



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

24 November 2021

Senator Anthony Chisholm
Chair
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: economics.sen@aph.gov.au

Dear Senator Chisholm,

Response to Questions on Notice

On behalf of the Financial Planning Association of Australia, may I express our appreciation for the opportunity to appear before the Senate Economic References Committee's Inquiry into the Collapse of the Sterling Income Trust.

During our appearance on Thursday, 18 November 2021 we undertook to provide answers to questions placed on notice by the Acting Chair, Senator Scarr.

Accordingly, please find attached our response to the Committee.

Yours sincerely,

Ben Marshan CFP® LRS®
Head of Policy, Strategy and Innovation
Financial Planning Association of Australia



SENATE ECONOMICS REFERENCES COMMITTEE

Response to questions taken on notice from the Acting Chair (Senator Scarr)

1. *Observations on ASIC's response regarding the Sterling Income Trust Product Disclosure Statement*

The Financial Planning Association of Australia (FPA) is not in a position to comment on the regulator's action in relation to this matter, however, we remain incredibly concerned that such highly complex products continue to be marketed directly to consumers via webinars and media advertising.

That is why the FPA has long called for the product intervention and direction powers that the Australian Securities and Investment Commission (ASIC) has recently been given to intervene in certain products when they identify significant risks to consumers.

As ASIC Chair Joe Longo said in a speech to the Australian Financial Review Super and Wealth Summit on Monday, 22 November 2021:

"...where industry has neglected to take its share of responsibility, ASIC will not hesitate to deploy the powers in our regulatory toolkit..."

We now have a range of recently legislated powers available to augment our regulatory toolkit. These include new and increased civil and criminal penalties for misconduct and powers of intervention to prevent unsafe financial products being distributed."

Whilst we welcome these new powers and the statements of Mr Longo relating to enforcement, we have highlighted in our submission to this Committee a number of areas where we believe these powers could have been further strengthened.

As such when considering the Sterling Income Trust Product Disclosure Statement (PDS), the FPA acknowledges that it is not ASIC's role to approve, endorse or alter a PDS upon its issuance. However, given the significant concerns highlighted by ASIC in relation to the original PDS, as well as the issuing of interim and final stop orders, it appears prudent, prima facie, for the regulator to further consider the replacement PDS upon its issuance in an effort to ensure it is also neither misleading nor defective. It appears that ASIC provided comments only on the draft replacement PDS.

Additionally, given the issues highlighted in ASIC's response to the PDS and that consumers never have visibility of ASIC concerns in relation to products or a PDS, consideration could be

given to some form of public notification or a requirement by products to issue a notice, note or letter with the PDS in instances ASIC has raised these types of concern. This could be similar to the notification super trustees are required to provide members under the 'Your Super, Your Future' performance test obligations.

Similarly, the establishment of a Compensation Scheme of Last Resort (CSLR) should assist in protecting consumers from unpaid Australian Financial Complaints Authority (AFCA) determinations. However, the recently proposed model for such a scheme will only cover the following financial products and services:

- personal advice on relevant financial products to retail clients;
- credit intermediation;
- securities dealing;
- credit provision; and
- insurance product distribution.

As a result, consumers who have invested in products outside of these provisions, such as a Managed Investment Scheme (MIS), will not be protected by, or able to access compensation from, such a CSLR.

Further, the CSLR levy framework has been proposed to align with the ASIC Industry Funding Model, which currently applies to 48 listed sub-sectors, with the Minister able to exempt any of these sub-sectors as they see fit.

In essence the proposed CSLR will leave consumers unprotected with financial planners and product distributors footing the bill for the misconduct of others.

To remedy this and ensure that the CSLR that is implemented satisfies the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Hayne Royal Commission), the FPA believes the scope of the CSLR should align with those licensees who are legally required to be a member of AFCA as a requirement of their license conditions, including:

- Australian Financial Services (AFS) licensees who provide financial services to a retail client must be a member of AFCA (a912A(1)(g) and s912A(2)(c) *Corporations Act 2001*); and,
- Australian Credit licensees (s47(1)(i) *National Consumer Credit Protection Act 2009*).

As the responsible entity for a registered MIS must hold an AFS licence, such an expansion of scope will ensure that when a body is authorised to operate such a scheme and provide financial services, they will be both covered by the CSLR as well as contribute to its funding. It will also ensure consumers are adequately protected by the CSLR and its funding obligation is fairly shared across the financial services industry.

Further, the FPA has worked collaboratively with CPA Australia in relation to detailed amendments to the package of Bills presented by the Government to establish a CSLR and support the position they have outlined in their response to questions taken on notice from this Committee.