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Dear Sean

Joint submission into the Leasehold Schemes: Strata Titles Regulations Discussion Paper

Thank you for the opportunity to provide feedback on the Discussion Paper for leasehold strata schemes. The Discussion Paper presents a new and important opportunity for strata development and more importantly the provision of affordable housing options in Western Australia. CHIA WA and Shelter WA welcomes the release of the Leasehold Schemes: Strata Titles Regulations Discussion Paper and the opportunity to provide feedback.

Community Housing Industry Association WA (CHIA WA) and Shelter WA have come together to provide Landgate with a cross-sector submission that canvasses views from our broad membership bases, and that focuses on the wide-reaching opportunities that this new form of strata can bring to the delivery of affordable housing.

Summary of recommendations

1. There should be no lower time limit, i.e. 20 years, to leasehold strata schemes and the ability to create short-term leasehold strata schemes should be widened to everyone, not just the Housing Authority or any other government agency.
2. There is no core need for a formula to be included in the regulations, rather there should be flexibility for both lessor and lessee, when putting the scheme together, to negotiate the by-laws when developing the scheme.
3. We support the recommendation for the 'not to be unreasonably withheld clause', provided it is very clear that it would be reasonable to withhold if the result would be the property would be lost to affordable housing for the duration of the lease.
4. In terms of disclosure at the time of transacting with a leasehold strata scheme, we strongly recommend information be provided to the buyer to ensure they understand what they are purchasing.

About CHIA WA and Shelter WA

CHIA is the peak industry body for the Australian community housing industry, which provides one in five of Australia's social housing properties, complementing public housing.

Community housing providers manage a \$30 billion-plus portfolio of more than 80,000 rental properties, which are home to people who are on low and moderate incomes who find it hard to access affordable or appropriate housing in the private market

CHIA WA is the State branch of CHIA representing community housing providers in Western Australia.

Shelter WA is the independent peak body in Western Australia, that advocates for social and affordable housing and ending homelessness. Our vision is that all people living in Western Australia have housing that enables them to thrive.

Shelter WA brings together a strong coalition committed to diverse and affordable housing choice for all. With a focus on housing for people on low to moderate incomes and groups that experience housing insecurity.

Shelter WA undertakes research and policy development, engagement, and advocacy to drive solutions to build an effective housing system and alleviate housing-related poverty.

Affordable housing in Western Australia

Access to, and the provision of affordable housing supply in our community is a real and complex issue. We know that there is a significant shortfall of diverse and affordable housing across the State, whether that be for crisis accommodation, transitional housing, public and social housing, affordable rental properties, and affordable home ownership options.ⁱⁱⁱ

THE STATE OF HOUSING IN WA



Social Housing



Crisis and transitional



Shelter WA Research (2018), Anglicare Rental Affordability Report (2018), ABS (2018)

Figure 1 The state of housing in WA (Shelter WA, 2018)

It is important to acknowledge that the affordable housing debate is not just about affordable home ownership. Affordable home ownership is an important element, but the reality is that for many West Australian households on low to moderate incomes access to affordable rental options is critical to meet their housing need.

In addition, it is crucial that West Australians in affordable rental properties have access to security of tenure, i.e. long-term leases are entered into to enable them to create a stable home life. Currently under the *Residential Tenancies Act 1987*, most private landlords only offer six month or 12-month leases. It can be difficult to lock in a lease for longer than 12 months in the current private rental market. This has impacts on private rental as an attractive housing option and the attractiveness of this asset class to institutional investors.

From the infographic in Figure 1, it is evident that the current stock of public and community housing ('social housing') is insufficient to meet the actual demand in Western Australia. The Australian Housing and Urban Research Institute (AHURI) papers referenced earlier outline the enormous gap between supply and demand in Western Australia and Australia.

HOUSING NEED IN WA

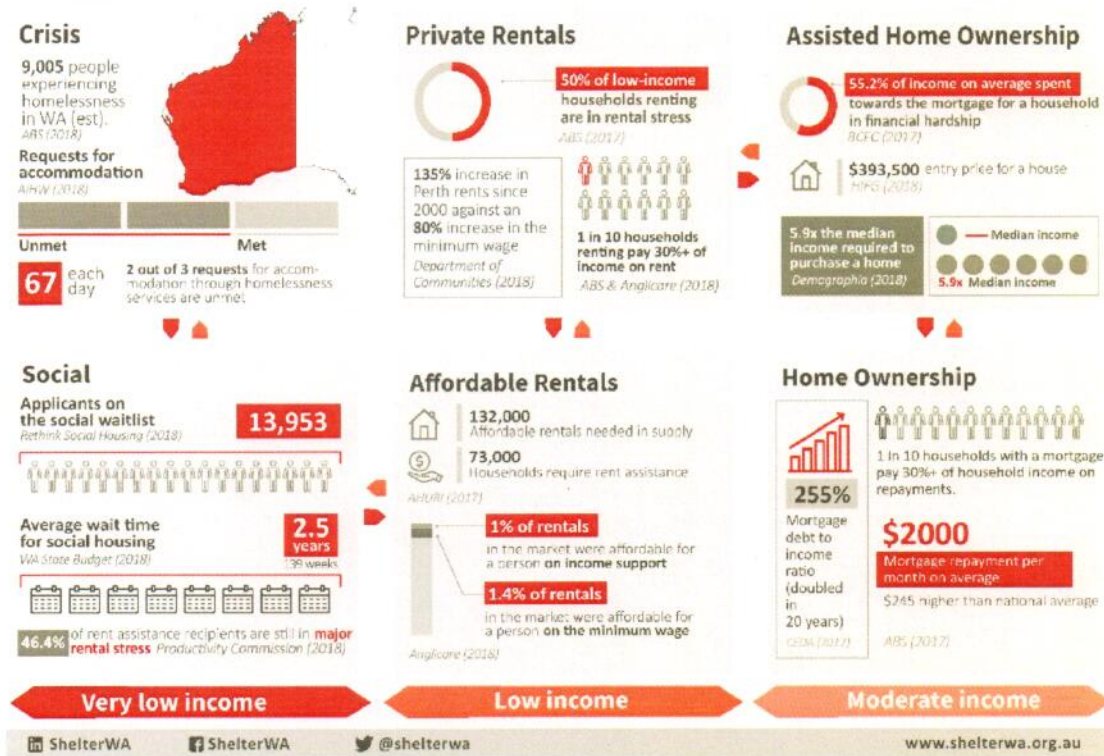


Figure 2 Housing need in WA (Shelter WA, 2018)

The opportunity of the leasehold strata scheme regulations

Leasehold strata schemes provide great potential to expand the land available for, and development of, social and affordable housing in Western Australia. Both Shelter WA and CHIA WA feel that the full potential is not optimised or reflected in the Discussion Paper. The Discussion Paper appears focus on two assumptions:

1. That all such housing will be provided by the Housing Authority or Department of Communities; and
2. That affordable housing is low priced home ownership.

These two core assumptions limit the scope and scale of the opportunity that leasehold strata can bring to the provision and supply of affordable rental and home ownership options for West Australians. Also, the value proposition for government in increasing affordable rental housing supply through community housing and private rental options harnesses the growth of the community housing sector and private sales.

It is important to understand that the low price reflects the low value of a short-term lease, so although it may look initially attractive, in the end it will leave the purchaser with no home or residual value; they are potentially worse off than before they bought the lease.

How do we make housing affordable?

Making housing affordable can only be achieved if it is developed at low cost. We think the real value of the leasehold strata regulations lies in opening up the potential for Not-for-profit

organisations and benevolent organisations such as churches, local government, philanthropists, etc. who want to provide free or below market land for affordable and social housing, whilst keeping their land in perpetuity.

The draft regulations could facilitate innovation and partnerships, all of which needs to be enabled through these regulations. For example, a Church could partner with a community housing provider (CHP) to set up and develop a leasehold strata scheme where the Church is the lessor and the CHP is the lessee of all of the lots. The CHP can then let the properties at social and affordable rents to occupants on leases regulated by the *Residential Tenancies Act 1987*. The CHP could afford this development because the land element was free or below the market rate, and, unlike the Housing Authority or other government agency, it can also leverage other sources of revenue such as, Commonwealth Rent Assistance, charitable donations, and philanthropy.

Variations of this, in a long-term lease scenario, might see the CHP taking, for example, 80 per cent of the lots with the balance sold to owner occupiers of affordable home ownership stock, with restrictions on resale to ensure they remain affordable. The CHP could buy in the leases as their term runs down, using them for short-term lets, thus ensuring the individual purchasers walk away with some residual value.

As is evident, the possibilities of this specific reform in the Strata Reform package are only limited by the creativeness of social and affordable housing providers. For this reason, the opportunity must be open to anyone who is able to or intends to provide affordable housing solutions for West Australians. Opportunity for partnering with the private sector needs to be articulated.

As you highlighted in the seminar to Shelter WA members and interested parties, "these are the biggest property reforms in over twenty years". It is critical that we do not miss this exciting opportunity by limiting its use.

Feedback on specific Discussion Paper questions

We provide the following feedback in response to the specific questions posed in the Discussion Paper.

1.3 Expiry day for leasehold scheme

We think that short-term leasehold schemes can provide value to certain lessees, but possibly not quite in the original way envisaged in this Discussion Paper.

We suspect that short-term leases will be un-mortgageable in WA¹. In the United Kingdom, where leasehold properties are common and mortgage lenders are very familiar with them, most mortgage lenders, nevertheless, will not lend on properties with a lease of under 70 years. They are looking for a lease which extends at least 40 years beyond the term of the mortgage term.

¹ As an example, CBA's December 2018 *Consumer Mortgage Lending Products Terms & Conditions*, which extends to 84 pages, contains the word "lease" twice, both times in relation to sub-letting investment properties.

It may be that the Housing Authority is proposing to use KeyStart to provide mortgages for such short-term leases. Whilst there may be ethical issues as to whether it is appropriate to be lending to those who purchase a short-term lease which will have little or no residual value, this in itself, would be an extremely restrictive market and add little to the options and supply for those seeking affordable home ownership.

We do see real potential in short-term leases if the lessee of each of the lots were a community housing provider (CHP) who was then sub-letting the occupation of the lots to West Australian households on a *Residential Tenancies Act* lease. For example, if a retirement village had been wound down and was to be mothballed pending future re-development, the owner of the village might lease it to a CHP for five years and they would sub-let on to households seeking affordable rental properties governed under the *Residential Tenancies Act*. Another alternative could be unlettable office buildings being converted to temporary affordable rental residential solutions on such a short-term basis. In addition, some households might want to purchase lots in such schemes if they had sufficient money to, pay the equivalent of five year's rent as a lump sum in advance and know they had security of tenure for that period and were protected against rent increases for five years.

For these reasons, we think there should be no lower time limit to leasehold strata schemes and the ability to create them should be widened to everyone, not such the Housing Authority, Department of Communities or other government agency.

1.4 Leasehold by-laws

It is important that there is clarity for all about what happens financially at the end of lease term and if the lease term is to be extended.

We do not think that this is necessarily achieved by a formula, particularly in the more complex situations. We envisage that, where both the lessor and the lessee are putting the scheme together to provide social and affordable housing, these details can be negotiated as part of the development and associated by-laws. Therefore, the parties to the transaction should be able to come to their own agreement on what will happen in these situations and draft the by-laws accordingly.

In these circumstances it would be prudent to ensure that licensed valuers are involved and provide guidance as best as practicable to ensure fairness and transparency in the valuations associated with the by-laws for the leasehold strata scheme.

1.6 Limitations on powers of owner of a leasehold strata scheme

We agree with the purpose of this proposal, to ensure that housing remains affordable housing for the length of the lease. Provided the restrictions are clearly intended only in situations where affordable housing is being provided, we would not restrict the class of persons who can impose

such restrictions. A wide range of possible lessors may be in this space, across all Government Departments, Not-for-Profits, Community Housing Providers, and Philanthropists.

In terms of dealings, we agree with restriction a. in question 2 of the Discussion Paper, on transferring the lot. We are not clear what is intended by restriction c. but would not want it to include short term lettings under the *Residential Tenancies Act 1987*. With regard to restriction b. in question 2 of the Discussion Paper, we do not see any particular reason why the lessor's consent would be required to mortgage, provided it was clear that a mortgage in possession could not deal with the property other than to sell to the same class of persons the affordable housing scheme was set up for.

We support the recommendation for the 'not to be unreasonably withheld clause', provided it is very clear that it would be reasonable to withhold if the result would be the property would be lost to affordable housing for the duration of the lease.

1.7 Content and form of a strata lease

We see no reason why suggested condition f. of the of question 3 in the Discussion Paper - instalment payments - should be restricted to the Housing Authority or any other government agency. There are many other organisations which already provide social and affordable housing and the changes proposed under these regulations, if widened in terms of who can provide it, will encourage much more innovation and additional provision of affordable housing within the sector.

In terms of disclosure at the time of transacting with a leasehold strata scheme, we strongly recommend information that will assist the buyer with understanding entirely what they are purchasing be provided. Similarly, for the purchase of a strata or survey strata lot, there will now be a series of additional disclosure documents that sellers must provide to prospective buyers, we believe a similar approach should be taken for the sale of leasehold strata lots. It is imperative to recognise and understand that this is a new product in Western Australia and many people will buy into it not fully understanding what they are buying and that over time the asset will lose its value.

Conclusion

Both Shelter WA and CHIA WA see enormous potential for developing new, and maximising the potential of existing, social and affordable housing through these reforms. It is a once in a life-time transformation of how affordable housing, both rental and ownership can be delivered in this State. Any restriction to who can develop or enter in to leasehold strata schemes of any term less than 99 years is a missed opportunity. As is the prescription of 'which class of person'. At a time of economic recovery, this type of reform could deliver innovation, growth in construction and property industries, and more importantly significantly address the shortfall in social and affordable housing that exists in Western Australia.

We welcome the opportunity to discuss further with the Strata Reform Team at Landgate, the Minister for Lands and Minister for Housing, to flesh out how some of the opportunities identified in our submission can increase the delivery of affordable housing in our great State.

To arrange a time and to discuss our submission further, please contact Lisa Kazalac, Consultant Policy and Advocacy at Shelter WA on 08 9322 6660 and Jennie Vartan, State Manager CHIA WA on 0409 889 437.

Yours sincerely



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CEO, Shelter WA



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ⁱ Rowley, S; Leishman, C; Baker, E; Bentley, R and Lester, L, (2017) Modelling housing need in Australia 2025, Australian Housing and Urban Research Institute, Melbourne.

ⁱⁱ Lawson, J; Pawson, H; Troy, L; van den Nouwelant, R and Hamilton, C; Social housing as infrastructure: an investment pathway, Australian Housing and Urban Research Institute, Melbourne.