



ASIC
Australian Securities &
Investments Commission

Senate Inquiry into Sterling Income Trust

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A Executive summary

- 1 The collapse of the Sterling Group and Sterling Income Trust has had a devastating impact on their clients, many of whom are elderly. Those losses were primarily caused by product and organisational complexity, mis-priced products and a fall in the residential property market.
- 2 The people most significantly impacted by the collapse had been sold a ‘lease for life’ where their long-term tenancy was linked to the performance of an investment. They were told that the returns from their initial lump sum payment would be sufficient to cover the rent on their long-term lease and that they would not be asked to make any other payments towards rent. This was both novel and high-risk.
- 3 The victims of the Sterling collapse who entered into a Sterling New Life Lease (SNLL) were both tenants and investors. This dual characterisation highlights the fact that ASIC is empowered only to deal with the victims as investors, not as tenants. We have worked alongside and liaised with the Western Australian Department of Mines Industry Regulation and Safety (Consumer Protection Division) (WA DMIRS) to respond to the Sterling collapse.
- 4 ASIC investigated and ultimately took actions which led to the liquidation of the Sterling Group. ASIC successfully brought civil penalty proceedings against the responsible entity of the Sterling Income Trust and its director, and has referred the matter to the Commonwealth Director of Public Prosecutions (CDPP) on criminal proceedings relating to the Sterling Group.
- 5 The Sterling Group has been the subject of regulatory action. In the course of its investigations ASIC has interviewed, and gathered evidence from, and communicated with the tenant-investors of the Sterling Group. The group’s operations have been investigated by insolvency practitioners. The director of its responsible entity has been banned from future directorships and from providing financial services. The Australian Financial Complaints Authority (AFCA) has made determinations in relation to Sterling Group investors.
- 6 This Senate inquiry will provide further transparency and is welcomed by ASIC. The Government has recently introduced the Compensation Scheme of Last Resort legislation into Parliament. Despite all of these avenues, ASIC acknowledges that tenant-investors are unlikely to receive any compensation for their losses.
- 7 While there is always room for improvements to the financial services regulatory regime and how it is administered by ASIC, sometimes investment vehicles fail and consumers suffer substantial or complete losses.

B Introduction and overview

- 8 ASIC acknowledges the great distress, financial and emotional, the collapse of the Sterling Group and Sterling Income Trust (together, the Sterling collapse) has caused to many people. While ASIC has taken what action it could in recent years in response to the evolving situation, tenant-investors have lost significant funds and are waiting for the liquidation process to be completed to see if any money will be returned to them.
- 9 ASIC has reviewed its involvement in the Sterling Group and Sterling Income Trust matter. ASIC acted in good faith at each point in the chronology based on the information and evidence available to us at the time and the powers entrusted to us.
- 10 While we appreciate tenant-investors may have preferred ASIC to move faster at times, in our financial, legal and regulatory system ASIC needs to obtain proper evidence and follow due process before it can intervene. Sometimes this means our responses are not as timely as the public may like them to be.
- 11 Regulatory agencies have to make difficult choices on a daily basis—which reports of misconduct to examine, which firms and documents (e.g. Product Disclosure Statements (PDSs)) to review, which apparent breaches to investigate, which matters to prosecute and when to intervene in circumstances of incomplete or conflicting information and intelligence. Our finite resources, as well as those of the prosecuting authorities and courts, mean that we cannot pursue all possible breaches of the law. While not perfect, we are satisfied that the judgements we made were generally reasonable in the circumstances with the information and understanding we had at the relevant times.
- 12 Ultimately the losses suffered by the tenant-investors were caused by exposure to a lease agreement that was dependent upon the financial success of the Sterling Group and the Sterling Income Trust, which both failed. Responsibility for the collapse of the Sterling Group rests with the officers of the relevant companies. While investigations are ongoing, and no criminal prosecution has to date been initiated, it is ASIC’s view that certain aspects of the conduct involving the Sterling Group may have been criminal in nature and warrants close consideration by the CDPP.
- 13 There is a limit to what any regulator can do to prevent criminal conduct in advance of its commission. Rather, regulators tend to focus on measures to deter criminal conduct by taking appropriate and well-publicised action against criminal conduct once detected.
- 14 ASIC welcomes the opportunity to make a submission to the Senate Inquiry into the Sterling collapse and looks forward to assisting with the Inquiry.

ASIC's role and mandate

- 15 As the financial services regulator, ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system. We administer the Australian financial services (AFS) licensing regime and conduct risk-based surveillance of financial services businesses to ensure that they operate efficiently, honestly and fairly. We also exercise the powers given to us by Parliament to exempt and modify the law, register new managed investment schemes, provide guidance to consumers and industry, and take enforcement action where appropriate
- 16 Conduct and disclosure regulation for financial products, including Australia's own regulatory system, is not generally considered 'merit' regulation. Regulation has traditionally focused on the transparency of the sales process (through disclosure) and the conduct of the intermediaries involved in the sale. Unlike regulation for many non-financial products, conduct and disclosure regulation is typically not concerned with the merit (i.e. 'safety' or quality) of a financial product and the services associated with it.
- 17 The regulatory settings were generally based on the belief that disclosure would be effective to enable consumers to make informed decisions, including in relation to the risk they are taking when making a financial decision. This is especially the case with investment products such as interests in managed investment schemes. ASIC's mandate and the financial services regulatory regime are discussed in Section D of this submission.
- 18 As noted in the final report of the Parliamentary Joint Committee on Corporations and Financial Services 'Inquiry into financial products and services in Australia' (2009) (quoting from ASIC's submission):
- Consistent with the economic philosophy underlying the FSR regime, ASIC does not take action on the basis of commercially flawed business models. A significant feature of the recent collapses leading to investor losses, is flawed business models, that is, models that could only prosper if asset prices continually rose and debt markets remained open and liquid. Responsibility for flawed business models lies with management and the board.¹
- 19 The Australian managed investment scheme regime is relatively open and liberal by international standards. Provided that an appropriately licensed entity operates the scheme and adequate disclosure is made of the nature, benefits and risks of the scheme, almost any type of collective investment can be sold to Australian retail clients. Schemes that are novel, risky, illiquid, leveraged or speculative can be registered and sold in Australia.

¹ See Parliamentary Joint Committee on Corporations and Financial Services 'Inquiry into financial products and services in Australia' (2009), final report, p. 72.

- 20 This is in contrast to some peer jurisdictions that do not permit higher risk, less liquid schemes based on unconventional underlying assets (e.g. certain real estate, timber and other agricultural products) for retail investors (e.g. United Kingdom and European Union).
- 21 In recent years in many countries, financial services regulation has moved to more actively influence the quality of financial services and products provided to retail investors and financial consumers. Following the 2014 Financial System Inquiry (Murray Inquiry) and the recent Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission), the Government legislated product intervention powers and the design and distribution obligations. However, these reforms only came into effect *after* the Sterling collapse. These reforms are discussed in more detail in Section F and Appendix 3 of this submission.
- 22 ASIC’s regulatory role does not involve preventing all consumer losses or ensuring compensation for consumers in all instances where losses arise. Our underpinning statutory objectives, regulatory tools and resources are not intended or able to prevent many of the losses that retail investors and financial consumers will experience. This is true of every financial market regulator.

The collapse of the Sterling Group and Sterling Income Trust

- 23 The collapses of the Sterling Group and Sterling Income Trust have had a devastating social, emotional and financial impact on the victims, many of whom are elderly. These collapses were primarily caused by product and organisational complexity, mis-priced products and a fall in the residential property market.
- 24 The people most significantly impacted by the collapse had been sold a ‘lease for life’ where their long-term tenancy was linked to the performance of an investment. That combination was novel, complex and high-risk.
- 25 101 tenant-investors obtained a long-term lease from the Sterling Group (a ‘Sterling New Life Lease’) with all of those tenants making an investment in an associated entity, being predominantly:
- (a) units in the Sterling Income Trust; or
 - (a) redeemable preference shares in another Sterling Group company, Silverlink Investment Company Limited (Silverlink).
- 26 These ‘tenant-investors’ were told that the investment would produce sufficient returns to cover their rent and that they would not have to make any further payments towards rent during the life of the long-term lease.
- 27 Another 465 clients (‘investors’) invested in the Sterling Income Trust, but did not hold a long-term lease through the Sterling Group.

- 28 When the Sterling Group and Sterling Income Trust collapsed, and their investments failed, the arrangement by which the rent was being paid for by the returns on these investments ceased. This left the tenant-investors in a very vulnerable and difficult position.
- 29 Unfortunately, the liquidators of the Sterling Group and the Sterling Income Trust report that there is little chance of significant (and possibly no) returns to creditors in the winding up of these entities.
- 30 As the financial services regulator, ASIC regulates financial products and services. This includes the Sterling Income Trust and the Silverlink redeemable preference shares. We do not have jurisdiction over real estate and tenancy matters, including residential tenancy agreements. This is a matter for the state and territory governments and their agencies (generally the local consumer affairs or fair trading agency).
- 31 The Sterling New Life Lease appears to have been offered under a range of different documents during 2016–18. The lease offered by the Sterling Group could, on the face of at least some of the contractual and marketing documents, be entered into without investing in the Sterling Income Trust or Silverlink. The two arrangements were legally independent. However, the commercial reality was that the most likely (and most common) means by which a tenant-investor would participate would be by entering into both the Sterling New Life Lease and a Sterling investment. Many tenant-investors sold their existing family homes in order to take up the offer.
- 32 The complexity of the offering resulted in two different regulatory bodies having jurisdiction over different aspects of the offering. In Western Australia, the Sterling New Life Lease arrangement was regulated by WA DMIRS, which is responsible for the licensing and supervision of real estate agents and laws relating to residential tenancies, whereas the Sterling Income Trust and later Silverlink redeemable preference share issue were regulated by ASIC.
- 33 ASIC acknowledges that those victims of the Sterling collapse who entered into a Sterling New Life Lease were both tenants and investors. This dual characterisation highlights the fact that ASIC is empowered only to deal with the victims as investors, not as tenants. To the extent that there was overlap, we have worked alongside and liaised with WA DMIRS to respond to the Sterling Group.
- 34 ASIC took regulatory action where we became aware of serious concerns in relation to the Sterling Group and Sterling Income Trust. For example:
- (b) ASIC investigated and ultimately took actions which contributed to the Sterling Group entering into liquidation.
 - (c) ASIC has taken civil penalty action against the responsible entity.

- (d) ASIC is working with the CDPP in relation to possible criminal proceedings against individuals associated with the Sterling Group.
 - (e) ASIC imposed stop orders on the issue of PDSs by the responsible entity of the Sterling Income Trust.
 - (f) The Sterling Group and Sterling Income Trust's operations have been investigated by insolvency practitioners of the Sterling Income Trust.
 - (g) The director of Theta (the responsible entity) has been banned from future directorships for four years and from engaging in the provision of financial services for the same period.
- 35 AFCA has made determinations on the conduct of two AFS licence holders who promoted Sterling Group investments.
- 36 Despite all of these actions, ASIC acknowledges that investors are unlikely to receive significant recoveries of their investments or compensation for their losses.

C Outline of the Sterling Income Trust

Key points

The Sterling Income Trust, established in 2012, operated as a registered managed investment scheme and a funding vehicle for the Sterling Group.

The Sterling Group engaged in rent roll aggregation, property management and property development, and raised funds for these purposes.

In 2016, the Sterling Group introduced the ‘Sterling New Life Lease’ (SNLL), which promised a ‘long term secure residential lease’ for tenant-investors with rents covered by returns on Sterling investments.

The tied use of investment returns to pay rent was novel.

The Sterling Group collapsed for a combination of reasons, including a downturn in the residential property market, the complexity of the Sterling organisation, and mispricing of Sterling products.

Money invested in the Sterling Income Trust was used in the Sterling Group’s operations. The realisable assets have largely been paid to secured creditors. Investors are likely to receive little or no return.

Note: This section addresses the issues in paragraphs (d) and (e) of the Inquiry’s terms of reference.

The Sterling Group and Sterling Income Trust

- 37 The Sterling Income Trust was established in 2012 as a funding vehicle for the Sterling Group. The Sterling Group had been established in 2010 and comprised around 50 companies and trusts centred around real estate-related assets, with a complex organisational and operational structure. On 3 May 2019, most of the companies in the Sterling Group went into voluntary administration, and most of the companies are now in liquidation. The Sterling Income Trust is in the process of being wound up by its responsible entity (which is now in liquidation itself).
- 38 The Inquiry’s terms of reference refer to the Sterling Income Trust, and this submission therefore focuses on that entity. Discussion of the Sterling Group, its related entities and the products they offered is included, however, to provide a fuller understanding of the Sterling Income Trust’s activities.
- 39 The Sterling Group and its associated entities had a complex corporate structure. For the purposes of this section, in order to provide a response to paragraph (d) of the terms of reference, this submission sets out a broad overview of the Sterling Group’s business activities, investment model, and the financial products offered by the group. It is not a comprehensive overview of the structure of the group.

Note: For a diagram of the Sterling Group structure prepared by the partners of KPMG Australia (KPMG) who are the group’s liquidators, see Appendix 1 of this submission.

The Sterling Group's business operations

Rent roll aggregation

- 40 Initially, the Sterling Group's primary business operations were sourcing and aggregating rent rolls and property management agreements. 'Rent rolls' in this context are, broadly, rights to fees payable under property management agreements. Landlords enter into property management agreements with property managers (e.g. a local real estate agent) and pay ongoing property management fees, usually calculated as a percentage of rent received from the tenant.
- 41 The property manager may sell all or part of the ongoing income stream from these fees in exchange for an upfront lump-sum. The rights to these fees can then be aggregated into 'rent rolls'. Alternatively, a single rental property manager may manage multiple rental properties, which can also be termed a 'rent roll'. Holders of 'rent rolls' can purchase other 'rent rolls' and thereby aggregate the income streams, which is said to lead to economies of scale.
- 42 One of the entities in the Sterling Group, Rental Management Australia Pty Ltd (Rental Management Australia), aggregated rent rolls and provided property management services. At the date of voluntary administration, Rental Management Australia's rent roll comprised 3,600 properties under management with operations in Western Australia, Victoria and Queensland, and the company employed around 75 employees. The income stream associated with Rental Management Australia's rent roll was transferred to the trustee for the Sterling Income Trust in March 2013 and later to the trustee for the Silverlink Income Rights Trust in May 2018.

Residential property development—Acquest Property

- 43 Sterling Group also engaged in property development, conducted through a complex corporate structure centred around Acquest Property Pty Ltd (Acquest Property) as trustee for various Residential Property Investment Trusts (RPIT) Development Trusts (e.g. RPIT Development Trust No 2, RPIT Development Trust No 3).
- 44 The RPIT structure appears to have initially been set up as a managed investment scheme for the purpose of purchasing residential property for deriving rental income and/or residential property development and sales. It appears that the intention was that Acquest Property would own and develop properties which would then be rented, primarily to SNLL tenant-investors.
- 45 The Acquest Property managed investment scheme was never launched. Instead, funds invested in 'development units' in the Sterling Income Trust were used to provide second-ranking or lower-ranking loans to Acquest Property and/or its related entities.

- 46 At the time of voluntary administration, Acquest Property owned 20 properties and development sites², most of which were subject to first-ranking mortgages to third-party lenders (Acquest Properties).

Note: For a diagram of the Acquest Property structure (including Rental Management Australia) prepared by KPMG, see Appendix 2 of this submission.

Sterling Income Trust

- 47 The Sterling Income Trust was a retail managed investment scheme under s601EB of the *Corporations Act 2001* (Cth) (Corporations Act). It was registered by its responsible entity, Theta Asset Management Limited (Theta), on 19 June 2012.

Theta Asset Management

- 48 As the ‘responsible entity’, Theta was the operator of the Sterling Income Trust managed investment scheme,³ and in this context Theta:⁴
- (a) established and maintained a due diligence committee for the PDSs issued in relation to the Sterling Income Trust;
 - (b) prepared, lodged with ASIC and amended from time to time a compliance plan for the Sterling Income Trust; and
 - (c) established and maintained a compliance committee to seek to ensure that the Sterling Income Trust complied with its legal obligations.
- 49 Theta held an AFS licence which authorised it to issue interests in and act as the responsible entity for registered managed investment schemes. Theta acted as the responsible entity for a number of managed investment schemes other than the Sterling Income Trust. For a discussion of the regulatory principles relating to responsible entities, see Section F of this submission.

Investments in the Sterling Income Trust

- 50 Sterling Corporate Services Pty Ltd (Sterling Corporate Services), an entity within the Sterling Group, was the investment manager of the Sterling Income Trust. Theta delegated day-to-day management of the Sterling Income Trust to Sterling Corporate Services.
- 51 The Sterling Income Trust appears to have raised funds for the Sterling Group through investments in four types of asset classes corresponding to ‘sub-trusts’ of the Sterling Income Trust (together, the Sterling Income Trust units) as shown in Table 1.

² Ferrier Hodgson, *Sterling First (Aust) Limited and others—Voluntary administrators’ report*, 30 May 2019, p. 25.

³ Corporations Act, s601FB(1).

⁴ *Australian Securities and Investments Commission v Theta Asset Management Limited* [2020] FCA 1894, [9].

Table 1: Investment options in the Sterling Income Trust

Asset class	Description
Income units	<p>The income on these units was derived from a share of the revenue from property management agreements.</p> <p>The structure through which the funds passed was complex. The value of the income units was dependent upon, among other things, the rents payable under the property management agreements and the ability for the Sterling Group to obtain and retain property management agreements.</p> <p>The targeted returns for these units were represented in their PDSs as 9.25% p.a.</p>
Growth units	<p>The income on these units was said to derive from growth in acquiring new property management agreements, so the return on growth units was dependent on the Sterling Group sourcing new property management agreements for Rental Management Australia.</p> <p>The value of the growth units depended upon, among other things, the ability of the group to generate and acquire new property management agreements. The targeted returns for these units were represented in their PDSs as 12.00% p.a.</p>
Development units	<p>The funds from these units were used to acquire property and construct residential homes, sometimes for renting out under an SNLL through the provision of subordinated (second or lower-ranking) debt mortgage loans.</p> <p>The properties were held by Acquest Property as trustee for various Residential Property Investment Trusts and 'sub-trusts' (RPITs). Standard loan terms were at an interest rate of 22% per annum.</p> <p>The value of the development units was dependent upon, among other things, the repayment of the loans, along with property development risks. The targeted returns for these units were represented in their PDSs as 20% p.a.</p>
First mortgage units/ Management company units	<p>These units were fully redeemed in 2017 and 2018 respectively. It appears that no SNLL tenant-investors invested in first mortgage units or management company units, so this submission will not address these units further.</p>

52 Each of these asset classes corresponded to a particular pool of assets and liabilities held within the Sterling Income Trust, so that each class carried different and specific risks associated with the assets relevant to that class. However, all assets and liabilities of the asset classes remained assets and liabilities of the Sterling Income Trust as a whole.

53 Based on the information available to ASIC, ASIC understands that:

- (a) a total of 527 people invested in Sterling Income Trust units and approximately \$30 million of funds were invested;
- (b) 481 people invested approximately \$25 million in the Sterling Income Trust before ASIC's stop orders in August 2017; and
- (c) between around 27 October 2017 to around 30 April 2018, a further \$4.9 million was invested by 46 people in that period before Theta notified ASIC that the new PDS was no longer in use.

Sterling New Life Lease

- 54 In early 2016, Sterling First Projects Pty Ltd, an entity within the Sterling Group, launched a new product called the ‘Sterling New Life Lease’ (referred to in this submission as ‘SNLL’). This was a complex housing product marketed as enabling retirees and seniors to release cash for the purpose of living a more comfortable retirement, and as an alternative to retirement villages and traditional downsizing options for retirees. ASIC understands that, in total, 101 people entered into an SNLL.
- 55 The SNLL included what was marketed as a long-term secure residential lease of up to 40 years on a property located in the general community. As part of the arrangement, the investor would enter into the long-term residential lease, and was also required to invest capital in a financial product. The return on the investment was intended to be used to pay rent under the SNLL, with any surplus re-invested in the financial product.
- 56 SNLL tenant-investors were told that the returns from their invested capital would be sufficient to enable each lessee to pay all of the rent due on their particular SNLL. At least some SNLL tenant-investors were also told that they would *not* be asked to make any other payments towards rent during the life of the SNLL arrangement.
- 57 Some SNLL properties were owned by Acquest Property as trustee for the Residential Property Trust, a Sterling Group entity (Acquest Property), or were owned by third-party investors. All were managed by Rental Management Australia as it was a condition of the contractual documents that the properties would be managed by Rental Management Australia.
- 58 The design and marketing of the SNLL product meant that often, these tenant-investors sold their existing homes to access equity for the SNLL investment. Others placed substantial savings into the SNLL.
- 59 The SNLL was promoted in newspapers such as the *Mandurah Coastal Times* and *Have A Go News*. The advertisements in these two publications only referred to the lease and the opportunities for seniors, rather than the associated investment vehicle. Promotional material for SNLL seminars in Western Australia in March 2017 included testimonials from customers and a quote from a prominent radio personality, stating it was the ‘best retirement solution I’ve ever seen. Meet me at the seminars.’⁵ Other advertisements also ran on radio and featured well-known sporting personalities.
- 60 Two employees of WA DMIRS attended the 23 March 2017 seminar. Attendees were also invited to stay after the presentation to speak with Sterling team members. WA DMIRS staff spoke with a Sterling Group staff member who mentioned, among other things, that it is a managed investment

⁵ Source: WA DMIRS.

fund and that ASIC makes them put in ‘all the disclaimers in the world and it says you may or may not get your money back’.⁶

- 61 The SNLL product took two primary forms:
- (a) The ‘Sterling Income Trust type’, in which the SNLL tenant entered into:
 - (i) a residential tenancy lease between the landlord and the tenant; and
 - (ii) a ‘Payment Direction Deed’ between Sterling Corporate Services, the landlord and the tenant.
 - (b) The ‘Silverlink type’, in which:
 - (i) the landlord entered into a head lease to lease a property to Sterling Corporate Services, under which market rent was payable; and
 - (ii) Sterling Corporate Services entered into a sublease to lease the property to the SNLL tenant, for nominal or no rent.
- 62 Apart from two leases entered into in NSW and Queensland respectively, all SNLL agreements that ASIC has had the opportunity to review were in a standard form residential tenancy agreement in Western Australia. They contained terms relating to parties, premises, rent payable, period and liability for maintenance and outgoings. The leases were governed by the *Residential Tenancies Act 1987 (WA)* (Residential Tenancies Act). The regulator for residential tenancy agreements in Western Australia is WA DMIRS.
- 63 The Western Australian SNLL agreements reviewed by ASIC were in Form 1AA, as prescribed by s27A of the Residential Tenancies Act, and accompanied by an informational statement in Form 1AC and headed ‘Information for Tenant’, as prescribed by s27B of that Act.
- 64 Under the ‘COMPLAINTS AND DISPUTES’ section of the ‘Information for Tenant’ document, tenants are told that the Magistrates Court has exclusive jurisdiction to hear and determine applications relating to bond and other tenancy matters that do not involve a claim over \$10,000. Under the ‘FURTHER INFORMATION’ section of the ‘Information for Tenant’ document, tenants are referred to the Consumer Protection Division of the Department of Commerce of the Western Australian government.
- 65 An example of a ‘Sterling Income Trust’ type of SNLL was considered by the Supreme Court of Western Australian in *Soussa v Thomas* [2021] WASC 172 (*Soussa v Thomas*). The SNLL in that case was a standard form residential tenancy lease under the Residential Tenancies Act, but included (among other things) a ‘Payment Direction Deed’ as an ‘additional term’ and ‘special condition’ to the lease. The parties to the Payment Direction Deed were the landlord, Mr Soussa, Sterling Corporate Services, and the tenants, Mr and Mrs Thomas.

⁶ Source: WA DMIRS.

66 The Payment Direction Deed contained the following non-recourse clause:⁷

Despite any provision to the contrary contained in this deed or the Sterling New Life Lease (being the residential tenancy agreement in respect of the Residential Premises entered into between the Landlord as lessor and the Tenant as tenant dated on or about the date of this deed):

- (a) the liability of the Tenant to pay the Rent (being the rent by the Tenant (as tenant) under the Sterling New Life Lease) under the Sterling New Life Lease is limited to the payments made pursuant to the distribution from the Tenant's Units or the redemption of the Tenant's Units under clauses 2.5(a)(i), 2.5(a)(ii) and 2.5(b)(i) (Distribution and Redemption Payments); and
- (b) if there is a shortfall between the amount of the Distribution and Redemption Payments and the amount of the Rent, the Tenant is not liable to pay that shortfall.

67 This non-recourse clause purported to limit the SNLL tenant's liability to pay rent to the tenant's distributions from the Sterling Income Trust, or from the redemption of their units in the Sterling Income Trust. Further, if there was a shortfall between the amount of the distribution or redemption from the Sterling Income Trust, then the SNLL tenant was not required to pay that shortfall.

68 In *Soussa v Thomas*, the Supreme Court of Western Australia held that this non-recourse clause did not operate to prevent the landlord terminating the lease for non-payment of rent. This is because clause 3 of Part B of the standard terms of a Western Australian residential tenancy lease under the Residential Tenancies Act provided that a tenant must pay rent on time or the landlord may issue a notice of termination, and if the rent is still not paid in full, the landlord may take action through the court to evict the tenant.

69 Under s27A and 82 of the Residential Tenancies Act, any agreement or arrangement which is inconsistent with a standard term clause contained in the prescribed form of residential tenancy agreement will be 'void and of no effect'. To the extent that the non-recourse clause could be understood as being inconsistent with the landlord's right to terminate for non-payment of rent, the clause was void and of no effect.

70 The 'Silverlink type' of SNLL did not include a non-recourse clause. Instead, on the face of the lease documents, the SNLL tenant's liability for rent was an obligation to pay no or nominal rent under the sublease, and the SNLL tenant was not party to the head lease. Nevertheless, the SNLL tenant's position as a sub-tenant made them vulnerable in the event of a termination of the head lease between the landlord and the Sterling entity. ASIC understands that litigation in relation to the 'Silverlink type' of SNLL product is currently underway in the Supreme Court of Western Australia.

⁷ *Soussa v Thomas* [2021] WASC 172, [83(7)].

Summary of how clients invested

71 Table 2 summarises how the SNLL tenant-investors' funds were used.

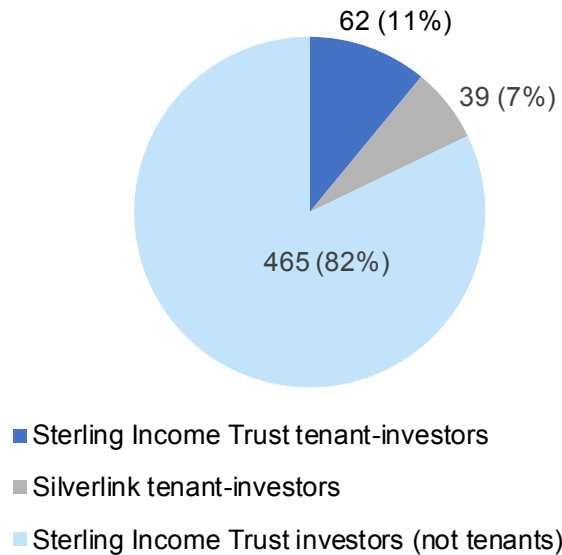
Table 2: Use of SNLL tenant-investors' funds

How funds were used	How it worked
Purchases of income, growth, or development units in the Sterling Income Trust	<p>The mix of units purchased by each SNLL tenant-investor was determined by a Sterling Group entity at its sole discretion and control. These purchases generally occurred between early 2016 and February 2018. Distributions from the Sterling Income Trust were used to pay rent on the SNLL, with any surplus reinvested in the Sterling Income Trust.</p> <p>Under this scenario, the tenant-investor generally had a lease directly with the landlord. ASIC understands that 62 SNLL tenants invested through the Sterling Income Trust (with the other 39 SNLL tenants investing through Silverlink).</p>
Purchases of preference shares in Silverlink and/or related companies (Silverlink companies)	<p>The Silverlink companies were all part of the wider Sterling Group. These purchases generally occurred between December 2017 and December 2018. Silverlink was a beneficiary of the Silver Link Income Rights Trust,⁸ which in turn was assigned income from Rental Management Australia's rent roll. Rent under the relevant SNLL was to be paid directly by the Sterling Group under a head lease with the third-party landlord, with a sublease between Sterling Group and the tenant-investor.</p> <p>ASIC understands that 39 SNLL tenants invested a total of \$7.56 million through Silverlink. ASIC has not identified any investors in Silverlink who did not also enter into an SNLL, and at least one Silverlink Information Memorandum stated that investments in Silverlink redeemable preference shares were 'exclusively reserved' for SNLL tenants.</p>
Investments in the Australian Rental Trust.	<p>ASIC understands that between 9 October 2018 and 12 May 2019, the Silverlink Income Rights Trust was known as the Australian Rental Trust, and from 12 March 2019 the name was changed back to the Silverlink Income Rights Trust. ASIC understands that the trustee for the Silverlink Income Rights Trust/Australian Rental Trust was at all times Silverlink Securities Pty Ltd.</p> <p>ASIC understands that five SNLL tenants invested a total of \$682,860 through the Australian Rental Trust. For the purposes of this submission, ASIC has included these five SNLL tenants as investors in Silverlink and are included in the 39 total Silverlink tenants.</p> <p>For completeness, another four tenants investors invested a total of \$100,000 in the Australian Rental Trust.</p> <p>Two of these investors were also SNLL tenants following separate investments in the Sterling Income Trust, and are included in the 62 Sterling Income Trust tenant-investors. One was an SNLL tenant following a separate investment in Silverlink, and is included in the 39 Silverlink tenant-investors.</p> <p>These three investor-tenants collectively invested \$80,000 in the Australian Rental Trust. three of whom also had an SNLL from other investments in the Sterling Income Trust or Silverlink.</p>

⁸ The trustee of the Silverlink Income Rights Trust was Silver Link Securities Pty Ltd.

72 Figure 1 shows a breakdown of clients in the Sterling Group and how they invested.

Figure 1: How clients invested



Note: Of the 566 clients who invested in Sterling Group, 465 (82%) were Sterling Income Trust investors (not tenants), 62 (11%) were Sterling Income Trust tenant-investors and 39 (7%) were Silverlink tenant-investors.

The novelty of the products of the Sterling Income Trust

Novelty of the units issued by the Sterling Income Trust

73 ASIC does not consider that the income, growth, development and management company units issued by the Sterling Income Trust were in and of themselves particularly novel. Considered solely as investment products, the units were not highly unusual, apart from the disclosure issues about the inherent characteristics, investor suitability and risk profiles of the units: see paragraph 149.

74 Rental property management agreements are commonly used in the real estate rental market. The consolidation and aggregation of property management agreements is also an established business model. The sale and purchase of 'rent rolls' regularly occurs in the market. ASIC is aware of other operating listed and non-listed entities with a business model involving the aggregation of rent rolls. Investment in an underlying functional business asset (as in this case) through the purchase of units in a unit trust is also not inherently unusual, and may be regulated as a managed investment scheme.

Novelty of the SNLL arrangement

- 75 In ASIC’s view, the SNLL product was unusual in structurally linking the provision of housing (the ‘Sterling New Life Lease’) with an investment (indirectly) in a real estate business (the rent roll for Rental Management Australia and the properties through Acquest Property).
- 76 ASIC is not aware of any other arrangement which made the supply of residential housing *dependent* on the investment performance of an investment product purchased at the same time. The novelty of the SNLL arrangement was the claim that distributions from investments in the Sterling Income Trust (and later Silverlink) would be sufficient to cover residential rental payments for investors. The Sterling Group relied on this novelty as part of their marketing efforts:
- Through its [SNLL] product, the company has created an innovative solution ... after more than 3 years of incubation and development, launched the [SNLL] product in early 2016.
- 77 ASIC considers that this combination of housing, business investment, and elderly tenant-investors created a significantly risky arrangement because the downturn or failure of the underlying business investment may leave tenant-investors unable to pay rent on their homes. Retirees and seniors who may be interested in the SNLL product over more traditional retirement products were less likely to have alternative income sources to pay rent if the returns from the accompanying investment were reduced or failed. If significant loss was suffered, retirees and seniors were likely to have limited prospects for rebuilding their financial position into the future.
- 78 The SNLL product and accompanying investment involved a complex set of contracts and disclosure documents. We have reviewed these documents as they related to some of the tenant-investors and they involved lengthy, complex and technical disclosures, contracts and deeds. As discussed in paragraphs 66–70, court cases seeking to resolve the proper interpretation of some of these documents are ongoing.
- 79 The structure and marketing of the SNLL product actively encouraged tenant-investors to sell their existing homes to ‘free up equity’, which in turn made them much more vulnerable if the investment failed.
- 80 In summary, ASIC considers that the business activity underlying the Sterling Income Trust—the aggregation of rent rolls and residential property development—was unremarkable. However, for SNLL tenant-investors (101 investors out of 566 total investors in the Sterling Income Trust and Silverlink), their access to housing was *dependent* on the financial performance of the investments. This combination was unusual and has resulted in devastating impacts on these tenant-investors.

ASIC's regulatory approach to risk in financial products

- 81 ASIC has a risk-based approach to the surveillance of managed investment schemes and responsible entities. ASIC's regulatory guidance does not include, as a specific criteria, the 'novelty' of a product as a risk factor.
- 82 In ASIC's view, 'novelty' should not be introduced as a risk factor in our criteria for regulatory enforcement action. The 'novelty' of a product is subjective and hard to define.
- 83 More fundamentally, imposing a higher regulatory burden on 'novel' products would be inconsistent with one of the aims of the Australian financial services regulatory regime, which is to promote competition, innovation and flexibility and enable retail investors to have access to a wide range of products.
- 84 Nevertheless, ASIC considers that the 'novelty' of a financial product does already interact with our existing guidance for financial industry regulation. The Australian financial regulatory system's focus on conduct and disclosure regulation means that any 'novel' features of financial products (along with any other relevant, non-novel features) must be clearly and adequately disclosed in the relevant product documents, to allow investors and consumers to make informed decisions in a transparent market.
- 85 The design and distribution obligations in Pt 7.8A of the Corporations Act which commenced on 5 October 2021 would have required the Sterling Income Trust to be marketed and sold in a way which was consistent with its target market. Under these obligations, the issuers and distributors of a 'novel' product (as well as 'non-novel' products) must have regard to the likely objectives, financial situation and needs of the consumers for which the product is intended, and describe a target market for the product accordingly. If an appropriate target market cannot be identified for a product, the issuer will not be able to offer the 'novel' product.

Note: For a discussion of how the design and distribution obligations could have applied to the Sterling Income Trust, see Section F of this submission.

Why the collapse occurred and where the money went

Reasons for the collapse of the Sterling Group

- 86 KPMG, as the voluntary administrators and subsequently liquidators of the Sterling Group, has conducted investigations into the causes of the collapse of the Sterling Group and Sterling Income Trust.⁹

⁹ As set out in paragraphs 192–193, the voluntary administrators and subsequently liquidators of the Sterling Group entities are Martin Jones and Wayne Rushton. Martin Jones and Wayne Rushton were both partners of Ferrier Hodgson until June 2019. In June 2019, Ferrier Hodgson merged with KPMG and became known as KPMG. As part of the KPMG/Ferrier Hodgson merger, Martin Jones and Wayne Rushton became partners of KPMG. Throughout this time, Martin Jones and Wayne Rushton remained voluntary administrators and later liquidators of the Sterling Group entities.

- 87 In essence, KPMG has identified the following reasons for insolvency:¹⁰
- (a) a *downturn* in the residential property market which affected the value, growth and prospects of the Sterling Group’s ‘rent roll’ and the Acquest Properties;
 - (b) ‘the *complexity* of the organisational and operational structure which ultimately resulted in higher operational costs and a level of dysfunctionality’; and
 - (c) *mispricing* of the Sterling Group’s investment products and income stream, combined with a high interest burden, which meant the Sterling Group became reliant on capital raising to fund operations.
- 88 ASIC notes that the liquidators’ work is ongoing. While no liquidators’ reports have been provided on the collapse of the Sterling Income Trust specifically (as distinguished from the Sterling Group), it is apparent that the collapse of the Sterling Group means that the value of the assets of the Sterling Income Trust was substantially diminished, as its main valuable assets were its interests in the Sterling Group businesses and assets.

Reasons for the collapse of Theta

- 89 Worrells, as liquidator of Theta, the responsible entity of the Sterling Income Trust, is in the process of winding up the Sterling Income Trust.
- 90 Worrells noted that the directors of Theta resolved to appoint voluntary administrators to Theta on 13 December 2019 on the basis that, among other things, Theta was likely to become insolvent within 12 months due to:
- (a) increased professional indemnity insurance premiums (a condition of its AFS licence);
 - (b) the potential civil penalties in the Federal Court proceeding brought by ASIC against it; and
 - (c) the adverse effect of AFCA claims.
- 91 Worrells did not disagree with this analysis, and noted that legal and associated expenses from complaints made to AFCA by Sterling Income Trust investors, along with increased professional indemnity insurance cover had placed Theta’s future solvency at risk.

¹⁰ Ferrier Hodgson, *Sterling First (Aust) Limited and others—Voluntary administrators’ report*, 30 May 2019.

Where did the money go?

- 92 The fate of the funds invested in the Sterling Income Trust was summarised by KPMG (at that time known as Ferrier Hodgson) in its ‘Frequently Asked Questions: SNL Lease Tenants’ document:
- What happened to the money I invested?**
- The capital invested was used to buy property related assets (including loans on residential developments and rights associated with property management agreements) and arguably, at least recently, to fund ongoing losses of the Group.
- Given current market conditions the value of these underlying assets has deteriorated.
- The companies do not currently hold any cash and it is not possible to facilitate any redemption requests relating to your capital.
- 93 ASIC understands that funds received from investors in the Sterling Income Trust were generally applied in the manner set out in the relevant disclosure documents, that is:
- (a) funds from purchases of development units were used to advance loans to various Sterling residential development projects;
 - (b) funds from purchases of income units were used to acquire rights in the income stream from Rental Management Australia’s ‘rent roll’; and
 - (c) funds from purchases of growth units were used to acquire rights to growth in the income stream of Rental Management Australia’s ‘rent roll’.
- 94 ASIC notes that the PDSs for the Sterling Income Trust expressly permitted funds to be used to meet redemption requests of unit holders, and this appears to have been a substantial use of investor funds.
- 95 ASIC understands that, broadly speaking, funds received from investors in the Silverlink companies were applied in accordance with the disclosed investment strategy, although the investment strategy was disclosed in broad terms. ASIC understands there were instances before voluntary administration where funds invested through Silverlink were used to purchase units in the Sterling Income Trust for redemption by SNLL tenant-investors.
- 96 Although investigations are continuing, ASIC understands that the liquidators of Theta and the Sterling Group have not identified recoverable uncommercial or unreasonable director-related transactions which could be pursued for the benefit of creditors. The liquidators also do not appear to have identified any significant misappropriation of funds.

Current status

- 97 The liquidators of Theta and the Sterling Group are currently in the process of realising the companies' assets, and assets of the Sterling Income Trust.
- 98 The following appear to be the significant assets of the Sterling Group and its associated entities:
- (a) *Properties owned by Acquest Property*—After an unsuccessful deed of company arrangement, Acquest Property entered into liquidation on 6 September 2019. The properties are now being sold by the liquidators of Acquest Property. The liquidators note that the properties are subject to first-ranking mortgages to private mortgagees and the mortgage to the RPIT Development Trusts is second-ranking and unregistered. The liquidators of Acquest Property have concluded that there will be insufficient funds in the liquidation to pay out unsecured creditors of the company, including the RPIT Development Trusts.
 - (b) *Rent roll held by Rental Management Australia*—ASIC understands that the business of Rental Management Australia was realised under a deed of company arrangement and to ASIC's knowledge, no returns were paid to unsecured creditors.
- 99 Early in its investigation, ASIC assessed whether there were any parties responsible for investor losses in the Sterling Group who may have assets that could be frozen or pursued by ASIC in the interests of investors who had suffered loss. The conclusion to this assessment was that there were no such parties. As part of its investigation ASIC also assessed whether there may be civil actions under the Corporations Act that might benefit investors. ASIC concluded that any such action was likely to deliver only negligible compensation for investors, as there were no assets to satisfy any compensation orders that may be made.
- 100 The liquidators of the Sterling Group and of Theta both anticipate little if any return to unsecured creditors and investors. However, this will not be confirmed until the liquidation process is completed. In ASIC's experience, around 95–97% of liquidation reports lodged with ASIC report an estimated dividend of less than 11 cents in the dollar.

D ASIC's regulatory role in relation to the Sterling Income Trust

Key points

ASIC regulates the financial services sector, including financial products, managed investment schemes and the issue of shares.

ASIC is a conduct regulator, not a prudential regulator. In other words, ASIC's role is not to monitor the financial soundness of the firms it regulates. Australian financial services legislation focusses on the transparency of the sales process through disclosure and the conduct of the persons involved.

In relation to the Sterling Group, ASIC has conducted investigations, examinations, surveillance activities and worked with other regulators, with the Sterling Income Trust subsequently having been wound up by the responsible entity.

ASIC has issued stop orders, stopped seminars, removed misleading statements, encouraged the appointment of voluntary administrators, and conducted civil penalty proceedings, as well as referring matters relating to the Sterling Group to the CDPP for consideration.

Note: This section addresses the issues in paragraph (a) of the Inquiry's terms of reference.

ASIC'S role in the financial system

- 101 ASIC regulates Australian companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit.
- 102 As the financial services regulator, ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system and the payments system. The ASIC Act requires ASIC to strive to:
- (a) maintain, facilitate and improve the performance of the financial system and entities within it in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy;
 - (b) promote confident and informed participation by investors and consumers in the financial system;
 - (c) administer the law effectively and with minimal procedural requirements;
 - (d) receive, process and store—efficiently and quickly—the information we receive;

- (e) make information about companies and other bodies available to the public as soon as practicable; and
 - (f) take whatever action we can, and which is necessary, to enforce and give effect to the law.
- 103 ASIC is also obliged to consider the effects that the performance of its functions and exercise of its powers will have on competition in the financial system.¹¹
- 104 As the financial services regulator, ASIC’s functions include monitoring and promoting investor and consumer protection in financial services. We administer the AFS licensing regime and conduct risk-based surveillance of financial services businesses to ensure that they operate efficiently, honestly and fairly. These businesses typically deal in superannuation, managed investment schemes, deposit and payment products, shares and company securities, derivatives, and insurance.
- 105 ASIC is also the consumer credit, markets and corporate regulator.
- 106 ASIC’s roles and responsibilities include regulating companies and registered managed investment schemes from their incorporation through to their winding up, and seeking to ensure that officers comply with their responsibilities.
- 107 We also register and, where necessary, take disciplinary action against company auditors and liquidators. We monitor the financial reporting and disclosure and fundraising activities of public companies and registered managed investment schemes.
- 108 We promote financial literacy to ensure investors and financial consumers can have greater confidence when buying financial services and are able to make sensible and informed financial decisions.

Principles underpinning ASIC’s role

- 109 The Australian financial services regulatory regime is based on the principles that:
- (a) free and competitive markets can produce an efficient allocation of resources, and provide a strong foundation for economic growth and development;
 - (b) where any factor impedes a market from producing efficient outcomes, there may be a case for government to regulate participation in, or operation of, that market; and

¹¹ This reference to considering competition matters was added into the ASIC Act in October 2018.

- (c) the financial system warrants specialised regulation to ensure that market participants act with integrity and that consumers are protected, due to:
 - (i) the complexity of financial products;
 - (ii) the adverse consequences of market participants breaching financial promises; and
 - (iii) the need for low-cost means to resolve disputes.
- 110 The basic features of the current financial services regulatory regime were developed following these principles and favour:
- (a) efficient and flexible allocation of risk and resources;
 - (b) promotion of competition, innovation and flexibility; and
 - (c) retail investors having access to a wide range of products.
- 111 This approach accepts that regulation is necessary to deal with factors that prevent the market operating efficiently, as long as such regulation is set at the minimum level necessary to respond to market problems. Factors that prevent the market operating efficiently include information asymmetries, which can enable fraudulent conduct by industry participants and anti-competitive conduct, or manipulative conduct.
- 112 These information asymmetries also create opportunities for conflicts of interest on the part of the people on whom consumers are relying for help. An information advantage gives opportunities to institutions and intermediaries to profit at the expense of investors and financial consumers.
- 113 In the most extreme cases, institutions or intermediaries can use an information advantage to defraud their customers by deliberately misleading them.

Conduct and disclosure regulation

- 114 While the objectives of financial system regulation are similar to those applying in all markets (i.e. to prevent a range of possible market failures), the means of achieving them often needs to take specific forms due to the nature and complexity of financial products.
- 115 For this reason, the financial services regime implemented following the Wallis Inquiry's recommendations includes specific types of financial regulation (conduct and disclosure regulation) to ensure:
- (a) markets operate in a sound, orderly and transparent manner, participants act with integrity and the price formation process is reliable; and
 - (b) retail investors and financial consumers have adequate information, are treated fairly and have adequate avenues for redress.¹²

¹² See Wallis Inquiry recommendations.

- 116 The regime includes some additional investor protections to help address situations where consumers are likely to be at a particular disadvantage relative to industry participants. An example of this is the system of internal and external dispute resolution, which provides a free, accessible, fair and efficient process for retail investors and financial consumers. However, the effectiveness of these protections is limited if the relevant industry participant is in external administration and does not have sufficient assets or professional indemnity (PI) insurance to cover retail investor and consumer claims.
- 117 The financial services regime’s conduct regulation includes rules aimed at ensuring industry participants behave with honesty, fairness, integrity and competence. The regime uses a licensing system which sets minimum standards as to who can operate within the industry, and, if they do not meet conduct standards, exclude them by licence suspension or cancellation, or by banning individuals from providing financial services.
- 118 The financial services regime’s disclosure regulation includes rules designed to:
- (a) overcome the information asymmetry between industry participants and investors by requiring disclosure of information required to facilitate informed decisions by investors; and
 - (b) promote transparency in financial markets, and the efficient and appropriate pricing of assets and risks.
- 119 Conduct and disclosure regulation for financial products, including Australia’s own regulatory system, is not generally considered ‘merit’ regulation. Regulation has traditionally focused on the transparency of the sales process (through disclosure) and the conduct of the intermediaries involved in the sale.
- 120 Unlike regulation for many non-financial products, conduct and disclosure regulation is typically not concerned with the merit (i.e. ‘safety’ or quality) of a financial product and the services associated with it. The regulatory settings were generally based on the belief that disclosure would be effective to enable consumers to make informed decisions, including in relation to the risk they are taking when making a financial decision. This is especially the case with investment products such as interests in managed investment schemes.
- 121 In recent year, in many countries, financial services regulation has moved to more actively influence the quality of financial services and products provided to retail investors and financial consumers. In our submission to the 2014 Financial System Inquiry (Murray Inquiry), ASIC supported this shift to a regulatory philosophy and regime that acknowledges different tools are needed to address different problems.
- 122 This was endorsed in the final report of both the Murray Inquiry and the recent Royal Commission into Misconduct in the Banking, Superannuation and

Financial Services Industry (Financial Services Royal Commission). For example, the final report of the Murray Inquiry stated:

The current regulatory framework focuses on disclosure, financial advice and financial literacy, supported by low-cost dispute resolution arrangements. Product disclosure plays an important part in establishing the contract between issuers and consumers. However, in itself, mandated disclosure is not sufficient to allow consumers to make informed financial decisions.¹³

The existing framework relies heavily on disclosure, financial advice and financial literacy. However, disclosure can be ineffective for a number of reasons, including consumer disengagement, complexity of documents and products, behavioural biases, misaligned interests and low financial literacy.¹⁴

123 For background, over the past decade, ASIC has received between 9,000–12,000 reports of misconduct each year. In the 2016–17 financial year, ASIC received 9,011 reports of misconduct, of which 42%, or 3,784 related to financial services and retail investors.

124 In the same financial year, there were a total of 3,632 registered managed investment schemes and 466 licensed responsible entities.

ASIC role in regulating managed investment schemes

Licensing the responsible entity

125 ASIC *must* grant an AFS licence to anyone who applies, in accordance with s913B of the Corporations Act, where:

- (a) all documentary requirements with the application were submitted by the applicant;
- (b) ASIC has no reason to believe that the applicant is likely to contravene the obligations that will apply under s912A if the licence is granted;
- (c) ASIC is satisfied that there is no reason to believe that the applicant, or in the case of a body corporate its responsible officers, is not of good fame or character or that the applicant's ability to provide the financial services covered by the licence would nevertheless not be significantly impaired;
- (d) the applicant has provided ASIC with any additional information that we have requested; and
- (e) the applicant meets any other relevant requirements prescribed by regulations.

126 Importantly, the 'no reason to believe' test requires actual evidence the applicant has been involved in illegal activity and not just mere suspicion.

¹³ See Murray Inquiry, final report, p. 193.

¹⁴ See Murray Inquiry, final report, p. 199.

127 To enable ASIC to form a view on this, we collect information from the applicant about its responsible officers and about its organisational expertise, compliance arrangements, training, supervision and monitoring of representatives, adequacy of financial, human and IT resources, dispute resolution systems, and risk management practices. We impose conditions on the AFS licence (such as conditions relating to minimum financial resources) to address these matters.

128 In deciding whether to grant a license to a responsible entity, we conduct a review of documents provided in support of the licensing application. The level and type of documentation required depends on our assessment of the risks associated with the application. For example, if the application is to vary an existing AFS licence to include additional financial services, our assessment of the application generally focuses on the additional services. If the licensee has a history of significant compliance issues, we would assess the applicant more broadly before making a decision.

129 In the Sterling collapse, the licensed responsible entity was Theta.

Registering the managed investment scheme

130 Under the Corporations Act, ASIC *must* register a managed investment scheme within 14 days of lodgement of an application, unless it appears to us that:

- (a) the proposed responsible entity is not a public company that holds an AFS licence that authorises it to operate the scheme; and/or
- (b) the application does not meet the requirements in s601EA of the Corporations Act by including:
 - (i) an application form, which states the name and address of the proposed responsible entity and the person who has consented to be the auditor of the compliance plan (see Form 5100 *Application for registration of managed investment scheme*);
 - (ii) a constitution that meets the requirements in s601GA and 601GB;
 - (iii) a compliance plan that meets the requirements in s601HA; and
 - (iv) a statement by the directors certifying that the application complies with the scheme constitution and that the compliance plan complies with the Corporations Act.

131 There is no prescribed form for the constitution or the compliance plan. However, the application must state which provisions of the constitution address the matters in s601GA and 601GB of the Corporations Act.

Provision of guidance

- 132 ASIC issues regulatory guides to give guidance to regulated entities by:
- (a) explaining when and how we will exercise specific powers under legislation (primarily the Corporations Act);
 - (b) explaining how ASIC interprets the law;
 - (c) describing the principles underlying our approach; and
 - (d) giving practical guidance (e.g. describing the steps of a process, such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Risk-based surveillance of disclosure

- 133 Interests in a registered managed investment scheme must generally be offered to retail investors through a PDS. Unless the scheme is listed on a financial market, there is no requirement for a PDS to be lodged with ASIC. PDSs do not expire, but are subject to an obligation to update for substantial changes.
- 134 The PDS is issued by the responsible entity and need not be signed by the directors. We may (and do) examine PDSs in the market on a risk-assessed basis and may require corrective disclosure or we may issue a stop order for defective disclosure.
- 135 The Corporations Act gives ASIC the power to issue a stop order on a PDS where the document is defective (because it is misleading or deceptive, or does not contain material information). We may issue interim or final stop orders. An interim order generally lasts for around 21 days. A final stop order can only be issued after a hearing where interested parties can make submissions about whether the stop order should be made.
- 136 ASIC's actions do not always result in stop orders. Where we believe a PDS is defective, the issuer may rectify their disclosure document by issuing a supplementary PDS.
- 137 ASIC's stop order power also extends to advertisements or statements made by product issuers where the advertisement or statement is defective. ASIC may (subject to a hearing where interested parties have the right to make submissions) order that the advertising be removed from publication.

Risk-based surveillance of responsible entity conduct

- 138 ASIC takes a risk-based approach to surveillance of the conduct of a responsible entity and its officers, to check whether they are complying with their legal obligations for the managed investment schemes they operate. This is often triggered by a breach notification from the responsible entity, a report from a compliance plan auditor or compliance committee, a person reporting misconduct, or our targeted surveillance of entities or sectors.

- 139 Where an entity is targeted for surveillance, our approach to that entity varies with the circumstances. We may initiate an active dialogue with senior executives and conduct meetings to ascertain information. We may also use our powers under s601FF of the Corporations Act to conduct surveillance checks.
- 140 When conducting surveillance of a responsible entity, we may:
- (a) go to the premises of the responsible entity and conduct interviews with its officers and examine documentation it maintains;
 - (b) request documents from the responsible entity and conduct assessments of those documents;
 - (c) request disclosure documents from a larger population of the industry and examine the PDSs;
 - (d) write to a responsible entity requiring it to respond to the issues we have raised; and
 - (e) set up regular reporting periods by which a responsible entity provides ASIC with updates as to how it is dealing with any issues we have identified.
- 141 Responsible entities are obliged to act in the best interest of members of the schemes they operate at all times. In some circumstances, this means they will need to consider closing the scheme to new members or winding up the scheme altogether. In certain circumstances, when ASIC has received sufficient information to become concerned that a scheme is not being run in the best interest of members, or may be trading while insolvent, ASIC may take regulatory action.

ASIC's involvement with Sterling Group and Sterling Income Trust

Overview of ASIC's involvement

- 142 The Sterling Income Trust was registered with ASIC in 2012. Figure 2 summarises the key dates and facts of ASIC's involvement.

Figure 2: Key dates and facts

2010	First Sterling Group companies formed		
19 June 2012	Sterling Income Trust registered by Theta	481 people invested approximately \$25 million in the Sterling Income Trust in this period (early 2012 to August 2017)	
5 November 2012	Sterling Corporate Services appointed investment manager of Sterling Income Trust		
February 2012	First PDS issued for Sterling Income Trust		
Early 2016	Sterling New Life Lease (SNLL) product launched		
20 May 2016	Three PDSs issued for Sterling Income Trust		
17 March 2017	ASIC receives referral from WA DMIRS		
9 August 2017	ASIC issues interim stop order on (then) current PDSs for Sterling Income Trust		
29 August 2017	ASIC issues final stop order on PDSs for Sterling Income Trust		
29 September 2017	Theta lodged 2016–17 audited financial statements and reports for Sterling Income Trust		
27 October 2017	New PDS issued for Sterling Income Trust	46 people invested an additional \$4.9 million into Sterling Income Trust in this period	
Late 2017	Silverlink redeemable preference shares launched		
30 April 2018	PDS for Sterling Income Trust no longer in use (no further sales)		39 people invested a total of \$7.56 million in Silverlink redeemable preference shares during this period, which overlaps with the sales period for Sterling Income Trust
29 May 2018	Formal investigation commenced into Sterling Group and Sterling Income Trust		
22 June 2018	Sterling Group advised ASIC the Silverlink RPS offer had been withdrawn back in May 2018		
27 August 2018	Theta decides to wind up Sterling Income Trust (and begins the process)		
17 December 2018	Silverlink redeemable preference share offer ceased		
3 May 2019	Voluntary administrator appointed to Sterling Group		
10 June 2019	Sterling Group placed into liquidation		
11 December 2019	ASIC commences Federal Court action against Theta and Mr Marie		
13 December 2019	Voluntary administrator appointed to Theta		
March 2020	Theta placed into liquidation		
19 December 2020	Federal Court makes decision against Theta and Mr Marie		
15 October 2021	ASIC refers the matter to CDPP		

- 143 In relation to the Sterling Group and Sterling Income Trust, ASIC has:
- (a) spoken to at least 44 tenant-investors to discuss their experiences;
 - (b) conducted examinations of six individuals;
 - (c) served over 100 notices requiring production of documents, provision of information and the attendance of individuals for examination by ASIC officers;
 - (d) met with representatives of the Sterling Group and Sterling Income Trust to discuss their legal obligations and compliance issues;
 - (e) conducted surveillance activities in relation to the Sterling Group and the offering of interests in the Sterling Income Trust, including fundraising by entities associated with the Sterling Income Trust; and
 - (f) worked with the administrators and liquidators of the Sterling Group and WA DMIRS (which is responsible for the licensing and supervision of real estate agents and laws in relation to residential tenancies) and will continue to do so.
- 144 This work has resulted in the following outcomes:
- (a) an interim stop order was placed on offerings of units in the Sterling Income Trust under the (then) current PDS on 9 August 2017 (due to lack of disclosure of risks);
 - (b) a final stop order was made on 29 August 2017;
 - (c) two promotional seminars, scheduled in August and September 2017, were stopped from taking place;
 - (d) misleading statements on websites concerning the Sterling Income Trust were removed in August 2017;
 - (e) Theta, the responsible entity for the Sterling Income Trust, has ceased further sales (it issued a cease to use notice about a revised PDS for the Sterling Income Trust on 30 April 2018);
 - (f) a decision was made by Theta on 27 August 2018 to voluntarily wind up the Sterling Income Trust;
 - (g) the directors of Silverlink Investment Company Limited and Silverlink Securities Pty Ltd have provided ASIC with signed undertakings that prevented further fundraising on 17 December 2018;
 - (h) the directors of the Sterling Group resolved to appoint, and appointed voluntary administrators to the companies on 3 May 2019 after ASIC advised it was preparing applications to court to obtain orders for such appointment;
 - (i) secured creditor Macquarie Bank agreed to provide assistance to vulnerable investors and SNLL tenant-investors through its vulnerable client team in the form of an advice line, despite having no obligation to do so; and

- (j) successful civil penalty proceedings were brought in the Western Australian Registry of the Federal Court of Australia against the responsible entity of the Sterling Income Trust, with the Federal Court ordering Theta to pay a penalty of \$2 million and a director of Theta to pay a penalty of \$100,000, with that director also being banned from managing a corporation for a period of four years (ASIC has not enforced the penalty ordered against Theta to avoid reducing the assets available to creditors).

145 On 15 October 2021, ASIC referred the matter to the CDPP about the alleged misconduct of a number of persons related to the Sterling Group. ASIC is assisting the CDPP by providing such further information as the CDPP requires to assess the relevant conduct and determine whether criminal charges ought to be laid in relation to the matter.

Reports of misconduct

146 ASIC received three reports of suspected misconduct in 2015–16 relating to the Sterling Group. However, these did not relate to the SNLL product nor the Sterling Income Trust. These reports were assessed according to our normal regulatory criteria and at the time it was considered that no further action was warranted.¹⁵

147 On 17 March 2017, ASIC received a report of suspected misconduct from WA DMIRS. WA DMIRS had been receiving calls from individuals about insufficient information being supplied by ‘Sterling New Life’¹⁶ in relation to the SNLL product.

148 From this time, there were numerous discussions between ASIC and WA DMIRS. ASIC considered whether there had been false and misleading statements made in relation to the right to withdraw from the Sterling Income Trust and the right to a return of the initial investment amount, as well as whether there had been false and misleading statements on the Sterling New Life website in breach of s1041E and 1041H of the Corporations Act.

Issuing of stop orders

149 ASIC requested, and obtained on 14 June 2017, then-current versions of the PDS for the Sterling Income Trust, which were not available from Sterling Income Trust’s public website. These PDSs related to development units, income and growth units, and management company units. ASIC formed the view that the PDSs were defective due to concerns about inadequate disclosure of risks and conflicts of interests, omission of material information about the investment, presentation of prospective information about targeted returns, and outdated and incorrect references.

¹⁵ See ASIC’s response to Questions on Notice, SBT118 (Senate Economics Legislation Committee, Treasury Portfolio, Supplementary Budget Estimates, 2019–20).

¹⁶ Sterling New Life was a business name of Sterling First Projects Pty Ltd.

- 150 On 9 August 2017, ASIC issued an interim stop order. The interim stop order was then served on Theta, in its capacity as the responsible entity for the Sterling Income Trust.
- 151 The effect of the interim stop order was that any offers, issues, sales or transfers of the interests in the Sterling Income Trust were prohibited under those PDSs while the order remained in force.
- 152 On 10 August 2017, Theta acknowledged the interim stop order and notified ASIC that it would no longer issue interests in development units and management company units, but that it would be preparing a new PDS for income and growth units.
- 153 On the same day, ASIC contacted WA DMIRS to notify it that an interim stop order had been issued and asked it to contact ASIC if WA DMIRS became aware of any new investors in the Sterling Income Trust.
- 154 Following the issuing of the interim stop order, ASIC continued to investigate the Sterling Income Trust, including by issuing Theta with notices under s33 and 912C of the Corporations Act. ASIC also ensured that seminars intended to encourage investment in the Sterling Income Trust, and which were scheduled for 21 August 2017 and 6 September 2017, were cancelled. Further, the statements on Sterling New Life’s website which had caused concern were removed.
- 155 On 29 August 2017, ASIC issued a final stop order on the PDSs for interests in the Sterling Income Trust. Theta consented to the issuing of a final stop order. ASIC notified WA DMIRS that a final stop order had been issued.
- 156 On 18 September 2017, ASIC issued a media release which explained and provided details about the final stop order that had been issued on the PDSs for interests in the Sterling Income Trust.¹⁷ The effect of the final stop order was that any offers, issues, sales or transfers of the interests in the Sterling Income Trust under the PDSs were prohibited while the final stop order remained in force. The media release noted that ‘Investors in [Sterling Income Trust] include some consumers who have acquired a Sterling New Life Lease marketed by Sterling First Projects Pty Ltd.’

ASIC’s actions after issuing the final stop order

- 157 ASIC’s work in relation to the Sterling Income Trust continued following the issuing of the final stop order. The work focused upon two principal issues of concern—Sterling Corporate Services (the investment manager) and Theta’s stated intention to issue a new PDS for income and growth units, and the financial viability of the Sterling Income Trust itself.

¹⁷ See [Media Release 17-316MR](#) *ASIC issues stop order on Theta product disclosure statements*, 18 September 2017.

- 158 In relation to Sterling and Theta’s intention to issue a new PDS for income and growth units:
- (a) On 31 August 2017, Theta provided ASIC with a draft of a new PDS for the issue of income and growth units in the Sterling Income Trust.
 - (b) On 22 September 2017, ASIC responded to Theta, providing non-exhaustive comments on the draft PDS. ASIC required Theta to revise the PDS to comply with the Corporations Act. ASIC reserved the right to take action against Theta in relation to the draft PDS.
 - (c) On 27 October 2017, Theta issued a new PDS for interests in income and growth units in the Sterling Income Trust.
 - (d) On 9 November 2017, Theta informed ASIC that it had issued a new PDS for interests in income and growth units in the Sterling Income Trust and ASIC informed WA DMIRS of this occurrence on 21 November 2017.
 - (e) On 7 March 2018, a review of the new PDS was completed and ASIC determined not to take action to stop use of the new PDS.
- 159 In relation to the financial viability of the Sterling Income Trust:
- (a) On 29 September 2017, Theta lodged the audited financial statements and reports for the Sterling Income Trust for the 2016–17 financial year.
 - (b) The auditor stated that ‘a material uncertainty exists that may cast significant doubt on the [Sterling Income Trust and its controlled entities, including sub-trusts]’s ability to continue as a going concern’. Theta’s director, Robert Patrick Marie, signed off on this issue, stating: ‘The Directors of the [responsible entity] believe that the [Sterling Income Trust and its controlled entities] will continue as a going concern as they regularly monitor the operations of the sub-trusts and that financial support is provided by Sterling First (Aust) Ltd and its controlled entities to the [Sterling Income Trust and its controlled entities] to meet its obligations as and when they fall due.’
 - (c) On 2 November 2017, ASIC issued a notice under s912C of the Corporations Act on Theta, requesting information in relation to the auditor’s notice concerning the material uncertainty.
 - (d) On 16 November 2017, Theta responded to the notice issued by ASIC under s912C of the Corporations Act and disputed whether that material uncertainty as to solvency existed.
 - (e) On 21 November 2017, ASIC commenced a financial analysis of the financial accounts and financial information provided by Theta on the Sterling Income Trust. This was completed on 4 December and the relevant officer concluded that there were some serious concerns with the financial viability of the Sterling Income Trust.

160 In February–March 2018, ASIC had obtained sufficient evidence to have grounds for concern about the solvency of the Sterling Group and the flow-on impact insolvency would have on the group’s investors. Given the concerns ASIC had, we formed the view that steps should be taken to stop new investors from investing in the Sterling Income Trust because of (among other things) concerns ASIC had with the financial viability of the product, the complexity of the product, and the elderly target audience.

161 ASIC took preparatory steps for enforcement action to stop the further issuing of interests in the Sterling Income Trust. As part of this preparation for enforcement action, ASIC issued notices to Theta under s33 of the ASIC Act and s912C of the Corporations Act. The first notice was issued on 28 March 2018. ASIC received a response to the first notice on 17 April 2018.

162 A second notice was issued on 4 April 2018. ASIC received Theta’s first response to the s912C notice on 19 April 2018, with further responses provided by Theta on 3 May and 9 May 2018.

163 On 30 April 2018, Theta closed the Sterling Income Trust to new investors, and informed ASIC the revised PDS for that trust was no longer in use.

ASIC’s formal investigation in relation to the Sterling Group and Sterling Income Trust

164 From 15 May 2018 onwards, ASIC issued at least:

- (a) three notices under s19(2) of the ASIC Act;
- (b) one notice under s32A of the ASIC Act; and
- (c) 16 notices under s33 of the ASIC Act.

165 On 29 May 2018, ASIC commenced a formal investigation into whether, from 19 June 2012, individuals associated with the Sterling Group had contravened s601FC, 601FD, 727, 911A, 1018A, 1041E and 1041H of the Corporations Act and s12DA and 12DB of the ASIC Act in the way in which they offered managed investments and issued financial products (suspected contraventions). This determination of suspected contraventions was subsequently updated on 12 July 2018 to include suspected contraventions of s912A of the Corporations Act and s12CB of the ASIC Act.

166 Having made this determination, from June 2018 onwards, ASIC commenced its detailed investigation into the suspected contraventions. 44 individuals were interviewed in person or over the phone, who were investors and/or tenant-investors. Some of their documents were also reviewed.

167 ASIC also conducted examinations of at least five individuals under s19 of the ASIC Act, which were held on 19 December 2018, 27 February 2019, 1 March 2019 and 17 April 2019.

- 168 In addition to this work, ASIC also met with those involved in offering and encouraging the purchase of interests in the Sterling Income Trust, including Theta and Mr Marie, as part of our information gathering and investigatory processes.
- 169 On 8 August 2018, ASIC met with Theta and the auditor of the Sterling Income Trust. We informed Theta of our concerns with the Sterling Income Trust and that in ASIC's view, the Sterling Income Trust should be wound up. We also told Theta of our concerns about the impact of the scheme on approximately 63 elderly investors who relied upon returns to pay their lease payments.
- 170 On 27 August 2018, Theta advised ASIC that it would wind up the Sterling Income Trust. The winding up process is ongoing.

ASIC's actions in relation to Silverlink

- 171 In April 2018, ASIC was made aware by WA DMIRS that Sterling had begun to offer preference shares in the Silverlink Investment Company Limited (a Silverlink company) in addition or as an alternative to investments in the Sterling Income Trust.
- 172 ASIC understood the promotion of preference shares in Silverlink as an investment option was occurring despite there being no PDS or prospectus in relation to these shares, and despite Silverlink not holding an AFS licence.
- 173 Earlier in April 2018, ASIC had written to Sterling First Limited about ASIC's concerns about apparently misleading and deceptive statements about the Sterling Income Trust contained on the website sterlingnewlife.com.au and in promotional material distributed by the Sterling Group.
- 174 Between April and June 2018, ASIC (in the context of its wider investigation into the Sterling Group at the time) progressed its consideration of the Silverlink preference shares.
- 175 On 6 June 2018, ASIC requested (under notice) information and materials from WA DMIRS about an investigation into suspected contraventions in relation to the offer of managed investments and issue of financial products by, among other Sterling Group entities, Silverlink. ASIC conducted a careful review of the materials. In this period, ASIC and WA DMIRS were in close contact in relation to the Sterling Group.
- 176 On 22 June 2018, ASIC met with Robert Marie (Theta), a director of Silverlink and Silverlink's external solicitor (a partner of a national law firm). At this meeting, Silverlink (through its solicitor) advised ASIC that the Silverlink investment option had been removed from the Sterling Group website since 18 May 2018. As a result of statements made at this meeting, ASIC understood that the promotion of investment in Silverlink preference shares had ceased.

- 177 On 4 December 2018, ASIC was informed by Tenancy WA of new complaints that had been received from one Sterling Income Trust SNLL tenant-investor and three Silverlink SNLL tenant-investors. It then became apparent that Silverlink had indeed been offering redeemable preference shares since around December 2017. Despite the statements on 22 June 2018 that the Silverlink investment option had been removed from the Sterling Group website since 18 May 2018, Silverlink had not ceased offering redeemable preference shares.
- 178 On 6 December 2018, ASIC served a notice under s19 of the ASIC Act requiring a director of Silverlink to attend an examination.
- 179 On 11 December 2018, ASIC conducted interviews with four individuals who were SNLL tenant-investors and/or investors in Silverlink. As a result of the meeting with Tenancy WA and the interviews conducted with the four individuals, on 13 December 2018, ASIC updated the determination of suspected contraventions to include suspected contraventions of s601ED and 727 of the Corporations Act and s378 and 409 of the *Criminal Code Compilation Act* (WA) (Criminal Code) in relation to the offer of redeemable preference shares by the Silverlink companies.
- 180 On 14 December 2018, ASIC sent letters to two directors of Silverlink, informing them that ASIC suspected that Silverlink may have contravened provisions of the Corporations Act and the Criminal Code. ASIC stated that the directors and Silverlink were to stop any further offering of the redeemable preference shares and to provide a written undertaking to that effect.
- 181 On 17 December 2018, the two directors of the Silverlink companies provided written undertakings to ASIC, confirming that the Silverlink companies would not offer any further redeemable preference shares.
- 182 The written undertakings provided by the directors of the Silverlink companies also preserved ASIC's right to continue its investigatory work, and take such further action as it considered appropriate in future.
- 183 On 6 February 2019, ASIC served a notice under s19 of the ASIC Act requiring another a director of Silverlink to attend an examination. The director was subsequently examined on four separate days, with the first examination occurring on 15 February 2019. The s19 notice was followed by a notice under s33 of the ASIC Act to Theta on 15 February 2019.
- 184 On 13 March 2019, ASIC determined that there should be a broader investigation into the conduct of the Silverlink companies as part of the investigation into the Sterling Income Trust. The scope of the investigation was broadened to cover additional suspected contraventions, which might in the future ground civil, administrative and/or criminal proceedings.

Appointment of a voluntary administrator

- 185 On or around 12 March 2019, Martin Jones of Ferrier Hodgson was appointed by the Sterling Group to conduct a review into its solvency.
- 186 On 5 April 2019, ASIC engaged counsel to commence preparation for a potential application for orders to wind up and freeze assets of the Sterling Group and related entities.
- 187 ASIC's view was (and remains) that placing the Sterling Group into external administration would be an appropriate response in the circumstances. The external administration would remove control of the Sterling Group from the directors and place control into the hands of an independent officer of the court (i.e. the administrator). Importantly, it would prevent the Sterling Group from continuing to accept investor funds.
- 188 Existing investor claims would be dealt with in accordance with Corporations Act priorities, including the equal treatment of creditors rule (*pari passu*). In the case of investors, their claims would be lodged for assessment by the external administrator without the need to first obtain a judgment or AFCA determination. Finally, external administrators are empowered to investigate what has occurred and consider whether to bring claims against the alleged wrongdoers, having regard to whether those claims would produce any return for creditors/investors.
- 189 Between March 2019 and 30 April 2019, ASIC prepared a case for a possible court-appointed provisional liquidator and associated orders. During this time, we continued to communicate with the Sterling Group with a view to reduce any adverse effect on investors and tenant-investors.
- 190 On 30 April 2019, ASIC met with the board of directors for the Sterling Group and informed the board that ASIC was progressing with an imminent application for the appointment of a provisional liquidator to the whole group on the just and equitable ground and on the ground of insolvency, with an application to be filed within days.
- 191 On 1 May 2019, ASIC was advised by Ferrier Hodgson that a meeting had been convened to formalise the appointment by the board of directors of Martin Jones and Wayne Rushton of Ferrier Hodgson as voluntary administrators of the Sterling group of companies.
- 192 On 3 May 2019, Martin Jones and Wayne Rushton of Ferrier Hodgson advised ASIC that they had been appointed by the companies as voluntary administrators of the following companies within the Sterling Group:
- (a) Acquest Capital Pty Ltd;
 - (b) Acquest Property Pty Ltd;
 - (c) Gage Management Ltd;

- (d) Sterling First (Aust) Limited;
- (e) Sterling First Property Pty Ltd;
- (f) Sterling First Projects Pty Ltd;
- (g) SHL Management Services Pty Ltd;
- (h) Sterling Corporate Services Pty Ltd;
- (i) Silverlink Investment Company Ltd;
- (j) Silver Link Securities Pty Ltd;
- (k) Rental Management Australia Pty Ltd; and
- (l) Rental Management Australia Developments Pty Ltd.

193 On 10 June 2019, ASIC was advised by Martin Jones and Wayne Rushton of Ferrier Hodgson that the creditors of the Sterling Group had voted in favour of placing the Sterling Group (other than Rental Management Australia Pty Ltd) into liquidation. Martin Jones and Wayne Rushton were appointed as liquidators.

194 In June 2019, Ferrier Hodgson merged with KPMG and became known as KPMG. Throughout this time, Martin Jones and Wayne Rushton remained voluntary administrators and later liquidators of the Sterling Group.

195 On 13 December 2019, Christopher Darin and Mervyn Kitay of Worrells Solvency & Forensic Accounting were appointed as administrators of Theta. On 23 January 2020, ASIC suspended Theta's AFS licence, to ensure it could provide no further financial services (including issuing of new units in any of the schemes it operated) and reduce the risk of it being opportunistically bought by another entity to use as a shell licensee.

196 Theta subsequently entered liquidation in March 2020. ASIC has monitored the liquidation to ensure the various managed investment schemes of which Theta is the responsible entity are wound up or transferred to new responsible entities. This is ongoing.

197 ASIC has assisted the liquidators to ensure that accurate and detailed information was provided to affected customers, and obtained agreement from secured creditor Macquarie Bank to provide assistance to vulnerable investors and SNLL tenant-investors through its vulnerable client team, in the form of an advice line.

Civil and criminal proceedings

198 On 11 December 2019, ASIC commenced civil penalty proceedings in the Federal Court in Western Australia against Theta and Mr Marie focused on the promotion and management of the Sterling Income Trust.

- 199 ASIC alleged that Theta and Mr Marie failed to ensure that five PDSs for the Sterling Income Trust were not defective. The Federal Court found Theta and Mr Marie contravened the Corporations Act on multiple occasions in authorising the issue of five defective PDSs for the Sterling Income Trust.
- 200 The Federal Court ultimately ordered Theta to pay a penalty of \$2 million in relation to the declarations of contravention and ordered Mr Marie to pay a penalty of \$100,000, (both of which are payable to Commonwealth Consolidated Revenue). Mr Marie was also disqualified for four years from managing corporations. Mr Marie was subsequently banned by ASIC from the financial services industry for a period of four years.
- 201 ASIC will not seek recovery of the penalty against Theta, as doing so would decrease the funds available for distribution to creditors by Theta's liquidators.
- 202 ASIC's work on another investigation, into suspected criminal misconduct, remains ongoing. As a result of that investigation, on 15 October 2021 ASIC referred the matter to the CDPP regarding the alleged misconduct of a number of officers of companies in the Sterling Group. ASIC is assisting the CDPP by providing such further information as the CDPP requires to assess the relevant conduct and determine whether criminal charges ought to be laid in relation to the matter.

E Access to justice and redress

Key points

AFCA is the primary vehicle for direct resolution of retail client issues in the financial service sector. While ASIC does not deal with individual consumer disputes or complaints about financial products and services, it oversees the AFCA system that provides consumers with free, timely and independent resolution of any disputes and complaints with financial service providers.

On 28 October 2021, the Government introduced legislation into Parliament to introduce a compensation scheme of last resort (CSLR). The proposed CSLR would compensate unpaid AFCA determinations relating to credit activity, financial product advice, and dealings in securities for a person as a retail client, up to a cap of \$150,000.

The design and scope of the CSLR has been and remains a policy decision of the Federal Government, not ASIC. The final scope will be resolved by the Parliament through the legislative process.

ASIC recognises that while there have been efforts to obtain justice across several different mechanisms (including numerous regulatory actions discussed previously in this submission, investigations by voluntary administrators and liquidators, and civil penalty proceedings in the courts), it appears that these actions are unlikely to result in material financial compensation for the losses suffered by the victims of the Sterling collapse.

Note: This section addresses the issues in paragraph (c) of the Inquiry's terms of reference.

Proposed compensation scheme of last resort

- 203 In September 2017, the supplementary final report of the Review of the Financial System External Dispute Resolution and Complaints Framework (Ramsay Review) recommended the establishment of an industry-funded compensation scheme of last resort (CSLR) to allow for the payment of claims which had been determined but remained unpaid, usually due to the insolvency of the relevant entity.
- 204 In this context, a CSLR would provide for the wider industry to pay for compensation where that compensation has been awarded and all options for payment (e.g. insurance) have been exhausted without success.
- 205 In February 2019, the final report of the Financial Services Royal Commission recommended that this aspect of the Ramsay Review be carried into effect, but did not express a view on the scope of the proposed CSLR.
- 206 In its response to the Financial Services Royal Commission in February 2019, the Government announced it would establish an industry-funded, forward-looking CSLR.

- 207 After consultation on draft legislation conducted by Treasury in July 2021, the Government introduced legislation to establish a CSLR into Parliament on 28 October 2021.
- 208 The proposed CSLR will provide compensation to eligible consumers where they have an AFCA determination of compensation in their favour and the relevant financial firm has not paid the consumer that compensation within the required time. Compensation for each claim will be capped at \$150,000.
- 209 The determination must relate to one or more of the following:
- (a) engaging in credit activity within the meaning of the *National Consumer Credit Protection Act 2009* as a credit provider or otherwise as a credit intermediary;
 - (b) providing personal financial product advice to a retail client about one or more products that include at least one relevant financial product; and
 - (c) dealing in securities for a person as a retail client, other than issuing securities.
- 210 Investors in Sterling Income Trust or Silverlink who receive an AFCA determination of compensation for personal financial product advice, or for certain securities dealings as a retail client, which goes unpaid may be eligible for compensation under the proposed CSLR.
- 211 Certain AFCA determinations made from November 2018 (the date of AFCA commencement) may be eligible.
- 212 The proposed CSLR will be a legislative scheme created by statute. Questions about CSLR design and policy, including scope and funding arrangements, are matters for the Government and not for ASIC.

The role of AFCA

- 213 The AFCA scheme was established under Pt 7.10A of the Corporations Act to provide independent external dispute resolution and deal with consumer and small business complaints against financial firms.
- 214 AFCA is intended to be a one-stop-shop for most complaints concerning investments, insurance, banking, credit provision and superannuation; and provides an alternative to going to court. AFCA has authority to make binding determinations requiring financial firms to compensate consumers. In accordance with this regulatory framework, ASIC has encouraged investors in Sterling Income Trust to consider lodging complaints with AFCA.
- 215 While ASIC has what is referred to as ‘an enhanced oversight role over AFCA’, AFCA remains independent and responsible for its own internal processes and the management of complaints. ASIC has no role in individual complaints handling by AFCA and cannot intervene in the decision-making processes of AFCA.

- 216 Before the Government’s announcement in February 2019 that it would implement a CSLR, AFCA and its predecessor schemes would not accept complaints against a financial firm if it was insolvent, as there was no prospect of the consumer receiving compensation (and AFCA’s fees for determining the complaint being paid). After the Government’s announcement, AFCA began accepting and assessing complaints against insolvent financial firms.
- 217 On 31 March 2020, AFCA published a determination (case number 667692) of a complainant against Theta in relation to an SNLL tenant. AFCA’s determination was in favour of the complainant and awarded \$118,957.60 in compensation to the complainant. AFCA also later published a determination (case number 655484, on 26 August 2020) regarding a complainant against Libertas Financial Planning Pty Ltd (Libertas), whose authorised representative provided financial advice to the complainant to enter into an SNLL. Libertas was ordered to pay the complainants \$268,207.57 plus interest in compensation and \$5,000 for non-financial loss.
- 218 In April 2020, when it became apparent that the implementation of the CSLR would be delayed, AFCA determined to pause its handling of complaints against insolvent firms. While AFCA would ‘accept future complaints’, those complaints would be held over until there was more clarity about the CSLR. AFCA’s concern was about putting consumers through the complaint resolution process in circumstances where the consumer may not have any chance of obtaining compensation.
- 219 Theta ceased to be an AFCA member on 9 March 2021. As a result, AFCA can no longer register new complaints lodged against Theta. Before this, AFCA (and ASIC) had encouraged investors to lodge their complaints against Theta’s conduct as soon as possible to preserve any possible remedies in the future.
- 220 ASIC anticipates that if and when CSLR legislation is passed by Parliament, AFCA may recommence assessing any complaints involving Theta and Sterling Group companies that may be entitled to compensation under the proposed CSLR.

Other remedies

- 221 ASIC notes that the liquidators of Theta and the Sterling Group are required by law to investigate and consider the bringing of claims against directors or other persons for the benefit of creditors of those companies. ASIC understands that following those investigations, the liquidators of Theta and the Sterling Group have not determined to bring claims against directors or other persons involved in Theta or the Sterling Group.

- 222 Where investors have suffered loss as the result of contraventions of the law, they may be able to bring private legal action against persons or corporations responsible for those contraventions. ASIC is not aware of any private legal action, whether individually or as a class, being brought in relation to the Sterling collapse seeking compensation for investor losses.
- 223 As a matter of general observation, ASIC notes that actions available to private litigants in an insolvency scenario are likely to have substantial overlap with actions which would be investigated by a liquidator, and as noted earlier, the liquidators of Theta and the Sterling Group have not determined to bring claims against directors or other persons.

F Possible legislative and regulatory reforms arising out of the collapse

Key points

ASIC considers that two key reforms which have come into force after the Sterling collapse may have been of benefit in relation to ASIC's oversight of the Sterling Income Trust (had they been in force at the time):

- *Product intervention power*—If ASIC found evidence that a large number of customers had been sold products misaligned with their expectations leading to significant consumer detriment, ASIC may have used the product intervention power to reduce the risk of this detriment.
- *Design and distribution obligations*—If Theta had been required to comply with the design and distribution obligations at the time it issued the Sterling Income Trust investment products, Theta would have been legally obliged to put in place controls and obligations which may have reduced consumer losses.

The legislative framework for managed investment schemes has been the subject of a number of reviews and a significant amount of work in developing potential refinements; however, it has remained largely the same. Consideration should be given to the recommendations of these various reviews and inquiries when considering options for reform.

Note: This section addresses the issues in paragraph (b) of the Inquiry's terms of reference.

Key reforms since the Sterling collapse

- 224 Since the Sterling collapse, ASIC has new powers that can be used. However, each of the new powers has particular processes that must be followed and require the gathering of evidence before their use.
- 225 In April 2019, Parliament introduced reforms in financial industry regulations which:
- (a) introduced a new regulatory tool for ASIC, the product intervention power; and
 - (b) established a new obligation on issuers and distributors of financial products to comply with new design and distribution obligations in Pt 7.8A of the Corporations Act (which commenced on 5 October 2021).

Note: For a more detailed discussion of these reforms, see Appendix 3 of this submission.

The product intervention power and the Sterling Income Trust

- 226 ASIC may have used the product intervention power to reduce the risk of significant consumer detriment if:
- (a) the power had been available to ASIC at the relevant time;
 - (b) ASIC had obtained evidence that a large number of consumers were being sold products which were misaligned with their understanding or expectations; and
 - (c) ASIC was satisfied that this was likely to lead to significant consumer detriment.

- 227 This may have included a product intervention order to temporarily prevent the inappropriate distribution of these products. We note that there is a relatively high threshold which must be met in order to establish significant consumer detriment and enliven ASIC's product intervention power.

Note: For a more detailed discussion of the product intervention power, see Appendix 3 of this submission.

- 228 In this case, ASIC could have intervened by, for example, restricting distribution of this product, preventing the marketing of the product as part of a lease-for-life arrangement, or requiring that the product only be distributed through personal advice.
- 229 ASIC notes that the issue of any product intervention order would have been dependent on not only establishing the risk of significant consumer detriment (as above) but also in ASIC having obtained sufficient evidence of this detriment and the need to intervene. We also have an obligation to consult with affected persons, although this may be done through publishing the proposed order on ASIC's website and inviting public comment.
- 230 On balance, ASIC's view is that the product intervention power would not necessarily have provided a faster solution to the Sterling Income Trust managed investment scheme than intervention through the issuing of stop orders on the PDS and ultimately the closure of the product by Theta on 30 April 2018.

Would the design and distribution obligations have had an impact on the Sterling Income Trust?

- 231 The design and distribution obligations are intended to help consumers obtain appropriate financial products by requiring issuers and distributors to have a consumer-centric approach to designing and distributing products.¹⁸

¹⁸ See [Regulatory Guide 274](#) *Product design and distribution obligations* (RG 274) at RG 274.5.

- 232 The obligations do not equate to an individualised product suitability test that requires assessment of each individual’s personal circumstances at the point of sale. Instead, the obligations require issuers and distributors to develop and maintain effective product governance arrangements across the life cycle of financial products to ensure that consumers are receiving products that are likely to be consistent with their likely objectives, financial situation and needs.¹⁹
- 233 If Theta had been required to comply with the design and distribution obligations at the time it issued interests in the Sterling Income Trust,²⁰ Theta would have been required to define a target market for the Sterling Income Trust products and effectively ensure the products would likely be consistent with the likely objectives, financial situation and needs of the consumers in this defined group (the ‘target market determination’).²¹
- 234 Theta would then have been required to take reasonable steps to ensure the Sterling Income Trust products were marketed and distributed to this defined group of consumers.²² Distributors, including the Sterling Group, would also have needed to take reasonable steps that would, or were reasonably likely to, result in distribution being consistent with the target market determination.²³
- 235 These obligations would have required Theta to put in place controls and processes to broadly ensure that the Sterling Income Trust was marketed and sold in a way that was consistent with the target market determination—so that generally only consumers whose needs would have been consistent with products would have received them. The Sterling Group (and other entities that sold the product) would also have been required to have controls to broadly direct sales to the target market.²⁴
- 236 If the Sterling Income Trust product were marketed and sold to a large number of consumers for whom the product was not appropriate (for example, because the target market was inappropriate or because it was not distributed in accordance with the defined target market), then there would likely have been a breach of the design and distribution obligations.²⁵ In such circumstances, ASIC may have imposed a stop order on further sales of the product until the design and distribution issues were resolved.

¹⁹ See RG 274.6.

²⁰ We note that at one stage the Sterling Group sought to rely on the 20/12 exemption in s708 of the Corporations Act and that design and distribution obligations only apply where disclosure is required (i.e. where the 20/12 exemption does not apply).

²¹ Corporations Act, s994B.

²² Corporations Act, s994E.

²³ See RG 274.139.

²⁴ See RG 274.48 and RG 274.175.

²⁵ See RG 274.237–RG 274.238; Corporations Act, s994J.

Other opportunities for reform

- 237 The legislative framework for managed investment schemes has undergone numerous reviews and inquiries, including:
- (a) a review of the *Managed Investments Act 1998*, commissioned by the Government in 2001;
 - (b) the Parliamentary Joint Committee on Corporations and Financial Services (PJC) inquiry into financial products and services in Australia (2009), which covered managed investment schemes among other matters;
 - (c) the PJC inquiry into agribusiness managed investment schemes (2009);
 - (d) the PJC inquiry into the collapse of Trio Capital (2011–12);
 - (e) a report by the Corporations and Markets Advisory Committee (CAMAC), *Managed investment schemes* (2012) (CAMAC report); and
- Note: CAMAC also released a second discussion paper, *The establishment and operation of managed investment schemes*, in March 2014.
- (f) the Senate Economics References Committee inquiry into forestry managed investment schemes (2014–16).

External administration and replacement of responsible entities of managed investment schemes

- 238 A range of reforms were recommended in the reports noted above, but to date have not been implemented. ASIC notes the recommendations for law reform in relation to managing non-viable or insolvent managed investment schemes and their responsible entities that have been made.
- 239 CAMAC made the following recommendations in 2012:
- (a) including a definition of an insolvent scheme in legislation;
 - (b) introducing a voluntary administration regime for insolvent schemes;
 - (c) requiring that an incumbent responsible entity or temporary responsible entity provide reasonable assistance to a prospective responsible entity in certain circumstances;
 - (f) giving the court a general power to adjust the duties and liabilities of a temporary responsible entity to particular circumstances;
 - (g) giving the court the power to wind up a scheme if it is insolvent; and
 - (h) providing for a statutory order of priorities in the winding up of a scheme—based on that provided for companies in s556 and adjusted, where necessary, for schemes—and provide a first priority for payments to a temporary responsible entity.²⁶

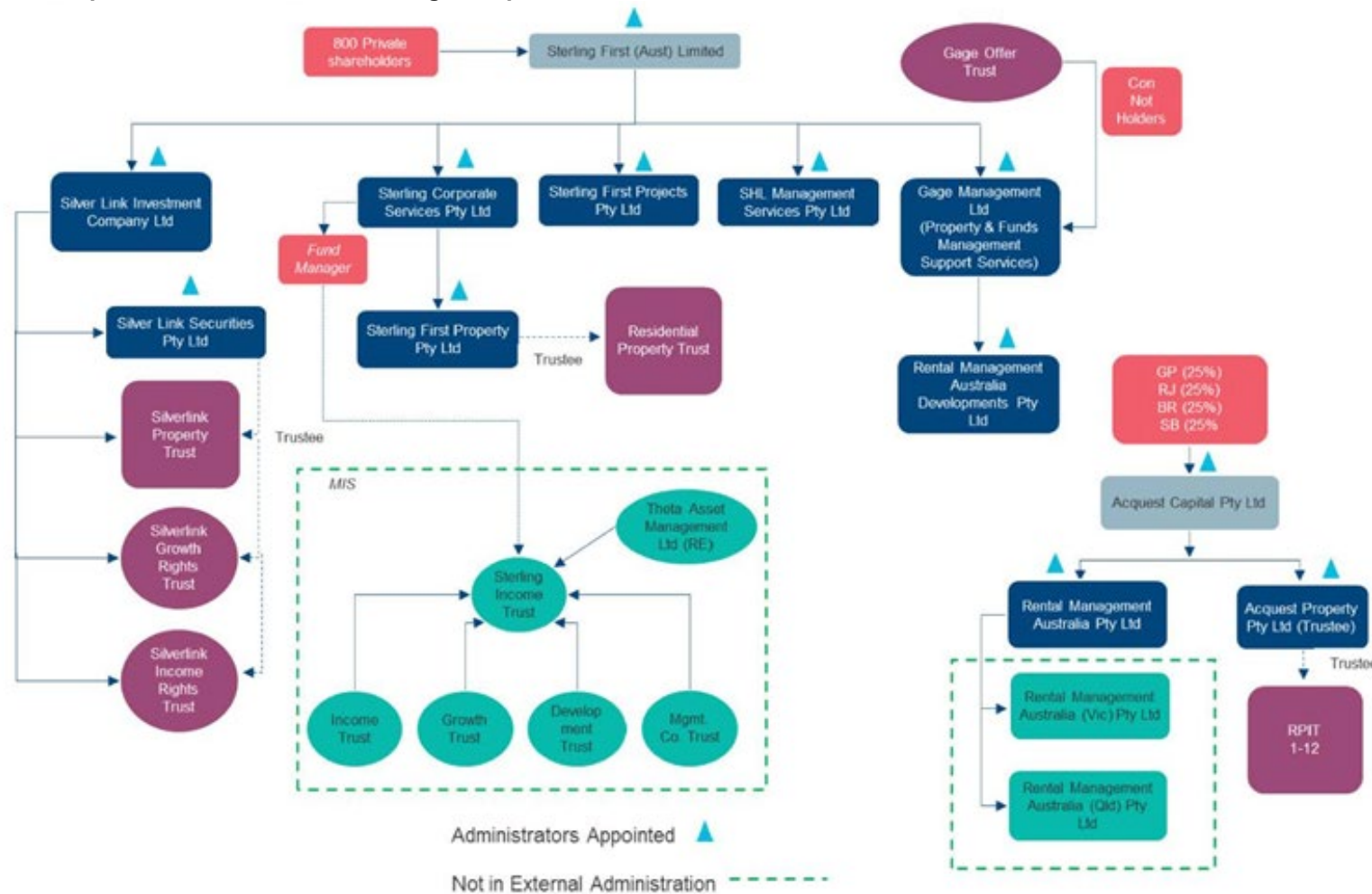
²⁶ See CAMAC report; ASIC referred to these recommendations in our submission to the Senate Economics References Committee inquiry into forestry managed investment schemes (p. 49).

240 Recommendation 20 of the final report of Senate Economics References Committee inquiry into forestry managed investment schemes stated:

The committee recommends that the government use [the CAMAC report] on managed investment schemes as the platform for further discussion and consultation with the industry with a view to introducing legislative reforms that would remedy the identified shortcomings in managing [a managed investment scheme] in financial difficulties and the winding-up of collapsed schemes.

Appendix 1: Sterling Group corporate structure

Figure 3: Corporate structure of the Sterling Group

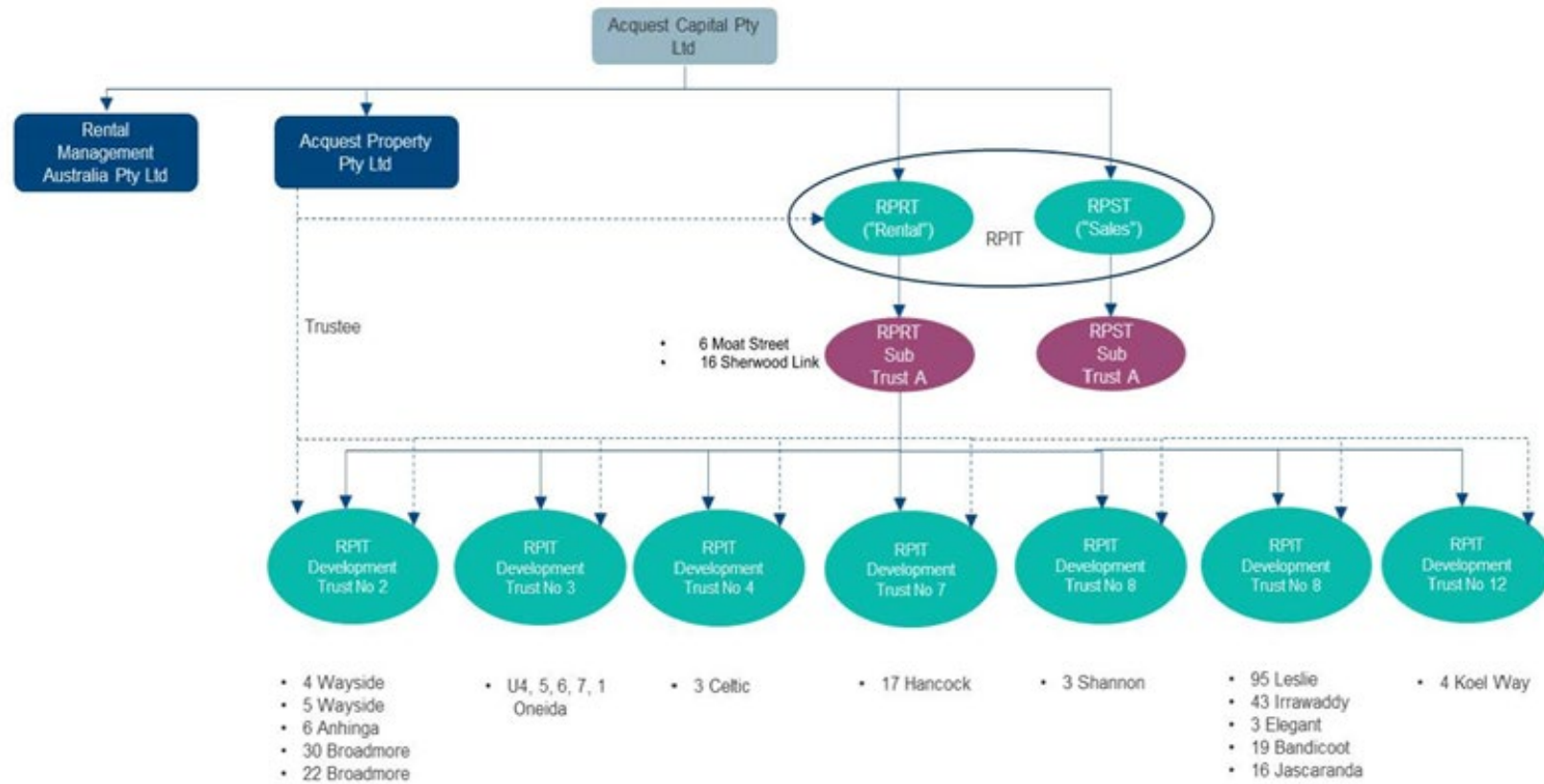


Source: Ferrier Hodgson, *Sterling First (Aust) Limited and others—Voluntary administrators' report*, 30 May 2019, p. 14.

Note: For a description of the Sterling Group corporate structure, see Section C of this submission (accessible version).

Appendix 2: Acquest Property corporate structure

Figure 4: Corporate structure of Acquest Property



Source: Ferrier Hodgson, *Sterling First (Aust) Limited and others—Voluntary administrators' report*, 30 May 2019, p. 15.

Note: For a description of the Acquest Property corporate structure, see Section C of this submission (accessible version).

Appendix 3: ASIC's product intervention power

- 241 In April 2019, Parliament introduced reforms in financial industry regulations which:
- (a) introduced a new regulatory tool for ASIC, the product intervention power; and
 - (i) established a new obligation on issuers and distributors of financial products to comply with new design and distribution obligations contained at Pt 7.8A of the Corporations Act, with the obligation to comply having commenced on 5 October 2021.
- 242 These reforms represented a fundamental shift away from relying predominantly on disclosure to drive good consumer outcomes. The reforms were recommended by the Murray Inquiry in 2014, which recognised that disclosure can be ineffective for a number of reasons, including:
- (a) complexity of documents and products;
 - (b) behavioural biases;
 - (c) misaligned interests;
 - (d) low financial literacy;
 - (e) that many consumers do not seek advice, and those who do may receive poor-quality advice; and
 - (f) many products are distributed directly to consumers without advice.
- 243 ASIC considers that a number of these elements were present in relation to the Sterling collapse.

Purpose and use of the product intervention power

- 244 The product intervention power is intended to provide ASIC with powers which can be used proactively to respond to the risk of significant detriment to retail clients resulting from financial products. The power is available where a product has resulted in, or will or is likely to result in significant consumer detriment. ASIC can exercise the product intervention power in relation to a product (or class of products) regardless of whether there has been a breach of the law (e.g. a defective PDS).
- 245 ASIC can make a product intervention order for an initial period of up to 18 months. This period may be extended or made permanent with approval of the Minister. Product intervention orders may be applied to a specified person or persons in relation to a specified product, or may be a market-wide product intervention order, which applies to a person in relation to a class of products.

246 Product intervention orders available to ASIC include (for example) banning the distribution of a product to retail investors, ordering that a product only be offered in specific circumstances, and ordering the banning of a feature of a product. The power is intended to be used flexibly in responding to significant customer detriment.

247 The power is not a prudential tool and will not prevent all product failures or the collapse of an entity. However, the power does enable ASIC to make interventions to mitigate the significant detriment that can arise when consumers are marketed and sold investment products when they are unable to understand and/or assess the risk they are taking.

Establishing significant consumer detriment

248 ASIC must be satisfied that there is, or will likely be, a significant detriment, before it can use its product intervention powers. A high threshold must be met to establish significant consumer detriment. The assessment is made by reference to ASIC's satisfaction that there is, or will likely be, a significant detriment. A few isolated instances of low-value misaligned sales, for example, are unlikely to be sufficient to satisfy this threshold.

249 Detriment can arise when consumers are sold a product that is misaligned with their understanding or expectations, and that detriment arises even before the misalignment crystallises into some financial or other loss. It can also arise in relation to harm that is non-financial in nature (e.g. the effect on a person's credit rating).

250 In assessing the potential detriment in this instance, ASIC would have taken into account, among other things:

- (a) the number of consumers involved and the amount of invested capital (at an individual level and in total) by consumers whose interests were misaligned with the product;
- (b) the risk and impact for these consumers, where they had entered into a lease-for-life arrangement in relation to the prospect of losing their homes; and
- (c) the impact this detriment could have on the particular class of consumers involved—in this case, where many consumers targeted by these products were retirees who are more likely to have a limited ability to recover financially from a large capital loss, we consider that the detriment could have a greater impact on the consumers involved.

Determining how to intervene

- 251 In determining how ASIC will design a product intervention order, we focus on:
- (a) identifying the specific product features, conduct or other factors that have contributed to the significant consumer detriment or likely significant consumer detriment; and
 - (b) how we can best reduce the likelihood of further significant consumer detriment occurring.
- 252 In this case, we could have intervened by, for example, restricting distribution of this product, preventing the marketing of the product as part of a lease-for-life arrangement, or requiring that the product only be distributed through personal advice.
- 253 ASIC notes that the issue of any product intervention order would have been dependent on not only establishing significant consumer detriment (as indicated above) but also in ASIC having obtained sufficient evidence of this detriment and the need to intervene. We also have an obligation to consult with affected persons, although this may be done through publishing the proposed order on ASIC’s website and inviting public comment.

Key terms

Term	Meaning in this document
Acquest Capital	Acquest Capital Pty Ltd ACN 149 170 927
Acquest Property	Acquest Property Pty Ltd ACN 167 584 572 Note: See Appendix 2 of this submission for a diagram of Acquest Property's structure.
AFCA	Australian Financial Complaints Authority
AFCA Act	<i>Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth)</i>
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001 (Cth)</i>
ASX	ASX Limited or the exchange market operated by ASX Limited
ATO	Australian Taxation Office
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee Note: This is a definition contained in s761A.
CAMAC	Corporations and Markets Advisory Committee
CAMAC report	CAMAC's report, <i>Managed investment schemes (2012)</i>
CDPP	Commonwealth Director of Public Prosecutions
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7)
Corporations Act	<i>Corporations Act 2001 (Cth)</i> , including regulations made for the purposes of that Act
Criminal Code	<i>Criminal Code Compilation Act (WA)</i>

Term	Meaning in this document
CSLR	Compensation scheme of last resort
design and distribution obligations	Means the obligations contained in Pt 7.8A of the Corporations Act
development unit	An asset class within the Sterling Income Trust
Div 5 (for example)	A division of the Corporations Act (in this example numbered 5), unless otherwise specified
external administrator	Means: <ul style="list-style-type: none"> • for a company, a voluntary administrator, deed administrator, controller, provisional liquidator or liquidator; or • for a disclosing entity that is neither a company nor managed investment scheme, the person taking responsibility for ensuring the disclosing entity is wound up in accordance with its constitution, rules and applicable laws
financial services business	A business of providing financial services Note: This is a definition contained in s761A of the Corporations Act. The meaning of 'carry on a financial services business' is affected by s761C.
Financial Services Royal Commission	Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry
first mortgage unit	An asset class within the Sterling Income Trust
growth unit	An asset class within the Sterling Income Trust
income unit	An asset class within the Sterling Income Trust
Libertas	Libertas Financial Planning Pty Ltd ACN 160 419 134
management company unit	An asset class within the Sterling Income Trust
managed investment scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
Murray Inquiry	Financial System Inquiry (2014)
PI insurance	Professional indemnity insurance
PJC	Parliamentary Joint Committee on Corporations and Financial Services
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.

Term	Meaning in this document
Pt 7.8A (for example)	A part of the Corporations Act (in this example numbered 7.8A)
Ramsay Review	Review of the Financial System External Dispute Resolution and Complaints Framework
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
Rental Management Australia	Rental Management Australia Pty Ltd ACN 160 167 108
Rental Management Australia (Qld) Pty Ltd	Rental Management Australia (Qld) Pty Ltd ACN 165 335 928
Rental Management Australia (Vic) Pty Ltd	Rental Management Australia (Vic) Pty Ltd ACN 617 023 604
Residential Tenancies Act	<i>Residential Tenancies Act 1987 (WA)</i>
responsible entity	Has the same meaning as in s9 of the Corporations Act For a registered scheme, the company named in ASIC's record of the scheme's registration as the responsible entity or temporary responsible entity of the scheme
retail client	A client as defined in s761G of the Corporations Act and associated Corporations Regulations
retail investor	For the purposes of this submission, a retail client who invests in an agribusiness scheme
RG 232 (for example)	An ASIC regulatory guide (in this example numbered 232)
RPIT	Residential Property Investment Trust
s601EB (for example)	A section of the Corporations Act (in this example numbered 601EB), unless otherwise specified
Silverlink	Silverlink Investment Company Limited ACN 623 500 407
Silverlink companies	Silverlink Investment Company Limited and Silverlink Securities Pty Ltd
Silverlink Investment Company Limited	Silverlink Investment Company Limited ACN 623 500 407
Silverlink Securities Pty Ltd	Silverlink Securities Pty Ltd ACN 622 598 823
Silverlink tenant-investors	Investors in the Sterling Income Trust who entered into an SNLL through Silverlink companies
SNLL	Sterling New Life Lease

Term	Meaning in this document
SNLL tenant-investors	Investors in the Sterling Income Trust who entered into an SNLL (see also 'Sterling Income Trust tenant-investors')
Sterling collapse	The collapse of Sterling Group and Sterling Income Trust
Sterling Corporate Services	Sterling Corporate Services Pty Ltd ACN 158 361 507
Sterling First (Aust) Ltd	Sterling First (Aust) Ltd ACN 610 352 826
Sterling First Projects Pty Ltd	Sterling First Projects Pty Ltd ACN 162 801 425
Sterling Group	Established in 2010, comprising around 50 companies and trusts centred on real estate-related assets Note: See Appendix 1 of this submission for a diagram of the Sterling Group's structure.
Sterling Income Trust	The Sterling Income Trust, ARSN 158 828 105, a registered managed investment scheme established in 2012 Note: Previous names were Rental Express Investment Trust and Rental Management Investment Trust.
Sterling Income Trust investors	Investors in the Sterling Income Trust who are not tenants
Sterling Income Trust tenant-investors	Investors in the Sterling Income Trust who are tenants (also referred to as 'SNLL tenant-investors')
Sterling Income Trust units	Income units, growth units, development units and management company units
Sterling New Life Lease (SNLL)	Marketed as a 'long term secure residential lease' for tenant-investors with rents covered by returns on Sterling investments
Theta	Theta Asset Management Ltd ACN 071 807 684
WA DMIRS	Western Australia Department of Mines Industry Regulation and Safety (Consumer Protection Division)
Wallis Inquiry	Financial System Inquiry (1997)
Worrells	Worrells Solvency & Forensic Accounting