



Summary of Judgment

Jason Mallard v Homes Victoria

[2025] VSCA 339

19 December 2025

The Court of Appeal (Niall CJ, Kennedy JA and J Forrest AJA) today dismissed an appeal brought by the applicant, Mr Jason Mallard, on behalf of renters in three public housing towers located in Flemington, North Melbourne and Carlton, against a decision of a judge of the Trial Division to dismiss the judicial review proceedings brought against Homes Victoria.

On 18 September 2023, the Chief Executive Officer ('CEO') of Homes Victoria made a decision under s 15(1)(a) of the *Housing Act 1983* (the '*Housing Act*') to implement a policy of the Victorian Government to retire all 44 of Melbourne's public housing towers and redevelop the land on which they are located, commencing with the Flemington, North Melbourne and Carlton towers. Homes Victoria did not consult or notify residents of the towers of its decision. The applicant is a resident of the Flemington public housing tower.

The applicant sought leave to appeal against the decision to dismiss the judicial review proceedings on six proposed grounds.

Grounds 1 and 5 related to Homes Victoria's obligations under the *Charter of Human Rights and Responsibilities Act 2006* (the '*Charter*'). Respectively, they contended that the judge should have found that Homes Victoria failed to establish that the limitation of the applicant's right to home under s 13(a) was demonstrably justified, and that, by failing to consider the impact on renters of the decision being made without prior notice or consultation, Homes Victoria failed to comply with the procedural limb of s 38(1).

Grounds 2, 3 and 4 related to whether Homes Victoria was obliged to afford the renters procedural fairness before making the decision. Respectively, these grounds contended that the judge ought to have found that renters were entitled to be heard prior to the making of the decision, that this error was material to the decision, and that this right to be heard would have extended to permitting renters to make submissions about the feasibility of renovating and retrofitting the towers.

Ground 6 contended that the judge should have excluded parts of the evidence given by the CEO of Homes Victoria under s 135 of the *Evidence Act 2008* (the ‘*Evidence Act*’).

The respondent, Homes Victoria, also filed a notice of contention containing three grounds. Ground 1 contended that the judge erred in finding that the CEO of Homes Victoria did not reflect on the impact of the decision being made without prior notice or consultation. Grounds 2 and 3 contended that the decision did not arbitrarily interfere with the applicant’s rights under s 13(a) of the *Charter*.

In respect of Homes Victoria’s obligations under the *Charter*, the Court held that although the decision did interfere with the applicant’s right to home under s 13(a) of the *Charter*, this interference was not arbitrary. While not necessary to determine, the Court held that the judge was correct to find any interference with the applicant’s right to home arising from the decision was demonstrably justified.

The Court also rejected the applicant’s argument that the judge ought to have found that Homes Victoria failed to act in compliance with the procedural limb of s 38(1) of the *Charter*. The Court observed that it was open on the evidence before the judge to find that the CEO of Homes Victoria considered both the legal consequences of the decision on renters in the towers, as well as the loss of community that would cause. This was held to reveal a sufficient understanding of the s 13 right and how it might be limited as a consequence of the decision.

In respect of grounds 2, 3 and 4, the Court held that a decision made by Homes Victoria under s 15(1)(a) of the *Housing Act* is not conditioned on an obligation to afford group members procedural fairness. It was found that the legal rights under the tenancy agreement held by renters of the towers were not altered by the making of the decision and, absent further steps taken by Homes Victoria, renters’ rights to exclusive possession continued. The Court also rejected the submission that the loss of community gave rise to an obligation to afford procedural fairness.

Rejecting proposed ground 6, the Court held that the judge was correct not to exclude the impugned expert evidence under s 135 of the *Evidence Act*, holding that the evidence had clear probative value and its admission did not occasion procedural disadvantage to the applicant.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.