Act is not only based on protected attributes, but also, protected areas of public life.

Under section 53 of the EO Act, a person cannot discriminate against another person in the provision of accommodation. In the context of compulsory relocation processes, this will be an important consideration when providing relocation housing - i.e., alternative housing while residents’ homes are being redeveloped.

Additionally, under section 44 of the EO Act, a person cannot discriminate against another person in the provision of a ‘service.’ The EO Act does not specifically define ‘service,’ but case law suggests that a ‘service’ can be broadly defined as ‘any act of helpful activity’.<sup>9</sup> As such, any conduct during the relocation process that can be described as an act of helpful activity for public housing residents could also constitute the provision of a service to residents. The provision of relocation housing for residents seems likely to fit the description of a ‘helpful activity’ and could therefore also be the provision of a service under the EO Act.

The Commission understands that according to the *Relocation manual* of the Department of Families, Fairness and Housing (**DFFH**) residents are offered up to two options for relocation housing.<sup>10</sup> Public housing residents may have, as all renters, specific needs based on their protected attributes. Residents with a physical disability or older residents may have specific accessibility requirements. Residents of a particular religious faith may have requirements regarding the configuration of a home, while residents with children (i.e., with the protected attribute of ‘parental status’) may have requirements regarding the number of bedrooms in their home. If residents are subjected to a particular detriment related to a protected

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<sup>8</sup> *Terms of Reference*, Legal and Social Issues Committee, Inquiry into the redevelopment of Melbourne’s public housing towers, accessible [online](#).

<sup>9</sup> *Bayside Health v Hilton* [2007] VCAT 1483, [17] citing *IW v City of Perth* [1997] HCA 30; (1997) 191 CLR 1.

<sup>10</sup> *Relocation manual*, Department of Health and Human Services (currently the Department of Families, Fairness and Housing), Chapter 2, ‘Move out’, February 2015, p 11, accessible [online](#).

attribute, in the provision of this relocation housing, this could amount to discrimination under the EO Act within both the accommodation and services areas of public life.

The importance of complying with the EO Act in the provision of relocation housing is reflected in DFFH's *Public Housing Allocations* guideline, which sets out how relocation housing offers are made.<sup>11</sup> The guideline acknowledges that DFFH has obligations under the EO Act, specifically in relation to housing meeting the needs of people with disability.<sup>12</sup> But it is important to note that 'disability' is not the only protected attribute that may be relevant to consider in the provision of relocation housing.

Beyond the provision of relocation housing, other aspects of the relocation process could involve some aspect of 'service' delivery, because of the broad definition of 'services' established by case law.<sup>13</sup> For example, communications about the relocation process to residents through information booths or individual and group meetings, could be a 'helpful activity' in some circumstances. On that basis, subjecting residents to a particular detriment related to a protected attribute, while providing them with a 'service' during the relocation process, could amount to discrimination under the EO Act.

The Charter is also directly relevant and vital to consider during relocation processes.

### 3. The relevance of the Charter

The Charter requires that public authorities, when making decisions, give proper consideration to and act compatibly with Charter rights that are relevant to that decision.<sup>14</sup> DFFH, as a government department performing functions of a public nature, is a public authority under the Charter – and therefore, has obligations under the Charter.<sup>15</sup>

Practically, this means that DFFH is obliged to think about how decisions made during the relocation process might impact Charter rights of residents. Rights under the Charter can be limited (meaning, negatively impacted) but this limitation must be reasonable, proportionate and justified to be lawful.<sup>16</sup>

While the relevant Charter rights for any decision must be assessed on an individual basis, there are some key Charter rights that are likely to be impacted by decisions made during relocation processes. The Commission considers that the rights to be free from arbitrary interference with home and family, the right to protection of families and children, the right to equality and the right to choose where one lives, are particularly relevant and important in this context.

#### ***The right to be free from arbitrary interference with home and family***

Under section 13(a) of the Charter, a person has the right to not have their home and family arbitrarily interfered with. Compulsory relocation processes are, by their very nature, an interference with 'home.' But there are two other aspects of this right that are particularly relevant to consider during a compulsory relocation process.

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<sup>11</sup> *Public Housing Allocations: Operational Guideline*, Department of Families, Fairness and Housing, Chapter 2: Offers of Housing, last updated December 2024, accessible [online](#).

<sup>12</sup> Ibid, 2.8.2.

<sup>13</sup> n 9.

<sup>14</sup> Charter s 38.

<sup>15</sup> 'Public authority' is defined at s 4 of the Charter.

<sup>16</sup> Charter s 7(2).

Firstly, only an ‘arbitrary’ interference with a person’s home or family will limit this right. If there is a risk of interference, but that interference would not be ‘arbitrary,’ then this right would not be limited. The definition of an ‘arbitrary’ interference, for the purposes of this right, has been settled by the courts.<sup>17</sup> An ‘arbitrary’ interference is one that is “capricious, or has resulted from conduct which is unpredictable, unjust or unreasonable in the sense of not being proportionate to the legitimate aim sought.”<sup>18</sup> This will be important to consider when making decisions that impact people’s homes and families during the relocation process. Putting safeguards in place like giving residents reasonable notice of decisions, accessible, clear and consistent communication in various languages, and genuine consultation with residents may reduce the risk of an interference with people’s homes and family that is “unpredictable” or “unreasonable”.

Secondly, it is important to consider that ‘family’ is intended to be broadly defined under the Charter, reflecting the “diversity of families that live in Victoria.”<sup>19</sup> This is not only mentioned in the extrinsic materials to the Charter, but reflects international law. Article 17 of the International Covenant on Civil and Political Rights (**ICCPR**), on which section 13 of the Charter is modelled, is intended to include a broad definition of ‘family.’ The UN Human Rights Committee has noted that, with respect to Article 17, family is to be “given a broad interpretation to include all those comprising the family as understood in the society of the State party concerned”.<sup>20</sup>

The definition of ‘family’ is relevant because relocation processes will naturally impact and interfere with family units living within the public housing towers. Therefore, reducing the impacts on families not only requires ascertaining a clear idea of the needs of different families but understanding *who* is within that family. This understanding should go beyond Western ideas of ‘family’ – beyond the nuclear family or people that live within the one dwelling. It should recognise the diversity of families that exist across different racial and ethnic groups, within First Nations communities and within ‘chosen’ families<sup>21</sup> – reflecting Parliament’s intention behind the drafting of the Charter.<sup>22</sup>

### ***The right to protection of children and families***

Under section 17 of the Charter, families are entitled to protection by the State, and children have the right to protection as is in their best interests and needed by them by reason of being a child. As discussed above, compulsory relocation processes undoubtedly impact and interfere with residents’ families. Moreover, relocation processes in Victoria are managed by the State and specifically, DFFH. It is therefore important to note that throughout relocation processes, families – and that is, a broad definition of ‘families – have a right to protection by the State.

Relatedly, it is critical to consider the impacts of relocation specifically on children – who are entitled to protection in their best interests under the Charter. Decisions relating to the removal of children from their home and community, and relocating them elsewhere, is likely

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<sup>17</sup> See the Court of Appeal decision of *Thompson v Minogue* [2021] VSCA 358 [55].

<sup>18</sup> *Ibid* [55].

<sup>19</sup> Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006, 14. While this note in the Explanatory Memorandum relates to section 17 of the Charter, which is concerned with the protection of families, it is reasonable to assume that Parliament intended that there would be a consistent definition of ‘family’ across both sections 13 and 17 of the Charter.

<sup>20</sup> UN Human Rights Committee, General Comment No.16: Article 17 (The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation), 32nd session (8 April 1988), UN Doc HRI/GEN/1/Rev.9 (Vol. I) [5].

<sup>21</sup> The concept of ‘chosen family’ is particularly relevant but not limited to Victoria’s LGBTIQ+ community. This is noted in the Victorian government’s *Pride in our future: LGBTIQ+ Strategy 2022-2032*, p 41, accessible [online](#).

<sup>22</sup> n 19.

to engage a child's right to protection. This may be especially so if children cannot be relocated within the same area. While children may often move homes, the way that relocation occurs can impact a child's sense of stability and security – an essential protection for children and something that is needed by them by reason of being a child.

Similarly to the right to be free from arbitrary interference with home and family, there are safeguards that can be put in place during the relocation process to reduce the risk of unlawful limitations on the right of children to protection. For example, ensuring that relocation decisions consider the proximity to existing childcare and schools, or options for education at a new location will be important, as will proximity to healthcare services. Genuine and considered consultation with residents about the needs of their families and their children may reduce the negative impacts of relocation processes on residents' and in turn, reduce the risk of breaching their right to protection.

### ***The right to equality***

The right to equality under section 8 of the Charter has several limbs – at least two of which may be relevant to compulsory relocation processes.

Under section 8(2) of the Charter, every person has the right to enjoy their human rights without discrimination. This right becomes relevant when a person's enjoyment of other Charter rights is limited on the basis of a protected attribute, such as disability, age, religion or race.

To safeguard against this, when a Charter right is considered relevant during relocation processes, consideration should also be given as to whether any limitations on this Charter right may be discriminatory. For example, if an adult child with a physical disability is offered relocation housing with mobility adjustments but in a separate dwelling to the rest of their family, this could impact their right to be free from arbitrary interference with their family, as their family unit will be separated. It could also impact their right to equality if the decision is made on the basis of that adult child's disability.

Under section 8(3) of the Charter, every person is equal before the law, is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination. This limb of the right to equality is broader than section 8(2) – it ensures that laws and policies are applied equally and do not have a discriminatory effect.

In the context of relocation processes, section 8(3) will be relevant in ensuring that aspects of the relocation process do not have a direct or indirect discriminatory effect. For example, if residents are offered limited alternative housing options and are then removed from the priority list if they do not accept one of these alternative options, this may result in indirect discrimination in some circumstances. If residents are unable to accept alternative housing options because the housing does not meet their particular needs, such as being inaccessible due to their disability, this standard process could in fact result in indirect discrimination against residents with a disability.

### ***The right to choose where to live***

The right to choose where to live is protected under section 12 of the Charter, as part of the right to freedom of movement. Compulsory relocation processes will, naturally, limit this right. This is because residents in most compulsory relocation processes are not *choosing* to move out of their homes.

This right may be impacted during particular stages of the relocation process. For example, the right to choose where to live may be relevant to consider when decisions are being made about relocation housing for residents and when residents are being moved back to their redeveloped homes. In circumstances where residents of a demolished public housing tower cannot all move back to their redeveloped homes (due to insufficient replacement public housing, for example), this right will be even more important to consider - to ensure that limitations on residents' right to choose where to live are lawful.

The Commission considers these four Charter rights in particular – the right to choose where to live, the right to equality, to protection of children and families, and to be free from arbitrary interference with home and family – are particularly vulnerable to limitation during the relocation process. As such, they must form part of a human rights framework within the relocation process. Other Charter rights may also be engaged and limited in relation to specific aspects of the relocation process.

### ***Ensuring limitations on Charter rights are justified***

As mentioned above, rights under the Charter can be lawfully limited if this limitation is justified.<sup>23</sup> As such, if any Charter rights are limited by a particular decision during the relocation process, it is vital to consider if those limitations are lawful.

Practically, this can involve asking the following questions:

- What are the relevant rights? For example, the Commission has outlined how the right to protection of children can be a relevant right during relocation processes.
- Why is the right being limited? In other words, what is the purpose of the limitation?
- What are the consequences for the person whose rights are being limited?
- Is the decision that limits rights a tailored, unique decision that is specific to the circumstances? Or is the decision a blanket approach that is not tailored to the circumstances?
- Can the decision be made in a different way that will have a lesser impact on the person's rights?

Ensuring that any limitations on Charter rights are justified throughout the relocation process is not only required under the Charter, but it may help to reduce the negative impacts on the thousands of residents affected by the redevelopment of Melbourne's public housing towers.

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<sup>23</sup> Charter s 7(2).



## 4. The importance of a human rights and equal opportunity framework

Compliance with the Charter is a legal duty and the Commission has created practical guidance for public authorities on how to properly consider Charter rights, act compatibly with Charter rights and how to determine if any limitations on rights are lawful. The Commission encourages DFFH to utilise our guide for public authorities on the application of the Charter<sup>24</sup> and to embed this practical guidance into DFFH's *Relocation manual* for relocation processes.

Similarly, DFFH can draw on the Commission's guide to Victorian Discrimination Law to ensure that anti-discrimination practices frame the relocation process.<sup>25</sup>

Finally, while the Commission's submission largely goes to term (h) of the Inquiry's Terms of Reference - namely 'any other matter' – this does not take away from the importance of ensuring that the Charter and the EO Act frame the relocation process of residents.

Melbourne's public housing residents have created communities that are vibrant and rich in diversity and difference. The Commission has seen many of the submissions made to this Inquiry from residents of these communities. Residents are concerned about their ability to return to the areas they call home, a concern that may be amplified in light of the government's recent announcement that the housing towers in Flemington and North Melbourne may not be replaced by public housing.<sup>26</sup> Residents are also concerned about the personal toll this relocation process will take on them and their families and how their rights will be upheld. This reinforces the importance of a relocation process that respects and upholds Charter rights and equal opportunity, as required by law.

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<sup>24</sup> *The Charter of Human Rights and Responsibilities: A guide for Victorian public sector workers*, Victorian Equal Opportunity and Human Rights Commission, 3<sup>rd</sup> ed, January 2024, accessible [online](#).

<sup>25</sup> *Victorian Discrimination Law*, Victorian Equal Opportunity and Human Rights Commission, accessible [online](#).

<sup>26</sup> 'Landmark renewal project delivering hundreds of homes' Media release, Hon Harriet Shing MP, 11 March 2025, accessible [online](#); 'Flemington and North Melbourne towers to be redeveloped with no public housing' *The Age*, 11 March 2025, accessible [online](#).

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