

Response to question taken on notice at hearing 15 December 2021

1. Did you ever see documents signed that were directly contrary to the Residential Tenancies Act—for example, a 40-year lease or the idea of signing rolling leases?

As stated in evidence on 15 December 2021, there is nothing illegal about offering a 40-year lease – this is not contrary to anything in the Residential Tenancies Act 1987 (WA) (“RTA”). It is open to parties to a residential tenancy agreement to agree to whatever duration they see fit.

In many Sterling leases, parties were offered an initial 5-year lease, and then a series of 5-year options – usually seven of these. In most cases we came across, these options were all exercised and executed at the same time as the original lease was signed. Again, nothing about this is contrary to any provisions of the RTA.

As stated in our written submission, one of the main concerns around entering into these long-term leases was the issue around effectively paying rent in advance for the 40-year lease. In our opinion, the Sterling entities which took large up-front payments from tenants breached s 28 of the RTA, although these amounts were not taken directly as rent. Tenants were not permitted to enter Sterling leases unless they made these up-front payments. In our opinion payment of more than 2 weeks rent under the Sterling leases was a requirement imposed on Sterling tenants, rather than an option available to them.

While it is not illegal for parties to enter a lease of 40-year duration, practically there are several implications for tenants entering into leases of this length, particularly those tenants of advanced age – such as termination of tenancy upon death of all tenants, or termination of tenancy by superior title holder taking possession. It is not unreasonable to expect that these issues may arise during the term of a 40-year lease, which further highlights the impracticality of using tenancy agreements as the mechanism for these types of products.

The Committee may wish to seek independent legal advice to inform itself on issues around indefeasibility with longer term leases, and how this impacted Sterling tenants.

For any further information, please contact Alice Pennycott, Managing Solicitor – Tenancy