



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**
Consumer Protection

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Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Sir/Madam

**SUBMISSION TO SENATE STANDING COMMITTEE ON ECONOMICS -
INQUIRY INTO STERLING INCOME TRUST**

The Department of Mines, Industry Regulation and Safety – Consumer Protection Division (Consumer Protection) welcomes the opportunity to make a submission to the inquiry into the Sterling Income Trust (SIT).

Consumer Protection is responsible for the administration and enforcement of legislation governing a number of property related industries in Western Australia, including (*inter alia*) residential tenancies. Of particular relevance to this inquiry is Consumer Protection's role in the:

- investigation of alleged contraventions of the *Residential Tenancies Act 1987 (WA)* (RTA) by the Sterling Group and the referral of information about the SIT to the Australian Securities and Investments Commission (ASIC); and
- support for Western Australian consumers impacted by the collapse of the Sterling Group in 2019.

Sterling New Life Scheme

Sterling First (Aust) Ltd was the flagship of a network of property management and investment companies including: Sterling Corporate Services Pty Ltd; Sterling First Projects Pty Ltd trading as Sterling New Life; and Rental Management Pty Ltd (collectively known as the Sterling Group).

The Sterling Group operated the Sterling New Life Scheme (Scheme) by sourcing established and off the plan properties to be sold to investors, with the Sterling Group retaining ownership of some of those properties.

Sterling First Projects Pty Ltd held a real estate agent's licence under the *Real Estate and Business Agents Act 1978* (WA) from June 2014 until January 2019.

Investigation of Scheme and referral to ASIC

Consumer Protection first became aware of issues with the Sterling Group in May 2015 when concerns were raised regarding the marketing of the Scheme to elderly consumers and retirees in Western Australia.

The Scheme marketed "rent-free" properties to tenants in exchange for an investment payment into the SIT. Consumer Protection undertook inquiries with the Sterling Group to gather information and documentation to determine whether the contracts being proposed were compliant with the RTA.

In December 2015, Consumer Protection initiated follow-up inquiries to ensure the long-term leases actually being offered by the Stirling Group at that time complied with the requirements of the RTA. Consumer Protection closed this inquiry in July 2016.

In November 2016, a complaint was received by Consumer Protection where the complainant paid the Sterling Group \$100,000 but was under the impression that she was purchasing a property rather than entering a long-term lease. Consumer Protection provided advice and assistance to this tenant to enable her to negotiate the return of her \$100,000 from the Sterling Group.

In March 2017, Consumer Protection officers attended a free seminar conducted by Sterling First Project Pty Ltd, trading as Sterling New Life, promoting the Scheme to elderly consumers. The information obtained at this seminar raised concerns about the representations being made to potential tenant investors.

Of particular concern at the time was whether the monies invested in the SIT would adequately cover the rental payments for the tenants and investors in the scheme over an extended period. These matters were altogether different from the RTA issues previously investigated by Consumer Protection. They did not fall within the scope of the RTA investigation and were considered outside of our jurisdiction.

On 16 March 2017, a senior Consumer Protection Director spoke with a senior manager at the Australian Securities and Investments Commission (ASIC) and sent a subsequent email with an attachment. This was an initial contact to raise initial concerns and provide a document setting out Consumer Protection's understanding of how Sterling New Life operated.

On 12 April 2017, Consumer Protection initiated formal contact with ASIC as the regulator with responsibility for the *Corporations Act 2001* (Cth) and other financial services legislation.

On 6 June 2017, Consumer Protection received notification from ASIC that the following entities would be investigated by ASIC:

Sterling First Projects Pty Ltd (ACN: 162 801 425) (Sterling New Life)
Sterling First Limited (ACN: 601 159 057)
Sterling Income Trust (ARSN: 167 971 057) and
Theta Asset Management Ltd (ACN: 071 807 684)

ASIC was provided with a large quantity of research information and documentation about SIT that had been obtained by Consumer Protection for assessment by ASIC. Consumer Protection continued to liaise with ASIC officers by email and teleconferences in August and September 2017.

On 10 August 2017, ASIC issued an interim stop order to the responsible entity for the SIT, Theta Asset Management Ltd (Theta), in relation to their product disclosure statement. Consumer Protection understood this to mean that no new interests in the Scheme could be issued. ASIC notified Consumer Protection on 21 November 2017 that Theta had provided a new product disclosure statement and could resume signing up new tenants/investors.

On 6 June 2018, ASIC issued a Notice under the *Australian Securities and Investments Commission Act 2001* (Cth) compelling Consumer Protection to provide all relevant information and evidence it held in relation to the Sterling Group. Consumer Protection complied with the Notice, providing the required information to ASIC on 14 June 2018.

Consumer Protection received advice from ASIC on 29 August 2018 that the SIT was being wound up. At that time, ASIC asked that this information be kept confidential as it was not then public knowledge. It is understood that Theta proceeded to notify the 600 unit holders in the SIT of this wind up and all activities with the Scheme ceased on 13 August 2018.

On 17 December 2018, Consumer Protection received information about new investments by tenants in the Scheme through Silverlink Securities Pty Ltd, which Consumer Protection understood was not licensed with ASIC. Consumer Protection advised ASIC of this development.

On 3 May 2019, 12 of the Sterling Group companies were placed into voluntary administration.

Support for victims of Sterling Group collapse

In total there were 98 tenancies involving older Western Australian tenants and investors that were impacted by the 2019 collapse of the Sterling Group.

On 14 June 2019 Consumer Protection established a team of investigation and compliance staff to make contact with all affected tenant/investors in Western Australia to provide them with advice and referrals to support agencies and to record tenancy details.

Since that time, Consumer Protection has provided ongoing advice and support to these tenants and their families, particularly those facing eviction from their tenancies, as they have endeavoured to obtain redress for their losses.

Landlords who purchased Scheme properties have also been adversely impacted, with tenant/investors refusing to make any further rental payments or to vacate the properties.

In June 2019, Consumer Protection established a consultative group of State and Commonwealth government agencies, tenancy advocates and a pro bono law firm through Law Access (the consultative group). Law Access is a not for profit organisation which coordinates the provision of pro bono legal assistance in Western Australia. The purpose of the consultative group was to coordinate activities, share information and work collaboratively to assist the victims of the collapse.

The members of the consultative group included:

- Consumer Protection;
- ASIC;
- the Department of Communities;
- Circle Green Community Legal (formerly Tenancy WA); and
- Herbert Smith Freehills.

In 2020, Consumer Protection provided \$195,000 to Circle Green Community Legal (Circle Green) to provide specific legal advice and assistance to 43 tenants impacted by the Sterling Group collapse for particular matters and interim court representations, exclusive of representation at final hearings.

Circle Green assisted clients to source pro-bono legal representation through Law Access. Circle Green and Herbert Smith Freehills also spearheaded legal defences in both the Magistrates and Supreme Courts on behalf of a number of tenants.

On 1 June 2021, the Western Australian Supreme Court handed down a decision in *Soussa v. Thomas [2021] WASC 172*, a private civil action between a landlord investor who rented out his home through the Scheme and the tenants who had leased the property for 40 years.

The plaintiff (landlord) was successful in claiming a right to terminate the lease for non-payment of rent but not on a claim to recover outstanding rent. The matter was decided on the terms of the lease and the conduct of the relevant parties. Notably the Supreme Court held that all parties to the proceedings were “*innocent persons who have suffered a loss by the actions of third parties.*”

Consumer Protection also liaised closely with the Australian Financial Complaints Authority (AFCA) and actively encouraged tenants/investors to lodge claims for the loss of their investment monies.

It is understood that the applications received by AFCA in relation to the Sterling Group collapse have been placed on hold pursuant to the proposed establishment by the Commonwealth Government of a Compensation Scheme of Last Resort (CSLR). As the various entities in the Sterling Group have been liquidated, the proposed CSLR may be the only option available for any redress by these claimants.

It is also relevant to note that the only recourse available to affected landlords has been to seek a Court Order to end the tenancy agreement for non-payment of rent under the RTA. Consumer Protection understands that the cases filed by some landlords were placed on hold by the Magistrates Court in WA pending the outcome of the Supreme Court case mentioned above.

While there may be legal avenues available for victims of the collapse to seek redress, these processes are slow and costly and the opportunities to receive adequate compensation may be somewhat limited.

Support for establishment of Compensation Scheme for victims

Consumer Protection strongly supports the proposal by the Commonwealth Government to establish a CSLR for consumers and small businesses who are unable to enforce compensation determinations against financial service providers.

In August 2021, Consumer Protection lodged a submission to the Commonwealth Treasury's consultation on the CSLR Proposal Paper (Proposal Paper). This submission raised concerns that the limitations in the scope of the proposed CSLR scheme would cause issues for the Sterling Group victims and would not provide adequate compensation for these elderly and vulnerable consumers.

Consumer Protection notes that the scope of the proposed CSLR excludes claims involving managed investment schemes. Consumer Protection strongly supports the inclusion of managed investment schemes into the scope of the CSLR, which will directly affect and benefit the elderly victims of the Sterling Group collapse. Of particular concern is that these victims will go uncompensated if the managed investment schemes continue to be excluded from the scope of the CSLR.

The proposed \$150,000 cap on claims would prevent the full recovery of losses for many victims of the Sterling Group collapse. While Consumer Protection has not recorded detailed data of these losses, it is known that individual victims may have lost somewhere between \$110,000 and \$315,000 each. The proposed cap should be increased or the CSLR operator empowered to pay higher compensation if individual circumstances justify higher payments.

As previously stated, Consumer Protection has been advising affected consumers to lodge applications for determinations with AFCA.

It is understood that a significant number of the victims have not lodged complaints or have actually since withdrawn their complaints, preferring to proceed with actions through the Courts. It is understood that many victims have done so because, in the absence of a CSLR, any determination by AFCA would likely to be unenforceable on a liquidated entity.

These victims will now be unable to lodge a complaint, as the relevant financial advisor involved is no longer an AFCA member. Consequently, the victims will be adversely impacted by the exclusion of Court and Tribunal decisions under the proposed CSLR scheme.

It is recommended that a transitional arrangement should apply to victims who have acted in good faith on the basis of the limited options that were legally available to them at the time, in order to allow them to apply to AFCA for a determination and to receive compensation.

Consumer Protection urges the Commonwealth Government to take action to ensure that the scope of the proposed CSLR is sufficient to provide full compensation to the elderly and vulnerable Western Australian consumers who have been impacted by the collapse of the Sterling Group.

In the event that the CSLR is not accessible, Consumer Protection believes that the Commonwealth Government should strongly consider alternative forms of compensation for victims of the collapse of the Sterling Group.

Thank you for the Committee's consideration of this submission.

Yours sincerely

Gary Newcombe
COMMISSIONER FOR CONSUMER PROTECTION