RELOCATION AND URBAN RENEWAL IN VICTORIA

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The activities of public housing authorities in Victoria, particularly the Victorian Housing Commission, have been for many years in the limelight of public interest. In this article, Mr Gibson examines the impact that the Urban Renewal Act 1970 might be expected to have on the role of the housing authorities and also looks at the question of relocation, a matter which has been largely neglected in Australia, although it has been extremely important in the United States. His conclusions show the failures of the Victorian legislation in this area and also give guidelines for a new approach to the problem.

I INTRODUCTION

The need for a more positive and enlightened approach to the problems created in our inner suburbs by so-called 'slum clearance' projects, has been obvious for some time. Some of these problems have been unavoidable, others could, with a more sympathetic and constructive approach have been greatly minimized if not entirely eliminated. For example, considerable evidence exists to the effect that Victoria's inner suburban areas just do not contain sufficient 'bad' housing to justify the sort of mass demolition programmes which have been undertaken in the past by the Victorian Housing Commission.[1] Also, the responsible authorities (the Housing Commission and the Victorian Parliament) have entirely ignored the enormous problems created for displaced home-owners. How else can one explain the absence from any of the relevant legislation of any provision dealing with questions of relocation?

Another area which has been totally ignored concerns the use of rehabilitation provisions. This concept has long been recognized in many western countries which have 'slum' or 'blighted' areas close to their main cities, as an integral part of the total urban renewal process.[2] In Victoria, however, money is never made available for rehabilitation, though provision for this very purpose exists in the Housing Act 1958, and has also been included in the Urban Renewal Act 1970.

It is hard to avoid the conclusion that the failure to recognize and come to grips with these problems has been due to a total lack of response on the part of Victoria's slum reclamation authorities. Prior to the passing of the Urban Renewal Act 1970, sole responsibility for slum reclamation

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[1] Jones, 'Urban Renewal—The Role of the Public Housing Authorities' in Clark (ed.), *Analysis of Urban Development* (1970) 3.79.

[2] *E.g.*, United States and Great Britain.

in this State was vested in the Victorian Housing Commission. The performance of this body over the past ten years has, to say the least, been controversial. It has over this period been the subject of very considerable criticism, much of it coming from people directly affected by the Commission's activities and aimed at its lack of feeling and expertise. Seldom, if ever, has it been pointed out that, as a creature of the Victorian Parliament, the Commission had, until the recent Urban Renewal legislation, derived all its powers from the Housing Act 1958.

A good deal of the criticism levelled at the Commission is due at least as much to the short-comings of the relevant legislation as to any deficiencies in the Commission itself. This might help to explain why, faced with mounting criticism over slum reclamation generally, and the Commission in particular, the Victorian Government decided to adopt a 'new' approach to the problem; an approach which was given legislative form in the Urban Renewal Act 1970.

The aim of this article will therefore be to examine and compare the role of the Commission as a slum reclamation authority under the Housing Act 1958 on the one hand, and its future role as an urban renewal Authority on the other. To a large extent the scope of the Commission's activities has depended upon the width of its powers. Unfortunately, these powers are not clearly defined in either of the Acts. Nor have they been the subject of judicial determination in the courts of this State.

A good deal of the trouble already referred to, seems to result from the use of terms which are never defined. For example, what are the distinctions between 'slum reclamation' and 'urban renewal'? It will be important to establish them before making any assessment of likely future changes. Here again one is hampered by the lack of judicial examination through which it might have been possible to obtain a precise definition of slum reclamation and, perhaps by analogy, of urban renewal. A recent decision of the Victorian Supreme Court which will be discussed below might provide some kind of indication. It was concerned with the kinds of things which the Commission might be required to take into account before declaring any area for reclamation, or making a proposal for urban renewal.

The article is also aimed at a consideration of the problems inherent in the relocation of displacees. It seems that these problems will remain whether or not the Commission's role changes. This is so because the new Act nowhere provides for the recognition of relocation as a separate and distinct problem in urban renewal. The subject of rehabilitation is relevant for very much the same reasons. It seems impossible to speak of urban renewal in any relevant sense without recognizing that re-

habilitation is and must necessarily be an integral part of it. This is especially so in Victoria, since the quality of housing in the inner suburbs is such that wholesale demolition is difficult to justify. Rehabilitation, therefore, is yet another aspect of urban renewal which seems to have been completely ignored by both the Commission and the Parliament.

II BACKGROUND

The first Commission house was completed in the year 1940, on an area of land which had been acquired in the Victorian suburb of Port Melbourne.[3] No slum clearance work was undertaken during the war years 1939-45. Instead, the Commission was fully occupied with the problem of dealing with the acute shortage of houses; a problem which was made more difficult due to the chronic shortage of labour and materials. Early in 1946, the Commission took over the Commonwealth Munitions Plant at Homesglen, and set up a mass production programme for concrete houses. Pre-fabricated timber houses were manufactured by private contractors and transported to many towns throughout Victoria.[4]

In 1956, two important decisions were made. In the first place, a number of policy changes were instituted by the Commission. The most important of these for present purposes, was a decision to concentrate on slum reclamation work. Secondly, a Royal Commission was appointed to enquire into the operation of the Housing Act 1958, and the administration of the Housing Commission in Victoria. As one of its terms of reference, the enquiry was to establish whether

> [a]ny and what reorganisation of the Housing Commission is necessary or desirable to enable it to carry out its functions relating to slum reclamation.[5]

As a result of investigations made under this heading, the enquiry made some specific recommendations with regard to the Commission's slum clearance activities.[6]

(a) (i) That the overall planning of slum reclamation be the responsibility of an authority (not the Commission) charged specifically with the task of selecting and resuming land, allotting parts for various purposes and, in particular, allotting parts for development by private enterprise for housing and other purposes, parts for development by the Commission . . . and parts for development by appropriate authorities for community purposes.

(ii) That the Commission build new houses or repair and renovate existing houses on the areas allotted to it by the authority charged with the planning responsibility.

(b) That no reorganization of the Commission is necessary or desirable.[7]

[3] Information gained from V.H.C. booklet entitled *Housing Commission Victoria, Australia* published April 1971.

[4] 26,000 dwelling units were constructed between 1946 and 1956 at this factory.

[5] Victoria, *Report of the Royal Commission to Enquire into the Operation of the Housing Acts of Victoria and the Administration of the Housing Commission* (1956).

[6] *Ibid.* 86.

[7] *Ibid.*

Nothing was done in relation to any of the recommendations contained in this report. The Commission resumed its slum reclamation activities in 1956. By 1964, it had become obvious that the Commission was placing primary emphasis as regards its metropolitan programme on this concept. In the period 1965-66, for example, some 53 *per cent* of all dwellings constructed by the Commission in Melbourne related to slum clearance projects.[8] It had also become apparent that the Commission was beginning to think of itself as something more than just a housing authority. This was clearly revealed in the report for that period.[9] In its report for the following year, the Commission produced overt support for the move to have itself transformed into a Redevelopment Authority. As will be seen from the following extract, however, it was not at this time thinking in terms of new legislation. It obviously felt that this was unnecessary and that the experience it had gained over the years could be reflected in minor adjustment to existing Acts. In the report, the following views were put forward by the Commission:

(a) The greater part of any area to be redeveloped will be residential in character and will involve the re-housing of people—an operation for which the Commission has both the resources and experience;

(b) Existing legislation with some minor adjustments would be adequate to enable the Commission to continue and extend its activities in a field in which it has gained considerable experience over almost thirty years;

(c) The redevelopment of the greater part of the areas reclaimed must be the responsibility of private enterprise and will require the consolidation of the ownership of numerous parcels of land as a prerequisite for sale to developers. The Commission is already doing this in a small way;

(d) The setting up of a separate Redevelopment Authority would be a costly duplication of the Commission's present functions.[10]

This controversial section of the report should be briefly discussed. Read in relation to the situation as it has developed in Victoria since 1956, its accuracy should be seriously questioned. Let us, for example, take the remarks concerning re-housing contained in (a) above. There is no evidence whatever to suggest that the Commission has, or ever had, the slightest notion of what is involved in the re-housing of displacees. No real effort has been made by the Commission to ascertain, with any positive intention of implementing information obtained, the housing needs of these people. This is true even of the housing which it builds itself and provides under its legislative powers as a housing Authority.

Those people displaced through slum reclamation have their re-housing opportunities limited by the Commission's single-minded policy

[8] Victorian Housing Commission, *Annual Report 1965-66.*
[9] *Ibid.*
[10] Victorian Housing Commission, *Annual Report 1966-67.*

of constructing high-rise flats in inner suburban areas. It is not clear just what is meant by the reference made in the report to 'resources'. Undoubtedly, the Commission would have been referring to the Homesglen Factory in which it constructs the sort of unimaginative and irrelevant housing just referred to. In the circumstances, it is difficult to imagine how such 'resources' could be described as adequate.

In (b) above, the report makes reference to the 'considerable experience' gained by the Commission during the first thirty years of its operations. What exactly is meant by 'experience' in this context? The thirty year period referred to has been one of almost continual error. A period which has resulted, among other things, in the Commission earning for itself an extremely unenviable reputation as a public body devoid of all feeling; a bureaucratic institution making arbitrary decisions affecting the lives of many not in a position to contest them. Its 'considerable experience' has been gained at 'considerable expense' both to the society within which it operates, and to the people with whom it has been concerned. It has isolated older members of the community by forcing them into separate accommodation, thereby removing them from their more natural and thoroughly integrated environment; constantly and consistently refused to have anything to do with the rehabilitation of existing housing although ample power is included in the legislation,[11] and failed to co-operate with the government in order to ascertain the social requirements of those areas into which it introduces higher density living through the construction of high-rise flats.

In short, had the Commission gained experience of any value over the years, one could have expected that it would have been reflected in the development of a more constructive and overall approach to planning. Similarly, one could have also expected a distinctly more human quality in its dealings with people. Both have been sadly lacking in all Commission activity since its birth in 1937.

In part (c) of the report, the Commission observed that the redevelopment of the greater part of the areas reclaimed must be the responsibility of private enterprise with its accompanying consolidation of the ownership of numerous parcels of land as a pre-requisite for sale to developers. This is surely a remarkable claim, and one which if fully implemented, could defeat the whole purpose of reclamation. How, for example, would such a course of action help in the increase of low-cost housing in Melbourne's inner suburbs? If it is the Commission's stated intention to redevelop these areas so that those who once lived in them could be ultimately returned, then private development does not seem to be the

[11] Housing Act 1958, ss 5(1), 44(1), 57(1) and 69(1); Urban Renewal Act 1970, s. 8(1)(f).

appropriate way to achieve the aim. This approach creates many more problems than it can ever hope to solve, except perhaps for the developers themselves. On this matter, Jones has observed that:

> Historically, urban renewal gained support from a wide variety of groups. Architects, social workers and town planners thought that urban sprawl led to problems such as social isolation. In addition, many of the decayed inner suburbs that would be demolished were regarded as aesthetically offensive. Central city interests saw a chance to boost city government revenues and increase population in inner areas to help revive a declining Central Business District. They were joined in this latter aim by members of the intellectual elite who deplored the supposed cultural barrenness of suburbia and saw in urban renewal an opportunity to revive or originate the cosmopolitan life of the central city. The building industry applauded the increase in building construction that would accompany renewal.[12]

It would seem, therefore, to be at least arguable that the Commission's role as a slum reclamation authority has been far from beneficial to the community, especially that section of it which lives or has lived in Melbourne's inner suburbs. The question is how, if at all, will this role alter under the new Act?

III THE NEW ACT

The Victorian Urban Renewal Act 1970 was ostensibly designed to provide a more palatable 'cure' for the ills of our inner suburban areas. Broadly speaking, it has the effect of facilitating the establishment of Urban Renewal Authorities. It also amended the Housing Act 1958 so as to include urban renewal as a further function of the Victorian Housing Commission. Under Part I of the Act, an Urban Renewal Authority is defined as:

(a) any public authority authorized under the provisions of any Act to prepare and implement urban renewal proposals;

(b) a municipal council authorized by the Governor in Council pursuant to section 755A of the Local Government Act 1958 to prepare and implement urban renewal proposals; or

(c) The Housing Commission.[13]

The Housing Act 1958 is amended by inserting the term 'Urban Renewal' in the heading to Part III of the Act.[14] This Part sets out the various powers and duties of the Commission, so it seems more than likely that any change in the activities of the Commission will arise from the distinction obviously implicit in the Urban Renewal Act 1970 between the powers of 'slum reclamation' and 'urban renewal'.

Recently, the Chairman of the Melbourne City Council's Building and Town Planning Committee indicated that he thought of slum re-

[12] Jones, *loc. cit.*
[13] Urban Renewal Act 1970, Part I, s. 2.
[14] Urban Renewal Act 1970, s. 17(2)(a).

clamation and urban renewal as two distinct concepts.[15] If he is correct, and the distinction does apply in the Victorian context, then we may see a change for the better in future Commission activities under the Urban Renewal Act. But what is meant by urban renewal? It is not difficult to find definitions in American literature on the subject. Martin Anderson, for example, says that '[t]he federal urban renewal program attempts to rebuild run-down areas of cities by feeding large subsidies of public money and government power into normal operations of the private market'.[16] Other writers describe urban renewal as being aimed at 'slum clearance, and the constitution of new housing in the place of substandard, blighted homes'.[17] Harry Parsons, who has recently been appointed to the Victorian Urban Renewal Advisory Committee, says that

> Urban Renewal is the term used in the United States to describe the total process of physical intervention, generally, in the central areas of cities. Its basic purpose is to allow the public will to remove and clear the incubus of blight; and create the physical infrastructure for the rebirth of civilized urban values.[18]

These extracts would seem to indicate that in the United States, urban renewal almost always means the clearance of so-called slum areas; the sale of this cleared land to private developers; and its ultimate redevelopment.

In a recent publication, the Victorian Housing Commission claimed that the aim of urban renewal was to rebuild inner run-down areas in such a way as to provide a satisfactory environment, functionally efficient and aesthetically pleasing.[19] Jones has attempted to outline the aims of urban renewal in Australia, by saying that it had three main objectives:

> The first is the replacement of slums, inner suburban areas of poor housing, with modern dwellings, usually public housing units. The second is the desire to attain economies by the use of the surplus of inner area services and so alleviate the suburban sprawl. The third is the aim to arrest the decline of the central city by boosting population densities in inner areas.[20]

He was, of course, referring to the 'urban renewal activities of the Victorian Housing Commission'[21] and therefore must have been using the term as synonomous with slum reclamation, as of course the Commission at this time had no other role.

[15] See *The Herald*, 19 June 1971.
[16] Anderson, *The Federal Bulldozer—A Critical Analysis of Urban Renewal 1949-1962* (1964) 2.
[17] Millspaugh, 'Problems and Opportunities of Relocation' (1961) 26 *Law and Contemporary Problems* 6, 8.
[18] Parsons, 'Renewal and Rehabilitation' (1971) 6 *Archetype* (Magazine of the Department of Architecture and Building, Royal Melbourne Institute of Technology) 2.
[19] V.H.C. booklet cited *supra* n. 3. [20] Jones, *loc. cit.*
[21] *Ibid.*

IV FUTURE URBAN RENEWAL ACTIVITIES

How will the new legislation operate? Some see the Act as leaving the Housing Commission as the only body with large enough funds at its disposal to carry out renewal proposals.[22] In this way, it will have a distinct advantage over local councils although it is not elected or orientated to meeting local needs.

Commentators have suggested that the 'participatory' provisions of the Urban Renewal Act 1970 indicate that the Commission will be involving all relevant sections of opinion in its decision-making process. For instance, the implementation of an urban renewal proposal may be effected only after the steps outlined in certain sections of the Act have been complied with.[23] One such provision is section 6:

> Where the Governor in Council approves a proposal and declares an area to be an urban renewal area the responsible authority shall forthwith on the application of the renewal authority prepare a planning scheme for the area under the provisions of Part IIIA of the Town and Country Planning Act 1961 or where there is a planning scheme which covers the area shall (if necessary) prepare a planning scheme amending or varying that scheme under the provisions of the said Part IIIA, to permit renewal of the area as set out in the proposal.

The Housing Act 1958 contains no similar provision. The rights of citizens under that Act are confined to the submission of objections before recommendation is made to the Governor in Council.[24]

However, it can be argued that substantial grounds exist for a genuine fear that the consultative provisions of the Urban Renewal Act 1970 lack substance. For example, the Renewal Authority, under section 3(1) may, after defining on a map the renewal area recommend to the Minister that it should be authorized to prepare an urban renewal proposal for the area. Before doing this, however, it must pursuant to section 3(2)(a), give notice to the Town and Country Planning Board of its intention. Under section 3(3) it must 'consider' any recommendation or report of the Town and Country Planning Board made pursuant to sub-section 2. The remainder of its obligation to any planning authority consists of a consultation under section 3(4)(c), with the Minister for the time being administering the Town and Country Planning Act. Section 4(2)(a) obliges the Renewal Authority, in the preparation of an urban renewal proposal, to have regard 'to the planning scheme of the responsible authority and in particular to any standards, restrictions, regulations or site requirements which apply in areas adjoining the area concerned'.

[22] For a typical opinion see *The Age*, 4 November 1970.
[23] See Urban Renewal Act 1970, s. 3.
[24] Housing Act 1958, s. 67(3)(b).

It should be observed that at no time is the Commission, acting as an Urban Renewal Authority, obliged to do anything more than 'consider', 'give notice to' or 'consult'. There is nothing in the Act so far which prevents the Commission (or indeed any Renewal Authority), from completely ignoring any of the recommendations made by the Town and Country Planning Board.

An Urban Renewal Authority will, nevertheless, have certain obligations under the Act *vis-a-vis* the Town and Country Planning Board when it completes preparation of the Urban Renewal proposal. Under section 5(1)(a), copies of the proposal are to be deposited at the office of the Town and Country Planning Board. Once the proposal is adopted, a copy must be sent to the Board under the provisions in section 5(11)(a); further obligations are included in section 5(15)(a). Final implementation of the proposal is carried out pursuant to section 7 using the powers conferred by section 8.

Nowhere in the Act is there a provision which would prevent the Renewal Authority from implementing whichever plan it chooses. It may follow all steps required, including those which call for a plan by the Responsible Authority, and yet still proceed with its own plans for a particular area. Participation in this context would therefore appear to be a rather empty concept. The Housing Commission has never been bothered by provisions such as the Town and Country Planning Act in the past. It has continually ignored any planning provisions which might have been applicable to particular slum-reclamation areas. Indeed, it would appear that the Commission, acting in its role as Housing Authority and/or slum-reclamation authority, enjoys a considerable measure of Crown immunity.[25]

[25] *North Sydney Municipal Council v. The Housing Commission of New South Wales* (1948) 48 S.R. (N.S.W.) 281. In this case, the question was whether or not the Commission was bound by necessary implication by ss 305-7 and 310-8 of the Local Government Act 1919 (N.S.W.) as amended—the Full Court in this case was of the opinion that the Housing Commission was a body representing the Crown and was not subject to the provisions of the Local Government Act which it is alleged to have infringed. However, in *The Housing Commission of New South Wales v. Imperial Paint Manufacturers Pty Ltd* (1956) 56 S.R. (N.S.W.) 312, the question arose as to whether or not the Commission was liable to garnishee proceedings under the Common Law Procedure Act 1899 (N.S.W.). The Supreme Court held that, '[h]aving regard to those provisions and particularly s. 5(12) of the 1941 Act, which enacts, *inter alia,* that the Commission is a body corporate which may "sue and be sued in its corporate name", I am of opinion that the Commission, even though a statutory body representing the Crown for the purposes of the *Local Government Act,* and perhaps for other statutes and purposes, is subject to the ordinary processes of law available for the enforcement against it of civil rights and remedies'; *Ibid.* 313 *per* Hardie J. This same line was taken in *Housing Commission of New South Wales v. Panayides* (1963) 63 S.R. (N.S.W.) 1. In this case, s. 2A of the Common Law Procedure Act 1899-1957 was involved. The Supreme Court found that it did bind the Commission; 'no special quality attaches to it as a corporate power to sue; it is no more than the power to sue enjoyed by any corporation and is subject, as regards choice of court and remedy to the general law which in these respects governs every corporation'. *Ibid.* 6 *per* Sugerman J.

Similarly, any other Renewal Authority which may be set up under section 2, Part I of the Act, would appear to have no greater obligation to observe any existing plan. Certainly it would have to comply with the relevant sections mentioned above, but in the final analysis, it would not be forced to comply with any plan provided for any given area. One might, however, be less concerned with the possible activities of such authorities, since there are likely to be very few of them constituted under the Act. Although the Melbourne City Council has indicated its intention to seek the status of an Authority, there is very little chance that other councils will follow. This would be due primarily to the lack of funds which already prevents many of these local bodies carrying out even the most modest works in areas already under their control.[26]

V URBAN RENEWAL AND THE COURTS

The only piece of litigation so far initiated in Victoria which has involved an examination of the extent of Housing Commission power in relation to slum reclamation concerned the proposed declaration of an area in Fitzroy. The area of ground which formed the basis of the dispute is 15 acres bounded by Church, Rae, Reid and Nicholson streets. The Commission at first planned to demolish the 200 houses, factories and shops in the area and replace them with high-rise low-income flats and a school. The local residents concerned first found out about the Commission's plans in August 1969 and immediately formed themselves into the North Fitzroy Residents' Action Committee. Despite the efforts of this group the Housing Commission served notice on them in June 1970 that the area was to be reclaimed under the slum clearance powers contained in the Housing Act 1958, section 67(1) of which reads as follows:

Where in any area there are any houses which—

(a) are unfit for human habitation; or

(b) are in the opinion of the Commission in any respect insanitary or unhealthy by reason of the excessive number of buildings within the area or the bad arrangement of such buildings or the bad arrangement or narrowness of streets or the insanitary condition of the area or the unsuitability of the area for human habitation or for any other reason—

and the Commission considers that housing conditions within the

[26] It is a well-established fact of local government life that councils are continually waging a battle against increasing costs and decreasing revenues. The South Melbourne Council was unable to finance the redevelopment of the Raglan Street block through lack of funds, and the fear of creating a precedent. This is a fair indication of the position in which councils find themselves on the question of urban renewal. The Raglan Street block was a very small one by comparison with others reclaimed previously in the South Melbourne area. If the Council found itself unable to finance this project, there is little hope that it could ever manage larger areas in the future.

> area cannot be satisfactorily dealt with unless the area is dealt with under this Division as a reclamation area, the Commission may cause the area to be defined on a map and may recommend that the area so defined should be constituted a reclamation area.

The above section was considered at some length in the case of *Paddle Shoes (Holdings) Pty Ltd & Others v. The Housing Commission (Vic.)*. This is an unreported decision of the Victorian Supreme Court (Newton J.), given on 17 February 1970.[27] The case arose out of an application for an interim injunction to restrain the Housing Commission from submitting a recommendation for renewal affecting the plaintiff's land to the Governor in Council.

Newton J. left no doubt as to what he considered to be the scope of the Commission under this section. He observed that:

> Hence the constitution pursuant to s. 67 of an area as a reclamation area inter alia enables the Commission compulsorily to acquire all land in the area, and to make a 'clean sweep' of all houses and buildings which it considers ought to be demolished, and to substitute new houses or flats with, if necessary, new streets.[28]

It is interesting to note that Newton J. does not mention at any point in his judgment the Regulations promulgated in 1939 pursuant to section 8 of the Slum Reclamation and Housing Act 1938.[29] Had they been brought to His Honour's attention, they may have helped to explain some of the powers he referred to in the above statement. The Regulations are stated to apply to 'every house whether erected before or after the coming into operation of these Regulations, and shall have operation throughout the State of Victoria', and they provide, *inter alia,* that '[t]he Commission may declare to be unfit for human habitation a house which does not comply with any of these Regulations'.[30]

Particular notice should be taken of the use of the word 'any', which has the effect of providing the Commission with a considerably wide range of matters from which to choose. There are fifty-three Regulations, ranging from Drainage[31] to Cleanliness.[32] In the *Paddle Shoe* case, Newton J. prefaced what he described as a list of 'substantial arguments' in support of four propositions with the statement:

[27] It should be noted from the outset that this case may be of limited value for a number of reasons. In the first place, there is no certainty that the hearing for a permanent injunction will ever take place. It is also far from certain that the plaintiffs would succeed if the matter did come before the court for final determination. There is also the question of whether any judgment for the plaintiffs could be used as a precedent which might be applied to matters arising out of s. 3 of the Urban Renewal Act 1970, which is more vague than its counterpart in the Housing Act 1958.

[28] *Paddle Shoe* case revised judgment 2a.

[29] Housing (Standard of Habitation) Regulations 1939. They will be referred to in the text as the 1939 Regulations.

[30] *Ibid.* Preamble.

[31] *Ibid.* Reg. 1.

[32] *Ibid.* Reg. 22.

> In my opinion a substantial argument exists in support of the view that before the Commission could lawfully recommend that the subject area be constituted a reclamation area one or both of the matters referred to in paras. (a) and (b) of s. 67(1) of the Housing Act 1958 had to exist, and in addition the Commission had bona fide to consider that 'housing conditions within' the subject area could not satisfactorily be dealt with unless the subject area was dealt with as a reclamation area.[33]

The following observations can be made about this statement. In the first place, it should not be difficult for the Commission to satisfy the requirements of this section. It should be a relatively simple matter, given the areas in which they operate, for the Commission to declare any number of houses to be 'unfit for human habitation' since, theoretically at least, all that is required is that they not comply with any one of the fifty-three Regulations made in 1939. In the Brooks Crescent area, according to evidence which was accepted by His Honour, there were sixteen houses subject to demolition orders. This in itself would be sufficient to satisfy the requirements of section 67(1) because that section simply refers to an area in which there are any houses which fit the descriptions outlined in (a) and (b); although it is a nice question as to how many houses constitute 'any'.

But to strengthen their hand in the matter the Commission, under section 67(1)(b), is provided with a number of separate criteria. These refer to houses which in the opinion of the Housing Commission are insanitary or unhealthy by reason of:

(a) the excessive number of buildings within the area,

(b) the bad arrangement of buildings within the area,

(c) the bad arrangement or narrowness of streets within the area.

All of these can be objectively ascertained and, together with section 67(1)(a), provide the Commission with an extremely broad basis upon which to exercise its discretion. It is not obliged to establish all matters referred to in the section, since the word 'or' clearly presents it with a choice.

His Honour went on to present four arguments which he not only considered to be 'substantial', but which he felt were worthy of support. The first was

> [t]hat the expression 'housing conditions within the area' in s. 67(1) must be interpreted in the light of the preceding paras. (a) and (b), so as to mean in substance 'the unsatisfactory housing conditions within the area caused by the presence of houses which are unfit for human habitation or which are in any respect insanitary or unhealthy', so that the Commission could not lawfully recommend that the subject area be constituted a reclamation area, unless in its consideration of the question

[33] *Paddle Shoe* case revised judgment 4a.

> whether housing conditions within the subject area could not be satisfactorily dealt with unless the subject area was dealt with as a reclamation area it attributed this meaning to the expression 'housing conditions within the subject area'.[34]

His Honour is here implying that in the exercise of its undoubted discretion under section 67(1)(b), the Commission must address itself to the housing conditions within the subject area. These conditions must be assessed in terms of the matters outlined in (a) and (b). What he seems to be suggesting is that in making its decision to declare the area, the Commission could not possibly have placed the interpretation outlined above on the words 'housing conditions within the area'. In doing this His Honour was, of course, completely accepting evidence led by the plaintiffs as to the condition of the housing in the Brooks Crescent area. Furthermore, he was prepared to accept that the Commission's resolution of 9 February 1970, added to this evidence, suggested that the Commission had not acted properly.[35] He says:

> The Commission's resolution . . . begins with a recital that the Commission considers that housing conditions within the subject area cannot be satisfactorily dealt with except as a reclamation area, and it then proceeds to a bare recital that there are within the subject area houses which are unfit for human habitation and/or houses which in the opinion of the Commission are insanitary or unhealthy for the reasons therein set out. This may suggest that the Commission did not give to the expression 'housing conditions within the area' the interpretation earlier mentioned.[36]

One may well ask why this should suggest anything of the sort. All that is required of the Commission is that it make a determination as to whether or not there existed housing in the Brooks Crescent area which came within the category of either (a) or (b) of section 67(1). Its 'bare recital' merely establishes that it was satisfied that such housing existed. Surely His Honour is not seriously suggesting that because the Commission began its resolution with the announcement of its intention to declare the area, it had made its decision before satisfying itself about the condition of housing. There is nothing in the Act itself which in any way purports to outline the manner in which the Commission must communicate decisions of this type to the residents. The order in which it outlines its decisions is surely not to be taken as evidence that it had not complied with the necessary requirements. His Honour continued:

> there is nothing in Mr Bohn's affidavit to suggest that the Commission ever considered whether it was necessary to declare the subject area a reclamation area in order to deal satisfactorily with housing conditions caused by the presence of houses which were unfit for human habitation or which were insanitary or unhealthy in any respect. In para. 10 of Mr Bohn's affidavit it is simply stated that after considering objections 'the

[34] *Ibid.* 5a.
[35] *Ibid.* 9a.
[36] *Ibid.*

Commission was of opinion that housing conditions within the area were *in need of improvement* and the required *improvement* could not be achieved unless the area was dealt with as a reclamation area'.[37] (Italics added.)

This view seems, with respect, to be incorrect. The affidavit showed clearly that the Commission, having established that the requirements of section 67(1)(a) and (b) had been satisfied, made the decision that the housing conditions were 'in need of improvement', and that 'improvement' in this particular context meant reclamation and redevelopment. In what way is this not a 'consideration' of the matter?

This leads to and opens up the whole question of what process the Commission must go through when it undertakes its 'consideration'. Clearly it must at the very least satisfy itself as to the condition of the housing. Having done this, however, the decision it ultimately makes concerning future action, depends upon how it considers the area could be most satisfactorily dealt with.

It would appear that the Commission must deal with the alternatives. It could, for example, decide that housing conditions could be dealt with by carrying out an extensive programme of rehabilitation. It can do this under the Housing Act 1958.[38] But even if the Commission was in favour of either encouraging present owners to rehabilitate, or providing loans for this purpose, there may exist other considerations which could cause it to follow another course. For example, it might be concerned about the width of streets in the area. Similarly, it may feel that even allowing for an extensive rehabilitation programme, no substantial improvement could be expected in the insanitary or unhealthy nature of buildings, perhaps because they are constructed too close together.

It is not the concern of this writer to comment on the morality or practicality of these kinds of arguments. It is, however, important to see that the Commission's scope when it deliberates on matters of this sort is not as narrow as His Honour seems to have thought. Furthermore, nothing obliges the Commission to make these deliberations public. But even if it were so obliged, their absence in the affidavit would not be conclusive either way.

However, the proposition contained in (a) above is probably open to some doubt on another, slightly different point. Part III of the Housing Act 1958 is headed 'Improvement of Housing Conditions and Slum Reclamation'. It could be suggested, therefore, that when the Commission exercises its discretion under section 67, it may take into account other considerations relating to the improvement of housing conditions. While it may be correct to say that the Commission must relate housing conditions within the area to the wording of paragraphs (a) and (b), it would not be correct to say that it is confined only to the criteria laid

[37] *Ibid.*

[38] Ss 44(1)(d) and 57(1).

down in the section. This could be important since it would allow the Commission to make a decision on how housing should be improved in an area which would result in declaration despite the fact that perhaps only 10 *per cent* of the housing was fit only for demolition.[39]

Implicit also in the comments of the judge on this matter, was the suggestion that in some way the Commission was not acting *bona fide* when it made its determination that housing conditions within the area could not be dealt with satisfactorily unless the area was declared. It would seem, however, extremely difficult to show *mala fides* in this situation; it is a very serious charge which would be no easier to make out in this case than it has in the past.[40]

The second of the four arguments presented by His Honour was

> [t]hat the Commission could not lawfully recommend that the subject area should be constituted a reclamation area, unless the conclusion that 'housing conditions within the subject area' . . . could not be satisfactorily dealt with unless the subject area were dealt with as a reclamation area, was a conclusion which reasonable men could have arrived at.[41]

At least two difficulties prevent this argument from being completely acceptable. In the first place, there is the matter of the very wide discretion which the Housing Act 1958 gives to the Commission in this regard. Secondly, and more importantly, unreasonableness *per se* is not a separate ground for impugning the sort of decision made by the Commission in the *Paddle Shoe* case.[42]

The term 'unreasonable' may, however, be regarded in another light. It may be taken to mean outrageous, as it seems to have been by Lord Greene M.R. in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation*.[43] Commenting on this aspect of the concept, Lord Greene said:

[39] On 29 June 1970, the Secretary of the Victorian Council for Civil Liberties sent a series of questions to the Chairman of the Victorian Housing Commission. In question one, the Chairman was asked to indicate 'the precise criteria used by the Commission in deciding whether a dwelling should be acquired and demolished, or become subject to a repair order'; letter, 29 June 1970. The following answer was given: 'Acquisition and demolition of properties is carried out in Reclamation Areas which are areas where a substantial proportion of the housing is sub-standard and where in the opinion of the Commission, housing conditions cannot be improved unless the area is dealt with as a Reclamation Area. Demolition and repair orders are also served in respect of individual houses following detailed inspections by Housing Standards Officers and which are located in areas where reclamation is not warranted or where the necessary investigations have not been carried out; letter, 1 December 1970.

[40] See generally the discussion in *Westminister Corporation v. London and North Western Railway* [1905] A.C. 426, especially the judgment of Lord Macnaghten. It would seem that in order to support any suggestion of lack of good faith, it would need to be shown that the Commission was declaring the Brooks Crescent area simply to provide itself with another area within which to carry out its role as a provider of public housing.

[41] *Paddle Shoe* case revised judgment 5a.

[42] See *Williams v. City of Melbourne* (1933) 49 C.L.R. 142.

[43] [1948] 1 K.B. 223.

> there may be something so absurd that no sensible person could ever dream that it lay within the power of the authority. Warrington L.J. in *Short v. Poole Corporation* gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.[44]

The question, of course, is not what the Victorian Supreme Court or any other court might think was unreasonable, but rather whether the decision is one which no reasonable body could have made. It would appear, however, very difficult to show conclusively that the Commission, when declaring the Brooks Crescent area for reclamation, made anything other than a reasonable decision. This is not to indicate approval of that decision, but only to show that the existing state of legislation makes the formation of such decisions 'reasonable'. This must always be the case where a body such as the Commission enjoys such a wide discretion.

The next of the four main areas of argument also concerned motive:

> That the Commission could not lawfully recommend that the subject area should be constituted a reclamation area, if one of its substantial purposes or objects in making the recommendation went outside the object of satisfactorily dealing with existing unsatisfactory housing conditions in the area caused by the presence of houses which were unfit for human habitation or in any respect insanitary or unhealthy.[45]

This argument suggests that some 'improper purpose' might have motivated the Commission in its decision to treat the Brooks Crescent area as one suitable only for reclamation. There have been many cases decided which have involved this as a basis of challenge,[46] and it is undoubtedly a possibility in the instant case. It must always be remembered that the Housing Commission is also a public housing authority. It operates partly as a provider of low-cost housing; a role which it carried out, at least until 1956, with a considerable measure of success. Perhaps it was with this in mind that Newton J. made the comments outlined above.[47] Accordingly, it may be argued that in declaring the Brooks Crescent area, the Commission may have been considering the possibility of furthering its building programme by compulsorily acquiring the land in this way. More cynically-minded observers might even go so far as to say that it was acquiring the property for private developers; an accusation which is not infrequently made.[48] But while it may be possible to show that the Commission's role as housing authority had in this instance intruded into its

[44] *Ibid.* 229.
[45] *Paddle Shoe* case revised judgment 6a.
[46] *E.g., Westminster Corporation v. London and North Western Railway* [1905] A.C. 426; *Arthur Yates & Co. Pty Ltd v. Vegetable Seeds Committee* (1945) 72 C.L.R. 37.
[47] T.A.N. 45.
[48] This was one of the fears expressed by the residents of the Raglan Street South Melbourne area when it was negotiating through the Council with the Commission over the decision to reclaim their block.

decision-making process when the question of slum reclamation was at issue, it would be much more difficult to show that its actions were not in this case calculated to improve housing conditions. It would appear that this, plus the Commission's very wide area of discretion and the lack of concrete evidence to the contrary, would make any allegation of improper purposes extremely difficult to substantiate.

Finally Newton J. claimed:

> That an opinion for the purpose of s. 67 (1) (b) that any houses within the subject area were in any respect insanitary or unhealthy could not lawfully be formed by the Commission, unless such opinion was not only honestly held but reasonably open on the facts.[49]

As a statement of what would be required of the Commission, this is unexceptionable, but as with all other arguments presented by His Honour, extremely difficult to substantiate.

On balance, therefore, it would seem that the plaintiffs would find it extremely difficult to convince a court that the temporary injunction granted against the Commission should be made permanent. It seems most likely that any curb on the Commission's activities in slum reclamation will have to be effected by legislation.

Furthermore, it is hard to subscribe to the belief that the 1939 Regulations were intended to have no application when housing is judged as being unfit for human habitation for the purposes of satisfying section 67(1)(a) of the Housing Act 1958. They were originally passed pursuant to section 8(7) of the Slum Reclamation and Housing Act 1938. This section was contained in Part II of the Act which was headed 'Improvement of Housing Conditions'. It is this fact more than any other which has led some to argue that they were intended to apply only in relation to questions of improvement. This would appear to be incorrect for two reasons.

In the first place, though slum reclamation provisions were contained in a separate part of the old Act,[50] it could be argued that they were intended to represent just another aspect of, indeed another way of, improving housing conditions. If this is the case, then the regulations would be relevant in the context of slum reclamation. Secondly, both in the old Act and in the Act passed in 1958, these Regulations remain the only criteria by which housing may be declared to be unfit for human habitation. If the court argues that they are concerned with repair orders only, or that they can have no application to housing where slum reclamation is concerned, then the legislation becomes deficient. It means that 'unfit for human habitation' has different meanings depending on which area of

[49] *Paddle Shoe* case revised judgment 6a.
[50] Housing Act 1937, s. 4.

activity the Commission happens to be concentrating. It would also mean that the Commission has no criteria whatever on which to base any decision made under section 67 of the 1958 Act.

It may be significant that both 'Improvement of Housing Conditions' and 'Slum Reclamation' are now included together under Part III of the Housing Act 1958. This may mean that the 1939 Regulations were intended to be used to determine both questions, always supposing them to be different. Section 56(1) of the Housing Act 1958 provides that:

> Where the Commission after making due inquiries and obtaining all necessary reports is satisfied that any house or the land on which any house is situate does not comply with the regulations made under this section the Commission may declare the house to be—
>
> (a) unfit for human habitation; or
>
> (b) in a state of disrepair.

Section 56(7) of the same Act permits the making of Regulations prescribing conditions the non-compliance with which may render any dwelling unfit for human habitation. There have so far been no regulations passed under this enabling provision. This may mean that the 1939 Regulations were intended to apply to all activities undertaken by the Commission under Part III of the Housing Act 1958. Once again, the Commission seems to enjoy an almost unfettered discretion.

It now seems unlikely that the court will be given the opportunity to decide finally the issue in the *Paddle Shoe* case. This is unfortunate, since it presented the courts in Victoria with an opportunity to comment on and possibly define the scope of the Commission's powers under the Housing Act 1958. This might very well have helped in analysing the new Urban Renewal Act, and the power which any Renewal Authority constituted under it might enjoy. It might also have provided some sort of guide as to whether or not the Commission, when acting as an Urban Renewal Authority, could reasonably be expected to make any alterations in its role, *i.e.*, the role which it played as a slum-reclamation authority under the Housing Act. As things stand at this moment, we have only the Commission's recent record in the Carlton area to guide us. The not inconsiderable anger with which the residents of that suburb greeted the Commission's first act as an Urban Renewal Authority would seem to indicate that nothing whatever has changed.[51]

VI THE PROBLEM OF RELOCATION

Relocation problems arise in urban renewal because families living in project areas must be displaced in order that slum clearance can be under-

[51] See the following newspaper articles in which the matter is discussed: 'Carlton's Little Acre Hits Trouble' *The Age*, 23 January 1972; 'Minister is "Dodging On Carlton"' *The Age*, 11 January 1972; 'Council Gets Renewal Power' *The Age*, 8 February 1972.

taken. In Victoria, up to this point in time, this clearance work has been done by the Housing Commission acting in one of its many roles.[52]

The question of relocation and the problems which necessarily attend it have been very widely discussed by academics and others in such countries as the United States and Great Britain. It has received scant attention so far in this country, even from those people who have written on the subject of urban renewal. Perhaps, therefore, one should not be too surprised to find that none of the relevant Australian legislation—with the possible exception of South Australia—makes provision for the relocation of displaced persons. The South Australian Housing Improvement Act does contain a provision as follows:

> Before making any such recommendation the housing authority shall be satisfied that insofar as suitable accommodation for the persons of limited means who will be displaced by the clearance of the area does not already exist, the housing authority can provide, or can arrange for the provision of such accommodation in advance of the displacements which will from time to time become necessary as the demolition of houses in the area, or in different parts thereof, proceeds.[53]

The Victorian Housing Act 1958 is absolutely silent on the matter, and the Urban Renewal Act 1970 similarly makes no demands on the Renewal Authority to provide any sort of relocation plan as part of its urban renewal proposal. It is difficult to explain just why successive pieces of legislation dealing with slum reclamation or urban renewal have neglected to recognize the problem of relocation. It may have been thought unnessary to insert specific requirements since the Housing Commission has always offered the relocatee a choice of public housing. However, this is done purely as a matter of 'policy', and can hardly be seen as a sophisticated approach to a delicate and socially relevant problem.

If the Australian legislative record in relation to relocation is a poor one, how has the matter been handled in other countries? In the United Kingdom, relocation provisions have been included in various Acts since 1890. In that year, the Housing of the Working Classes Act 1890 was passed and included the following section:

> (1) Subject as herein-after mentioned, every scheme comprising an area in the country or city of London shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area comprised therein, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the limits of the same area, or in the vicinity thereof . . .

This provision has been carried forward in some form or another in most English Housing legislation since that time.[54]

[52] Housing Act 1958, ss 5, 22, 31 and 34.
[53] Housing Improvement Act 1940 (S.A.), s. 33(2).
[54] *E.g.*, Housing Act 1969 (Eng.), s. 32(3).

Provisions similar to those contained in English legislation first appeared in the United States in the 1937 Housing Act,[55] and were administered under one central body known as the United States Housing Authority. However, it was not until the Housing Act of 1949,[56] that the Federal Government undertook a national programme of what was defined in the Act as 'slum clearance and redevelopment'.[57] The term urban renewal did not come into use until the Housing Act of 1954.[58]

The 1949 programme was begun by people who were concerned with the physical condition of housing, especially in the cities.[59] The three primary objectives of the programme were to:

(1) Eliminate substandard and other inadequate housing through clearance of slums and blighted areas.

(2) Stimulate housing production and community development sufficient to remedy the housing shortage.

(3) Realize the goal of a decent home and a suitable living environment for every American family.[60]

How was this programme designed to operate? When urban redevelopment first took on legislative form, Federal Congress laid down two basic and major guidelines for the programme. They were, (i) maximum reliance on private enterprise, and (ii) the responsibility for initiating and carrying out specific urban redevelopment projects was to lie with the local governments. The role of the Federal Government, therefore, was one primarily of providing advice, guidance, and the necessary funds.[61] Relocation was not only a public responsibility, but an essential feature of slum clearance under the Act. It is important to note the essentially local nature of the programme, despite the fact that some commentators have criticized it on the basis that it was run by decree from Washington.[62]

As Groberg says, there can be no urban redevelopment project started anywhere in the United States unless:

[55] 42 U.S.C.A. 1401. [56] 63 Stat. 414.

[57] Despite the comments in Anderson, *op. cit.* 33 ff., this redevelopment was not designed to solve all national housing problems. For criticism of this and other aspects of Anderson's book see Groberg, 'Urban Renewal Realistically Re-appraised' (1965) 30 *Law and Contemporary Problems* 212.

[58] 68 Stat. 590; 42 U.S.C.A. 1451. This Act amended and broadened the 1949 programme so as to encompass city-wide programmes rather than individual projects.

[59] Had not s. 105(c) of this Act contained safeguards for displaced families there is some doubt that it could have mustered enough votes for passage. This indicates how strongly the legislators felt about the problem of relocation in urban renewal.

[60] See Housing Act 1949, s. 2.

[61] In this regard, Martin Anderson would appear to be incorrect; see Groberg, *op. cit.* 213.

[62] *Ibid.*

— a state legislature has first adopted an enabling law to give cities the governmental power for urban renewal, and some forty-eight states have;
— an elected city council has first organized an operating local renewal agency and some 800 cities have;
— the same city council has first approved the project, and some 1600 projects have been so approved;
— the local government has first authorized local public expenditure to supplement federal funds, and more than one billion dollars in local public funds have been so approved to back the program;
— local citizens are participating in the urban renewal process, as required by law, and citizens everywhere are so doing.[63]

A redevelopment project, as it was known under the 1949 Act, was 'activated' by the creation of a Local Renewal Agency.[64] This could take the form of (i) a specially created redevelopment agency, (ii) an authority responsible for public housing or (iii) the City or County itself. Once it was established, however, application could be made to the Federal Government for a planning advance. This was a temporary loan used to finance initial surveys and planning.

In certain circumstances, funds could be made available earlier than the planning stage for the purpose of studying the feasibility of the proposed project. Need for such a survey would usually be discussed with the local Regional Office of the Urban Renewal Administration before an application for this type of assistance was made. Where a feasibility study was undertaken, application for the usual planning advance could only be made on its completion. These planning advances were not gifts; they had to be repaid with interest out of the first funds, be they federal or non-federal, which became available for the financing of the project.[65] Such funds became available then only upon completion of the Redevelopment Plan. They had to be applied for and consisted of two forms of assistance, the first of which was a Federal Temporary loan used to finance the project during its execution. The second type took the form of a Federal Grant which could be used to defray a large part of the costs incurred by the Local Renewal Agency.

A contract between the Local Renewal Agency and the Federal Government could then be authorized by the Urban Renewal Administration, provided that all requirements had been met. Now, these requirements

[63] *Ibid.*
[64] Only after passage of enabling legislation by the State legislature concerned in the project.
[65] Subsequent legislation like the Housing Act 1959 (73 Stat. 672, 42 U.S.C.A. 1453) (Supp. 1959) has enabled more effective use of federal and local funds for permitting the best scheduling of urban projects in the community. The Housing Arbitrator was also authorized to make grants for long-range community renewal programmes instead of advances which had to be paid.

have changed in certain respects since the 1949 Housing Act.[66] Under that Act, it was prescribed that contracts for loans or capital grants must require that:

(1) the redevelopment plan be approved by the governing body of the locality;
(2) the local governing body find, among other things, that the plan conforms to a general plan for the development of the locality as a whole;
(3) the purchaser or lessee of the land be obligated to devote it to the uses specified in the redevelopment plan and to begin building improvements on the land within a reasonable time;
(4) there be a feasible method for the temporary relocation of families displaced from the project area and for the permanent provision of decent, safe, and sanitary dwellings at prices and rents within the financial means of such families; and
(5) none of the project land will be acquired by the local public agency until after a public hearing.[67]

Under Title I of the Housing Act 1954,[68] 'Urban Renewal' was substituted for 'Urban Redevelopment' and the Title I programme under the 1949 legislation was broadened. To a very great extent, this broadening was to become most evident in the area of rehabilitation; an area which up until this time had been expressly excluded since a project could not include the re-construction or improvement of any buildings contemplated by the redevelopment plan. Under the 1954 Act, however, an urban renewal project was defined so as to include not only the previously authorized acquisition, clearance and disposal of land by the public agency, but the restoration of other blighted or deteriorating areas by 'carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan'.[69]

This basic shift in thinking has been described as a

> [b]roader and more comprehensive approach to the problems of slums and blight, or as a redirection of the urban redevelopment program. More specifically, it means a broadening of the program into blighted areas where the land would not be acquired by the local public agency. This was intended to permit blight in the area to be eliminated by private enterprise through rehabiliation, so that structures would be conserved before reaching a stage where demolition would be necessary.[70]

Another very far-reaching innovation in the 1954 Act, was the introduction of what was called the 'workable program'. Under section 101(c) of the 1954 Housing Act, no federal loan or grant can be made for slum clearance, urban renewal, or public housing unless a locality first presents

[66] These changes are contained in recent legislation which will not be dealt with in this article.
[67] Foard and Fefferman, 'Federal Urban Renewal Legislation' (1960) 25 *Law and Contemporary Problems* 635, 654-5.
[68] 68 Stat. 590; 42 U.S.C.A. 1451.
[69] 68 Stat. 626; 42 U.S.C.A. 1460.
[70] Foard and Fefferman, *op. cit.* 654.

an acceptable workable programme to the Administration. Broadly speaking, this programme is made up of seven elements:

(1) Codes and Ordinances: establishing adequate standards of health and safety under which dwellings may be lawfully constructed and occupied.

(2) Comprehensive Community Plan: providing a framework for improvement, renewal, and blight prevention to foster sound community development in the future.

(3) Neighborhood Analyses: developing a community-wide picture of blight—where it is, how intense it is, and what needs to be done about it.

(4) Administrative Organization: establishing clear-cut authority and responsibility to co-ordinate the over-all program through effective administration of planning measures and other activities.

(5) Financing: providing funds for staff and technical assistance needed, for public improvements and renewal activities essential to the program.

(6) Housing for Displaced Families: determining community-wide the relocation needs of families to be displaced; developing housing resources to meet these needs, and providing relocation service to displaced families.

(7) Citizen Participation: assuring that the community as a whole, representative organizations, and neighborhood groups are informed and have full opportunity to take part in developing and carrying out the program.[71]

Before a project can be approved for execution, there must be a public hearing, and the local governing body must officially adopt the urban renewal plan, find that it conforms to the general plan for the locality as a whole and determine that the proposed relocation of families to be displaced is feasible. This 'workable program' provision had, to a large extent, been foreshadowed by section 191 of the 1949 Housing Act,[72] but the provisions allowed not only for a broader concept of urban renewal, but also for a more positive approach to the problems of displacees.

Subsequent legislation has extended and broadened the scope of the urban renewal programme even further. The 1956 Housing Act, for example, provided further assistance for displacees by permitting payments for moving expenses up to $100 for an individual family and up to $2,000 in the case of a business. Such expenses were further liberalized under Title IV of the 1959 Housing Act.[73] Further enactments have expanded the programme in areas which do not immediately concern us here. Financial provisions, for example, have been made more liberal. In some cases, grants have taken the place of advances where community renewal programmes are involved.

[71] Anderson, *op. cit.* 17-8.
[72] 63 Stat. 414 (1949) as amended; see 70 Stat. 1103, 42 U.S.C.A. 1451.
[73] 73 Stat. 672, 42 U.S.C.A. 1453 (Supp. 1959).

VII RELOCATION AND PUBLIC HOUSING

The success of any relocation programme, such as that outlined in the United States legislation, depends to a large degree upon the sort of housing made available to the relocatee. So far as the public sector is concerned in Victoria, the Housing Commission is the only authority providing such housing. This body is primarily a public-housing authority whose basic function is the construction, for sale or rental, of adequate low-cost housing. Although some have challenged the wisdom of allowing the Commission to continue operating as a building authority in the inner areas,[74] it seems likely to remain the only Victorian construction authority for public housing for some time to come. What are the implications of this state of affairs for the relocatee in Victoria?

Generally speaking, the relocatee has two choices open to him when he is forced to leave his home. He may accept the Commission's offer of public housing, or he may choose to select a house from a private sector.[75] In very many cases, he will have no real choice at all and this is especially so if he happens to be a tenant. Almost certainly, the tenant will be forced into rented accommodation which, at the present time, means high-rise living. Not only is this type of construction very costly,[76] but there is some doubt now as to whether this form of accommodation does in fact improve the position in terms of housing densities.[77]

The Commission's high-rise syndrome is a comparatively recent manifestation and it represents a complete change from the type of housing which it so successfully produced during its first twenty years of operation. It is true that during this early period it did build some flats, but these were seldom above three storeys in height and were almost always built in outer suburbs.

Under existing United States legislation, a local public agency, before obtaining a Federal loan or grant to carry out a project must show:

1. That it has a feasible method for relocating the families living in properties to be acquired; and
2. That standard housing units will be available to the displaced families,
   (a) at rents or prices they can afford,
   (b) in areas 'not less desirable' than the project area with respect to utilities and facilities; and

[74] *E.g.*, Crow and Crow, *Plan for Melbourne* (1970) (Part II) (published by the Modern Melbourne Committee of the Victorian State Committee of the Communist Party of Australia).

[75] Always supposing, of course, that he is in the financial position to do so.

[76] See Royal Australian Institute of Architects—Victorian Chapter, *Urban Renewal In Melbourne* (1970) 4. This is a report taking the form of a case study of the Fitzroy (Brooks Crescent) reclamation area.

[77] *Ibid.*

(c) in locations accessible to the relocatee's place of employment.[78]

These requirements would appear to be most reasonable. The onus is placed squarely where it should be, on the shoulders of the local renewal agency, to make adequate provision, within the limits of the Act, for relocatees. The Victorian Housing Commission would have great difficulty satisfying any of the requirements set out in section two above, even if it reverted to a policy of constructing low-cost cottage type accommodation.

According to a recent article,[79] surveys carried out in the United States revealed that 50 *per cent* of the displaced families were eligible for low-rent public housing. They also showed that less than 20 *per cent* actually moved in. This can be compared with the experience in Australia where, in New South Wales up to the year 1952, only 94 families out of a total of 755 displaced, declined the public housing offered them.[80] This figure reflects the acceptance of the sort of public housing produced by the New South Wales Housing Commission. Jones has commented that

> [i]n contrast to the [Victorian Housing Commission], the [New South Wales Housing Commission] has always been able to offer a better range of housing to those displaced in slum clearance schemes. This is because [the latter] has concentrated on the construction of cottages, with the option to purchase, while the Victorian Commission has been increasingly engaged in flat construction.[81]

According to Jones, there are very definite reasons for the refusal of some families to relocate in public housing. He declares: 'It appears that most of those who refuse public housing are Greeks and other continental European migrants who settled in the inner areas in recent years. Few home owners seem to accept the offer of public housing'.[82]

In Victoria, the figures concerning housing acceptance generally would seem to indicate that up to 1968 at least, 55 *per cent* of those families that had been displaced from clearance areas in Melbourne showed a willingness to relocate in public housing.[83] The Housing Minister has stated recently that the figures are 58 *per cent* in the case of home owners, and 75 *per cent* in the case of tenants.[84] These figures can, how-

[78] This is one of the factors which tends to make reclamation a costly proposition for those who must move away from the area in which they live, and consequently away from their employment.

[79] Millspaugh, *op. cit.* 11-2.

[80] New South Wales Housing Commission, *Annual Report (1951-52)* 10.

[81] Jones, *op. cit.* 3.84. [82] *Ibid.* 3.86.

[83] For a comparison with the figures for New South Wales see *Ibid.*

[84] Letter, *The Review*, 19 September 1971. But see also letter, *The Review*, 17 September 1971. In this letter, Doctor Michael Jones said, 'Mister Meagher claims that 58% of owners and 75% of tenants in the Highett Street area of Richmond were relocated in Commission housing. These figures are in complete contradiction to a survey that Ray Burkitt gave me of the area adjacent cleared in 1971'. (Mr Burkitt, incidentally, is one of the Commissioners.)

ever, be extremely misleading since there are probably a considerable number of people who eventually do not accept the housing offered by the Commission.

Public housing in the United States is, on the whole, received with much less favour than is the case in this country. In Philadelphia, 80 *per cent* of those displaced through slum reclamation in one project area, were eligible for public housing. Of these, 67 *per cent* were referred to public housing authorities, but only 15 *per cent* actually moved in. Similarly, of 68 *per cent* eligible in a project on New York's West side, only 16 *per cent* wanted to live in public housing.[85] These figures, incidentally, do not include those families who, although within the income limit, were nevertheless disqualified for other reasons. Some families may be considered undesirable; in other cases the family income may be too low; while in others the family may be too large for the unit.

Millspaugh goes on to list four broad reasons why families in the United States reject relocation in public housing. They are as follows:

(1) The desire to stay close to the old neighborhood, whether public housing is available there or not;
(2) the feeling that a stigma attaches to residents of public housing;
(3) an unwillingness to accept the rules and regulations that go with publicly administered housing (among other things, slum families often wish to spend a smaller proportion of the family income on housing than is required in public housing) and,
(4) dislike of the physical character of public housing projects (relocatees mentioned distaste for elevator living, for concrete floors, and so on).[86]

Each of the above-mentioned reasons could be applied to the present situation in Victoria, although, unlike the United States example, the position in this State is not likely to lead to the breakdown of renewal programmes. How could it, when no such programmes exist? The Commission is not bound in any way to provide a workable programme of relocation before proceeding with reclamation activities. It has no legislative duty toward relocatees, but rather offers them housing as a matter of 'policy'. Should they refuse the Commission's offers of accommodation, then the matter becomes their own responsibility.

Millspaugh goes on to list what he describes as further measures which seem most promising in this context, from the relocation point of view. He refers to 'experimentation with new forms of public housing—forms that would eliminate the stigma from public housing projects, the institutional character of the physical structures, and possibly some of the need for managerial red tape'.[87]

[85] Millspaugh, *op. cit.* 12.
[86] *Ibid.*
[87] *Ibid.*

Having regard to what has been said on the matter by Millspaugh and others, the following observations can be made relative to the situation in Victoria. If we are going to persist with slum reclamation, and there is nothing in the new Act which suggests that we are not, then we should have written into it an obligation on the part of the Urban Renewal Authority to outline a relocation plan prior to any reclamation. As that plan would of necessity relate to the current discussion on the type of housing required, its success would depend to a large extent on the following:

(i) The success with which vacancies could be located in standard existing housing (whether provided by public or private sector); and

(ii) the provision of new units on the market at the right time and in the right place.

The basic requirements were outlined by Millspaugh when he said that

> [n]ormally a relocation plan will call for the discovery and listing of suitable existing vacancies in the community by size and by price; the inspection of vacant units to establish that they are decent, safe and sanitary.[88]

VIII CONCLUSION

Extensive legislative reform would appear to be required as a matter of urgency. It is reasonable in view of the information available at this moment, to conclude:

(1) That the Victorian Housing Commission should at once be relieved of all duties excepting those connected with its role as a housing authority; and

(2) that the concept of urban renewal be widened so as to include a viable rehabilitation programme.

Having outlined these conclusions, it would seem necessary to briefly expand on them. In the first place, it seems quite apparent that the only real way to cope with problems arising as the result of decay in inner-suburban housing, is through a federally-financed nation-wide programme.[89] In the present political climate, this would not be feasible, but as an ideal concept it would appear to be the only way in which uniformity of thinking could be induced in this difficult area.

[88] *Ibid.* 14.

[89] The Commonwealth Government has never given any official indication that it is concerned with urban redevelopment or renewal, or that it acknowledges any obligation or responsibility to assist the states and cities in carrying out planning or development in these fields. Commonwealth housing legislation is concerned primarily with the provision of low interest loan funds to the states. In this respect, present Commonwealth policy contrasts strongly with central government attitudes in the three overseas countries with which we have a close connection. In Britain, Canada and the United States there is an apolitical mandate for action and involvement of central agencies in helping other levels of government to solve some of the problems of the cities.

The Federal Government could enter into agreements with the States under which grants could be made available to local renewal agencies to carry out redevelopment work, in line with federally approved plans. Section 96 of the Commonwealth Constitution would enable the making of these grants, and the Commonwealth Government would have considerable scope for attaching appropriate conditions to them.[90] In this way, it could insist that before any redevelopment work was undertaken, appropriate and approved plans would be submitted in which matters such as relocation were given high priority. Basically, therefore, the scheme envisaged would be very much along the lines of that which currently operates in the United States. Differences would exist, however, since conditions in that country make the problem very much more acute than it is here at the moment.[91]

It must also be said that State enabling legislation would have to be passed in order that locally formed renewal agencies could be given the power of acquiring property after approval of any plan. The Federal Government could make grants to these bodies on condition also that any money spent was only to be applied to matters which had been approved by a body such as the United States Federal Urban Renewal Administration. Such a scheme would have the most desirable effect of enabling the formulation of an 'overall plan', and of forcing any Local Renewal Agency to comply with the provisions of such a plan. The Housing Commission would, of course, very definitely not be included in the list of those organizations which may be constituted renewal agencies.

A national scheme, along the lines of the one just outlined, represents only a model solution to the problems of urban renewal; it is not likely to eventuate in the foreseeable future in this country. With that in mind therefore, a more realistic set of reform ideas is suggested:

(1) Amendments to both the Housing Act 1958 and the Urban Renewal Act 1970 aimed at excluding the Commission from operating as a slum reclamation authority under the first Act, and as an Urban Renewal Authority under the second. Its activities in these areas to date suggest that this be effected as a matter of priority.

(2) Amendments to both Acts to provide for a relocation plan as a pre-requisite to any reclamation project.

(3) The insertion of definite criteria by which, (i) houses are to be judged as substandard or unfit for human habitation; and (ii) areas are to be judged to be in such condition as to warrant reclamation.

[90] See *The State of Victoria v. The Commonwealth* (1926) 38 C.L.R. 399; *Deputy Federal Commissioner of Taxation (N.S.W.) v. W. R. Moran Pty Ltd* (1939) 61 C.L.R. 735.

[91] We do not, in this State, have the very considerable racial problems which serve to aggravate what is an already substantial problem in the United States.

(4) Adequate provisions for compensation which would include among other things, (i) increased moving expenses, (ii) provision of low-interest mortgages to facilitate purchases by displacees; and (iii) a rent supplement scheme along the lines of that provided in the 1966 United States Housing Act.

(5) Amendment to the Urban Renewal Act 1970 so that citizen participation begins well before any proposal for urban renewal is put forward by the relevant authority.

(6) Primary emphasis to be placed on rehabilitation programmes in order to avoid total clearance which has the effect of destroying huge quantities of 'good' housing.

(7) Should the suggested amendments contained in (1) above not be acceptable, then provision be made for the substantial reduction of the 'policy-making' power of the Commission.

It is only if reform of this kind is carried out that the precise area of urban renewal as distinct from slum reclamation can be defined, and the problems inherent in relocation be adequately dealt with to the satisfaction of those people most concerned. Until some reform is instituted, the same doubts will exist concerning the power of the Housing Commission (and other urban renewal authorities) under the Urban Renewal Act 1970 as existed under the Housing Act 1958. Without them, the new legislation would appear to have changed little, if anything, in this area.