

## **Senate Economics References Committee**

### **Inquiry into the Sterling Income Trust**

#### **Questions on Notice from Senator Pratt to Consumer Protection WA**

Note : All responses are limited to the experience of Consumer Protection. In the period 2015 to 1 July 2017, Consumer Protection was a division of the Western Australian Department of Commerce. With effect from 1 July 2017, Consumer Protection became a division of the Western Australian Department of Mines, Industry Regulation and Safety.

##### Question 1

When did Western Australian authorities have concerns raised regarding products from Sterling First or associated entities?

##### Response

On 19 May 2015, Consumer Protection received, and was asked to prepare a response to, a letter sent to the then Minister for Commerce, the Hon Michael Mischin MLC, from a member of the public raising concerns about advertising of the Sterling Group retirement product in a newspaper circulated in the Mandurah area.

##### Question 2

What did the department do to investigate and resolve those complaints?

##### Question 3

Can you give us an overview of the complaints as they came in and over what timeline?

##### Question 4

What did the department do to assess whether they were relevant to tenancy law, consumer law, corporations & company law, or any other relevant regulations?

##### Response

This response is to Questions 2, 3 and 4.

Consumer Protection received very few formal complaints about the Sterling Group.

The initial investigation commenced by Consumer Protection in May 2015 was internally generated as a result of the correspondence received through the Minister for Commerce referred to in response to Question 1.

Consumer Protection assisted a member of the public to turn an enquiry about possible misleading conduct in relation to a Sterling New Life lease received in October 2016 into a formal complaint. This particular matter was successfully resolved.

Consumer Protection also received information from Tenancy WA about their clients' experiences with Sterling New Life in December 2018 and Tenancy WA was advised by Consumer Protection that this would be treated as a formal complaint.

On 3 January 2019, Consumer Protection did receive a complaint from two investors who had made an unconditional offer to purchase another property, unrelated to Sterling New Life, that Sterling New Life would not release to them investment funds held in the Sterling Income Trust. Although this complaint was outside of Consumer Protection's formal jurisdiction, Consumer Protection did try to negotiate the release of the complainant's funds but was unsuccessful. This complaint was referred to ASIC for attention.

Consumer Protection received many enquiries after the Sterling Group went into voluntary administration in May 2019 but no formal complaints that were within jurisdiction.

The initial investigation commenced in May 2015 was conducted in the manner of a normal investigation. Evidence was obtained, consideration was given as to whether that evidence disclosed breaches of legislation administered by Consumer Protection and consideration was given as to the appropriate compliance outcome.

In this case, the focus was on the *Real Estate and Business Agents Act 1978* (WA) and the *Residential Tenancies Act 1987* (WA).

In particular:

- Consumer Protection obtained other advertised material relating to Sterling New Life offerings.
- On 6 July 2015 one of Consumer Protection's Principal Investigation Officers wrote to the licensee of Sterling First (a licensed real estate agent), Mr Ryan Jones, requesting further information about their offerings. Information was received from Mr Jones on 6 and 8 August 2015.
- On 3 September 2015, two officers from Consumer Protection attended the offices of the Sterling Group and met with the Director of Sterling First Corporate Services Pty Ltd, Mr Raymond Jones and his son, Mr Ryan Jones, to discuss the operations of Sterling New Life and voluntarily obtain documents and contracts to be provided to potential participants in the Sterling New Life scheme.

- No significant breaches of legislation administered by Consumer Protection were identified and the matter was closed with the issue of an educational letter in relation to possible breaches of the *Residential Tenancies Act 1987* (WA) on 23 October 2015.

Consumer Protection continued to monitor Sterling New Life and, as a result of new representations made in advertisements in the “Have a Go” newsletter, a new investigation file was opened in relation to Sterling New Life on 11 December 2015 to determine if the issues previously brought to Mr Raymond and Mr Ryan Jones’ attention had been addressed.

On 16 December 2015 a request for information was sent to Mr Ryan Jones, then person in bona fide control of Sterling New Life. A response was received from Mr Ryan Jones on 14 January 2016.

The investigation file was closed on 9 March 2016 but with a recommendation that there be further examination of Sterling New Life.

Consumer Protection continued to monitor Sterling New Life. Consumer Protection’s Seniors Housing Advisory Centre was receiving regular enquiries about the Sterling Group’s scheme.

A further assessment was made of Sterling New Life’s contracts and documentation and legal advice on the Sterling New Life’s offerings was sought.

A separate enquiry about Sterling New Life was received on 21 October 2016 from a woman who had bought into the Sterling New Life scheme but wanted to get out of it. This person was visited by one of Consumer Protection’s Principal Compliance Officers and was assisted in lodging a formal complaint with Consumer Protection. The substance of the complaint was that she had paid \$100,000 to Sterling New Life under the impression it was a deposit to purchase a property but the contract was for a lease not a purchase. The contract was with Sterling Corporate Services Pty Ltd but had been facilitated by Sterling New Life.

The complaint resulted in the complainant receiving advice from Consumer Protection that enabled the complainant to withdraw from the contract and receive her money back.

On 10 March 2017 Consumer Protection identified a free seminar being conducted by Sterling New Life to promote their scheme.

On 23 March 2017, two Consumer Protection officers attended (incognito) Sterling New Life’s advertised seminar.

As a result of information gained at this seminar, on 7 April 2017, the Sterling New Life matter was placed on an internal priority list and a decision was made to ensure that ASIC examine Sterling New Life to assess its compliance with the Corporations Law.

Consumer Protection's engagement with ASIC is dealt with in the response to questions 5, 6, 8 and 11 below.

Consumer Protection continued to investigate Sterling New Life for potential breaches of the *Residential Tenancies Act 1987* (WA), the *Retirement Villages Act 1992* (WA) and the *Real Estate and Business Agents and Sales Representatives Code of Conduct 2016* (WA), after referring concerns about Corporations Law compliance to ASIC.

In the course of that investigation, on 5 July 2017, Consumer Protection issued a section 69 notice under the *Fair Trading Act 2010* (WA) for the compulsory production of documents and information. A response to the section 69 notice was received from Sterling New Life's lawyers.

Consumer Protection engaged in a course of correspondence with Sterling New Life's lawyers about potential breaches of the Residential Tenancies Act.

On 20 October 2017 Consumer Protection investigators, senior officers and lawyers met with Ray Jones, Ryan Jones and Simon Bell from Sterling New Life and their lawyer.

Correspondence with Sterling New Life's lawyers continued through the first half of 2018.

On 6 June 2018 ASIC issued Consumer Protection with a notice under section 33 of the *Australian Securities and Investments Commission Act 2001* (Cth) to provide all documentation and information gathered during investigation of Sterling New Life. A response to this notice was provided to ASIC on 14 June 2017.

On 6 December 2018 Tenancy WA emailed Consumer Protection, providing a range of documents and tenancy agreements with Sterling New Life that they had become involved with. On 7 December 2017 Consumer Protection advised Tenancy WA that their email would be treated as a formal complaint.

On 17 December 2018 Consumer Protection became aware of the involvement of a new company in the Sterling Group, Silver Securities Pty Limited and advised ASIC.

On 15 January 2019 Sterling New Life surrendered its real estate and business agent's licence.

On 3 May 2019 12 of the Sterling Group companies were placed into voluntary administration and Consumer Protection ceased its investigations of Sterling New Life.

### Question 5

When did the state government refer these matters to ASIC?

### Question 6

What information and grounds can you give us for the referral?

### Question 8

How did ASIC respond to the referral of these complaints?

### Question 11

Did ASIC accept the referral and see it within their jurisdiction, if not why not?

### Response

This response is to questions 5, 6, 8 and 11.

On 16 March 2017 the responsible Director in Consumer Protection made an initial contact with two officers in ASIC and emailed an outline of what Consumer Protection knew about Sterling New Life's operations.

The basis of the referral to ASIC was that Consumer Protection officers had formed the view that the most significant concerns about the operations of Sterling New Life related to the investment aspects and that these were matters within ASIC's jurisdiction.

On 12 April 2017 a telephone conversation was held with an officer in ASIC's Misconduct and Breach Reporting Branch outlining Consumer Protection's concerns about Sterling New Life. The ASIC officer requested further information and on that same day six separate emails were sent to the ASIC officer with background material, including material obtained at the Sterling New Life seminar.

On 6 June 2017, Consumer Protection's relevant Director received a letter by email from ASIC advising that ASIC would investigate the following entities:

- Sterling First Projects Pty Ltd
- Sterling First Limited
- Sterling Income Trust
- Theta Asset Management Ltd

On 7 June 2017 ASIC emailed Consumer Protection to advise that the Sterling First matter had been referred to ASIC's Investment Managers and Superannuation team and providing contact details for that team.

Consumer Protection and ASIC have continued to engage in relation to Sterling First.

#### Question 7

Were they referred to any other agency?

#### Response

Consumer Protection did not refer the Sterling First matter to any other agency. However, after the Sterling Group was placed in voluntary administration, Consumer Protection made direct contact with the Australian Financial Complaints Authority (AFCA) to determine if AFCA had received complaints or enquiries in relation to the Sterling First Group and how AFCA might be able to assist those who had lost funds through the Sterling Group.

#### Question 9

Please provide copies of correspondence between the department and ASIC.

#### Response

The Commissioner for Consumer Protection is subject to confidentiality provisions in relation to information obtained by reason of the exercise of the Commissioner's functions.

See, for example, section 11A *Residential Tenancies Act 1987* (WA) and section 112 *Fair Trading Act 2010* (WA).

These provisions apply to correspondence received from ASIC.

One ground on which information may be released is with the consent of the person to whom the information relates.

ASIC has been asked to consent to the release of correspondence to Consumer Protection that falls within the scope of this question.

As at the date of this response, ASIC's consent has not been received.

The confidentiality provisions also relate to references to other parties in correspondence that falls within the scope of this question.

In the available timeframe set by the Committee, it is not feasible to seek consent from other parties.

As a result, references to other parties will be redacted from correspondence provided to the Committee.

Correspondence that can be provided to the Committee will be provided as soon as is possible and under separate cover.

#### Question 10

Were concerns about Sterling products raised with ministers, members of parliament or other entities and if so whom and in what capacity?

#### Response

It has been assumed that this question relates to concerns being raised before the Sterling Group went into voluntary administration.

On that basis, Consumer Protection is only aware of the correspondence to the Hon Michael Mischin, MLC in his capacity as Minister for Commerce referred to in response to Question 1.

After the Sterling Group went into voluntary administration, Consumer Protection is aware that successive Ministers for Commerce - the Hon John Quigley, MLA and the Hon Amber-Jade Sanderson MLA – have received many enquiries relating to the Sterling Group, as have the Premier, the Hon Mark McGowan, MLA and numerous Members of Parliament.

As noted in the response to questions 2, 3 and 4 above, Tenancy WA, a not for profit tenancy advice service, dealt with clients who had engaged with the Sterling Group.

#### Question 12

What were you able to advise Sterling tenants and others as a result of these referrals?

#### Response

It has been assumed that this question refers to the referral to ASIC in 2017.

After that referral, and up until the time the Sterling Group went into voluntary administration, Consumer Protection referred enquiries about the Sterling Group to ASIC.

After the Sterling Group went into voluntary administration, Consumer Protection continued to refer investors to ASIC but also engaged directly with investors and provided a range of advice and support. This is detailed in response to question 17 below.

#### Question 13

Please provide copies or examples of any correspondence between the department and Sterling tenants.

#### Response

Correspondence between Consumer Protection and Sterling tenants contains protected third party information.

In the time frame provided by the Committee, it has not been feasible to seek third party consent to the release of correspondence that falls within the scope of this question.

As a result, references to other parties will be redacted from correspondence provided to the Committee.

This process has not been able to be completed as at the date of this response but correspondence that can be provided to the Committee will be provided before 16 November 2021 and under separate cover.

#### Question 14

Does the department have ongoing concerns about potential gaps in consumer protection laws or tenancy law?

#### Response

Policy considerations are a matter for the Western Australian Government, however, the experience with the Sterling Group has raised operational concerns that section 27 of the *Residential Tenancies Act 1987* (WA), which deals with restrictions on the consideration that can be required or received from a tenant for or in relation to a residential tenancy agreement, did not contemplate the type of arrangements included in the Sterling Group Scheme.

Consumer Protection will be examining this issue, having regard to the two recent Western Australian Supreme Court decisions, and will provide advice to the Minister for Commerce.



Consumer Protection has insufficient information to determine if there are any gaps in Commonwealth legislation.

Consumer Protection does believe that there is a significant gap in the availability of compensation for victims of financial services schemes and supports the introduction of a robust and broadly defined Compensation Scheme of Last Resort.

#### Question 15

What legal advice did the department obtain if any?

#### Response

Consumer Protection has obtained legal advice in relation a range of matters concerning the Sterling Group scheme and legislation that it administers.

As noted in response to question 16, this legal advice is subject to legal professional privilege.

#### Question 16

Please provide copies of any legal advice obtained, and detail how it was used.

#### Response

Legal advice provided to Consumer Protection is subject to legal professional privilege, which vests in the Crown and only the Western Australian Attorney General is entitled to waive this legal professional privilege. As a result, copies of legal advice cannot be provided.

#### Question 17

What supports has the state government provided to victims of the collapse, including but not limited to legal advice, tenancy support, social housing?

#### Response

On 11 June 2019 Consumer Protection served a notice under section 69 of the *Fair Trading Act 2010* (WA) on the liquidator of the Sterling Group to obtain a full list of all affected investors to enable direct communication with them.

Later in June 2019, after having received the relevant contact information from the liquidator, Consumer Protection staff made telephone contact with all identified investors to:

- ensure they were aware of the appointment of Ferrier Hodgson;
- advise them of their rights under the *Residential Tenancies Act 1987* (WA);
- encourage them to contact the liquidator and discuss their options;
- get more detail about each investor's personal situation – including asking them to complete a survey over the phone in relation to their particular circumstances;
- provide contact details for Centrelink;
- advise that Consumer Protection was in the process of arranging an information session for investors; and
- assure them that Consumer Protection would remain in contact with them.

This initial contact was followed up later in June 2019 with an email to investors including:

- a letter from Theta Asset Management to Unit holders in the Sterling Income Trust;
- a set of Frequently Asked Questions published by the liquidator;
- a letter from the Western Australian Department of Communities about housing options and contact details for local Department of Communities offices (the Department agreed to waive the asset portion of its means test for eligibility for public housing for at least 12 months and to waive the standard asset and income eligibility requirements for bond assistance loans); and
- a list of useful contacts compiled by Consumer Protection.

On 20 June 2019 Consumer Protection convened a Sterling New Life Consultative Group, with membership from: Consumer Protection, ASIC, the WA Department of Communities, Tenancy WA and Herbert Smith Freehills. That Group met regularly through 2019 and 2020 and was created to share information about support for investors, including legal actions, and the progress of ASIC's investigations.

In August 2019, Consumer Protection emailed all investors with a copy of an update that ASIC had posted on their web site.

In December 2019, Consumer Protection emailed all investors with links to further updates from ASIC in relation to court action it had taken and its Sterling Group investigation.

Consumer Protection made direct contact with, and remained in contact with, the liquidator to obtain as much information as possible for communication to investors.

Consumer Protection encouraged investors to lodge a complaint with AFCA.

On 21 June 2019, the then Commissioner attended a large meeting of investors in Mandurah convened by Ms Denise Brailey. The Commissioner was not invited to speak.

In August 2019 \$63,696 was provided to Tenancy WA to provide assistance to around 40 investors. This grant was to provide advice, assistance in seeking disclosure, assistance with drafting deeds and consent orders, referral to pro bono or low cost legal services for assistance with specific matters and interim court representation. On 6 February 2020, a further \$131,042 was granted to Tenancy WA (later to become Circle Green Community Legal) to continue this assistance program.

On 15 July 2020, the then Commissioner met with a delegation of Sterling investors known as the Sterling Fighters for Justice, during a protest against ASIC in Perth's Murray Street Mall.

#### Question 18

Is the state government aware of any impending court cases affecting tenants or landlords within the Sterling scheme?

#### Response

In addition to decision of the Western Australian Supreme Court in the matter of *Soussa v Thomas* [2021] WASC 172, which was handed down on 1 June 2022, on 11 November 2021 the Western Australian Supreme Court handed down its decision in another Sterling Group legal proceeding – *Hassell v Yates* [2021] WASC 389.

Consumer Protection is not aware of any other impending court cases.