

Senate Economics References Committee

Sterling Income Trust

Questions on Notice arising out of evidence by Mr Gary Newcombe, Executive Director Consumer Protection and Commissioner for Consumer Protection, Western Australian Department of Mines, Industry Regulation and Safety on Tuesday 16 November 2021

Note: All responses are limited to matters for which Consumer Protection has (or had) responsibility.

Question 1

Senator Scarr p28 transcript

“Didn’t anyone from the department – one of the officers who are greater specialists than I am in WA residential tenancy law – look at this at a conceptual level and say that the residential tenancies law mechanism is not fit for purpose, that it should not be applied in this situation, in terms of providing elderly Western Australians with shelter on a 40-year, 20-year or 60-year basis, putting to one side 99 years?”

Response

The leases offered through the Sterling Group were 5 year leases with options to renew.

Consumer Protection formed the view that the Sterling Group leases did fall within the scope of the *Residential Tenancies Act 1987* (WA) but did not fall within the scope of the *Retirement Villages Act 1992* (WA).

Consumer Protection was bound to undertake investigations in accordance with the law as it then was.

A review of the *Residential Tenancies Act 1987* (WA) was commenced in 2019 and is continuing. This review will include an examination of the implications of the two WA Supreme Court decisions relating to the Sterling Group leases – *Soussa v Thomas* [2021] WASC 172 and *Hassell v Yates* [2021] WASC 389 and other matters relevant to the application of the *Residential Tenancies Act 1987* (WA) to the Sterling Group’s scheme and to any similar schemes that might be initiated in the future.

Question 2

Senator Scarr p28 transcript

“Do you accept that in order to give someone protection, with respect to a long-term lease, it would typically be registered against the title?”

Response

It is Consumer Protection's understanding that it is not common in Western Australia for residential tenancy leases to be registered against the title.

Registering a lease with Landgate (the relevant Western Australian agency) requires the consent of the landlord and the mortgagee of the land (where applicable). This means that in many instances it is practically difficult for a tenant to register a lease in the absence of the co-operation of the landlord.

Registration would not protect tenants from the consequences of failure to comply with the lease, including failure to pay rent.

Question 3

Senator Scarr p31 transcript

"Was any red flag raised up through the department that there was a gap here in the regulation, which was of grave concern because it was targeting the most vulnerable of Western Australians?"

Response

The primary focus of Consumer Protection in 2015 through to early 2017 was on investigating the operations of the Sterling Group to determine whether they were compliant with existing legislation. That investigation led to the view that the primary concern with the operations of the Sterling Group was the raising of investments through a managed investment scheme. This led to the matter being referred to ASIC in early 2017. The capacity of ASIC to effectively regulate the Sterling Group's behaviour was considered to be significant and it was not considered that there was a gap in the capacity to regulate the Sterling Group's behaviour.

A second stage review of the *Retirement Villages Act 1992* (WA) was commenced in August 2019.

Broad questions relevant to the Sterling Group's operations, including the issue of what arrangements the *Retirement Villages Act 1992* (WA) should apply to, have been considered by the department in the context of that review but issues relevant to the Sterling Group's operations have not been raised in the extensive public and industry consultation that has been undertaken as part of this review.

This review is continuing.

Question 4

Senator Scarr p31 transcript

"What legal or administrative action has the Western Australian government taken against any of the members of the Sterling Group or any of their officers?"

Response

This response only relates to action taken by Consumer Protection.

On 23 October 2015 an educational letter (administrative action) was sent to Mr Ryan Jones of Sterling First Projects Pty Ltd, trading as Sterling New Life, identifying a number of issues that required attention in their documentation with regard to compliance with legislation administered by Consumer Protection.

Sterling First Projects Pty Ltd surrendered its real estate licence on 31 December 2018.

No breaches of relevant State legislation warranting prosecution action were identified before the Sterling Group went into voluntary administration. Investigations on foot were terminated when the voluntary administration was announced.

Question 5

Senator Scarr p31 transcript

“Has the Western Australian government – it is probably the Attorney General’s department – looked at the circumstances where lawyers were recommended by the promoters of this scheme to potential participants in the scheme and the advice given by those lawyers to potential participants in the scheme?”

Response

Consumer Protection was advised by ASIC that they would be looking at the role of lawyers in the Sterling Group scheme and would refer any concerns to relevant authorities.

I am unable to answer on behalf of the Western Australian Government. The Committee should address this question to the Western Australian Attorney General or the Department of Justice in Western Australia.