

Proposed changes to legislation related to evictions from Office of Housing dwellings:

The Director may evict a tenant without the tenant being charged, convicted or sentenced. Therefore a person can lose their home for acts which would not breach, let alone result in a guilty finding under, the Drugs, Poisons and Controlled Substances Act 1981 (DPCS Act).

The Bill is not targeted. 'Drug trafficking' includes everything from minor - buying a \$100 bag of cannabis and sharing it amongst 4 friends, through to serious dealing of drugs. Residents can be evicted for any 'drug trafficking'.

The Director has absolute power - the first and final say - VCAT has no power - it cannot assess the allegation, VCAT has no discretion to evict or not.

VCAT cannot do anything even where evidence exists that the activity occurred through no fault of the tenant, or without the tenants knowledge; the relevant act was an isolated occurrence and will not be repeated; or the tenant has been sentenced by a criminal court and is successfully serving a community- based order designed to facilitate their rehabilitation.

The new sections 250A and 250B do not require proof of any "deliberate use of the premises for the illegal purpose". As SARC outlines, the Director can issue an eviction notice if the tenant merely downloads instructions for cultivating cannabis on a computer, or parks a car in the premises car park which contains an instrument for cultivating cannabis. The Bill doesn't require the illegal act be 'deliberate'. SARC questions whether this "is compatible with the Charter's right against arbitrary interference in the home".

There is an absence of basic criminal law elements: the Bill ignores presumption of innocence until proven guilty. Most offences require proof of guilt - this Bill does not. It ignores key words, such as, that a person "caused" or "permitted" the prohibited conduct and did so "intentionally" or "recklessly" - thus overlooking criminal law standards.

Sentencing should be proportionate. Eviction and homelessness is clearly a disproportionate measure considering 70% of people charged with drug trafficking will not be subject to a prison sentence, as they can be minor (as outlined above). Section 5(3) of the Sentencing Act 1991 states, '[a] court must not impose a sentence that is more severe than that which is necessary to achieve the purpose of purposes for which the sentence is imposed.'

This punishment is without reference to standard principles of sentencing, is likely to interfere with functions performed by the courts in specific sentencing, and there's no legislative requirement for these two processes to interact - the overlap, their consequences interact, and they arise from the same specific set of factual circumstances.