

**SUBMISSION**

To  
**UPPER HOUSE SELECT COMMITTEE**  
Parliament of Victoria

*On the matter of*

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**PUBLIC LAND DEVELOPMENT**

**Reference**

**The Site Identified**

**as**

**Kew Residential Services**

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**M. J. Jackson**

**South Melbourne**

26 September 2007

## **A. INTRODUCTION**

The writer submits that his credentials give weight to this submission. In particular, he considers his academic qualifications, his experience and involvement in the disability field, which commenced in 1966 and as such is in excess of forty years; combine to establish the evidence of such credentials. The writer's experiences encompass over fifteen years as a special education teacher, in excess of sixteen years as a senior manager in the public sector; including nine years as Chief Executive Officer of the former Kew Cottages; as well as almost ten years as a consultant and advisor to the disability field.

The writer also submits that the contents of this paper have direct relevance to the matter before the Upper House Select Committee (the Committee).

The Committee will note that a detailed overview of the writer's credentials is attached to this paper (*Attachment 1*).

## **B. THE WRITER'S INTEREST IN THE MATTER**

Notwithstanding the fact that it is now almost fourteen year since the writer last worked at Kew Cottages, his knowledge of and interest in the future of the Kew site, those former Kew Cottages residents remaining on the site, those former Kew Cottages residents who have now been excluded from the site, as well as the direction of disability services in this state, is current and underpins this submission.

To elaborate, the Committee should be made aware that since leaving the Cottages in 1993 the writer worked for five years as a senior manager in the Southern Region of the Department of Human Services. His responsibilities embraced the Disability Program as well as senior

operational management responsibility for public housing, Child Protection, Youth and Family Services and Juvenile Justice.

Since late 1998 the writer has conducted his own consultancy which involves regular assignments in the disability field. These assignments involve working with funded agencies in the areas of strategic planning, policy and procedures development, reviews, investigations, staff training and development and mediation. Additionally, from time to time he is also engaged by the Department of Human Services to undertake reviews of matters arising in funded disability service providers as well as some which are directly managed by the department. Part of the assignment portfolio undertaken by the writer for the department also includes formal grievance hearings, conciliations and mediations which may involve management, staff and industrial representatives. Additionally, the writer has been Chair and a Board member of a funded disability agency and he is currently on the National Board of Special Olympics Australia following a period as Chairman of Special Olympics Victoria.

The Committee should note that throughout this paper it is the writer's intention to make reference to the land which is the subject of this hearing as the 'Cottages' or the 'Kew site', rather than the newer name of Kew Residential Services.

### **C. THE TERMS OF REFERENCE AND THIS SUBMISSION**

The writer respects the fact the Committee is required to address the published Terms of Reference and he notes such terms represent a three-pronged focus. This submission focuses specifically on the following two only.

(a) The sale or alienation of public land for development

(b) The sale or alienation of public open space for the purpose of private development

However, while acknowledging the subtle variation between these two terms, for the purposes of this paper they will principally be addressed as a single focus.

However, notwithstanding the focus of the combination of the Terms of Reference addressing the matter of '**public land**' – it is the writer's contention that because this tract of land has, since 1887 been determined by successive governments and society in general, to be home to successive generations of people deemed to have special needs, the Terms of Reference are therefore about much more than the land itself. This submission therefore respectfully suggests that the Committee must also address impact on a particular cohort of people. These people are those identified as remaining on site as well as the former residents who have already been relocated; people with an intellectual disability and the families who have supported their cause. In addressing the impact on these people, it is therefore necessary to also address current disability policy and elements of both the former Intellectually Disabled Person's Services (IDPS) Act 1986 and the new Disability Act 2006.

To allay Committee members of any concerns they may have that the link between the Terms of Reference and disability policy and legislation is tenuous, it is important to emphasise the two Terms of Reference to be addressed make reference to the term '*alienation*'. And, while the writer is sure the Committee has reflected on the term, he considers it important to establish the definitions that will be applied in this submission.

The Concise Oxford Dictionary, which it is assumed the Committee accept as a respected and accepted reference, defines *alienate* as – "*estrangle, transfer ownership of, turn away or divert*" and, "*alienation*" as "*the state or experience of being alienated*". A further insightful extension of the definition is that it also refers to "*a state of de-personalisation or loss of identity in which the self seems unreal*".

In addition to this general definition, the writer also understands that there is a legal definition which in essence defines the term as – *the power of the owner or tenant to dispose of his interest in real or personal property.*

In addition to the concept of '*alienation*' the writer also draws the Committee's attention of the concept of '*public land*'. We all need to note that the government of the day does not in essence own '*public land*' because, after all, any government also represent a particular political party or parties, as in the case of a coalition government. Therefore, given a political party cannot by law assume ownership of

*public land*, the definition of '*public land*' must be defined as land that is not in private ownership but is held in trust by the government of the day on behalf of the citizens, as in this case the citizens of Victorian.

This paper will therefore articulate how the '*alienation of public land*', as per the stated definitions, and '*public open space*' for '*private development*' equates to the alienation not only of those people as noted above, but more generally to all Victorians.

### D. THE ISSUES

Let us now consider the link between the Terms of Reference, the people directly impacted, specific elements of disability policy and direction, and legislation.

#### 1. The Concept of Choice

The Committee's attention is drawn to the concept of '*choice*'. This concept is the first of a number of specific matters to be addressed in this paper as significant contradictions to the application of the Government's disability policy and both the previous and now new, but contentious Disability legislation. The contradictions stand as clear examples of '*alienation*' as applying to the Kew site.

The Government's – *Victorian State Disability Plan 2002 – 2012* makes much of the concept of '*choice*'. At this stage it needs to be emphasised that *the State Disability Plan* was described by former Premier Bracks, the former Minister for Community Services Ms Garbutt and a more recent Minister for Community Services in glowing terms. Indeed, in a government document entitled – *Victorian State Disability Plan 2002–2012 – A Summary and dated September 2002*, the plan is described as, "... a hallmark of the Victorian Government's policy". It goes on to state that it, "reaffirms the rights that people with a disability have to live and participate in the life of the Victorian community, with the same rights, responsibilities and opportunities as all other citizens of Victoria."

What then does this '*hallmark*' document say about *choice* and in particular *choice* as it relates to where a person with a disability is entitled to live? It can be articulated no better than what is stated

in the plan. Quoting from what the Government's policy under the heading – *Having more choice about housing* - the plan states:

*"The Government believes that, as much as possible, people with a disability should be able to choose where they live, with whom and in what type of housing – just like most other members of the Victorian community."*

The document then goes on to state, *"The Government will also continue to work to close Kew Residential Services (Kew Cottages) and will develop plans to close older, large-scale institutions."*

And then further, *"In closing these institutions, the Government recognises that people with a disability need to be supported when they move to other accommodation settings. This will be achieved by working with the people currently living in these institutions, and their families and carers ..."*

### **Relationship to the Terms of Reference**

Given the importance placed on the Disability Plan by the Government in terms of it underpinning the Government's disability policy, it is suggested therefore that the Committee has an obligation to consider the above references as they apply to the people most affected by the - *sale and alienation of public land for the purpose of private development?*

Given this, let us now analyse the statements in the context of *alienation*.

Firstly, and what in effect might be described as the platform policy commitment - *"Having choice about housing"*

Let us all be very clear about what this statement means. It is a statement that presents as a clear and unambiguous commitment, it is unchallengeable. Having *choice* about housing simple means just that – *having choice about housing!* Indeed, the commitment to *choice* is emphasised even more dramatically when considered in the context of the explanatory statement that, *"The Government believes that, as much as possible, people with a disability should be able to choose where they live, with whom and in what type of housing – just like most other members of the Victorian community."*

The reality of course is that other than the handful of clients who have been granted approval by the Government to remain on the Kew site, the vast majority have been removed from the site over recent years. And, while the Committee may be aware, and the writer certainly acknowledges, that while some of the people who have been removed have willingly agreed to be housed in various parts of Victoria, and in some cases families have also been agreeable to such moves. It must also be acknowledged that many people who have been relocated, have been reluctant participants. And yet, despite the advocacy from their families supporting their *choice* to remain on the Kew site, these people have been removed from the site.

What then does this say about the contradiction between the rhetoric of the policy and the way in which the Government practices the concept of *choice*?

The fact is that many people who formerly lived on the Kew site have not generally been permitted, *"to choose where they live, with whom and in what type of housing ..."* The policy of *choice* is a lie. Many of the people who wished to remain on the Kew site were not given a *choice* to remain. They were not able, as the policy states – *"to choose where they live – just like other members of the Victorian community"*. The policy lie has been manipulated by unfair and unconscionable pressure on people with a disability and their families to accept *what is offered – without choice*.

It is a lie because many of those people who wished to remain on the Kew site were not given a *choice* to remain. They were not able, as the policy states – *"to choose where they live - just like most other members of the Victorian community."*

Yet, in terms of other members of the community, they will be given the choice to live on the Kew site. In effect these 'other members of the community' will replace those people who, can reasonably be described as the traditional occupiers, also members of the community and yet were not allowed to remain.

The Kew site, which has always been public land and decreed so by successive governments, has, since 1887 been home to successive generations of people whose needs have been

generally considered greater than those experienced by other members of the community.

So, while the Government has determined, and as noted on the Department of Human Services website, that the site *is suitable* to accommodate new private housing development to a level of “around 380 houses and apartments” with “the majority being detached houses”, the same Government has said that the site *is not suitable* for the vast majority of the original occupiers except for approximately one hundred.

These facts are worth emphasising because they go to the core of *alienation*. Yes, what the Government is effectively saying is – *We are happy to have a private developer build 380 housing units which we anticipate will accommodate a population in excess of fifteen hundred other members of the community. But! We are not prepared to have the bulk of those people who originally lived on the site, other than one hundred of them, to now live on it.*

Thus, although the Government has deemed the site as suitable for significant private housing development for other members of the community, it has denied the vast majority of those original occupiers who wanted to remain on the site, their *choice* to do so.

The Government has therefore; by its decision to sell this tract of public land for the prime purpose of private development, and the resultant action of relocating people whose original and priority choice was to remain on the site, *alienated* those people.

The Government’s decision and actions have, under the Terms of Reference to be addressed by the Committee:

- Estranged those people who were relocated against their choice by denying them the protection of the stated policy
- Transferred ownership of public land to private ownership
- Turned away or diverted a significant number of the traditional occupiers of the site from what was the site of their home for many years

Thus, when considered in the context of the Government’s stated policy of *choice*, this submission suggests that the Committee has no option but to find that the people who were resident on the Kew

site at the time of the announcement of the Government's decision to redevelop the site, and have since been turned away or diverted, have been *alienated*.

### 2. The Principle of Dignity and Self Determination

This submission now turns to the second of the policy and legislative contradictions which provides a further example of alienation. As already mentioned, the *State Disability Plan 2002 – 2012* has been described by the government as, “... a hallmark of the Victorian Government's policy.”

The Government has stated that underpinning, “*the vision and all other elements of the State Disability Plan*” are four Guiding Principles or values.

They are -

- The Principle of Equality
- The Principle of Dignity and Self-Determination (Choice)
- The Principle of Diversity
- The Principle of Non-Discrimination

It must be placed on the record that the government should be congratulated on endorsing such indisputable principles as providing the platform of its disability policy. Because of the significance given to these principles, it must be assumed that the Government is not willing to have any one of them compromised.

This section addresses the *Principle of Dignity and Self Determination*, noting again that the State Plan articulates this principle as also encompassing the concept of *choice*, as already addressed above.

So what then does the State Plan say about this important principle? Firstly, it says that it “*is about respecting and valuing the knowledge, abilities and experiences that the people with a disability possesses.*” It then goes on to say that it is about, “*... supporting them to make choices about their lives, and enabling each person to live the life they want to live.*”

There are powerful words embedded in these statements. And, these words – let us highlight them – *respecting, valuing, supporting, choice, enabling each person to live the life they want to live* are in effect given legal emphasis in the *IDPS Act 1986, under the Statement of Principles 5 (c) which states – “the welfare of an intellectually disabled person is the first and paramount consideration.”* It is essential to note that it was this legislation that was in place at the commencement of the State Plan in 2002 and, at the time the Government made its decision to sell the Kew site for private development. Indeed, this legislation was the beacon legislation, in terms of the rights of people with an intellectual disability, right up until the end of June 2007.

### **Relationship to the Terms of Reference**

So, if the welfare of the individual is, *“the first and paramount consideration”* and, if the Government does truly *respect, value, support* and place such emphasis on *choice* which enables people with a disability to, *“live the life they want to live”* it is therefore an indisputable fact that, selling the Kew site for private development does constitute an *alienation* of those people who have been *turned away* and *diverted* from what was the site of their home. And, by such action the Government has therefore contradicted its own *hallmark policy* by demonstrating it does not, in action, really *respect* or *value* people with a disability, or support the notion of *choice*. And further, that the Government has acted illegally against both the letter and the intent of the IDPS Act.

### **3. The Principle of Non-Discrimination**

Included among the four Guiding Principles underpinning the State Plan as already mentioned above is that of *Non-Discrimination*. This is of course not only a principle, but is indeed a legal imperative under both Federal and Victorian State legislation. However, in the context of the State Plan this imperative is described as implying, *“... that all people have the right to live their lives free from discrimination.”* Where, *“... this means that society must set right all forms of discrimination – including both active and passive forms of discrimination.”*

How then does this Guiding Principle relate to the Government's action of *turning away* and *diverting* those people with an

intellectual disability who formerly lived on the Kew site and, who did not wish to be *alienated* from the site?

Quite simply, while the private development of the land will provide for, as already stated, "... around 380 houses and apartments", this development is to be directed to others from the community but debars or *discriminates* against those people who formerly lived on the site and have since been diverted. In other words, those of this group who articulated their wish to remain on the Kew site as their first *choice* have been discriminated against both *actively* by the fact they have been relocated from the site, and *passively*, by the pressure brought to bear on the individuals as well as their families, in the form of them being told – remaining on the Kew site was not an option.

On the matter of *passive discrimination*, or perhaps more accurately described as *manipulative discrimination*, despite many of the former Kew Cottages residents having listed in their individual General Service Plan, a desire to remain on the Kew site, this desire was ignored. Instead, a pseudo exercise of reviewing the GSPs was established with the Intellectual Disability Review Panel. An exercise, because it was undertaken as what might be described as a 'job lot' contravened the requirement of the IDPS Act which states – "*At any hearing of the Intellectual Disabled Review Panel the person in respect of whom the hearing is conducted must appear before the Intellectual Disability Panel in person.*" This requirement was not afforded to many of those individual's with a disability who disputed the contrary decision of diverting them from the Kew site. The pseudo nature of the exercise is highlighted even more given the fact that the IDRPs involvement only took place after the decision to relocate had been made and only three months before the move was to be effected. The Committee must again be alerted to the fact that, the individual clients who were the subject if these reviews had already been advised that staying on the Kew site was not an option. There can be no other interpretation therefore than the review process was therefore, in reality, a farce.

The concept of a General Service Plan or GSP was, as the Committee is no doubt aware, the legislated planning document

for people with an intellectual disability under the IDPS Act. Interestingly, the GSP is defined in the IDPS Act as – “... a *comprehensive plan prepared for an eligible person which specifies the areas of major life activity in which support is required and the strategies to be implemented to provided that support.*”

The attention of the Committee is drawn to the fact that the GSP is comprehensive in that it specifies the areas of *major life activity*. No one could deny that one of the most essential aspects of life is where one lives. And yet, by the Government’s action of selling off the Kew site for private development the Government has alienated the site by denying it to the traditional occupants to remain living there. Let us not forget, this is public land as held in trust by the Government, that has for one hundred and twenty years been specifically and exclusively set aside for those members of the public for whom successive governments have accepted responsibility.

### **Relationship to the Terms of Reference**

Thus, in selling off this tract of public land for private development and allocating it for use by some people, while at the same time denying occupancy to many of the traditional tenants, is an act of discrimination. Discrimination, that is in contravention of the State Disability Plan as well as the anti-discrimination legislation. And, discrimination that has *alienated* those people who previously resided on the site, but were told that to remain was not a *choice* available to them.

## **4. The Concept of Private Versus Public Development**

By definition, the concept of *private development* is in direct opposition to that of *public development*. And, while acknowledging the Government’s intention to erect twenty houses on the site for approximately one hundred of the traditional occupiers, albeit there is no advice as to who will actually own these houses – the state or the private developer. This number of dwellings represents only five percent (5%) of the combined number of total dwellings to be erected.

Any argument that this represents a fair and reasonable balance is either naive or is blatantly, and conveniently, attempting to rationalise the Government’s discriminatory action of bias. A bias

towards the development of housing on the land to a level of ninety-five percent for private use, and against those traditional occupiers who sought to remain on the site but were refused.

The Kew site is, and has always been public land and, even when at its peak in terms of numbers of clients or residents as they were traditionally called, when used as institutional accommodation, the available open-space was far in advance of that of the thirty percent of the site that the Government says will exist after the development has been completed. It is worthy of note that although promoted in the Government's spin about the development, thirty percent is understood to be a standard requirement in any large site development of this nature. In other words it is nothing special and is not a concession as the Government would have the public believe.

Of course, the number of clients in residence at Kew Cottages has not been anywhere near the nine hundred to one thousand population of the 1950'. Nor has the number of clients been anywhere near the eight hundred and fifty population when the writer first assumed the position of Chief Executive Officer in 1984. Indeed, at the time the Government announced the decision to sell the land for private development and alienate the then existing population, the number was less than five hundred, or to be precise and according to Government sponsored literature "around 480". The significance of these figures should not be overlooked. When considered in light of the total number of private dwellings to be built, 380, and the anticipated population these buildings will house of approximately fifteen hundred to two thousand people, it is quite clear that there is more than ample space to accommodate all those traditional occupiers of the site whose choice it was to remain, even if this included the total of the "around 480" people.

Based on the standard five-person Community Residential Unit (CRU) model, the number of individual houses required would be no more than ninety-six, or seventy-six in addition to the twenty to be build for the selected one hundred traditional occupiers. The total number of ninety-six is *two hundred and eighty-four less* buildings than the number proposed for private development. The right and proper action of providing free-standing houses for all those

traditional occupiers whose *choice* it was to stay would meet several imperatives.

- Firstly, it would adhere to the Government's stated policy of '*choice*'
- Secondly, it would ensure that no then existing resident living on the site was alienated.
- Thirdly, it would mean that any person wanting to remain on site was not discriminated against in favour of some other person
- Fourthly, it would ensure that the public land, as held in trust on behalf of the citizens of Victoria was not transferred into private ownership
- And fifthly, it would mean that a significant amount of public open space would be reserved for the benefit of all those members of the public wishing to access that part of the site reserved as public parkland.

### **Relationship to the Terms of Reference**

Under the Terms of Reference the sale of the site to accommodate 380 private dwellings is a clear and unambiguous action of *alienation* of the public land and open space.

## **5. The Concept of Site Versus Accommodation**

It will have been noted that the writer has consistently distinguished between the concept of '*site*' and that of '*accommodation*' or dwellings throughout this paper. This is a critical and necessary distinction. In Victoria the last quarter of a century in particular, has seen a concerted effort by successive governments, policy makers and funded advocacy organisations to do away with the large congregate care institutions that, in essence for so many decades provided the only form of government funded accommodation for people with a disability. At this point, the writer want to make it very clear to the Committee that he is not, and has never been an advocate for the retention of such facilities. And equally nor is he an advocate for a return to this type of accommodation.

The importance of making a distinction between the notion of '*site*' and '*accommodation*', which might also be defined as dwellings, is one where the writer argues that in addition to the one hundred people who have been selected or nominated to remain on the *site*, those people who formerly resided in Kew Cottage and also

wished to remain but have since been *diverted* and *alienated* from the *site*, should have also had this *choice* approved. Therefore, just as those who are remaining will not be accommodated in the former institutional accommodation and, instead will be accommodated in detached dwellings housing five people, so those of the other less than four hundred who wished to stay could have also been accommodated in new housing.

For some years now there has been a deliberate attempt by the Government, the policy purists and funded advocacy organisations to characterise those people, including the writer, as advocates for the retention of large outmoded institutions. This has not only been a scurrilous act, but it reflects the failure of the critics to actively advocate for the Government's policy of *choice*. For indeed, what the writer and others have simply been saying is – *let us really see the Government offer real choice in accommodation, the same range of options as available to other sections of the community.*

But no! What these puritanical critics are actually advocating is a single model with a fringe. A single model that relies on families, many of who are in their sixties, seventies and in some instances their eighties. Or, both older and younger parents who are under significant pressure, families condemned to slavery by having to continue to cater for their disabled family member in the family home. The little bit of fringe, or Government window dressing, is the handful of CRUs provided for a lucky five thousand only. The evidence is that there has been no funding for additional supported accommodation by the current Government since 2002, and nor is there likely to be in the future.

A recent example of this naive and ill-informed criticism is characterised by a response to a 'Dorothy Dix' question put by Mr Thornley in the Legislative Council to the Hon. T. C. Theophanous as recently as 19 September 2007. As noted in Hansard for that sitting of the Council, Mr Theophanous responded to Mr Thornley's question about the, "... *recent developments at Kew Residential Services ...*" Mr Theophanous by stating –

*"This is an exciting development for Melbourne and in terms of looking after disabled people in our community. That is completely*

*contrary to the view opposition members continued to put in relation to the old institutional setting and not be able to have the benefit of brand new facilities and the kind of situation they will be able to live in as a result of the government's initiative."*

The writer suggests the committee must be very clear as to how the concept of *choice* should be applied to the accommodation needs of people with a disability. The *choice* that should be made available should provide the same range of options as are available to the community at large and specific cohorts in particular. After all is this not what the policy of the State Plan prescribes - "*to choose where they live, with whom and in what type of housing*".

Given the community's general acceptance of clustered housing in private developments across the state, villages for the aged and the new hostel model to accommodate younger people with a disability as an option to accommodating them in nursing homes, the Committee must, in the context of its role, see the statement made by Mr Theophanous as a misrepresentation of the facts. The facts are:

- Whatever "*the view of the opposition members*", the supporters of *choice* do not support, "*the residents to remain in an old institutional setting*". But, they do defend their right to choose, and to have their *choice* respected, to live in newly developed free standing CRUs on the Kew site.
- The Committee must query why the Government accepts provision for one hundred of the traditional occupiers to remain on the site, and not all those others who sought to do so.
- The Committee must query why the Government considers it acceptable to allow an expected fifteen hundred or more other members of the community to live on the site.
- The Committee must query what Mr Theophanous means by, "an old institutional site". If he is suggesting that the traditional occupiers were to be accommodated in the *old institutional building* he is misleading the public. However, if he is suggesting that it is acceptable for these other members of the community to live on the "*old institutional site*" what is he really saying.
- "*Brand-new facilities*" are just that, Mr Theophanous again seems to mislead by suggesting that the traditional occupiers of the site

can only be accommodated in “*brand new facilities*” if they are moved off the site. Not so Mr Theophanous.

As noted above, the members of the Committee will be aware that the range of options available to other members of the community not only includes houses and apartments, but also includes hostels, clustered housing and dare I say, modern amenity congregate care facilities such as provided in Aged Care. Indeed, a perusal on almost any weekend of the Real Estate sections of daily and weekly publications will see such accommodation options as – ‘*The Retirement Alternative – A secure Gated Community with single storey cottages*’ or, ‘*vertical village living*’ or, ‘*estate living*’ which comprises housing clustered on a single developed site, similar in fact to that planned for the Kew site.

Thus, while a range of options is available to other people, the Government has alienated many of the former Kew residents by refusing to provide such options on the Kew site, on the existing public land and on a site which was home to these people.

Why, you may ask? The answer may be because the Government does not believe valuable public land such as the Kew site should be retained to accommodate more than the one hundred nominated former residents to remain living on the site, people with an intellectual disability. The writer suspects however the answer is more likely to be found in the form of the *cohort of convenience*, that is those who and represent what might be described as the *new right*, where they consider their view is right and those who hold a different view are wrong. In an attempt to give weight to their view they of course promulgate their view by seeking to turn every disagreement into a debate of the institutions versus the community option, just as Mr Theophanous sought to do. This is not only a misrepresentation and blatantly wrong, but totally ignores the Government’s own stated policy of ‘*choice*’.

Another pseudo argument often cited by the *opponents of choice* is that it is inappropriate for people with a disability to live in what is commonly described as clustered housing. The writer not only finds this argument bemusing, but more sensitively a slight on people with a disability. The Committee is urged to contemplate why it is that the *opponents of choice* consider it acceptable for other members

of the community to live in clustered housing, which is indeed what the private development planned for the Kew site constitutes, but not people with a disability? Why do these same people also accept without criticism aged people living in clustered housing in villages? Why do they not criticise nursing homes for the aged, and why not the new housing estates for retirees? Indeed, under their view of the world perhaps we should not have student hostels at universities, or boarders in private schools.

The Committee is urged to see such an argument for what it is, a convenient response against allowing all the traditional occupiers of the Kew site who sought to stay being accommodated there. An argument that in effect seeks to treat people with a disability differently from other sections of the community be they the aged, retirees, students and the other of the general population who will purchase and move into the 380 private dwellings to be built on the site.

It is a profound reflection that despite the fact that the *new right* denigrates large residential models and applauds small residential models, they totally neglect the fact that even the most enlightened small residential operates along institutional lines i.e.

- has rostered staff
- is a home that is also a work place and office
- has routines necessary to generally address the needs of the resident group rather than the individual
- undertake group travel in a mini-bus
- are visited by Community Visitors
- in some instances there are locked doors, refrigerators and cupboards

All this, as well as payment of upwards of 75% of the individual's Disability Support Pension, which is currently \$538 per fortnight for a single person aged over twenty-one, plus 100% of Rent Assistance in residential charges, thus leaving a small amount only of discretionary income. And let's not be fooled by the glowing assessment of CRU living for former institutional clients suggesting that the CRU option automatically provides a place without abuse, neglect and exploitation. Two recent well reported cases of a

death in one CRU and the torture of a client in another, torture committed over several years, clearly show that this is not the case.

### **Relationship to the Terms of Reference**

However, the real point of the above is to challenge the fact that only one hundred of the Kew clients have been permitted to stay on the site. This being despite the fact the site is large enough on which to establish any number of accommodation options, including enough free standing CRUs to accommodate all those clients who had selected staying as their first *choice*. It is based on this fact that this paper again argues that those people have been *alienated* from the public land that is the Kew site.

## **6. The Concept of Community**

Over recent years the word '*community*' has infiltrated many aspects of business and government activity and policy. This has been to the degree that it is now used as a sort of *feel good word*. Indeed, those who seek to influence and persuade, more often than not through stealth and spin, would have us believe there is but *a single homogenised community*. These same people would also have us believe that *the community* is also a place and, that while some people and some entities are '*in the community*' others are not.

It is from this rather fanciful position that the term '*community inclusion*' seems to have evolved. And so it is that the term *community inclusion* has become part of the lexicon of the disability policy makers, the Government funded advocacy bodies and the Government's State Disability Plan. The catchcry has become – *If we can only include all people with a disability in the community and we can persuade the community to be more accepting, all will be well*. This is utter nonsense, anyone who knows anything about people with a disability, and anyone who purports to advocate for their rights, recognises and advocates that services to people with a disability must firstly be built on a right *to* services that best meet their individual needs and, are chosen by the individual.

On the one hand, in terms of the development of the Kew site, the Government and the *new right* argue, that to allow all the traditional occupiers of the site who wanted to remain there to do

so would be contrary to the concept of *community inclusion*. Or, in other words the site would be considered not to be part of the community and therefore the occupiers of the site would be excluded from the community. The same argument is of course conveniently ignored, when it comes to those other members of the community who will be able to purchase privately developed dwellings and live on the same site.

To put this fallacious argument about *community inclusion* and the attempt to persuade us that *the community is a place* into context, the Committee members are asked to consider whether or not they condemn universities, schools, nursing homes, government departments, and the institution of parliament itself, as not being part of the community? Do they condemn those CRUs scattered throughout the state as not part of the community? I expect the answer will be – No! And, the writer suggest rightly so.

The reality is that each of us, the writer, the members of the Committee and all other citizens of Victoria, including people with a disability, live and participate in multiple communities. A factor, which the writer assumes is considered a blessing by the Committee members, as he is sure that whatever their individual commitment to their political party and the institution of parliament, they each enjoy and look forward to participating in their family, social sporting or whatever other set of individual communities in which they participate.

### **Relationship to the Terms of Reference**

The relationship of the notion of *community inclusion* and *the community* to the Terms of Reference although simple, is also stark. By seeking to sell this tract of publicly owned land for the purpose of private development, and then alienating those traditional occupiers who sought to remain on the site but have been diverted from it, the Government is in effect excluding these same people from this particular community. This action by the Government, under both the IDPS Act as well as the recently enacted Disability Act 2006, denies the legislative imperative of - *persons with a disability being legally given the same rights as other members of the community*.

By refusing to allow those people who wanted to stay on the Kew site to do so, the Government has not only alienated them from what was the site of their home for many years, and therefore what had become part *their community*. But, the Government has also alienated them from the very laws that were enacted to protect them.

### **7. The State of De-personalisation or Loss of Identity**

Further above, as part of the definitional parameters, mention was made as to the impact the act of *alienation* can have on an individual in the form of the person feeling de-personalised and having a sense of loss of identity. Despite the best intentions of those charged with the creation of alternative living arrangements for those people who have been relocated or diverted from the Kew site, it would be wrong to assume that all, noting the total number is just under four hundreds, have accepted their new living arrangements and have not felt a sense of de-personalisation and loss of identity. It does need to be noted yet again, that not all those people who have been relocated wished to leave the site but were forced to against their stated *choice* to remain.

Some psychologists have suggested that the act of moving house is among the most traumatic events that an individual can face. It is the writer's considered view that in particular when this is forced on the individual, the psychological response is akin to the emotions experience in grief.

It must be remember that those people who have been diverted from the Kew site as well as the one hundred who have been indentified to remain have all lived there for many years. Thus, it seems reasonable to suggest that for many of these people there will be a sense of loss and a sense of being isolated from others they have lived with or been friends with. The reality of course is that while the assessment profiles undertaken to determine the success of otherwise of the relocation have sought to generally paint a glowing picture of the relocation, to the writer's knowledge no formal individual psychological impact assessment has ever been undertaken on any of those people who have been relocated. And, yet at a time when our society has become more alert to the impact of forced removal such as articulated in the significant documentation over recent years concerning what has become

known as the *Stolen Generation*, or the many children who were shipped from England to places such as Australia during and after the Second World War. Vulnerable people who have been in the care and protection of successive governments, in many cases for most of their lives, have in many cases also been removed from their home on the Kew site and relocated.

### **Relationship to the Terms of Reference**

By any judgment, such an action must be assumed to have in many cases impacted negatively and left the person feeling as though he or she was simply part of a relocation exercise based on numbers. That is a number's concept that directed the action of – *all out bar one hundred*. In other words the over-all relocation has been based on a formula without due consideration to the impact on the individual. Thus, by failing to fully address the impact on the individual, alienation has been committed.

## **8. The Legal Definition of Alienation**

As already noted further above the writer is aware that the term alienation does have a specific legal definition. To refresh the Committee's recall of this definition it relates to, *the power of the owner or tenant to dispose of his interest in real or personal property*.

The Committee will also recall that the concept of public land also makes reference to the notion of ownership of such land. The principle highlighted being that a Government does not in effect own such land, but simply holds it in trust on behalf of the citizens of the state. The writer contends that given this, and when considered in light of the definition, the Government has abused its trust role in two ways. The first being that given that the Government is not in effect the owner of the site, it has a duty to the citizens of Victoria, who are the legal owners of the land, to seek and be granted their permission to sell the land. This has not occurred.

The second failure relates to the rights of the tenant, who in this case are the traditional occupiers, the residents of Kew Cottages. These people, have been tenants resident on the site, both as a group and as individuals, for many years. These people are also citizens of Victoria. Under both classifications their wishes have either not been sought, as in the case of their citizenship

classification, or ignored as in the case of those people who expressed the *choice* of remaining on the site, but were evicted.

### **Relationship to the Terms of Reference**

Clearly, under the legal definition of *alienation*, the Government has usurped both the legal and moral rights of both citizens of Victoria and the traditional occupiers of the site by seeking to sell the land and open space for private development.

## **E. CONCLUDING COMMENT AND RECOMMENDATIONS**

As a concluding comment, the writer urges the Committee not to dismiss the relationship between the Terms of Reference and the traditional occupiers of the Kew site. Those people with a disability, people who in many instances chose to remain on the site, but for many this option was rejected. Those, people for whom the *State Disability Plan 2002 -2012* and the *IDPS Act 1986* and *Disability Act 2006* were promulgated to protect and confirm their rights. Documents, in which the concept of *choice* and the right to be treated the same as other citizens of Victoria have been enshrined.

If the Committee accepts the above, then the writer submits that the Committee has no option but to make the following findings and recommendations.

### **Findings**

That to proceed with the sale of the public land known as the Kew site for the purpose of private development constitutes an:

1. Act of alienation against the traditional occupiers of the site.
2. Act of transgression against the published intent and published content of the Victorian State Disability Plan 2002-2012.

3. An illegal transgression against the letter and intent of the IDPS Act 1986
4. An illegal transgression against the letter and intent of the Disability Act 2006
5. An illegal transgression against the Equal Opportunity and Anti Discrimination legislation.

On the basis of the above findings, the writer therefore charges the Committee with making the following recommendations.

### **Recommendations**

That the Committee recommends that the site known as the Kew Cottages or the Kew Residential Services site:

1. Not be sold for the purpose of private development.
2. Be held in trust, on behalf of the citizens of Victoria, for the development of a minimum of twenty to a maximum of one hundred free standing dwellings to be used in perpetuity for the purpose of accommodating people with a disability.
3. And further, for the remainder of the site to be retained as a green wedge public open space.

### **F. A Reflection**

The Committee members may be familiar with four highly perceptive works each written ahead of its time and each in some

way addressing the way of future societies. These works – *The Organisation Man* written by William Whyte, 1984, by George Orwell, *Brave New World* by Aldous Huxley, and Huxley's later work *Brave New World Revisited* are perceptive for several reasons, none the least being the way in which they each prophesised future societies and explored anticipated regulation by social control.

In *Brave New World Revisited* written in 1963, just before his death, Huxley makes reference to the concept of *social engineering*. This concept was not new to that time, and indeed it was one that had been practised, perhaps under other guises, by various repressive regimes in particular countries during the first half of the twentieth century. In this work however, Huxley raises the question as to – “*who will mount guard over our guardians, who will engineer the engineers? p. 35*”. He suggests that the answer from the engineers is a denial they need supervision.

The writer suggests that the Government's action of seeking to sell off the Kew site for private development, and in so doing alienating the land from both those traditional occupiers who have been refused tenure and the broader public, is nothing less than an engineered action. And further, that the promotion of the ill-defined *community inclusion* to rationalise the Government's action where a big land developer is given favour over people with a disability, can be described in no other way than *social engineering*.

Given the Government refuses, or is incapable of ‘*mounting guard*’ over itself, then people like the writer, and the many others who have challenged the Government's despicable action, have taken the first step. The second step, and the one where the real power and authority rests in terms of *mounting guard*, is for the Upper House Select Committee to say –

*Enough is enough, the citizens of Victoria deserve better, people with a disability deserve better. The incremental creep of what amounts to surreptitious social engineering must be halted.*

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26 September 2007

**Attachment 1**

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