

Lead Ombudsman – Investments and Advice
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001

1 December 2023

Via email: consultation@afca.org.au

Response to AFCA request for comments on its draft to the AFCA Approach to determining compensation in complaints involving Financial Advisers and Managed Investment Schemes.

This document does not offer any direct comment on AFCA'S current procedures for handling complaints involving managed investment schemes. Instead, as representatives of the Sterling First Action Group, we offer some comments and suggestions on our experience in dealing with AFCA in the aftermath of the Sterling collapse and the unsatisfactory outcomes that resulted.

Firstly, we fully acknowledge that AFCA's dealing with the Sterling cases were circumscribed by institutional, legal, and financial constraints and we do not, for one moment, suggest that AFCA acted improperly in any of its actions. The Sterling First Action Group has made recommendations on how to address some of these obstacles to justice that restricted actions by AFCA in our submissions to Treasury on both the proposed Compensation Scheme of Last Resort and MIS Regulatory Framework. Fully cognisant of the restrictions faced, below are just some of the frustrations we encountered in our interactions with AFCA:

- Once Theta declared insolvency, we were very disappointed that those cases where AFCA were in the final throes of deciding were not actually finalised, and as such, claims against the Professional Indemnity Insurance (PII) policy of Theta could not be instigated.
- Related to this PII issue, we were also extremely disappointed that we, our legal representatives, or indeed AFCA itself were unable to view the PII policy to determine the veracity of the excess clause. This gap would seem to expose claimants with positive determinations to the possibility of being misled by the companies handling the insolvent entity and, to add insult to injury, are entitled to professional fees for passing the claim onto the insurer.

Case in point, determination 667682 was made awarding \$118,957.60 to the complainant. This was passed on to Worrells Solvency & Forensic Accountants, who were acting as administrator for Theta Asset Management. The PII insurer paid the amount - less an excess of \$100,000 - claiming this was the amount stipulated in PII policy. From the balance of \$18,957.60, Worrells then deducted \$614.60 as an administration fee. We also understand that Libertas Financial Planning Pty Ltd refused to accept some determinations made by AFCA and that, in at least one case, external negotiation and settlement took place to reach a mutually accepted solution.

- On the advice of a so-called consumer advocate, a number of claimants withdrew their AFCA claims and under the extant AFCA rules were unable to resubmit their claims, a situation compounded when Theta

ceased being a member of AFCA. It should be noted that we consider the advice given as being of a financial nature and was given by a person lacking the qualifications required to be a financial adviser. It seems unjust to us that vulnerable and admittedly, gullible people followed the very poor advice of an unqualified person and because they can no longer submit or resubmit an AFCA claim, will be ineligible should the CSLR be amended at some stage to cover losses from insolvent managed investment schemes. We urge AFCA to consider ways to re-engage with these people.

- Similarly, with relation to the claims considered ultra vires in relation to AFCA's jurisdiction by the DH Flinders vs. AFCA decision, we also request that AFCA investigate how these people can be compensated as it would seem inequitable that a subsection of the Sterling Group victims to be denied the opportunity for compensation when the majority may be eligible should CSLR be amended to include managed investment schemes in its scope.

We also refer the reader to our previous submissions and the associated recommendations (copies attached for your reference). Our recommendations have been consistent across all submissions associated with the CSLR:

- MIS Regulatory Framework Review – September 2023
- Financial Sector Reform Bill 2022 – October 2022
- Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions] and related bills – December 2021
- Sterling Income Trust Senate Inquiry – November 2021
- Compensation Scheme of Last Resort – August 2021
- Review of the Australian Financial Complaints Authority – March 2021

We are still firmly of the opinion that our recommendations are not only desirable, but essential if one of the aims of the CSLR (or other compensation mechanism) is to deliver equity to those who have been detrimentally affected by regulatory failure and the inadequacy of existing compensatory arrangements.

Sincerely,

Sterling First Action Group



Review of the Regulatory Framework for Managed Investment Schemes – Consultation Process

Submission by
Sterling First Action Group

September 2023

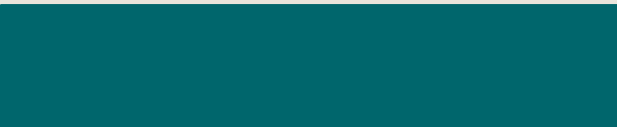


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About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e., family members acting on behalf of elderly parents).

It has been almost 4½ years since the collapse, and the Sterling First Action Group has continued to support all victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state, and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services; and raising awareness through the media.

We have also lodged a variety of submissions, including to the:

- February 2023; Senate Economics Legislation Committee – Australian Securities and Investments Commission Investigation and Enforcement,
- October 2022; Senate Economics Legislation Committee – Financial Sector Reform Bill 2022 [Provisions] and related bills,
- December 2021; Senate Economics Legislation Committee – Financial Accountability Regime Bill 2021 [Provisions] and related bills,
- November 2021; Senate Inquiry – Sterling Income Trust (also appeared as witnesses at this inquiry),
- August 2021; Treasury – Compensation Scheme of Last Resort, and
- March 2021; Treasury – Australian Financial Complaints Authority.

In each submission we referenced the operation of the Sterling Income Trust (the managed investment scheme) and have provided details of the devastating impact it has had on the lives of those caught up in the collapse. We have repeatedly highlighted the glaring deficiencies in both the regulatory and compensatory environments in which the Sterling Income Trust operated, and we hope that our experience can provide some guidance on improving the environment in which managed investment schemes operate in Australia.

Affiliations

Over the past three years we have taken part in various campaigns by consumer advocacy group, CHOICE, calling on the Federal Government to establish the Compensation Scheme of Last Resort (CSLR) as a top priority. Since that time, we have been in regular contact and have contributed a variety of materials to their media campaigns.

We have continued to work closely with Senator Louise Pratt, who has repeatedly raised concerns about the Sterling Group and its subsidiaries during Senate proceedings and had used her time to question ASIC in the PJC on Corporations & Financial Services on many occasions.

Our Response & Recommendations

We thank the Treasury for the invitation to provide a submission to the Inquiry and give permission for our submission to be made public. We must emphasise that we do not purport to have any specialised professional, legal or other specialised knowledge in this area. What we can bring to the table is over four years of experience in dealing with the aftermath of a failed managed investment scheme (**MIS**) that, in many respects, is atypical of MIS in general. Many Sterling Group investors were not only unaware of the true nature of what they were getting themselves into, but also were deliberately misled as to the operation of the MIS, so the comment we provide is purely from the perspective of the Sterling Group experience and may not necessarily extrapolate to other MIS.

To assist the Treasury with context to some of our answers, we have created a summarised timeline of the events leading up to the collapse of the Sterling Group. This can be found in *Appendix 1 – Sterling Group Chronology*. In preparation for this submission, we also conducted a short online survey of victims who suffered financial losses associated with the collapse of the Sterling Group. The survey was designed to show their experience during the ‘sales pitch’ point of the investment process, and their understanding of the Sterling Group’s managed investment scheme. This data will be referenced throughout our submission, with a full copy of the survey results available in *Appendix 2 – Victim Survey*.

In responding to the issues raised and questions for consideration in the Consultation Paper, we have decided to focus on key areas we believe have most impacted victims of the Sterling Group collapse. As such, our submission will concentrate only on the questions to which we can provide our experience. Our response to the Consultation Paper, along with a summary of our recommendations, is provided below.

List of Recommendations

RECOMMENDATION 1

The client must be provided with the definitions of the categories that designate a wholesale client and must provide written consent attesting to the fact that they understand the conditions under which they are to be considered a wholesale investor.

RECOMMENDATION 2

ASIC to be given greater discretion in the MIS registration process, including the ability to review, approve and refuse the officers of the proposed MIS. Where the officers of the proposed MIS have a history of bankruptcy, company insolvency, deregistration for non-compliance issues, or have been officers of other previously failed MIS, they should be closely scrutinised.

RECOMMENDATION 3

ASIC to be given greater discretion to refuse an application to register a MIS by amending s601EB(1) of the Corporation Act to ‘ASIC may register the scheme’ (rather than ‘ASIC must’), and include an additional clause that states ‘unless there is any other reason which in ASIC’s reasonable opinion justifies the refusal of the application’.

RECOMMENDATION 4

In the event an authorised representative is appointed by an AFS licensee, the AFS licensee obligations (i.e., fit and proper person assessment, risk management systems, etc.), and the obligations of the responsible entity (i.e., acting honestly, exercising care and diligence, acting in the best interest of investors, compliance requirements, etc.), should flow down to the authorised representative.

RECOMMENDATION 5

ASIC’s public warning power to be extended to include situations where ASIC has reasonable grounds to suspect a financial product or credit product (or a class of such products) has resulted, will result or is likely to result in significant consumer detriment.

RECOMMENDATION 6

ASIC to require all AFS licensees to submit their PII policy details as part of their annual compliance requirements to ensure the terms of cover remain adequate for the purposes of the Corporations Act.

RECOMMENDATION 7

Current and prospective members of AFCA must provide a copy of their current PII policy to be deemed eligible for an AFCA membership. Regulatory changes should also be implemented giving ASIC the power to enforce AFCA requests for information.

RECOMMENDATION 8

The Government work with state and territory governments to clarify the jurisdictional overlap between Commonwealth and state regulation of financial products. In particular, to review investment schemes that include real property rights, including accommodation, leases and tenancy rights under state and territory laws.

RECOMMENDATION 9

The Government review the marketing of, and financial advice for, investment products which deal in real property interests and whether or not sufficient protections are available for investors in these products.

Chapter 1. Wholesale client thresholds

Q4(a). If consent requirements were to be introduced, how could these be designed to ensure investors understand the consequences of being considered a wholesale client?

Q4(b). If consent requirements were to be introduced, should the same consent requirements be introduced for each wholesale client test (or revised in the case of the sophisticated investor test) in Chapter 7 of the Corporations Act? If not, why not?

The issue of client consent and sophisticated investor acknowledgement for Sterling Group victims did not become apparent until after the collapse of the Sterling Group in May 2019. In December 2017, the Sterling Group started fundraising under the name of SilverLink, with SilverLink Securities and the SilverLink Investment Company registered as new entities of the Sterling Group. There was no product disclosure statement, and although it was not a registered managed investment scheme, ASIC suspected¹ criminal conduct, and that the Sterling Group had actively concealed their fundraising through SilverLink companies.

They did this via the sale of redeemable preference shares in the two entities in exchange for a Sterling New Life Lease (**SNLL**, a rent-for-life scheme). In fact, the Information Memorandum (**IM**) clearly stated that ‘*an investment in the Redeemable Preference Shares is only available to SNL [Sterling New Life] Tenants*’. However, the IM disclaimer specified that the investment offer was only available to potential investors who qualified as either or both a sophisticated and/or a professional investor or invest under the small offering provisions of the Corporations Act.

Considering that SilverLink was specifically targeted at retired persons who, in the majority of cases, had little prior investment experience, they would have had no idea what the definition of a sophisticated and/or professional investor was. Our survey results indicate that none of the SilverLink tenant investors were aware of the sophisticated investor requirements, and none of them met the wholesale client eligibility test requirements (i.e., individual wealth test - assets of greater than \$2.5 million and/or income exceeding \$250,000; product value test – SNL investment equal to or greater than \$500,000).

Worse still is that, as per our detailed timeline in the Appendix, the illegal SilverLink fundraising occurred during the period of time in which ASIC were undertaking investigation activities into the Sterling Group and their managed investment scheme (**MIS**) – the Sterling Income Trust (**SIT**). Considering the significant non-compliance issues, countless reports of misconduct, numerous stop orders and the eventual wind-up of the SIT, the fact that the Sterling Group was able to commence a new fundraising model without ASICs knowledge, beggars’ belief. Furthermore, once ASIC knew about SilverLink (13 April 2018), no formal action was taken until June 2018.

We fully support the introduction of more prescriptive consent requirements for wholesale clients (as we did for the introduction of product intervention powers in April 2019, and product design and distribution obligations in October 2021), but we must also point out that even if these requirements were implemented prior to the collapse of the Sterling Group, it still does not account for those who wilfully and maliciously conduct illegal fundraising activities, with no consideration of the impact on investors (retail or wholesale).

RECOMMENDATION 1

The client must be provided with the definitions of the categories that designate a wholesale client and must provide written consent attesting to the fact that they understand the conditions under which they are to be considered a wholesale investor.

¹ ASIC, *Senate Inquiry into Sterling Income Trust—Supplementary submission by ASIC*, <https://download.asic.gov.au/media/vqwj1ud3/asic-supplementary-submission-senate-inquiry-into-sterling-income-trust.pdf>

Chapter 2. Suitability of scheme investments

Q5. Should conditions be imposed on certain scheme arrangements when offered to retail clients? If so, what conditions and why?

Q6. Are any changes warranted to the procedure for scheme registration? If so, what changes and why?

Q7. What grounds, if any, should ASIC be permitted to refuse to register a scheme?

The complexity of the SIT (and its predecessors, the Rental Management Investment Trust and the Rental Express Investment Trust) was highlighted in the Senate Economics References Committee Inquiry in 2019. Established in 2010, the Sterling Group eventually comprised around 50 companies and trusts focused on real estate related assets, with a complicated organisational and operational structure.

The responsible entity for the Sterling Group's MIS was Theta Asset Management (**Theta**). Up to and at the time of the collapse, the regulatory framework for a registered MIS relied on Theta, as the responsible entity, to ensure the MIS complies with the requirements of establishing and maintaining a MIS, and that the appropriate disclosure information was provided to potential investors. Unfortunately, as the 2019 SIT inquiry highlighted, the Sterling Group repeatedly engaged in misleading and deceptive conduct, and deliberately misled investors about the suitability of the SIT. The inquiry also suggested changes to the legislative and regulatory settings due to the ease with which schemes that are novel, risky, illiquid, or speculative can be registered and sold in Australia.

Our survey results indicate that almost 90% of the respondents did not know they were investing in a MIS, as the Sterling Group directors and/or salespersons did not disclose this information. The remaining respondents who knew about the MIS provided us with conflicting feedback about their understanding of the MIS arrangements, which further demonstrates the misalignment between their understanding of product and how the product was designed, disclosed and marketed to them.

With regard to the tenant investors (both SIT and SilverLink), there was an added layer of misunderstanding, as they thought were buying a long-term lease (versus the reality that their funds were being used in the MIS), and that the income from their investment was supposed to cover future rental payments. Adding to this confused state was that the leasing arrangements are regulated by the state government (in WA, the Dept of Consumer Protection/DMIRS), whereas the investment part of the scheme is regulated by ASIC. There is anecdotal evidence that these two bodies did not cooperate effectively together. We have made further comment about this dual responsibility in a later section.

Following the collapse of the Sterling Group, we were astonished to find that the only requirements for ASIC to register a MIS is a basic checklist or simple administrative process, and not a merit review of the proposed MIS. We wholeheartedly agree with the statements in the CPA Australia's submission to the SIT inquiry:

...we believe it is reasonable for an individual considering investing directly into an ASIC registered MIS, that holds an ASIC issued AFS licence, to take a level of comfort that the company has had an appropriate level of assessment and oversight from the regulator, such that it is appropriate for that MIS to be commercially operating.

...we question the appropriateness of the current regulation and oversight of registered MIS products if a commercially flawed business model can be approved and offered to the community. Of further concern is that often these products are complex and high risk, yet they are marketed directly to consumers through seminars and targeted advice.

CPA Australia, Submission, 8 November 2021, p. 2

We now know that even ASIC considered² the SIT to be ‘too complex for retail investors’ and that it was ‘not a commercially viable product’. As detailed in our timeline in the Appendix, despite the long history of non-compliance issues, ongoing reports of misconduct, and early access to information about a scheme targeting vulnerable consumers, ASIC repeatedly opted to take ‘no further action’ until August 2017, six months after the DMIRS referral in March 2017, and 2½ years after the first report of misconduct was referred by FOS (February 2015).

Considering several directors of the Sterling Group have either been bankrupt (Mr. Jones was discharged from bankruptcy in February 2015), or close to bankruptcy³, many are linked to previous catastrophic collapses (Monteath Properties ≈ \$35 million; Westpoint ≈ \$388 million; Finchley ≈ \$45 million; Storm Financial ≈ \$3 billion; Geneva Finance ≈ \$30 million), and ASIC has previously been involved in court proceedings against Mr. Jones⁴, we have serious concerns over ASICs current statutory obligations and limited refusal rights to register a MIS.

The Sterling case, despite its demise, also highlighted the demand for products that satisfy the requirements of a subset of retirees who wish to secure their housing needs in their retirement years. Obviously, the investment model adopted by the Sterling Group was inadequate, however it does not mean that new products which meet the demand (and are sustainable), shouldn't become available at some point in time. It is unlikely that state or federal government sponsored social housing will meet this demand in the near future, so the private sector may see the opportunity to fill this gap in the market. Should such products eventuate we believe that the primary supervisory responsibility should be with ASIC (or its future equivalent), but that it be mandated that it liaise with any relevant State bodies.

RECOMMENDATION 2

ASIC to be given greater discretion in the MIS registration process, including the ability to review, approve and refuse the officers of the proposed MIS. Where the officers of the proposed MIS have a history of bankruptcy, company insolvency, deregistration for non-compliance issues, or have been officers of other previously failed MIS, they should be closely scrutinised.

RECOMMENDATION 3

ASIC to be given greater discretion to refuse an application to register a MIS by amending s601EB(1) of the Corporation Act to ‘ASIC may register the scheme’ (rather than ‘ASIC must’), and include an additional clause that states ‘unless there is any other reason which in ASIC's reasonable opinion justifies the refusal of the application’.

Chapter 3. Scheme governance and the role of the responsible entity

Q8. Are any changes required to the obligations of responsible entities to enhance scheme governance and compliance? If so, what changes and why?

As discussed above, the responsible entity for the Sterling Group's MIS was Theta. Committee members of the Sterling First Action Group had many conversations with Mr. Robert Marie, the Managing Director of Theta regarding the collapse of the Sterling Group.

² Senate Order 1249, Australian Securities and Investments Commission - Sterling group - Internal review

³ AFR, Monteath may have traded while insolvent, <https://www.afr.com/property/monteath-may-have-traded-while-insolvent>

⁴ AFR, Two former Geneva Finance directors in Perth court, <https://www.afr.com/companies/briefs>

Below is an extract of one email exchange on 10 June 2019 with answers to questions regarding the management of SIT investments:

Q1. What is the mechanism by which monies were removed from SIT unit holders' trust accounts?

A. Unit holders did not have trust accounts. Such statements were made by Sterling salespeople and were not correct.

Q2. Who authorised the withdrawals?

A. Funds were used as per the PDS, and instructions were provided by the manager Sterling Corporate Services and reviewed by the responsible entity. If approved, they were processed.

Q3. What is the responsible entity's role in this?

A. As above.

Prior to the collapse, SIT investors were receiving monthly statements that they thought had been showing their investment balance, and any dividends/distributions that had been paid. Within a week of the collapse, the balance of the accounts was reduced to zero. As the above exchange shows, the funds were used by the Investment Manager, Sterling Corporate Services (**SCS**, another Sterling subsidiary), and reviewed by Theta who did not see fit to raise any concerns with the SIT investors. Furthermore, Theta admits they were aware that false statements had been made in relation to the so called trust account, yet failed to inform the SIT investors.

We now know that these statements were not a true account of each SIT investor's account, and the trust accounts did not actually exist. Our survey results indicate that over 80% of the respondents were told by one or more Sterling Group directors that their investment would be held in a secure Trust account.

Sterling Group investors were kept in the dark about the deteriorating financial situation of the SIT. As detailed in our timeline in the Appendix, prior to the collapse ASIC had previously identified numerous non-compliance issues against Theta (as a responsible entity) for Sterling Group and/or its previous entities, including:

- issuing a stop order on the PDS for products associated with the Rental Management Investment Trust in February 2013,
- issuing a stop order on the PDS for products associated with the Sterling Income Trust in August 2017,
- failure to lodge financial reports between 2013 and 2019,
- failure to lodge an amended constitution in 2017, and
- additional non-compliance issues since 2010.

Additionally, the Compliance Breach Register for Theta as the responsible entity (released as part of FOI 061-2022)⁵ details the following breaches associated with the Sterling Group and/or its previous entities:

- 3 x High Priority Incidents occurring from March 2014 to March 2018,
- 8 x Medium Priority Incidents occurring from October 2013 to August 2017, and
- 8 x Low Priority Incidents occurring from October 2012 to May 2018.

The Corporations Act sets out specific duties that Theta failed to conduct, which resulted in Mr. Marie being found guilty of breaches of the Corporations Act, fined and banned from acting in a similar capacity for a number of years. The issue we see here is that although Theta (and thereby Mr. Marie) was ultimately legally responsible for the day-to-day operation of the SIT, the recurring misleading and deceptive conduct by the Sterling Group directors ultimately resulted in 527 investors losing a total of \$30,127,841. As authorised

⁵ ASIC, FOI Disclosure Log <https://asic.gov.au/about-asic/freedom-of-information-foi/foi-disclosure-log/>

representatives of Theta, we believe the Sterling Group directors should be held to the same level of scrutiny as Theta and Mr. Marie.

We also understand that ASIC referred the matter to the Commonwealth Director of Public Prosecutions (CDPP) in October 2021, regarding the alleged misconduct of a number of officers of the Sterling Group. To date, no further information has been released, meaning the perpetrators of the many frauds and deceptions that occurred have not yet been held to account. Surely this sends the wrong signal to others who may be considering offering a MIS to the public?

Furthermore, the discrepancies between the obligations of a responsible entity/AFS licensee, and their authorised representatives was made abundantly clear for SilverLink tenant investors, when the responsible entity, Libertas Financial Planning Pty Ltd (**Libertas**) refused to comply with an AFCA⁶ ruling in mid-2020. Case 655484 related to the SilverLink Investment Company and the sale of Preference Shares in return for a SNLL, where AFCA found in favour of the complainant. Libertas disputed the ruling, and it was escalated to the Ombudsman, who also found in favour of the complainant.

In August 2020, a final determination was made in favour of the complainant, with Libertas ordered to pay compensation of \$268,207.57 for losses suffered because of the authorised representatives misleading and deceptive conduct. Libertas continued to dispute the ruling, using the November 2020 NSW Supreme Court judgement⁷ in support of their refusal to comply with AFCA's determinations. This resulted in AFCA reviewing its jurisdiction to consider complaints lodged before 13 January 2021. Simply put, all AFCA complaints lodged by SilverLink tenant investors were then deemed to be outside the scope of AFCA's jurisdiction.

Nonetheless, AFCA made it clear that any complaint that falls outside the scope of AFCA's rules can still be considered if the responsible entity gives consent. Unsurprisingly, Libertas refused and advised they would not consent to AFCA considering the complaints⁸.

What hope does an investor have if an authorised representative wilfully engages in misleading and deceptive conduct, the responsible entity refuses to comply with an AFCA ruling, and the only possible pathway to resolving a financial dispute (AFCA), is no longer an option?

RECOMMENDATION 4

In the event an authorised representative is appointed by an AFS licensee, the AFS licensee obligations (i.e., fit and proper person assessment, risk management systems, etc.), and the obligations of the responsible entity (i.e., acting honestly, exercising care and diligence, acting in the best interest of investors, compliance requirements, etc.), should flow down to the authorised representative.

We also fully support the recommendation below⁹, originally published by the Senate Economics References Committee as part of the SIT inquiry.

RECOMMENDATION 5

The committee recommends that the Australian Government consider extending the Australian Securities and Investments Commission's public warning power to include situations where the Australian Securities and Investments Commission has reasonable grounds to suspect a financial product or credit product (or a class of such products) has resulted, will result or is likely to result in significant consumer detriment.

⁶ Australian Financial Complaints Authority, Determination, Case number: 655484, <https://service02.afca.org.au/CaseFiles/FOSSIC/655484.pdf>

⁷ DH Flinders Pty Limited v Australian Financial Complaints Authority Limited [2020] NSWSC 1690

⁸ Sterling Income Trust Inquiry Report, para 3.42

⁹ Sterling Income Trust Inquiry Report, Recommendation 8, para 4.117

Chapter 5. Right to withdraw from a scheme

Q19. Is there a potential mismatch between member expectations of being able to withdraw from a scheme and their actual rights to withdraw? If so, how might this be addressed?

Our research^{10,11} has found repeated instances of Sterling Group investors (or earlier versions of the company in 2012/13/14), reporting that their investments (shares, units, etc.) being rolled over from company to company, and never being able to withdraw from the MIS.

Since the collapse of the Sterling Group in May 2019, we have collected copies of product disclosure statements, information memorandums, marketing and promotional materials, contracts, deeds and other correspondence sent to investors. A detailed analysis of this evidence shows a clear path between the establishment, restructure, and then eventual closure of various Sterling Group entities, which continually prevented investors from withdrawing from the MIS. The examples below highlight the repeated rollover of investors' shares/units due to alleged corporate restructuring and/or proposed ASX listing:

- 8 April 2013: Product Disclosure Statement for corporate restructure of Rental Management Australia Fund into the Rental Management Investment Trust; also references upcoming ASX listing.
- 30 April 2014: Letter sent to Heritage Acquisitions Limited investors, gifting them shares in Sterling First Group Ltd or units in the Rental Management Investment Trust, to replace their current shares in Heritage; also references upcoming ASX listing.
- 15 April 2015: Letter sent to investors regarding allocation of shares in Sterling First Limited, due to consolidation of all pre-existing Sterling Group companies; references delaying proposed ASX listing.
- 1 February 2016: Letter sent to Sterling First Limited investors, announcing corporate restructure and gifting them shares in Sterling First (Aust) Limited to replace their current shares in Sterling First Limited; also references the delayed ASX listing.
- 5 May 2016: Letter sent to Sterling Wholesale Property Rights investors, announcing corporate restructure and subsequent conversion of their investment into units in the Sterling Seniors Property Trust.
- 20 April 2017: Letter sent to Sterling Wholesale Property Rights investors, announcing conversion of investment to either units in the Sterling Income Trust, or shares in Sterling First (Aust) Limited; also references new efforts for upcoming ASX listing.
- 20 June 2017: Letter sent to Sterling First (Aust) Limited investors, announcing changes to Class 2 Performance Shares due to ASX listing, reallocation of investors' share holdings and changes to subsequent dividends payments.
- 1 February 2018: Email sent to Sterling First (Aust) Limited investors, with instructions to convert all preference shares to ordinary shares to enable ASX listing, and cancellation of upcoming dividend payment on preference shares.

Investors were also informed that the SIT was considered non-liquid, but that they could withdraw from the MIS by providing 6 months' notice. Several applications to withdraw were made by a variety of investors, but none were acted upon even when the application was made more than 6 months in advance of the eventual collapse and administrator appointment. While we do not have any specific recommendations on how to address the potential mismatch between member expectations to withdraw and their actual rights to withdraw, we support any improvements to the current regulatory framework that would provide greater transparency for investors and more accountability for responsible entities (and any authorised representatives).

¹⁰ Hot Copper Forums, Sterling First Pre IPO, <https://hotcopper.com.au/threads/sterling-first-pre-ipo.3351345/>

¹¹ Whirlpool Forums, Sterling First (Aust) Limited, <https://forums.whirlpool.net.au/thread/9mn2vx23>

Chapter 6. Winding up insolvent schemes

Q20. Are any changes required to the winding up provisions for registered schemes? If so, what changes and why?

We would like to highlight the current regulatory gaps impacting investors of an insolvent MIS and their inability to access the professional indemnity insurance (PII) policy that is mandated by the Corporations Regulations. AFCA Case 667682 (against Theta) is a very good example of this. In March 2020 a determination was made in favour of the complainant, with Theta ordered to pay compensation of \$118,957.60 for losses suffered due to the authorised representatives misleading and deceptive conduct.

As the responsible entity, Theta should have been responsible for paying the determination, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants (**Worrells**) appointed as the administrators. As a result, the complainants were required to liaise directly with Worrells to make a claim against Theta's PII policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. Therefore, the actual amount of compensation that was paid was reduced to \$18,957.60 from which the liquidator then deducted a \$614.60 administration fee.

Despite enquiries by AFCA and lawyers representing the complainant, the insurer refused to provide a copy of the PII policy (citing confidentiality), so we were unable to verify the veracity of the excess amount. They have however, confirmed that the excess clause would be applied against every claim made. This matter was raised with the Chief Operating Officer of AFCA, and astoundingly, the insurer again refused to provide AFCA with access to the insurance policy. On 9 June 2020, ASIC officers met with Worrells to discuss the letter AFCA had sent to ASIC about this matter on 28 May 2020. ASIC sent a report of their meeting to AFCA dated 19 June 2020, but have stated a FOI request must be submitted to view this and it would be handled at the discretion of the ASIC officer handling the request.

This also raises the critical point that if the PII policy existed, even with the excess clause, why did AFCA not continue to process more determinations so that victims could at least recover part of their losses? It appears the answer lies in the fact that AFCA were not receiving remuneration for any work once Theta was placed in liquidation, as AFCA '*...gets most of its revenue from fees charged to companies for resolving complaints*'. This was further confirmed by AFCA CEO David Locke in June 2020¹², as he reportedly stated, '*When we take on cases with organisations that are or become insolvent, we are doing work that we don't get paid for*'.

As a not-for-profit organisation, we understand that AFCA rely solely on fees/levies (membership and complaint resolution) for revenue. However, it is clearly evident the two major protections that should apply to an independent external dispute resolution (EDR) scheme have failed - an effective EDR cannot exist when it is dependent upon payment of fees by one of the parties, and there appears to be no verification to ensure the PII policy terms are adequate to provide true protection to the people most vulnerable – the investors.

In our opinion there are two clear regulatory gaps associated with insolvent MIS that need to be urgently addressed:

1. AFCA does not currently process complaints against companies in liquidation as they are not funded to do so, meaning victims of an insolvent financial firm cannot access the mandated PII policy.
2. MIS are currently excluded from the Compensation Scheme of Last Resort (CSLR), meaning that even if AFCA recommences processing complaints against insolvent firms and finds in favour of the complainants, the complainants cannot access the CSLR to recoup the losses suffered as a result of the disproportionate excess clauses on the mandated PII policy.

¹² AFR, Budget crisis for financial watchdog sparks case freeze, <https://www.afr.com/companies/financial-services/budget-crisis-for-financial-watchdog-sparks-case-freeze>

We do not have any suggestions for changes to the winding up provisions for registered MIS, however we do have recommendations on the minimum PII policy requirements.

RECOMMENDATION 6

ASIC to require all AFS licensees to submit their PII policy details as part of their annual compliance requirements to ensure the terms of cover remain adequate for the purposes of the Corporations Act.

RECOMMENDATION 7

Current and prospective members of AFCA must provide a copy of their current PII policy to be deemed eligible for an AFCA membership. Regulatory changes should also be implemented giving ASIC the power to enforce AFCA requests for information.

Chapter 7. Commonwealth and state regulation of real property investments

Q23. Do issues arise for investors because of the dual jurisdictional responsibility when regulating schemes with real property? If so, how could they be addressed?

Issues certainly did arise because of dual jurisdictional responsibility in the case of the Sterling Group. As discussed previously, there was an added layer of misunderstanding for SNLL tenant investors, as they thought were buying/paying for a long-term lease (via a residential tenancy agreement) and did not understand they were also investing in a MIS, where their tenancy arrangements were linked to the performance of the MIS.

Depending on when they executed their SNLL agreement, the tenant investors were given two options¹³:

1. Investment in the SIT, with distributions used to pay the rent and any surplus reinvested. Under this option the tenant investors generally had a lease directly with the landlord.
2. Investment in preference shares in SilverLink, which held units in the SilverLink Income Rights Trust (SIRT). Rent was paid directly by the Sterling Group under a head lease with the landlord and a sub-lease provided to the tenant investor.

Marketing materials for the SNLL arrangements emphasised that after the initial investment was made in the SIT or SilverLink, that no further payments would be required from the tenant investors (i.e., no ongoing rent or additional fees/costs). However, as AFCA¹⁴ determined in Case 667682 (against Theta), the Sterling Group ‘...failed to disclose the risk that distributions would be insufficient to cover rent, that the capital investment could be depleted and did not disclose the risk to their security of tenure if the SIT could not fund the rental payments’.

Many of the tenant investors sold their family home to fund their SNLL, losing their only real assets in the process. Some actually sold their home to the Sterling Group, who then signed them up to a SNLL in the property. An example of this is Mr G, who sold his home of 45 years to Sterling in April 2015 for \$370,000 and then paid \$270,000 for a 20-year lease on the home.

Our investigations have revealed that even though the registered owner of Mr. G’s property is Acquest Property Pty Ltd (a Sterling subsidiary, now in administration), the mortgage on the property was registered to a company by the name of Vermis Pty Ltd. The director this company? A director/ex-director of the Sterling

¹³ Ferrier Hodgson, Stirling First (Aust) Limited (Administrators Appointed) – Voluntary Administrators’ Report – 30 May 2019, p. 13.

¹⁴ Australian Financial Complaints Authority, Determination, Case number: 667682, <https://service02.afca.org.au/CaseFiles/FOSSIC/667682.pdf>

Group. Vermis Pty Ltd had a mortgage against the property valued at \$250,000 meaning that after the Sterling Group/Acquest purchased the property from Mr. G, they then used it as collateral against something else. In a similar situation are tenant investors Mr. & Mrs. H, based in Queensland. In February 2018 they paid \$210,000 for a lifetime lease on a property that is owned by Richmond Assets Pty Ltd. And who was the director of that company? Mr Bruce Monteath, an ex-director of the Sterling Group, with links to a variety of corporate collapses.

Another example is Ms. D, who signed a contract with the Sterling Group to build a property that would then be leased out to a SNLL tenant investor. From the documentation we have received, it appears the property was not constructed in accordance with the council approved plans (approved plans were for a single residence with an attached granny flat/teens retreat; the build completed was a dual key occupancy with two separate residences). As a result, Ms. D was ordered to return the property to the specifications initially approved by the council. This was not the only dual key property that had construction issues, with several also missing a central dividing firewall, which is a direct violation of the Building Code of Australia.

On the other side are the landlords who signed up to lease their property to the Sterling Group and were then faced with tenant investors who led to believe they had paid their rent in advance (via their SNLL). As a result, disputes between SNLL tenant investors and landlords arose not long after the collapse of the Sterling Group, as the rental payments to landlords ceased. Shockingly, many landlords also reported their rental payments had actually stopped in mid to late 2018, over 6 months prior to the collapse of the Sterling Group.

Multiple civil proceedings between landlords and SNLL tenant investors were initiated after the collapse, the first¹⁵ in 2019 involving three tenant investors and one landlord. The case deliberated the validity and use of:

- Short term management authorities between the landlord and Rental Management Australia (**RMA**, an entity of the Sterling Group), with the landlord specifying they wanted short term tenants only as they were preparing to sell the properties,
- Real property put option agreements to sell the properties to Acquest Property Pty Ltd (**Acquest**, an entity of the Sterling Group),
- Short term head leases between the landlord and either SCS or SHL Management Services Pty Ltd (**SHL**, an entity of the Sterling Group), which were executed by RMA on behalf of the landlord,
- Long term head leases between the landlord and either SCS or SHL, which were executed by RMA on behalf of the landlord,
- Short term subleases between the tenant investors and either SCS or SHL,
- Long term subleases between the tenant investors and either SCS or SHL, and
- Lodgement of caveats by the tenant investors.

In addition to the \$805,500 paid by the three tenant investors to the Sterling Group, there were added complexities affecting each tenant investor's SNLL agreements. This includes the dates the various long-term head and subleases were executed conflicting with the execution of the short-term management authorities, and the addition of short-term head leases and subleases several days after the initial long-term head and subleases were executed.

Even more concerning is the long-term head leases were executed by RMA on behalf of the landlord, in direct violation of the short-term management authority, and the short-term subleases were added after the fact. The tenant investors were advised by the Sterling Group that their initial long-term sublease was still valid, and would come into effect upon the expiry of the short-term sublease. This was in fact false, and each tenant

¹⁵ *Murphy Toenies v Family Holdings Pty Ltd as trustee for the Conway Family Trust* [2019] WASC 423

investor was served a notice to vacate from the landlord within several months of moving into their SNLL properties.

In early 2019 caveats were lodged over each of the three properties owned by the tenant investors, claiming a leasehold estate being a sublease on the terms entered into in the long-term sublease. Justice Smith agreed that there was an arguable case, and it should be fast tracked to an early trial. We are unaware of the outcome, as no trial occurred (that we know of), so the legality of the caveats appears to still be undetermined. Add to this is the misleading and deceptive conduct, and false representations made by the Sterling Group, which the both the landlord and three tenant investors relied upon, we have four parties that have suffered irreparable financial losses.

In the other two civil cases¹⁶ in 2021 between landlords and tenant investors, the court determined the non-recourse clause in the residential tenancy lease did not prevent the landlord from terminating the lease for non-payment of rent. The non-recourse clause implied the tenant investor's investment into the SIT or SilverLink (and therefore the distributions/dividends from their investment) would be sufficient to cover their rental payments for the duration of their SNLL, and in the event there was a shortfall, the tenant investor was not liable. As stated by Mr Gary Newcombe (former Western Australian Commissioner for Consumer Protection), at the SIT inquiry:

This has produced the situation where the court found that the landlord was able to terminate the lease, even though the deed basically said if rent was not paid the tenant was not liable for it, because that was in conflict with the standard-form provisions of the Residential Tenancies Act, which give the landlord the right to terminate a lease for non-payment of rent. But the provisions in the deed which were effective prevented the landlords from seeking to recover unpaid rent.

Proof Committee Hansard, 16 November 2021, p. 27

As the five cases discussed above have highlighted, the structure of the Sterling Group MIS was split between several regulatory jurisdictions – ASIC for the MIS, WA DMIRS (for the WA based tenant investors), and the QLD Department of Housing (for the QLD based tenant investors).

We fully support the two recommendations below¹⁷, originally published by the Senate Economics References Committee as part of the SIT inquiry.

RECOMMENDATION 8

The committee recommends that the Australian Government work with state and territory governments to clarify the jurisdictional overlap between Commonwealth and state regulation of financial products. In particular, the Australian Government should review investment schemes that include real property rights, including accommodation, leases and tenancy rights under state and territory laws.

RECOMMENDATION 9

The committee recommends that the Australian Government review the marketing of, and financial advice for, investment products which deal in real property interests and whether or not sufficient protections are available for investors in these products.

¹⁶ *Soussa v Thomas* [2021] WASC 172; *Hassell v Yates* [2021] WASC 389

¹⁷ Sterling Income Trust Inquiry Report, Recommendation 9, para 4.118 and Recommendation 10, para 4.119

Chapter 8. Regulatory cost savings

Q24. What opportunities are there to modernise and streamline the regulatory framework for managed investment schemes to reduce regulatory burdens without detracting from outcomes for investors?

In the absence of a strong corporate watchdog, a safety net needs to be in place for MIS that fail. Please refer to our submission to the Treasury on the scope of the CSLR for details of why we believe MIS should be included. Such a scheme would increase investor confidence, which in turn would have a beneficial impact on investment opportunities in Australia.

Appendix 1 – Sterling Group Chronology

To assist the Treasury with context to some of our answers, below is a summarised timeline of the events leading up to the collapse of the Sterling Group.

Date	Event
Pre-2010	ASIC notes a Sterling Group director has some antecedent history with ASIC since the 1990's. This includes reports of misconduct regarding other MIS he operated (failure to provide adequate information about financial standing of investments and payment of investment returns). He was also the subject of a few investigations in the 1990s.
2010	First Sterling Group companies formed
2010-2012	ASIC notes multiple non-compliance issues against Theta Asset Management (Theta) as a responsible entity.
5 June 2012	Rental Express Investment Trust registered with ASIC as a MIS. Theta was the Responsible Entity of the RMIT and was the operator of the MIS.
23 October 2012	MIS renamed to Rental Management Investment Trust (RMIT).
November 2012	Report of misconduct lodged with ASIC by Financial Services Ombudsman relating to concerns of misleading conduct.
February 2013	Stop order issued by ASIC for products associated with the RMIT.
18 November 2013	ASIC receives breach report from Theta relating to failure to lodge financial reports for the RMIT.
3 February 2015	Report of misconduct lodged by Financial Services Ombudsman relating to concerns of misleading conduct.
20 May 2015	MIS renamed to Sterling Income Trust (SIT).
18 June 2015	Report of misconduct lodged by ASIC officer expressing concerns of misleading or deceptive conduct.
Early 2016	Sterling New Life Lease (SNLL) product launched.
9 September 2016	Report of misconduct lodged by investor citing misleading investment information, and inability to redeem their investment.
29 September 2016	ASIC receives breach report from Theta relating to failure to lodge financial reports for the SIT
30 September 2016	ASIC receives breach report from Theta relating to failure to lodge financial reports for the SIT
16 February 2017	ASIC receives breach report from Theta relating to failure to lodge an amended constitution
17 March 2017	Report of misconduct lodged by WA DMIRS regarding insufficient information being supplied regarding Sterling New Life Leases (SNLL).
23 May 2017	Report of misconduct lodged by investor citing misleading investment information, and inability to redeem their investment.
7 August 2017	Internal ASIC communications (IMS to Corporations) regarding possible fundraising by the Sterling Group without a prospectus.

Date	Event
9 August 2017	Interim stop order issued by ASIC in relation to the product disclosure statements (PDS) for products associated with the SIT.
11 August 2017	ASIC identifies misleading statements used to promote SNLL on the Sterling website.
28 August 2017	ASIC receives breach report from Theta relating to failure to lodge financial reports for the SIT.
29 August 2017	Final stop order issued by ASIC in relation to the PDS for products associated with the SIT.
September 2017	Sterling Group continues sale of SIT products under a revised PDS issued by Theta.
29 September 2017	ASIC representative attends Sterling Group seminar on SNLL and the associated investments. When the representative enquired about the PDS, they were told that Sterling was listing on the ASX and that was delaying the release of the PDS.
29 September 2017	SIT Financial Statements and Reports for 2016/17 financial year lodged with ASIC, with Auditor stating, <i>'a material uncertainty exists that may cast significant doubt on the Group's ability to continue as a going concern'</i> .
27 October 2017	Sterling Group continues sale of SIT products under a revised PDS issued by Theta.
23 November 2017	Internal ASIC communications (IMS to Corporations) regarding Sterling advising investors they were listing on the ASX.
4 December 2017	ASIC analysis of the 2016/17 accounts concludes there are <i>'serious concerns with the financial viability of the SIT'</i> .
December 2017	Sterling Group commences fundraising under the name of SilverLink (SilverLink Securities and SilverLink Investment Company registered as new entities of the Sterling Group). Sterling promoted the sale of redeemable preference shares to sophisticated investors in exchange for a SNLL. No PDS was issued.
13 March 2018	ASIC receives breach report from Theta relating to failure to lodge financial reports for the SIT
February 2018	ASIC officer expresses interest in stopping new investors from investing in SIT products.
4 April 2018	ASIC directs Sterling Group to cease all advertising and promotional due to concerns about misleading and deceptive statements on its website
April 2018	WA DMIRS notifies ASIC about the SilverLink preference shares.
19 April 2018	ASIC determines they have sufficient information that is <i>'helpful in developing the case against Theta and convincing Theta to voluntarily wind up the SIT'</i> .
30 April 2018	Theta withdraws the PDS for the SIT.
29 May 2018	ASIC launches formal investigation into the Sterling Group and the SIT.
22 June 2018	ASIC meets with Theta and Sterling director, advises SilverLink offering <i>'appeared to be illegal in circumstances where there was no prospectus and SilverLink as not an AFSL holder'</i> .
8 August 2018	ASIC conferenced with Theta, where ASIC details the various issues they have with the MIS ((including issues regarding asset valuation, unit pricing, ownership of Rental Management Agreements, disclosure of losses and reliance on support from manager to pay distribution).

Date	Event
	ASIC noted the product offering was <i>'too complex for retail investors, particularly the targeted demographic of vulnerable elderly investors'</i> and it was <i>'not a commercially viable product'</i> .
18 August 2018	Theta advised ASIC of its decision to wind up all unit classes/investment products in the SIT.
27 August 2018	Winding up of the SIT officially commences.
October 2018	Theta assures ASIC that SNLL tenant investors would be made whole (i.e., their losses would be restored).
4 December 2018	Tenancy WA notifies ASIC about Sterling Group continuing to raise funds through the offer of investments in SilverLink.
14 December 2018	ASIC requests Sterling Group directors to stop any further offering of SilverLink products and to sign written undertakings.
17 December 2018	Sterling Group directors provide signed written undertakings to cease accepting funds for SilverLink investments.
December 2018	Sterling Group contact several existing tenant investors, proposing a further investment in Australian Rental Trust (ART), Gage Management Ltd and Acquest Capital Pty Ltd. He promoted the Sterling Group's apparent ASX listing,
December 2018-February 2019	Sterling Group continues sale of SilverLink products and signs up new investors for SNLL investments.
October 2018-May 2019	Sterling Group actively fundraise via the ART, and sign-up more investors for SNLL.
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. Robert Marie.
March 2020	Theta placed into liquidation.
19 December 2020	Federal Court finds Theta and Mr. Marie contravened the Corporations Act on multiple occasions in authorising the issue of five defective PDS for the SIT.
15 October 2021	ASIC refers the matter to the CDPP.

Appendix 2 – Victim Survey

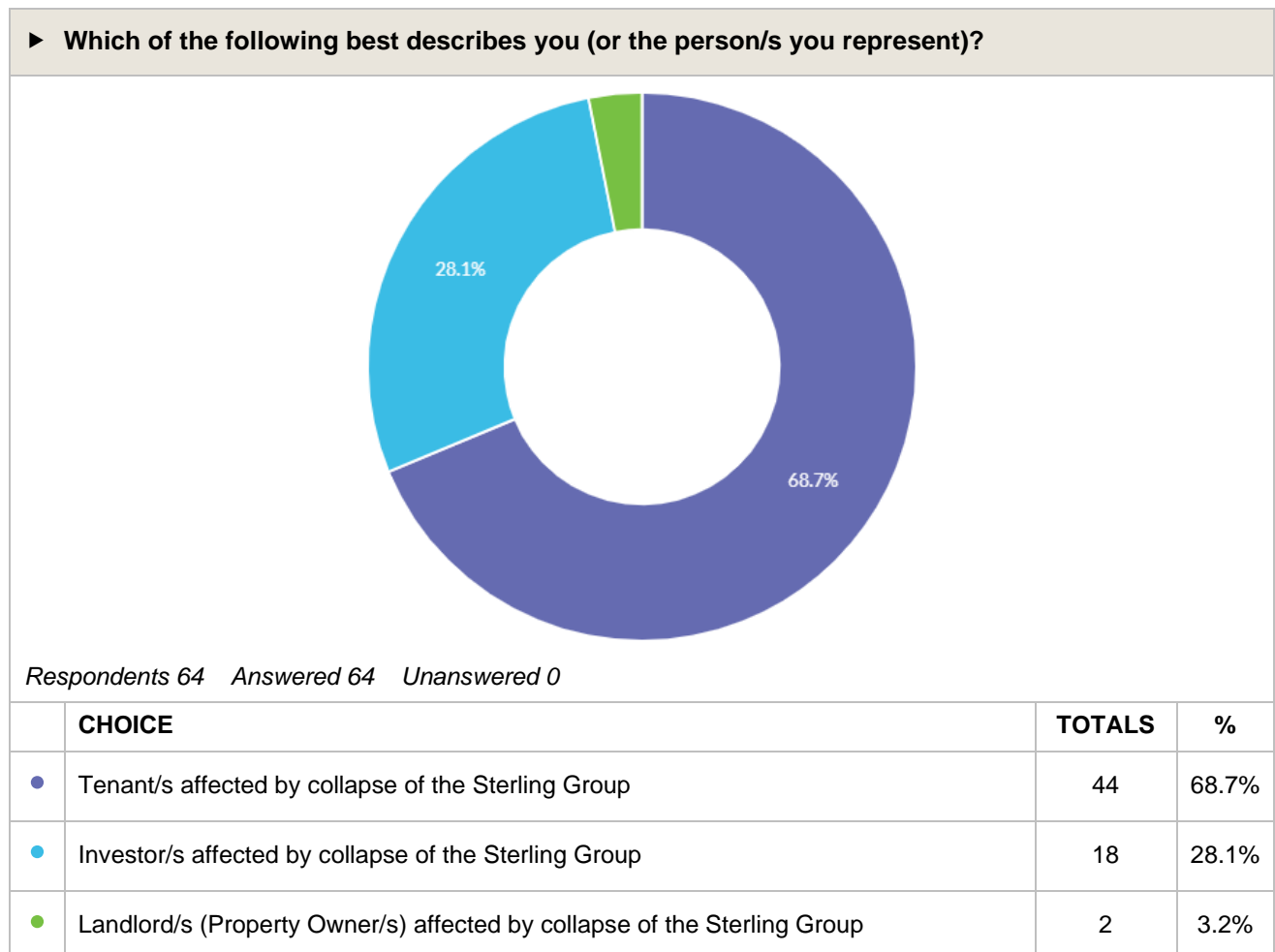
A total of 64 victims participated in the ***Sterling First Action Group: Treasury MIS Submission***.

We received responses from a variety of victims of the Sterling Group collapse. For ease of data collection, the victims are categorised into three broad categories:

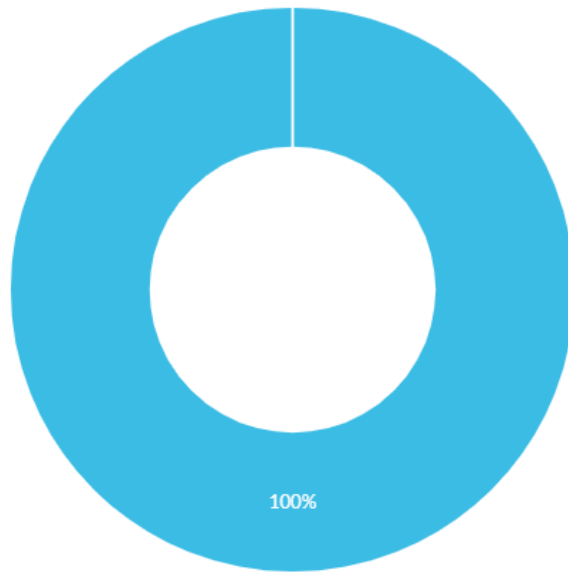
1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the SilverLink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 4 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e., Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to Sterling Income Trust, and so on).

In some instances, tenants and owners/landlords were also encouraged to invest in shares/units. To ensure accuracy of the data collection, survey respondents were asked to categorise themselves into one of the three categories that best described their situation.

Survey Results



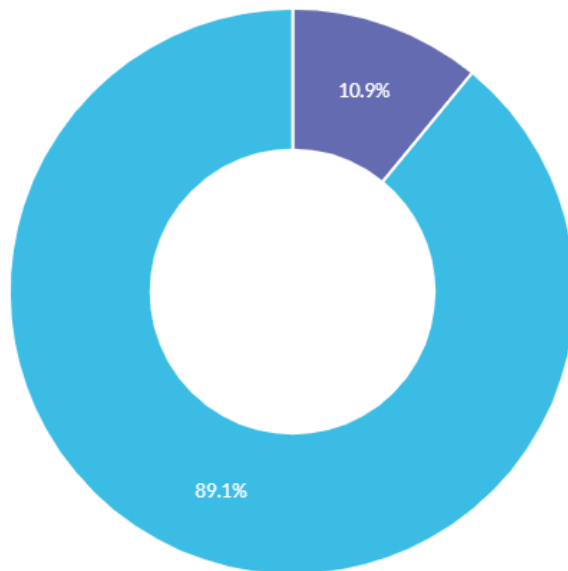
► **Would you have invested in Sterling Group products (shares, units, lifetime lease, etc.) if you had known the past history of the directors and/or responsible entity?**



Respondents 64 Answered 64 Unanswered 0

	CHOICE	TOTALS	%
•	Yes	0	0%
•	No	64	100%

► **Was the term Managed Investment Scheme (MIS) ever mentioned to you?**



Respondents 64 Answered 64 Unanswered 0

	CHOICE	TOTALS	%
•	Yes	7	10.9%
•	No	57	89.1%

► **If yes, what is/was your understanding of the Sterling Group’s Managed Investment Scheme (MIS)?**

They managed investment properties to produce a profit to return to investors.

Funds were held in an actual Trust. The funds held in the Trust were then used for aged care property development secured against the land and the property under development. Minimum risk was involved as the funds used for development of such properties were leased back from the original owners.

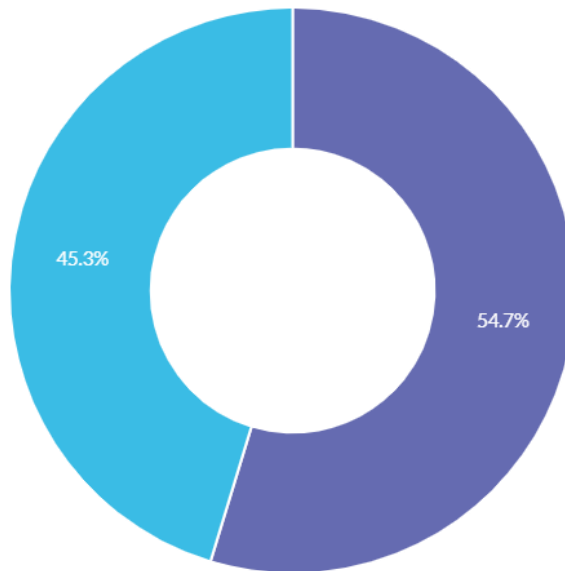
My understanding was that there were a number of investment options under a number of what seemed to be very convoluted parameters. Each with varying degrees of security and risk. What was emphasised was that all monies were secured and protected by an authorised trustee and therefore the monies were protected in case of anything untoward occurring.

% return on money loaned to company

Our money given to Sterling and invested so that our lease was covered for the rest of our life.

We would invest in a rent-free property for 40yrs, and our money would be put aside in a trust fund.

► **Were you told that the Sterling Group and/or the investment product (RMIT, SIT, etc.) was going to be listed on the ASX?**



Respondents 64 Answered 64 Unanswered 0

	CHOICE	TOTALS	%
●	Yes	35	54.7%
●	No	29	45.3%

► **If yes, what is/was your understanding of the proposed ASX listing?**

Whenever I wanted to sell / cash out of the units I had in Sterling First (Management Company Units, Development Units, Co-Dev units), I was advised not to do so as the ASX listing was imminent. Later down the track, the Sterling First management team also advised that the listing had been submitted to the various authorities and was awaiting final approvals for listing.

As the listing was imminent, I was unable to cash out my unit holdings in Sterling and would have to wait for the ASX listing. There were also some webinars provided by Quang Nguyen on the pre-IPO which provided many false promises.

There would be an opportunity for investors to purchase shares pre-IPO to gain capital gains after listing.

We were told that Sterling was working with ASIC to clear a few things before being listed on the ASX.

That the dividends paid on the investment would cover rent costs and would be paid to the landlord by the Sterling Group.

Ryan Jones told me the shares were going to be listed within weeks. I gave him a cheque for \$20,000.

Would further develop the Company and provide more aged people with long term rental properties and the money would be secure.

We bought at 20 cents a share and was told repeatedly told that they are looking confidently at listing at \$1.00 per share on the ASX. We bought 2 lots at \$20,000 each.

That it would be registered in 2019 and was set for high growth.

Only after our invested funds were not returned to us on promised due date, we were informed that these funds were going to be turned into shares.

That the Sterling Group was going to be listed on the stock exchange as a public company.

The investment we had would be listed as shares on the ASX where they expected the shares would double in a short period so we could sell them to receive the profits they had promised / predicted.

That they were a safe option if listing on ASX as they would have been thoroughly screened before being able to list.

Our understanding was that the ART was to be listed on the ASX. The funds which were invested were expected to rise in value. We would be paid dividends which would cover our rent. Over time these funds would increase.

Simon Bell and Andy Falkingham confirmed that the company was being listed imminently and because we were already clients, we could buy shares. This turned out to be a lie.

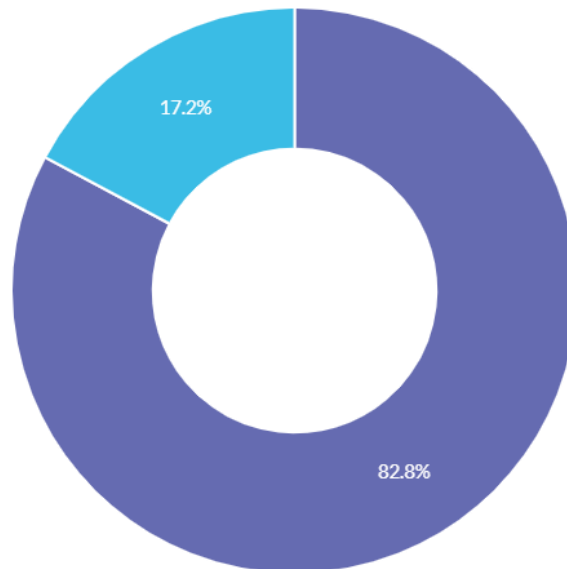
I was told the shares were to be listed within a month or two and they were worth 25 cents each, and as soon as they were listed, they would double in price.

It kept getting delayed. I chased them over 18 months and kept getting told the same thing. It's happening but not yet. Once the listing occurred, the share price would increase. The shares I purchased were at a low price (I bought \$10,000 worth) + my \$40,000 in the Sterling First Trust.

My seller told me that the product was doing really well and was soon to be listed on the ASX. He said the share price was getting higher and that the early investors would make a lot of money because the product was doing so well. It was his enthusiasm (or selling skills) that pushed me into buying shares and investing in the SIT on top of buying my life lease for the home I moved into.

It was supposed to be listed in 2012 but never happened. Excuse after excuse from Ray Jones.

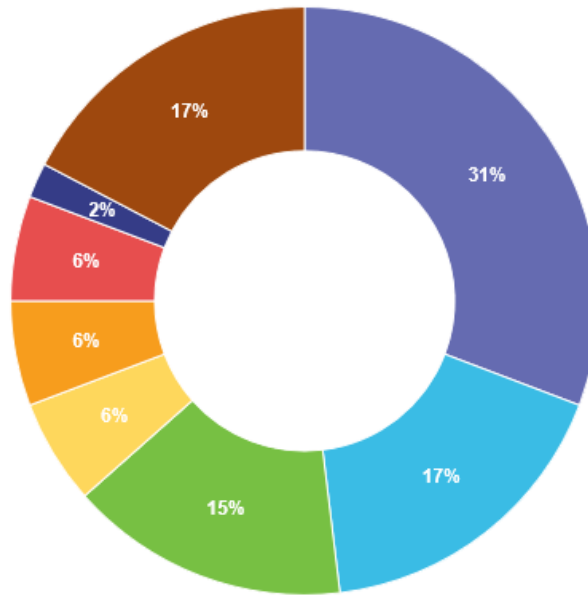
► Were you told your investment was safe because it was in a secure Trust account?



Respondents 64 Answered 64 Unanswered 0

	CHOICE	TOTALS	%
●	Yes	53	82.8%
●	No	11	17.2%

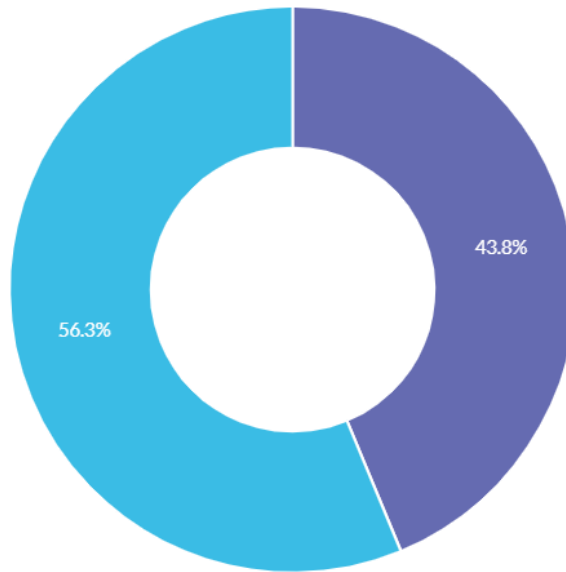
► If yes, who gave you this information?



Respondents 64 Answered 52 Unanswered 12

	CHOICE	TOTALS	%
●	Ryan Jones (former Director)	16	31%
●	Philip Lucks (former Director)	9	17%
●	Ray Jones (former Director)	8	15%
●	Quang Nguyen (former Director)	3	6%
●	Brian Ruzic (former Director)	3	6%
●	Mark McKeown (former Director)	3	6%
●	Simon Bell (former Director)	1	2%
●	Other (i.e., former sales consultants)	9	17%

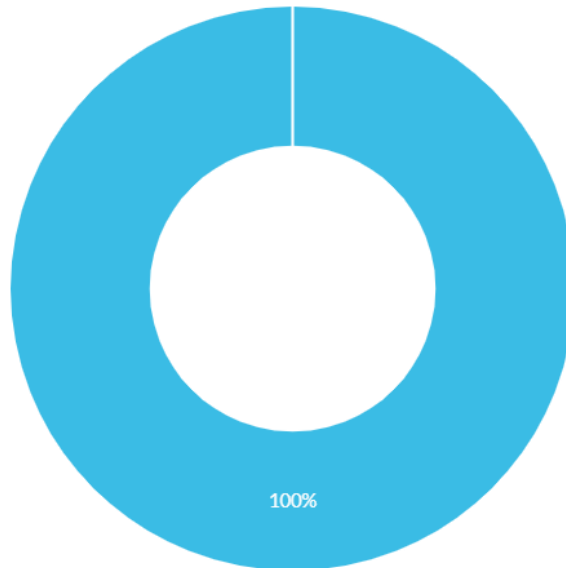
► Did you seek financial/legal advice prior to investing in a Sterling Group product (shares, units, lifetime lease, etc.)?



Respondents 64 Answered 64 Unanswered 0

	CHOICE	TOTALS	%
•	Yes	28	43.8%
•	No	36	56.3%

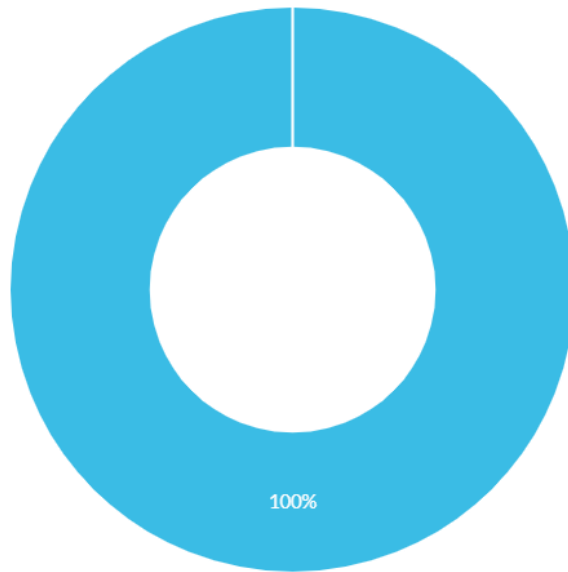
► If you invested in SilverLink, was the concept of a sophisticated investor explained to you?



Respondents 39 Answered 39 Unanswered 0

	CHOICE	TOTALS	%
•	Yes	0	0%
•	No	39	100%

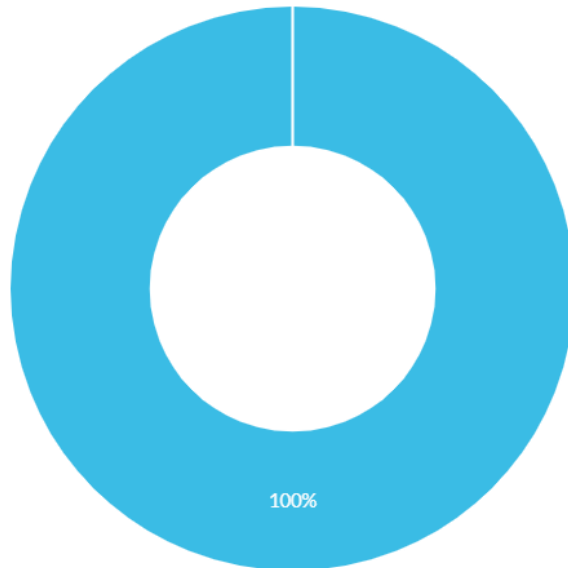
► If you invested in SilverLink, did you have assets of greater than \$2.5 million and/or income exceeding \$250,000?



Respondents 39 Answered 24 Unanswered 15

	CHOICE	TOTALS	%
•	Yes	0	0%
•	No	24	100%

► If you invested in SilverLink, did you pay more than \$500,000 for your rental agreement?



Respondents 39 Answered 21 Unanswered 18

	CHOICE	TOTALS	%
•	Yes	0	0%
•	No	21	100%

Financial Sector Reform Bill 2022 – Senate Economics Legislation Committee Inquiry

Submission by
Sterling First Action Group

October 2022

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About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e., family members acting on behalf of elderly parents).

In the 3½ years since the collapse, the Sterling First Action Group has continued to support victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state, and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services; submissions to the Senate Economics Legislation Committee (December 2021 on the *Financial Accountability Regime Bill 2021 [Provisions]* and *Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions]* and related bills; submissions to, and appearing as witnesses at, the Senate Inquiry into the *Sterling Income Trust* (November 2021); submissions to the Treasury (March 2021 on the *Review of the Australian Financial Complaints Authority*, August 2021 on the proposed *Compensation Scheme of Last Resort*), and raising awareness through the media.

In preparation for previous submissions, we have conducted a variety of short online surveys of victims who suffered financial losses associated with the collapse of the Sterling Group. These survey were designed to show the amount invested by victims and highlight the impact of the proposed CSLR compensation cap of \$150,000 per claimant. This data will be referenced throughout this submission, with a full copy of the survey results available in the Appendix.

The majority of Sterling Group victims have lodged complaints with AFCA, either against Theta Asset Management Ltd (victims with investments in the Sterling Income Trust), or Libertas Financial Planning Pty Ltd (victims with investments in Sterling Corporate Services and the Silverlink Investment Company).

Affiliations

Over the past two years we have taken part in various campaigns by consumer advocacy group, CHOICE, calling on the Federal Government to establish the Compensation Scheme of Last Resort (CSLR) as a top priority. Since that time, we have been in regular contact and have contributed a variety of materials to their media campaigns.

We have continued to work closely with Senator Louise Pratt, who has repeatedly raised concerns about the Sterling Group and its subsidiaries during Senate proceedings and had used her time to question ASIC in the PJC on Corporations & Financial Services on many occasions.

Our Response & Recommendations

We thank the Senate Economics Legislation Committee for the opportunity to provide a submission to the Inquiry and give permission for our submission to be made public. In responding, we have elected to focus on key areas we believe the proposed financial services compensation scheme of last resort (CSLR) will most impact Sterling Group victims. As such, our submission will concentrate solely on the **Financial Sector Reform Bill 2022**.

List of Recommendations

RECOMMENDATION 1.1

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation.

RECOMMENDATION 1.2

If the previous recommendation is not viable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off ‘accumulated unpaid determinations’ levy.

RECOMMENDATION 2.1

Align CSLR compensation limits with AFCA claim limits. Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.2

If the previous recommendation is not viable, CSLR compensation limits to be set at 80% of the maximum AFCA claim limit (i.e., the maximum compensation to be paid is 80% of the current AFCA limit of \$542,500 for direct financial loss). Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.3

If the previous recommendation is not viable, CSLR compensation limits to be aligned with APRA Financial Claims Scheme limit of \$250,000.

RECOMMENDATION 3

Scope of the CSLR to include disputes where misconduct is proven by AFCA investigation (irrespective of the financial product and/or service involved).

RECOMMENDATION 4

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

Our recommendations have been consistent across all submissions associated with the proposed CSLR. We are still firmly of the opinion that the above recommendations are not only desirable, but essential if one of the aims of the legislation is to deliver equity to those who have been detrimentally affected by regulatory failure and the inadequacy of existing compensatory arrangements.

The collapse has caused untold financial, emotional, and mental distress to all involved. Particularly galling is the fact that the CSLR had been held out as the solution to Sterling Group victims for over three years, only for their hopes to be dashed with the exclusion of managed investment schemes from the scope of the CSLR. We appreciate the fact that the Sterling Group situation is in many ways unique, and that the scope of the CSLR has to take into account very broad considerations as to what to include and what not to include. The point we

wish to emphasise is that if Sterling Group victims are excluded from the compensation scheme of **last** resort, where else can they go?

The lack of recourse for the victims of the Sterling Group collapse was well documented by the Senate Inquiry into the Sterling Income Trust in 2021. It is important to highlight that the recommendations¹ arising from the Inquiry also support the inclusion of managed investment schemes:

Recommendation 1: The committee recommends that the Australian Government take all necessary action to support investors in the Sterling Group of companies, including those who invested in the Sterling Income Trust and Silverlink Preference Shares, being able to access the Compensation Scheme of Last Resort.

Recommendation 4: The committee recommends that the Australian Government expand the scope of the Compensation Scheme of Last Resort to include managed investment schemes.

The Senate Economics Legislation Committee Inquiry into the *Financial Accountability Regime Bill 2021 [Provisions]*, the *Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions]* and related bills, also detailed concerns about the narrow scope of the Morrison government's proposed CSLR legislation, with Labor Senators recommending the scope of the CSLR be expanded to include managed investment schemes.

Pre-election commentary and representations around the proposed CSLR unfortunately now appears to have been entirely misleading, as the *FSR Bill 2022* contains no significant improvements on the previous draft bill proposed by the former Morrison government. This is a stark contrast to the repeated statements by many ALP voices intimating that managed investment schemes would be included in the new and improved CSLR:

Labor's Stephen Jones said the scope of the CSLR was too narrow and said Labor would consider whether the \$150,000 cap is "adequate" (Read, 2021).

Labor has recommended Managed Investment Schemes (MISs) be included in the Compensation Scheme of Last Resort (CSLR) as it claims the current scope is too narrow and will lead to poor consumer outcomes... ..Labor senators Anthony Chisholm and Jess Walsh said consumers will be worse off if MISs are excluded from the scope of the scheme (Dastoor, 2022).

Financial services minister Stephen Jones promised before the May federal election that a Labor government would review the proposed jurisdiction of the CSLR with a view to widening coverage to include managed investment schemes and funeral insurance (Lekakis, 2022).

In June, Assistant Treasurer and Minister for Financial Services Stephen Jones told the Australian Financial Review that he wanted to pass "a broader version of the CSLR than that proposed by the Coalition" and that he was consulting about the best way to bring in additional sectors such as managed investment schemes (Banking Day, 2022).

To say we are disappointed is an understatement. Victims of failed schemes, such as the Sterling Group collapse, are devastated and feel abandoned as the Government has torn away the only route to compensation that was touted as the "best fit" for the situation. However, it is not too late to remedy the issue. Let us not forget that the purpose of the CSLR is to stop people (such as the Sterling Group victims), from falling through the cracks, so it is essential the government does not create a system with cracks from the outset.²

¹ Sterling Income Trust Inquiry Report, para 3.84 and 3.87

² CHOICE, Joint Submission to Treasury, pg 5

Eligibility for Compensation Payments

The *FSR Bill 2022* proposes that compensation under the CSLR will be limited to relevant AFCA determinations only, where the determination must relate to personal advice on financial products to retail clients, credit intermediation, securities dealing or credit provision. Our greatest concern is that managed investment schemes (MIS) are to be excluded from the scope of the CSLR. This directly contradicts the Ramsey Review recommendations³ and the Federal Government commitment to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry⁴. AFCA also support the inclusion of MIS in the CSLR, in particular the issue of fairness and potential for consumer confusion if specific financial services are excluded.

Of note is AFCA's comment on the importance of the CSLR covering MIS due to *"the involvement of other financial firms or their subsidiaries in the funding, distribution or other arrangements with MIS"* (Australian Financial Complaints Authority, 2020). This is of critical importance to Sterling Group victims, as the vast majority were not aware that they were investing in a MIS; they believed they were paying rent in advance into a secure trust account.

It is recognised that existence of a CSLR may present a moral hazard where both the promoters of a MIS and investors in it may consider the existence of a safety net (i.e., the CSLR) will provide them with the incentive to indulge in more speculative behaviour than is prudent. However, we contend that this caveat should not apply to historical cases as they transpired prior to the existence of a CSLR, and hence there was no safety net that influenced the behaviour of the either scheme promoter or the investors.

It is also important to note that Sterling Group investors relied on financial advice that was misleading and deceptive⁵ and were provided with defective product disclosure statements that contained misleading or deceptive information. As such, the issue of a moral hazard in this scenario is not applicable. Furthermore, the Ramsay Review determined the moral hazard concerns raised during consultation for the CSLR in 2019/2020 could not be substantiated⁶.

Should MIS be totally excluded from the scope of the CSLR, it would deliver a devastating injustice to the victims of the Sterling Group collapse who, for over 3 years now, have been repeatedly advised by Treasury, DMIRS (WA Consumer Protection), and ASIC to seek compensation through AFCA and then, when that proved inadequate, to wait for the introduction of the CSLR. More specifically from ASIC that *"it is in the interests of investors in the Sterling Group of Companies to lodge and maintain their complaints with AFCA"* (ASIC, 2020). Refer to Appendix 2 for a comprehensive timeline of referrals to lodge complaints with AFCA.

Finally, we note that even if the scope of the CSLR is expanded at some future point in time, it will not provide a compensatory mechanism for all Sterling Group victims. Victims with investments in Sterling Corporate Services and the Silverlink Investment Company (associated with the authorised representative, Libertas Financial Planning Pty Ltd) are excluded from receiving an AFCA determination, which is the prerequisite for making a claim through the CSLR. This was pointed out by AFCA at the Senate Inquiry into the Sterling Income Trust⁷:

...what we know at the moment is that most of the Theta matters relate to the SIT. Hypothetically—I'm not forming a view, by the way; I'm just saying hypothetically—if managed investment schemes are included in the scope of the CSLR, on the surface they [SIT investors] would be included in the compensation scheme of last resort. That's not the case though for the Libertas matters, because, as I mentioned, part of the compensation scheme of

³ Ramsay Review Supplementary Final Report, para 4.59

⁴ Government response to Royal Commission, pg 36

⁵ AFCA Case Determinations 667682 and 655484

⁶ Ramsay Review Supplementary Final Report, para 3.52

⁷ Sterling Income Trust Inquiry Report, para 3.57

last resort is you need a determination; we can't even issue a determination against those Libertas matters because we don't have jurisdiction to do that.

For those who will not be covered by the expanded scope, the Senate Economics Legislation Committee should examine and recommend alternative methods of compensation.

RECOMMENDATION 1.1

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation.

RECOMMENDATION 1.2

If the previous recommendation is not viable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off 'accumulated unpaid determinations' levy.

Amount of Compensation Payments

Responses to our survey overwhelmingly revealed that the maximum proposed compensation cap of \$150,000 for each AFCA determination will be inadequate to cover the financial losses of Sterling Group victims. Results indicate that 66% of victims suffered losses greater than the proposed cap, with 23% at \$151,000 - \$200,000; 32% at \$201,000 - \$250,000; and 11% over \$251,000. Refer to Appendix 1 for more detailed information on our survey results.

Whilst we acknowledge the proposed maximum compensation amount for the CSLR is broadly aligned with the United Kingdom's Financial Services Compensation Scheme's maximum of £85,000; this cap does not align with the Federal Government's agreement⁸ to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Likewise, it also contradicts The Hon Scott Morrison's agreement⁹ to enhance access to redress for consumers by ensuring the CSLR will have the compensation caps recommended in the Ramsay Review.

As such, we feel it is necessary to highlight these recommended compensation caps in further detail, as well as the strong industry support identified during consultation for the CSLR in 2019/2020.

The Ramsey Review recommended aligning compensation limits of the CSLR with those imposed by AFCA¹⁰, which is currently \$542,500 compensation in most claims of direct financial loss¹¹. The proposed CSLR cap of \$150,000 equates to less than 30% of the limit recommended, and agreed upon, by the Federal Government.

Equally, the alignment of the CSLR compensation cap with AFCA limits was evident in many submissions to the Treasury Discussion Paper. AFCA's own submission¹² supported aligning the CSLR claim limits with compensation caps with AFCA's limits and caps. Numerous industry bodies and/or organisations that support this alignment, including CHOICE, Consumer Credit Legal Service (WA) Inc, Financial Counselling Australia, Financial Rights Legal Centre, SR Group, Legal Aid (NSW), Consumer Action Law Centre, CPA Australia, The Association of Superannuation Funds of Australia (ASFA), and Industry Super Australia (ISA).

⁸ Government response to Royal Commission, pg 36

⁹ Government response to Ramsey Review, Attachment B

¹⁰ Ramsay Review Supplementary Final Report, para 4.170

¹¹ AFCA Rules; Rule D.4.3

¹² AFCA Submission on CSLR; pg 9

The Sterling First Action Group strongly oppose setting a CSLR compensation cap; however, if a cap is to be imposed, it should be aligned with AFCA claim limits, be indexed accordingly to increase, and continue to align over time.

RECOMMENDATION 2.1

Align CSLR compensation limits with AFCA claim limits. Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.2

If the previous recommendation is not viable, CSLR compensation limits to be set at 80% of the maximum AFCA claim limit (i.e., the maximum compensation to be paid is 80% of the current AFCA limit of \$542,500 for direct financial loss). Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.3

If the previous recommendation is not viable, CSLR compensation limits to be aligned with APRA Financial Claims Scheme limit of \$250,000.

AFCA Case 667682 (against Theta Asset Management Ltd) is a very good example of why injustices can occur without a comprehensive CSLR in operation. In March 2020 determination was made in favour of the complainant, with the financial firm ordered to pay compensation of \$118,957.60 for losses suffered due to the authorised representatives misleading and deceptive conduct.

As the responsible entity for the Sterling Group, Theta Asset Management should have been responsible for paying the determination, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants appointed as the administrators. As a result, the complainants were required to liaise directly with Worrells to make a claim against Theta's PI insurance policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. Therefore, the actual amount of compensation that was paid was reduced to \$18,957.60 from which the liquidator then deducted a \$614.60 administration fee.

Despite enquiries by AFCA and lawyers representing Mr & Mrs F, the insurer has refused to provide a copy of the PI insurance policy (citing confidentiality), so we have been unable to verify the veracity of the excess amount. They have however, confirmed that the excess clause would be applied against every claim made. Without a CSLR in place this is a clear miscarriage of justice and reveals a potential opportunity for financial firms to avoid paying the full amounts of compensation as determined by AFCA.

This also raises the important point that if Professional Indemnity insurance existed, even with the excess clause, why did AFCA not continue to process more determinations so that victims could at least recover part of their losses? It appears the answer lies in the fact that AFCA were not receiving remuneration for any work once Theta were placed in liquidation, as AFCA "...gets most of its revenue from fees charged to companies for resolving complaints" (Roddan & Shapiro, 2020). This was further confirmed by AFCA CEO David Locke in June 2020, as he reportedly stated "When we take on cases with organisations that are or become insolvent, we are doing work that we don't get paid for" (Roddan & Shapiro, 2020).

As a not-for-profit organisation, we understand that AFCA rely solely on fees/levies (membership and complaint resolution) for revenue. However, it is clearly evident the two major protections that should apply to an independent EDR scheme have failed:

1. An effective EDR cannot exist when it is dependent upon payment of fees by one of the parties; and
2. No verification to ensure PI insurance policy terms of members are adequate to provide true protection to the people most vulnerable – the investors.

Once again this reveals the dire need for the CSLR to be implemented without delay.

RECOMMENDATION 3

Scope of the CSLR to include disputes where misconduct is proven by AFCA investigation (irrespective of the financial product and/or service involved).

RECOMMENDATION 4

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

Appendix 1 – Survey on CSLR Draft Legislation

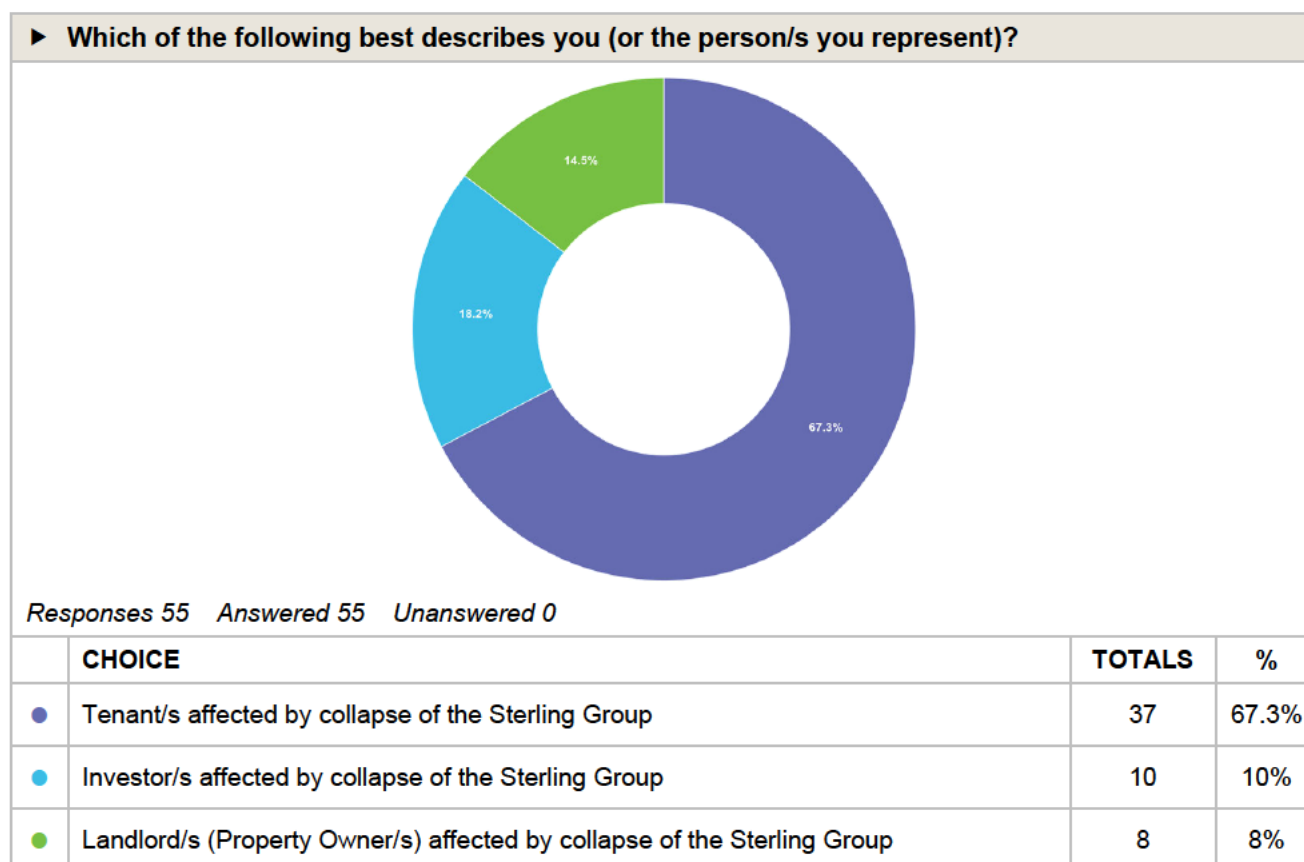
A total of 55 victims participated in the *Sterling First Action Group: Submission on CSLR Draft Legislation*.

We received responses from a variety of victims of the Sterling Group collapse. For ease of data collection, the victims are categorised into three broad categories:

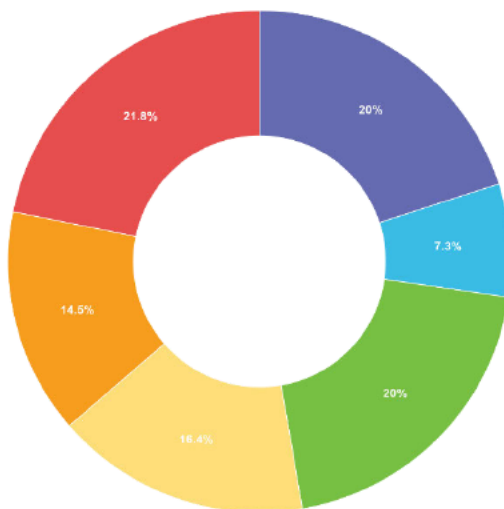
1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the Silverlink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 3 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e., Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to Sterling Income Trust, and so on).

In some instances, tenants and owners/landlords were also encouraged to invest in shares/units. To ensure accuracy of the data collection, survey respondents were asked to categorise themselves into one of the three categories that best described their situation.

Survey Results



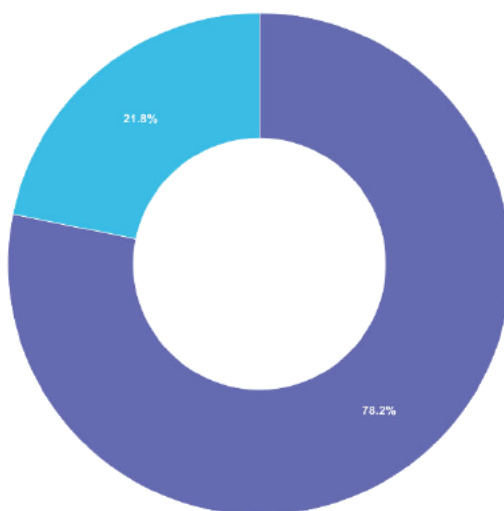
► When did you submit your AFCA complaint?



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Prior to July 2019	11	20%
● July - September 2019	4	7.3%
● October - December 2019	11	20%
● January - March 2020	9	16.4%
● After March 2020	8	14.5%
● Other (please specify): <i>Unsure of date; Can't remember.</i>	12	21.8%

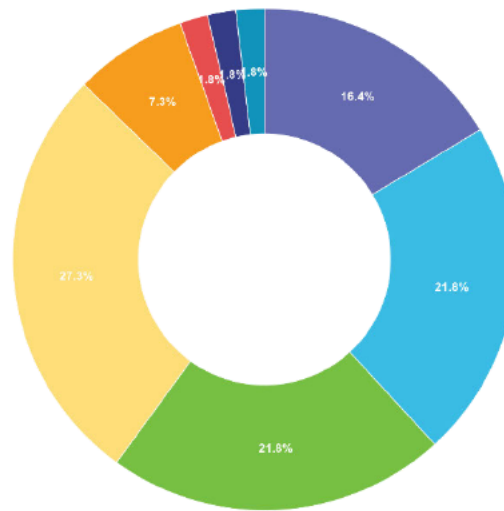
► Who was your AFCA complaint against?



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Theta Asset Management Ltd (SIT/Sterling Income Trust victims)	43	78.2%
● Libertas Financial Planning Pty Ltd (Silverlink victims)	12	21.8%

► Please indicate the total amount of funds you invested into the Sterling Group.



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Under \$100,000	9	16.4%
● \$100,000 - \$150,000	12	21.8%
● \$151,000 - \$200,000	12	21.8%
● \$201,000 - \$250,000	15	27.3%
● \$251,000 - \$300,000	4	7.3%
● \$301,000 - \$350,000	1	1.8%
● \$351,000 - \$400,000	1	1.8%
● Over \$400,000	1	1.8%

► Please indicate how your total investment was distributed*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by contacting us.

SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$280,000				
\$173,989	\$16,790	\$55,174	\$4,544	\$25,000
\$110,000	\$9,680			
\$179,063	\$17,424			\$3,613 in rent
				Rental income (\$350 a week + 2% increments every year)
		\$70,000		
\$150,000	\$15,000		\$20,000	
\$143,000	\$12,000	\$10,000 in Development Units	\$3,000	
\$228,000	\$22,000		\$15,000	Have paid over \$16,000 in rent to stay in the house; still paying \$290 per week.
\$154,000	\$13,500		\$15,000	
\$189,916	\$18,480			\$1604 (rent paid for 1 month)
		\$100,000 into shares \$30,000 into RMIT		
\$208,152	\$20,240		\$1,608	
\$229,000				
\$145,000				
\$300,000	\$17,000	\$500,000	\$12,000	
\$104,781	\$22,506	\$230,531		
		\$40,000		
		\$100,000		
			\$553,885 (total house/land package)	Purchased land, built to SNLL specs.
\$122,000	\$13,200	\$78,800	\$580	
\$230,000	\$20,000	\$209,760		

Financial Accountability Regime Bill 2022 [Provisions] and Financial Sector Reform Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 [Provisions]
Submission 2

*Financial Sector Reform Bill 2022 – Senate Economics Legislation Committee Inquiry
Submission by Sterling First Action Group (October 2022)*

SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$193,344	\$18,656		\$3740	
		\$100,000		
\$179,426	\$17,447		\$1,700	\$1,387 (first month's rent)
		\$40,000		Rent loss of \$44,000 (+ legal costs)
\$315,000			\$12,000	
\$157,000	\$7,800			
\$175,000	\$20,000			
		\$55,000		
\$192,000	\$18,000			
		\$400,000 Development units		
\$125,000	\$8000	\$25,000	\$2,000	
\$219,000	\$20,000	Income units 40% (\$79,285) Growth units 60% (\$118,927)		
\$201,000	\$19,000			
\$122,000	\$13,0000		\$7,250	\$2,500
\$234,000		\$20,000	\$8,000	
\$199,000	\$20,000			
\$190,000	\$18,000			
\$182,284	\$15,851		\$10,000	\$8,600 (ATO taxes)
\$189,674	\$16,494		\$2,096	
\$130,000	\$12,408	Income units \$51,041 Growth units \$76,561	\$8,000	
\$165,000	\$15,000			
\$208,512	\$20,240	\$83,261 into income units \$124,891 into growth units		\$1608 (first month rent)
\$140,000	\$12,320	\$137,680		
\$139,000	\$12,500		\$5,000	

Feedback Received*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by contacting us.

► Do you have any other comments?
<i>I can't recall the breakdown of the payment. The lease was in the name of [REDACTED] and [REDACTED]. [REDACTED] passed away on 13/7/2019.</i>
<i>We are landlords who have been affected by the tenants refusing to move out of our property and have had to pay huge legal fees to get our property back. They have contravened the rental agreement and not paid any rent. All the tenants have done is exacerbated a terrible situation for everyone and refused no matter what to negotiate. We have repeatedly tried to negotiate.</i>
<i>Please up the limit to recover funds for such instances to at least \$250,000 to cover such losses.</i>
<i>I regret investing in Sterling every day.</i>
<i>Due to default by SNLL and non-payment of rent, [REDACTED] has been forced to sell her family residence and the Bank has acquired the rental property,</i>
<i>We had loss through shares, as well as no payment of rent for 2 years, then legal fees on top.</i>
<i>Before signing my mother was told that if she passed away the SNL fund would be returned back to the estate to be distributed as per the will. She has now passed away and no recourse for her sons to obtain what is rightfully theirs.</i>
<i>Yes, as landlords, we were treated badly by the tenants as a group. The tenants took out their anger on us. We DID not take the money. We lost the lease rental amount for 2 years, but still had to pay the mortgage. Almost broke us financially and definitely broke us emotionally.</i>
<i>I am 83 years of age, I am living in a camper van and just surviving on my pension. My health has deteriorated to a point where I struggle to breath most days. I defy anyone at my age to live this way. Sterling should be prosecuted to the full force of the law. They still have a roof over their heads, we do not.</i>
<i>Please compensate the victims ASAP. It has been more than 2 years and it's not acceptable</i>
<i>I live just around the corner from Travis Jones, who signed me up even knowing they were failing. He has a home and drives a BMW. My \$50,0000 was my nest egg. I think I bought his car. I think of my gullible behaviour every day. Lies, lies, lies. I also think of all those people who lost their homes, the Jones I believe own theirs. Why wasn't this red flagged?</i>
<i>Also made a claim of \$10,000 for hardship suffered due the collapse of SNL</i>
<i>CSLR cap should be aligned with AFCA compensation caps.....as per previous Commission Recommendations. Caps (and levies) could be reviewed in time once more white-collar criminals are caught and weeded out of the financial systems. Less crooks = lower costs of potential compensation.</i>
<i>I'd be interested to know if the \$8,600.00 I paid to ATO on my own money, as my own money became interest earned by Theta - will this be refunded?</i>
<i>Yes. I am 42 years old (not a senior) - 2 kids and stuck in the rent trap. My future is really screwed, can't afford to live, no security of a home. Biggest mistake of my life!</i>

Appendix 2 – AFCA Referrals Timeline

Since the collapse of the Sterling Group in May 2019, victims who suffered financial losses have been repeatedly urged to pursue compensation by lodging a complaint with AFCA. The table below provides examples of the instances when this advice was provided. Links have been supplied to any online sources; electronic or hard copies of other sources can be supplied (with personal or identifying information redacted) can be obtained by contacting us.

Date	Originator	Subject Matter	Notes
09/05/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
14/06/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
21/06/2019	6PR	Interview with Federal Assistant Treasurer Michael Sukkar; discusses AFCA complaints (00:09:20 timestamp)	https://www.6pr.com.au/podcast/asic-launches-investigation-over-its-handling-of-sterling-first/?fbclid=IwAR1iiqNihNHwOxG8tVogYBKQaizol8pCc-STwE-ZsTa4Kjnz3qJRc_3R8ZE
02/07/2019	Mark McGowan	Response to letter from Sterling Group victim; information on lodging an AFCA complaint	Email attachment
25/07/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
26/07/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	Website snapshot
31/07/2019	WA Consumer Protection (DMIRS)	Response to enquiry from Sterling Group victim; information on lodging an AFCA complaint	Email with above snapshot attached
02/08/2019	ASIC – Sterling Investigation Team	Response to letter from Sterling Group victim	Letter with ASIC website update snapshot
16/09/2019	House of Representatives	Motion by Andrew Hastie MP about the Sterling Group collapse; recommendation to lodge AFCA complaint. Seconded by Madeline King MP.	https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/6cd30e15-83c4-4db4-bebc-e1033048fb66/&sid=0290
17/09/2019	The West Australian	Report on Andrew Hastie MP and Madeline King MP addressing parliament; recommendations to lodge AFCA complaint received bipartisan support	https://www.pressreader.com/australia/the-west-australian/20190917/281543702629548
21/10/2019	The Treasury	Response to letter from Sterling Group victim; information on lodging a complaint with Commonwealth Ombudsman	Letter
11/12/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
Sept 2019	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/september-2019

Financial Accountability Regime Bill 2022 [Provisions] and Financial Sector Reform Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 [Provisions]
Submission 2

Financial Sector Reform Bill 2022 – Senate Economics Legislation Committee Inquiry
Submission by Sterling First Action Group (October 2022)

Date	Originator	Subject Matter	Notes
13/09/2019	PJC on Corporations & Financial Services; Oversight of ASIC	Patrick Gorman MP; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
21/12/2019	The West Australian	Report on ASIC court case against Theta Asset Management and ASICs recommendation of lodging AFCA complaints	https://www.pressreader.com/australia/the-west-australian/20191221/282170768051147
31/01/2020	Worrell's Solvency & Forensic Accountants	Report to Creditors - Theta Asset Management Ltd; information on lodging an AFCA complaint	Email attachment
31/01/2020	Clayton Utz	Forwarding copy of Worrells Report to Creditors	Email with above report attached
Feb 2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/february-2020
28/02/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
27/03/2020	AFCA	Statement on Sterling complaints	https://www.afca.org.au/news/latest-news/statement-on-sterling-complaints
15/04/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
23/04/2020	Finance Feeds	Report on ASICs recommendation of lodging AFCA complaints	https://financefeeds.com/asic-insists-interest-sterling-group-investors-lodge-complaints-afca/
09/05/2020	The West Australian	Report on Sterling Collapse, AFCA determination for SIT complainant, reiterated ASIC advice to lodge AFCA complaint	https://thewest.com.au/business/sterling-first-fight-rages-on-for-elderly-victims-ng-b881542023z
20/07/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/july-2020
15/07/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair); Daniel Crennan (ASIC Deputy Chair); Warren Day (ASIC Executive Director); James Shipton (ASIC Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
04/08/2020	Mandurah Mail	Report on court cases; comments from Consumer Protection commissioner Lanie Chopping – coordinating with AFCA for compensation claims for loss of investment money.	https://www.mandurahmail.com.au/story/6861824/i-can-actually-hear-my-wife-sobbing-peel-residents-face-court-to-get-their-life-savings-back/?fbclid=IwAR2kEDEYUE668g0QU38sZqBV0XEKx3RvEUokN6LofaW23EIOKC RspJ9HDGc

Financial Accountability Regime Bill 2022 [Provisions] and Financial Sector Reform Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2022 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2022 [Provisions]
Submission 2

*Financial Sector Reform Bill 2022 – Senate Economics Legislation Committee Inquiry
Submission by Sterling First Action Group (October 2022)*

Date	Originator	Subject Matter	Notes
07/08/2020	Money Management	Report on PJC, ASIC recommendations to lodge AFCA complaints	https://www.moneymanagement.com.au/news/policy-regulation/asic-urges-continuing-complaints-despite-afca-pause
24/08/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
26/08/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
09/09/2020	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group
17/09/2020	Heritage Radio	Interview with Andrew Hastie MP, recommendation to lodge AFCA complaints (00:02:51 timestamp)	Audio recording available upon request
14/10/2020	ABC 7.30 Report	Report on CSLR delays, ASIC recommendations	https://www.abc.net.au/news/2020-10-14/the-people-left-waiting-for-new-compensation-scheme/12726518 https://www.abc.net.au/7.30/people-left-in-limbo-waiting-for-new-compensation/12767788
20/11/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
18/01/2021	ASIC – Sterling Investigation Team	Recommendation to contact AFCA	Response to letter sent by Sterling First Action Group
19/03/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
19/03/2021	Senator Jane Hume (Minister for Superannuation, Financial Service, and the Digital Economy)	References the Government commitment to establish CSLR	Email response to letter sent by Sterling First Action Group
25/03/2021	Independent Financial Advisor	Report on PJC, Armour and Chester recommendations to lodge AFCA complaints	https://www.ifa.com.au/news/29347-cslr-delays-keep-scam-victims-waiting
12/04/2021	Amelia Hamer (Financial Services Policy Lead Adviser to Senator Jane Hume)	Reiterated Government commitment to establish CSLR; encouraged lodgement of AFCA complaints	Teleconference with committee members of Sterling First Action Group
04/06/2021	WA Consumer Affairs	Encouraged all Sterling Group victims to lodge AFCA complaint	Phone call with committee member of Sterling First Action Group

Date	Originator	Subject Matter	Notes
18/06/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Justin Untersteiner (COO AFCA); David Locke (CEO AFCA); Dr June Smith (Deputy Chief Ombudsman AFCA); Cathie Armour (Commissioner ASIC) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
23/07/2021	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group

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Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions] and related bills – Senate Inquiry

Submission by
Sterling First Action Group

December 2021

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About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e., family members acting on behalf of elderly parents).

In the 2½ years since the collapse, the Sterling First Action Group has continued to support victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state, and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services (September 2019, February 2020, July 2020, March 2021, June 2021); submissions to the Treasury (March 2021 on the *Review of the Australian Financial Complaints Authority*, August 2021 on the proposed *Compensation Scheme of Last Resort*), and raising awareness through the media. Most recently we made a submission to the Senate Inquiry into the *Sterling Income Trust*, including appearing as witnesses at the public hearing on 16 November 2021.

In preparation for previous submissions, we have conducted a variety of short online surveys of victims who suffered financial losses associated with the collapse of the Sterling Group. These survey were designed to show the amount invested by victims and highlight the impact of the proposed CSLR compensation cap of \$150,000 per claimant. This data will be referenced throughout this submission, with a full copy of the survey results available in the Appendix.

The majority of Sterling Group victims have lodged complaints with AFCA, either against Theta Asset Management Ltd (victims with investments in the Sterling Income Trust), or Libertas Financial Planning Pty Ltd (victims with investments in Sterling Corporate Services and the Silverlink Investment Company).

Affiliations

In June this year we became aware of a campaign being mounted by consumer advocacy group, CHOICE, calling on the Federal Government to establish the Compensation Scheme of Last Resort (CSLR) as a top priority. As our objectives were identical, the Sterling First Action Group and CHOICE mutually agreed to cooperate and align our campaigns. Since that time, we have been in regular contact and have contributed a variety of materials to their media campaigns.

We have continued to work closely with Senator Louise Pratt, who has repeatedly raised concerns about the Sterling Group and its subsidiaries during Senate proceedings and had used her time to question ASIC in the PJC on Corporations & Financial Services on many occasions.

Our Response & Recommendations

We thank the Senate Economics Legislation Committee for the opportunity to provide a submission to the Inquiry and give permission for our submission to be made public.

In responding to the Explanatory Memorandum, we have elected to focus on key areas we believe the proposed financial services compensation scheme of last resort (CSLR) will most impact Sterling Group victims. As such, our submission will concentrate solely on the **Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021**.

List of Recommendations

RECOMMENDATION 1.1

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation.

RECOMMENDATION 1.2

If the previous recommendation is not viable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off ‘accumulated unpaid determinations’ levy.

RECOMMENDATION 2.1

Align CSLR compensation limits with AFCA claim limits. Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.2

If the previous recommendation is not viable, CSLR compensation limits to be set at 80% of the maximum AFCA claim limit (i.e., the maximum compensation to be paid is 80% of the current AFCA limit of \$542,500 for direct financial loss). Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.3

If the previous recommendation is not viable, CSLR compensation limits to be aligned with APRA Financial Claims Scheme limit of \$250,000.

RECOMMENDATION 3

Scope of the CSLR to include disputes where misconduct is proven by AFCA investigation (irrespective of the financial product and/or service involved).

RECOMMENDATION 4

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

Eligibility for compensation payments

The No. 3 Bill proposes that compensation under the CSLR will be limited to relevant AFCA determinations only, where the determination must relate to personal advice on financial products to retail clients, credit intermediation, securities dealing or credit provision. Our greatest concern is that managed investment schemes (MIS) are to be excluded from the scope of the CSLR. This directly contradicts the Ramsey Review recommendations¹ and the Federal Government commitment to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry². AFCA also support the inclusion of MIS in the CSLR, in particular the issue of fairness and potential for consumer confusion if specific financial services are excluded.

Of note is AFCA’s comment on the importance of the CSLR covering MIS due to *“the involvement of other financial firms or their subsidiaries in the funding, distribution or other arrangements with MIS”* (Australian Financial Complaints Authority, 2020). This is of critical importance to Sterling Group victims, as the vast majority were not aware that they were investing in a MIS; they believed they were paying rent in advance into a secure trust account.

It is recognised that existence of a CSLR may present a moral hazard where both the promoters of a MIS and investors in it may consider the existence of a safety net (i.e., the CSLR) will provide them with the incentive to indulge in more speculative behaviour than is prudent. However, we contend that this caveat should not apply to historical cases as they transpired prior to the existence of a CSLR, and hence there was no safety net that influenced the behaviour of the either scheme promoter or the investors.

It is also important to note that Sterling Group investors relied on financial advice that was misleading and deceptive³ and were provided with defective product disclosure statements that contained misleading or deceptive information⁴. As such, the issue of a moral hazard in this scenario is not applicable. Furthermore, the Ramsay Review determined the moral hazard concerns raised during consultation for the CSLR in 2019/2020 could not be substantiated⁵.

Should MIS be totally excluded from the scope of the CSLR, it would deliver a devastating injustice to the victims of the Sterling Group collapse who, for over 2 years now, have been repeatedly advised by Treasury, DMIRS (WA Consumer Protection), and ASIC to seek compensation through AFCA and then, when that proved inadequate, to wait for the introduction of the CSLR. More specifically from ASIC that *“it is in the interests of investors in the Sterling Group of Companies to lodge and maintain their complaints with AFCA”* (ASIC, 2020). Refer to Appendix 2 for a comprehensive timeline of referrals to lodge complaints with AFCA.

RECOMMENDATION 1.1

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation.

RECOMMENDATION 1.2

If the previous recommendation is not viable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off ‘accumulated unpaid determinations’ levy.

¹ Ramsay Review Supplementary Final Report, para 4.59

² Government response to Royal Commission, pg 36

³ AFCA Case Determinations 667682 and 655484

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

⁵ Ramsay Review Supplementary Final Report, para 3.52

Amount of compensation payments

Responses to our survey overwhelmingly revealed that the maximum proposed compensation cap of \$150,000 for each AFCA determination will be inadequate to cover the financial losses of Sterling Group victims. Results indicate that 66% of victims suffered losses greater than the proposed cap, with 23% at \$151,000 - \$200,000; 32% at \$201,000 - \$250,000; and 11% over \$251,000. Refer to the Appendix for more detailed information on our survey results.

Whilst we acknowledge the proposed maximum compensation amount for the CSLR is broadly aligned with the United Kingdom's Financial Services Compensation Scheme's maximum of £85,000; this cap does not align with the Federal Government's agreement⁶ to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Likewise, it also contradicts The Hon Scott Morrison's agreement⁷ to enhance access to redress for consumers by ensuring the CSLR will have the compensation caps recommended in the Ramsay Review.

As such, we feel it is necessary to highlight these recommended compensation caps in further detail, as well as the strong industry support identified during consultation for the CSLR in 2019/2020.

The Ramsey Review recommended aligning compensation limits of the CSLR with those imposed by AFCA⁸, which is currently \$542,500 compensation in most claims of direct financial loss⁹. The proposed CSLR cap of \$150,000 equates to less than 30% of the limit recommended, and agreed upon, by the Federal Government.

Equally, the alignment of the CSLR compensation cap with AFCA limits was evident in many submissions to the Treasury Discussion Paper. AFCA's own submission¹⁰ supported aligning the CSLR claim limits with compensation caps with AFCA's limits and caps. Numerous industry bodies and/or organisations that support this alignment, including CHOICE, Consumer Credit Legal Service (WA) Inc, Financial Counselling Australia, Financial Rights Legal Centre, SR Group, Legal Aid (NSW), Consumer Action Law Centre, CPA Australia, The Association of Superannuation Funds of Australia (ASFA), and Industry Super Australia (ISA).

The Sterling First Action Group strongly oppose setting a CSLR compensation cap; however, if a cap is to be imposed, it should be aligned with AFCA claim limits, be indexed accordingly to increase, and continue to align over time.

RECOMMENDATION 2.1

Align CSLR compensation limits with AFCA claim limits. Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 2.2

If the previous recommendation is not viable, CSLR compensation limits to be set at 80% of the maximum AFCA claim limit (i.e., the maximum compensation to be paid is 80% of the current AFCA limit of \$542,500 for direct financial loss). Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

⁶ Government response to Royal Commission, pg 36

⁷ Government response to Ramsey Review, Attachment B

⁸ Ramsay Review Supplementary Final Report, para 4.170

⁹ AFCA Rules; Rule D.4.3

¹⁰ AFCA Submission on CSLR; pg 9

RECOMMENDATION 2.3

If the previous recommendation is not viable, CSLR compensation limits to be aligned with APRA Financial Claims Scheme limit of \$250,000.

AFCA Case 667682 (against Theta Asset Management Ltd) is a very good example of why injustices can occur without a comprehensive CSLR in operation. In March 2020 determination was made in favour of the complainant, with the financial firm ordered to pay compensation of \$118,957.60 for losses suffered due to the authorised representatives misleading and deceptive conduct.

As the responsible entity for the Sterling Group, Theta Asset Management should have been responsible for paying the determination, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants appointed as the administrators. As a result, the complainants were required to liaise directly with Worrells to make a claim against Theta's PI insurance policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. Therefore, the actual amount of compensation that was paid was reduced to \$18,957.60 from which the liquidator then deducted a \$614.60 administration fee.

Despite enquiries by AFCA and lawyers representing Mr & Mrs F, the insurer has refused to provide a copy of the PI insurance policy (citing confidentiality), so we have been unable to verify the veracity of the excess amount. They have however, confirmed that the excess clause would be applied against every claim made. Without a CSLR in place this is a clear miscarriage of justice and reveals a potential opportunity for financial firms to avoid paying the full amounts of compensation as determined by AFCA.

This also raises the important point that if Professional Indemnity insurance existed, even with the excess clause, why did AFCA not continue to process more determinations so that victims could at least recover part of their losses? It appears the answer lies in the fact that AFCA were not receiving remuneration for any work once Theta were placed in liquidation, as AFCA "...gets most of its revenue from fees charged to companies for resolving complaints" (Roddan & Shapiro, 2020). This was further confirmed by AFCA CEO David Locke in June 2020, as he reportedly stated "When we take on cases with organisations that are or become insolvent, we are doing work that we don't get paid for" (Roddan & Shapiro, 2020).

As a not-for-profit organisation, we understand that AFCA rely solely on fees/levies (membership and complaint resolution) for revenue. However, it is clearly evident the two major protections that should apply to an independent EDR scheme have failed:

1. An effective EDR cannot exist when it is dependent upon payment of fees by one of the parties; and
2. No verification to ensure PI insurance policy terms of members are adequate to provide true protection to the people most vulnerable – the investors.

Once again this reveals the dire need for the CSLR to be implemented without delay.

RECOMMENDATION 3

Scope of the CSLR to include disputes where misconduct is proven by AFCA investigation (irrespective of the financial product and/or service involved).

RECOMMENDATION 4

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

Appendix 1 – Survey on CSLR Draft Legislation

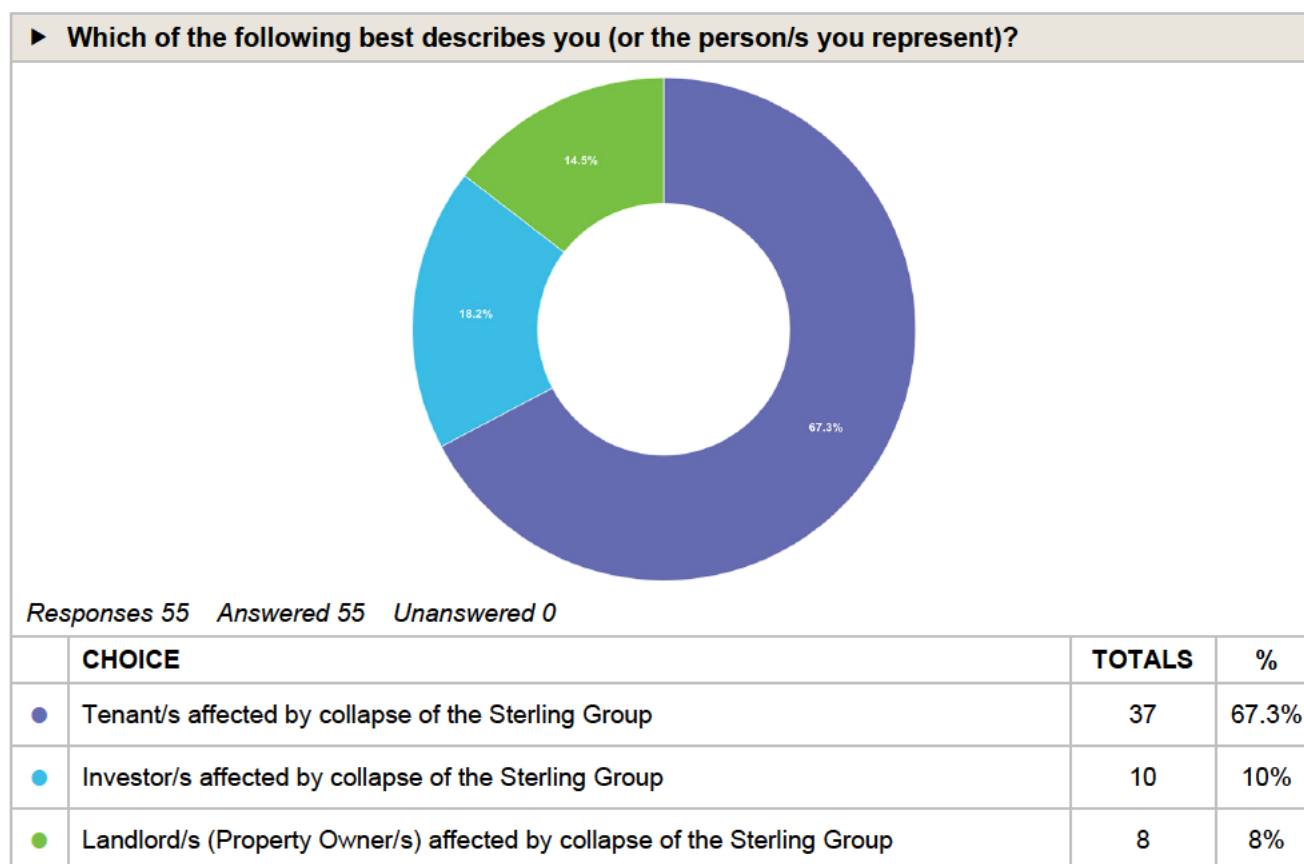
A total of 55 victims participated in the *Sterling First Action Group: Submission on CSLR Draft Legislation*.

We received responses from a variety of victims of the Sterling Group collapse. For ease of data collection, the victims are categorised into three broad categories:

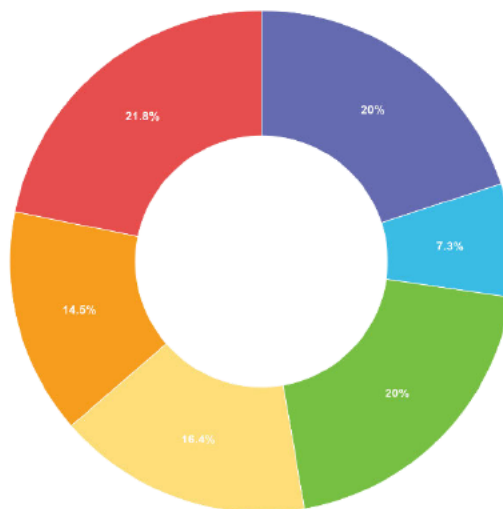
1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the Silverlink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 2 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e., Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to SIT).

In some instances, tenants and owners/landlords were also encouraged to invest in shares/units. To ensure accuracy of the data collection, survey respondents were asked to categorise themselves into one of the three categories that best described their situation.

Survey Results



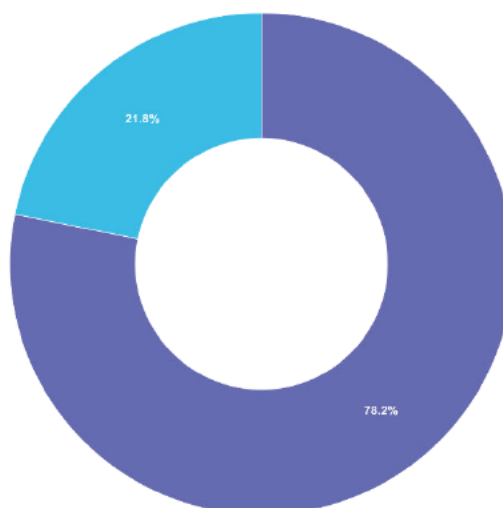
► When did you submit your AFCA complaint?



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Prior to July 2019	11	20%
● July - September 2019	4	7.3%
● October - December 2019	11	20%
● January - March 2020	9	16.4%
● After March 2020	8	14.5%
● Other (please specify): <i>Unsure of date; Can't remember.</i>	12	21.8%

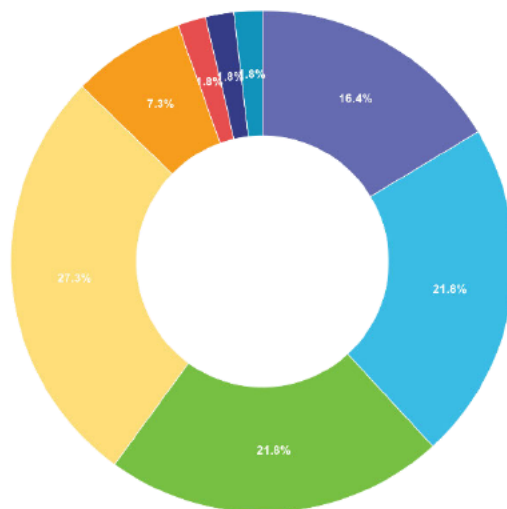
► Who was your AFCA complaint against?



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Theta Asset Management Ltd (SIT/Sterling Income Trust victims)	43	78.2%
● Libertas Financial Planning Pty Ltd (Silverlink victims)	12	21.8%

► Please indicate the total amount of funds you invested into the Sterling Group.



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Under \$100,000	9	16.4%
● \$100,000 - \$150,000	12	21.8%
● \$151,000 - \$200,000	12	21.8%
● \$201,000 - \$250,000	15	27.3%
● \$251,000 - \$300,000	4	7.3%
● \$301,000 - \$350,000	1	1.8%
● \$351,000 - \$400,000	1	1.8%
● Over \$400,000	1	1.8%

Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy
 Bill 2021 [Provisions] and related bills
 Submission 1

*Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions] and related bills – Senate Inquiry
 Submission by Sterling First Action Group (December 2021)*

► Please indicate how your total investment was distributed*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by contacting us.

SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$280,000				
\$173,989	\$16,790	\$55,174	\$4,544	\$25,000
\$110,000	\$9,680			
\$179,063	\$17,424			\$3,613 in rent
				Rental income (\$350 a week + 2% increments every year)
		\$70,000		
\$150,000	\$15,000		\$20,000	
\$143,000	\$12,000	\$10,000 in Development Units	\$3,000	
\$228,000	\$22,000		\$15,000	Have paid over \$16,000 in rent to stay in the house; still paying \$290 per week.
\$154,000	\$13,500		\$15,000	
\$189,916	\$18,480			\$1604 (rent paid for 1 month)
		\$100,000 into shares \$30,000 into RMIT		
\$208,152	\$20,240		\$1,608	
\$229,000				
\$145,000				
\$300,000	\$17,000	\$500,000	\$12,000	
\$104,781	\$22,506	\$230,531		
		\$40,000		
		\$100,000		
			\$553,885 (total house/land package)	Purchased land, built to SNLL specs.
\$122,000	\$13,200	\$78,800	\$580	
\$230,000	\$20,000	\$209,760		

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SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$193,344	\$18,656		\$3740	
		\$100,000		
\$179,426	\$17,447		\$1,700	\$1,387 (first month's rent)
		\$40,000		Rent loss of \$44,000 (+ legal costs)
\$315,000			\$12,000	
\$157,000	\$7,800			
\$175,000	\$20,000			
		\$55,000		
\$192,000	\$18,000			
		\$400,000 Development units		
\$125,000	\$8000	\$25,000	\$2,000	
\$219,000	\$20,000	Income units 40% (\$79,285) Growth units 60% (\$118,927)		
\$201,000	\$19,000			
\$122,000	\$13,0000		\$7,250	\$2,500
\$234,000		\$20,000	\$8,000	
\$199,000	\$20,000			
\$190,000	\$18,000			
\$182,284	\$15,851		\$10,000	\$8,600 (ATO taxes)
\$189,674	\$16,494		\$2,096	
\$130,000	\$12,408	Income units \$51,041 Growth units \$76,561	\$8,000	
\$165,000	\$15,000			
\$208,512	\$20,240	\$83,261 into income units \$124,891 into growth units		\$1608 (first month rent)
\$140,000	\$12,320	\$137,680		
\$139,000	\$12,500		\$5,000	

Feedback Received*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by contacting us.

► Do you have any other comments?
<i>I can't recall the breakdown of the payment. The lease was in the name of [REDACTED] and [REDACTED]. [REDACTED] passed away on 13/7/2019.</i>
<i>We are landlords who have been affected by the tenants refusing to move out of our property and have had to pay huge legal fees to get our property back. They have contravened the rental agreement and not paid any rent. All the tenants have done is exacerbated a terrible situation for everyone and refused no matter what to negotiate. We have repeatedly tried to negotiate.</i>
<i>Please up the limit to recover funds for such instances to at least \$250,000 to cover such losses.</i>
<i>I regret investing in Sterling every day.</i>
<i>Due to default by SNLL and non-payment of rent, [REDACTED] has been forced to sell her family residence and the Bank has acquired the rental property,</i>
<i>We had loss through shares, as well as no payment of rent for 2 years, then legal fees on top.</i>
<i>Before signing my mother was told that if she passed away the SNL fund would be returned back to the estate to be distributed as per the will. She has now passed away and no recourse for her sons to obtain what is rightfully theirs.</i>
<i>Yes, as landlords, we were treated badly by the tenants as a group. The tenants took out their anger on us. We DID not take the money. We lost the lease rental amount for 2 years, but still had to pay the mortgage. Almost broke us financially and definitely broke us emotionally.</i>
<i>I am 83 years of age, I am living in a camper van and just surviving on my pension. My health has deteriorated to a point where I struggle to breath most days. I defy anyone at my age to live this way. Sterling should be prosecuted to the full force of the law. They still have a roof over their heads, we do not.</i>
<i>Please compensate the victims ASAP. It has been more than 2 years and it's not acceptable</i>
<i>I live just around the corner from Travis Jones, who signed me up even knowing they were failing. He has a home and drives a BMW. My \$50,000 was my nest egg. I think I bought his car. I think of my gullible behaviour every day. Lies, lies, lies. I also think of all those people who lost their homes, the Jones I believe own theirs. Why wasn't this red flagged?</i>
<i>Also made a claim of \$10,000 for hardship suffered due the collapse of SNL</i>
<i>CSLR cap should be aligned with AFCA compensation caps.....as per previous Commission Recommendations. Caps (and levies) could be reviewed in time once more white-collar criminals are caught and weeded out of the financial systems. Less crooks = lower costs of potential compensation.</i>
<i>I'd be interested to know if the \$8,600.00 I paid to ATO on my own money, as my own money became interest earned by Theta - will this be refunded?</i>
<i>Yes. I am 42 years old (not a senior) - 2 kids and stuck in the rent trap. My future is really screwed, can't afford to live, no security of a home. Biggest mistake of my life!</i>

Appendix 2 – AFCA Referrals Timeline

Since the collapse of the Sterling Group in May 2019, victims who suffered financial losses have been repeatedly urged to pursue compensation by lodging a complaint with AFCA. The table below provides examples of the instances when this advice was provided. Links have been supplied to any online sources; electronic or hard-copies of other sources can be supplied (with personal or identifying information redacted) can be obtained by contacting us.

Date	Originator	Subject Matter	Notes
09/05/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
14/06/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
21/06/2019	6PR	Interview with Federal Assistant Treasurer Michael Sukkar; discusses AFCA complaints (00:09:20 timestamp)	https://www.6pr.com.au/podcast/asic-launches-investigation-over-its-handling-of-sterling-first/?fbclid=IwAR1iiqNihNHwOxG8tVogYBKQaizol8pCc-STwE-ZsTa4Kjnz3qJRc_3R8ZE
02/07/2019	Mark McGowan	Response to letter from Sterling Group victim; information on lodging an AFCA complaint	Email attachment
25/07/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
26/07/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	Website snapshot
31/07/2019	WA Consumer Protection (DMIRS)	Response to enquiry from Sterling Group victim; information on lodging an AFCA complaint	Email with above snapshot attached
02/08/2019	ASIC – Sterling Investigation Team	Response to letter from Sterling Group victim	Letter with ASIC website update snapshot
16/09/2019	House of Representatives	Motion by Andrew Hastie MP about the Sterling Group collapse; recommendation to lodge AFCA complaint. Seconded by Madeline King MP.	https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/6cd30e15-83c4-4db4-bebc-e1033048fb66/&sid=0290
17/09/2019	The West Australian	Report on Andrew Hastie MP and Madeline King MP addressing parliament; recommendations to lodge AFCA complaint received bipartisan support	https://www.pressreader.com/australia/the-west-australian/20190917/281543702629548
21/10/2019	The Treasury	Response to letter from Sterling Group victim; information on lodging a complaint with Commonwealth Ombudsman	Letter
11/12/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
Sept 2019	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/september-2019

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Date	Originator	Subject Matter	Notes
13/09/2019	PJC on Corporations & Financial Services; Oversight of ASIC	Patrick Gorman MP; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
21/12/2019	The West Australian	Report on ASIC court case against Theta Asset Management and ASICs recommendation of lodging AFCA complaints	https://www.pressreader.com/australia/the-west-australian/20191221/282170768051147
31/01/2020	Worrell's Solvency & Forensic Accountants	Report to Creditors - Theta Asset Management Ltd; information on lodging an AFCA complaint	Email attachment
31/01/2020	Clayton Utz	Forwarding copy of Worrells Report to Creditors	Email with above report attached
Feb 2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/february-2020
28/02/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
27/03/2020	AFCA	Statement on Sterling complaints	https://www.afca.org.au/news/latest-news/statement-on-sterling-complaints
15/04/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
23/04/2020	Finance Feeds	Report on ASICs recommendation of lodging AFCA complaints	https://financefeeds.com/asic-insists-interest-sterling-group-investors-lodge-complaints-afca/
09/05/2020	The West Australian	Report on Sterling Collapse, AFCA determination for SIT complainant, reiterated ASIC advice to lodge AFCA complaint	https://thewest.com.au/business/sterling-first-fight-rages-on-for-elderly-victims-ng-b881542023z
20/07/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/july-2020
15/07/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair); Daniel Crennan (ASIC Deputy Chair); Warren Day (ASIC Executive Director); James Shipton (ASIC Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
04/08/2020	Mandurah Mail	Report on court cases; comments from Consumer Protection commissioner Lanie Chopping – coordinating with AFCA for compensation claims for loss of investment money.	https://www.mandurahmail.com.au/story/6861824/i-can-actually-hear-my-wife-sobbing-peel-residents-face-court-to-get-their-life-savings-back/?fbclid=IwAR2kEDEYUE668q0QU38sZqBV0XEKx3RvEUokN6LofaW23EIOKC RspJ9HDGc

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Date	Originator	Subject Matter	Notes
07/08/2020	Money Management	Report on PJC, ASIC recommendations to lodge AFCA complaints	https://www.moneymanagement.com.au/news/policy-regulation/asic-urges-continuing-complaints-despite-afca-pause
24/08/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
26/08/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
09/09/2020	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group
17/09/2020	Heritage Radio	Interview with Andrew Hastie MP, recommendation to lodge AFCA complaints (00:02:51 timestamp)	Audio recording available upon request
14/10/2020	ABC 7.30 Report	Report on CSLR delays, ASIC recommendations	https://www.abc.net.au/news/2020-10-14/the-people-left-waiting-for-new-compensation-scheme/12726518 https://www.abc.net.au/7.30/people-left-in-limbo-waiting-for-new-compensation/12767788
20/11/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
18/01/2021	ASIC – Sterling Investigation Team	Recommendation to contact AFCA	Response to letter sent by Sterling First Action Group
19/03/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
19/03/2021	Senator Jane Hume (Minister for Superannuation, Financial Service, and the Digital Economy)	References the Government commitment to establish CSLR	Email response to letter sent by Sterling First Action Group
25/03/2021	Independent Financial Advisor	Report on PJC, Armour and Chester recommendations to lodge AFCA complaints	https://www.ifa.com.au/news/29347-cslr-delays-keep-scam-victims-waiting
12/04/2021	Amelia Hamer (Financial Services Policy Lead Adviser to Senator Jane Hume)	Reiterated Government commitment to establish CSLR; encouraged lodgement of AFCA complaints	Teleconference with committee members of Sterling First Action Group
04/06/2021	WA Consumer Affairs	Encouraged all Sterling Group victims to lodge AFCA complaint	Phone call with committee member of Sterling First Action Group

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Date	Originator	Subject Matter	Notes
18/06/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Justin Untersteiner (COO AFCA); David Locke (CEO AFCA); Dr June Smith (Deputy Chief Ombudsman AFCA); Cathie Armour (Commissioner ASIC) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
23/07/2021	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group

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Sterling Income Trust – Senate Inquiry

Submission by
Sterling First Action Group

November 2021

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Contacts

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[Sterling First Action Group](#)

About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e., family members acting on behalf of elderly parents).

In the 2½ years since the collapse, the Sterling First Action Group has continued to support victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state, and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services (September 2019, February 2020, July 2020, March 2021, June 2021); submissions to the Treasury (March 2021 on the *Review of the Australian Financial Complaints Authority*, August 2021 on the proposed *Compensation Scheme of Last Resort*), and raising awareness through the media.

Victims of the Sterling Group collapse can be categorised into three broad categories:

1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the Silverlink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 2 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e., Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to SIT).

In some instances, tenants and owners/landlords were also encouraged to invested in shares/units

Affiliations

In June this year we became aware of a campaign being mounted by consumer advocacy group, CHOICE, calling on the Federal Government to establish the Compensation Scheme of Last Resort (CSLR) as a top priority. As our objectives were identical, the Sterling First Action Group and CHOICE mutually agreed to cooperate and align our campaigns. Since that time, we have been in regular contact and have contributed a variety of materials to their media campaigns.

We have continued to work closely with Senator Louise Pratt, who has repeatedly raised concerns about the Sterling Group and its subsidiaries during Senate proceedings and had used her time to question ASIC in the PJC on Corporations & Financial Services on many occasions.

Our Response & Recommendations

We thank the Senate Economics References Committee for their invitation to provide a submission to the Inquiry into the Sterling Income Trust and give permission for our submission to be made public. Our response to the Inquiry Terms of Reference, along with a summary of recommendations is provided below.

Please note that due to file size and type, all referenced attachments will be provided as supplementary evidence to this submission.

List of Recommendations

RECOMMENDATION 1

ASIC to be held responsible for the losses incurred in the collapse of the Sterling Group due to defective administration in failing to properly regulate the formation and operation of the companies comprising the Sterling Group. Victims who suffered losses as a result to have access to the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

RECOMMENDATION 2

More rigorous processes to be implemented for the registration of managed investment schemes (MIS), including vetting of officers appointed to any company associated with the proposed responsible entity.

RECOMMENDATION 3

All officers associated with the Sterling Group (past and present appointments) to be disqualified from managing corporations for 20 years.

RECOMMENDATION 4

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation. If this proves to be unviable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off ‘accumulated unpaid determinations’ levy.

RECOMMENDATION 5

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership. Regulatory changes to be implemented giving ASIC the power to enforce AFCA requests for information.

ToR1: ASIC's oversight of the Sterling Income Trust

The collapse of the Sterling Group in May 2019 obviously came as a surprise to the hundreds of retirees, property owners and shareholders who had invested in one or more of the group's 12 entities¹; however, as our subsequent research has revealed, could have been prevented had ASIC taken a more proactive stance on protecting consumers in the financial services industry. Considering the Sterling Group was led by numerous directors who have been involved in multiple high profile company collapses (Bruce Monteath - Monteath Properties; Simon Bell - Westpoint, Finchley; Michael Fenech - Storm Financial; Raymond Jones (Armstrong Jones, Geneva Finance, and many more), we have question serious concerns over ASICs regulatory oversight.

In July 2019 we conducted a background check into the directors of the Sterling Group and uncovered some shocking statistics. As an example, a director search on Mr. Jones revealed that since 1976 he has been the director, alternate director, or secretary of 127 different companies. At the time of study, we identified that of the 127 companies, 110 were deregistered, 9 were under external administration and 8 were still registered (with Mr. Jones having resigned as director). We identified irregularities in the information Mr. Jones used to register each of the 127 companies, including the use of 4 different dates of birth, incorrect spelling on street addresses, and suburbs not matching the registered address. Please refer to Attachment 1 for more information.

Another prominent director of the Sterling Group, Mr. Simon Bell, we identified as having been the director, alternate director, or secretary of 84 different companies, of which only 4 are still operational. Similar to the inconsistencies in the information provided by Mr. Jones when he registered his 127 different companies, Mr. Bell also provided conflicting data such as 3 different dates of birth, Please refer to Attachment 2 for more information. We have also identified a variety of other companies linked to the Sterling Group (either by name or with the same directors), some of which (at the time of our research) were still currently registered. Please refer Attachment 3 for more information.

The Sterling Group raised funds using a managed investment scheme (the Sterling Income Trust – SIT), and Theta Asset Management were the responsible entity. As we now know, red flags surrounding the Sterling Group lifetime lease scheme were first identified by WA regulators in late 2016 and referred to ASIC in March 2017. Reports indicate that ASIC had also received other complaints about the scheme being marketed to retirees in 2016 (Coburn, 2020). However, it was not until September 2017² (some seven months later) that ASIC issued an interim stop order on the PDS for the SIT. This prevented directors from selling the product under the stop order, however they then restructured and commenced selling basically the same product under a revised PDS in October 2017. The Sterling Group continued to market the SIT and the funds managed under the scheme grew from approximately \$420,000 in 2017, to approximately \$15 million in 2018 (Coburn, 2020).

In December 2017 a new structure was created under the name of Silverlink, with Silverlink Securities and the Silverlink Investment Company being registered as new entities of the Sterling Group. The directors launched the sale of preference shares in the Silverlink Investment Company, without a PDS. With funds now coming in from Silverlink, the directors closed the SIT in April 2018 and withdrew the revised PDS. A further \$6.8 million in investment funds was collected by the Sterling Group under the banner of Silverlink, until December 2018, when ASIC finally shut it down. Please refer Attachment 4 for more detailed information on the Sterling Group of companies and ASICs involvement.

It is also important to note that ASIC representatives made house calls to a small group of WA based tenants in mid-2018 to discuss their lifetime lease arrangements. At no stage did the ASIC representatives provide any indication or warning that they were actively undertaking surveillance activities of the responsible entity (Theta). Several of the tenants asked if they should be concerned about the rent that they had paid in advance to the Sterling Group; the ASIC representatives said not to worry. The unannounced visits prompted Mr. Jones to send a letter out to all tenants in July 2018, in which he indicated their money was safe, and backed this up

¹ KPMG, *Sterling First (Aust) Limited*, <https://home.kpmg/au/en/home/creditors/sterling-first-aust-limited.html>

² ASIC, *17-316MR ASIC issues stop order on Theta product disclosure statements*, <https://asic.gov.au/about-asic/news-centre/find-a-media-release/2017-releases/17-316mr-asic-issues-stop-order-on-theta-product-disclosure-statements/>

with the promotion of an ASX listing (with the reasoning that it would further enhance the Sterling Group's financial position). Please refer to Attachment 5 for a copy of the letter.

The above summary alone should have been enough to warrant a more immediate ASIC investigation, yet there is even more staggering evidence to indicate that ASICs oversight of the Sterling Group was, at best – substandard, and at worst, grossly negligent.

Our research^{3,4} has found evidence of Sterling Group subsidiaries (or affiliated companies) promoting their plans to list on the ASX as early as 2012 and continuing through until ASIC finally took action in December 2018. Shareholders^{5,6} who invested in the Sterling Group (or earlier versions of the company in 2013/2014), have reported their shares being rolled over (or phoenixed) from company to company, never being able to extract their capital. Please refer to Attachment 6 for an example letter sent to a shareholder in 2014, informing them their shares were being “restructured” from Heritage Acquisition Limited to Sterling First Group.

Tenants signing up for a lifetime lease were actively encouraged to also invest in units/shares. Throughout 2017 and 2018 at least 10 tenants were convinced to invest additional funds into shares, with amounts ranging from \$2,000 to \$75,000. Mr. Bell made contact with several tenants as late as December 2018, proposing the purchase of units in ART (Australian Rental Trust) and Gage Management Ltd. In addition to promoting the ASX listing, he also advised the Sterling Group was expecting millions of dollars to be coming in from overseas investors within the next week. Given that the Administrators of the Sterling Group believe they were insolvent in/or around January 2019⁷, we question the ethics of Mr. Bell seeking funds from vulnerable, elderly tenants in a period where it is probable the Sterling Group were already insolvent.

Considering several directors of the Sterling Group have either been bankrupt (Mr. Jones was discharged from bankruptcy in February 2015), or close to bankruptcy⁸, many are linked to previous catastrophic collapses (Monteath Properties ≈ \$35 million; Westpoint ≈ \$388 million; Finchley ≈ \$45 million; Storm Financial ≈ \$3 billion; Geneva Finance ≈ \$30 million), and ASICs prior involvement in court proceedings against Mr. Jones (AFR, 1993), it is clear to us that ASIC have failed in their regulatory oversight of the Sterling Group.

RECOMMENDATION 1

ASIC to be held responsible for the losses incurred in the collapse of the Sterling Group due to defective administration in failing to properly regulate the formation and operation of the companies comprising the Sterling Group. Victims who suffered losses as a result to have access to the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme).

ToR2: Legislative and regulatory reform to prevent future losses

As highlighted above, the history of the directors involved with the Sterling Group should have prevented them from establishing yet another company (or web of companies) that allowed them to collect funds from vulnerable investors. With over \$3.5 billion in cumulative losses from corporate collapses over the past 30 years, a history of bankruptcies' and prior court proceedings for breaches of corporations legislation, it beggars belief that ASIC was unable to identify, investigate and prevent these individuals from doing the same thing over and over again.

³ Finance News Network, *Rental Management Investment Trust (RMIT)*, <https://www.finnewsnetwork.com.au/CompanyReports/RMA-Group/0>

⁴ Gordon Capital Research, *Rental Management Investment Trust*, <https://rmaproperty.com.au/sc/Property%20Rights/Gordon%20Capital%20Research%20RMIT%20Report.pdf>

⁵ Hot Copper Forums, *Sterling First Pre IPO*, <https://hotcopper.com.au/threads/sterling-first-pre-ipo.3351345/>

⁶ Whirlpool Forums, *Sterling First (Aust) Limited*, <https://forums.whirlpool.net.au/thread/9mn2vx23>

⁷ KPMG, *Voluntary Administrators Report - Sterling First (Aust) Limited*, pg 5

⁸ AFR, *Monteath may have traded while insolvent*, <https://www.afr.com/property/monteath-may-have-traded-while-insolvent-20010405-k0zah>

Whilst we note that the introduction of the Director Identification Number to prevent false and fraudulent director identities has been recently introduced (Commins, 2021), had this basic safeguard had been in place when the Sterling Group of companies were first registered, then the questionable background of the directors would have warranted further investigation and the subsequent losses could perhaps have been avoided.

There are however still challenges with the current legislative framework and access to funding to enable ASIC to take action against directors with a history of illegal phoenix activity or repeated company insolvencies. As highlighted in the 2015 Senate Inquiry into insolvency in the Australian construction industry, if evidence indicates that criminal or civil misconduct is connected to insolvencies, ASIC has the power to disqualify the directors concerned under Section 206F of the Corporations Act. Yet for ASIC to take this action, substantive evidence must be provided by the liquidator in the form of a supplementary report to support the allegations made in their initial report⁹. In the case of the Sterling Group, the liquidators KPMG were provided with \$440,000 from the Assetless Administration Fund (AA Fund). This reliance on the liquidators of an insolvent company to provide evidence of misconduct results in reactive regulatory action by ASIC, feeding the culture of low-level enforcement and mild consequences. If the history of the Sterling Group directors is anything to go by, it is clear the current legislative and regulatory framework is failing.

In addition, the release of the draft legislation of the proposed (CSLR) has dealt another blow to the Sterling Group victims. It is proposed that the CSLR will be limited to five financial products and services: personal advice on relevant financial products to retail clients; credit intermediation; securities dealing; credit provision; and insurance product distribution. However, it is also proposed that managed investment schemes (MIS) are to be excluded from the scope of the CSLR. This directly contradicts the Ramsey Review recommendations¹⁰ and the Federal Government commitment to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry¹¹. AFCA also support the inclusion of MIS in the CSLR, in particular the issue of fairness and potential for consumer confusion if specific financial services are excluded.

Of note is AFCA's comment on the importance of the CSLR covering MIS due to *"the involvement of other financial firms or their subsidiaries in the funding, distribution or other arrangements with MIS"* (Australian Financial Complaints Authority, 2020). This is of critical importance to Sterling Group victims, as the vast majority were not aware that they were investing in a MIS; they believed they were paying rent in advance into a secure trust account. It is also important to note that Sterling Group investors relied on financial advice that was misleading and deceptive¹² and were provided with defective product disclosure statements that contained misleading or deceptive information¹³. This again highlights the lack of regulatory oversight of the Sterling Group, and ASICs failure to protect consumers from dodgy company directors.

RECOMMENDATION 2

More rigorous processes to be implemented for the registration of managed investment schemes (MIS), including vetting of officers appointed to any company associated with the proposed responsible entity.

RECOMMENDATION 3

All officers associated with the Sterling Group (past and present appointments) to be disqualified from managing corporations for 20 years.

⁹ Insolvency in the Australian construction industry Report, para 7.6

¹⁰ Ramsay Review Supplementary Final Report, para 4.59

¹¹ Government response to Royal Commission, pg 36

¹² AFCA Case Determinations 667682 and 655484

¹³ Australian Securities and Investments Commission v Theta Asset Management Limited [2020] FCA 1894

RECOMMENDATION 4

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation. If this proves to be unviable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off 'accumulated unpaid determinations' levy.

ToR3: Justice and redress for victims of SIT collapse

With little hope of recouping funds through the liquidation process, victims of the Sterling Group collapse who have been repeatedly advised by Treasury, DMIRS (WA Consumer Protection), and ASIC to seek compensation through AFCA and then, when that proved inadequate, to wait for the introduction of the Compensation Scheme of Last Resort (CSLR). More specifically from ASIC that *"it is in the interests of investors in the Sterling Group of Companies to lodge and maintain their complaints with AFCA"* (ASIC, 2020).

On over 40 occasions victims to seek redress through AFCA. The Sterling Group collapse has also been examined by the Parliamentary Joint Committee on Corporations and Financial Services on numerous occasions with victims being encouraged to lodge a complaint with AFCA. Refer to Appendix 1 for a comprehensive timeline of referrals to lodge complaints with AFCA. This proved, in the overwhelming majority of cases, to be a complete waste of time.

AFCA Case 667682 (against Theta Asset Management Ltd) is a very good example of lack of justice and redress for Sterling Group victims. In March 2020 a determination was made in favour of the complainant, with the financial firm ordered to pay compensation of \$118,957.60 for losses suffered due to the authorised representatives misleading and deceptive conduct. As the responsible entity for the Sterling Group, Theta Asset Management should have been responsible for paying the determination, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants appointed as the administrators. As a result, the complainants were required to liaise directly with Worrells to make a claim against Theta's PI insurance policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. Therefore, the actual amount of compensation that was paid was reduced to \$18,957.60 from which the liquidator then deducted a \$614.60 administration fee.

Despite enquiries by AFCA and lawyers representing the complainants, the insurer has refused to provide a copy of the PI insurance policy (citing confidentiality), so we have been unable to verify the veracity of the excess amount. They have however, confirmed that the excess clause would be applied against every claim made. Correspondence from the Chief Operating Officer of AFCA indicates he had requested ASIC to ascertain details of the PI insurance policy, however the liquidator declined the request. This is a clear miscarriage of justice, reveals a potential opportunity for financial firms to avoid paying compensation, and demonstrates yet another loophole in the regulatory framework in ASICs oversight of the financial services industry. Please refer to Attachment 7 for a copy of this letter.

Insolvency is not the only issue to consider. AFCA Case 655484 (against Libertas Financial Planning Pty Ltd) is another example of the inadequacies in accessing redress for victims of the Sterling Group. Case 655484 was related to the Silverlink Investment Company and the sale of S Preference Shares, where AFCA found in favour of the complainant. The transactions were carried out by the Sterling Group as an agent of Libertas Financial Planning Pty Ltd, who hold a financial services provider license. Libertas disputed the recommendation, and it was escalated to the Ombudsman, who also found in favour of the complainant. In August 2020 a final determination was made in favour of the complainant, with Libertas ordered to pay compensation of \$268,207.57 for losses suffered because of the authorised representatives misleading and deceptive conduct.

Following the ombudsman decision, several other complaints against Libertas proceeded to the initial recommendation and loss calculation stage. However, Libertas continued to dispute these recommendations,

using NSW Supreme Court decision¹⁴ in support of their refusal to comply with AFCA’s determinations. All complaints against Libertas were ceased as a result, and AFCAs Rules were changed as a result of the DH Flinders ruling. Following this, 15 of the 19 complaints against Libertas were then determined to be outside of AFCAs rules and the cases were closed. Consequently, the 15 victims now have no access to the only external dispute resolution scheme within Australia, and the ability to obtain compensation through the CSLR has been eliminated.

RECOMMENDATION 5

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership. Regulatory changes to be implemented giving ASIC the power to enforce AFCA requests for information.

ToR4: Novelty of the products of the Sterling Income Trust

TENANTS PERSPECTIVE

The Sterling Group offered what it described and marketed as an affordable alternative to traditional retirement villages. In exchange for a lump sum payment, which would generally be an investor’s life savings (usually hundreds of thousands of dollars), the Sterling Group offered a lifetime lease arrangement marketed as a Sterling New Life (SNL) Lease. These lease arrangements ranged from 20-year leases (broken into a 5-year term with 3 further 5-year options) to 40-year leases (broken into a 5-year term with 7 further 5-year options). The monies paid was to be invested into a Sterling Fund, with the monthly distribution from the investment used to pay rent for the duration of the lease.

The SNL product was primarily marketed to seniors and retirees looking to downsize, as an alternative to retirement villages or aged care living arrangements, with promotion occurring at retirement expos, in local and senior specific newspapers and a variety of other forums. Promotional materials spruiked the SNL product as “*the SMART way to retire*”, with benefits such as no ongoing rental payments, no exit fees, no council or water rates, no weekly facility fees, no refurbishment costs, and so on. The key selling points were that once the initial investment was made, no further payments would be required, and security of tenure was guaranteed, regardless of who owned the property (Sterling Group or a private investor). If the owner sold the property, or it was repossessed by a lender, Sterling assured prospective tenants they could not be evicted, as their lifetime lease would stay with the property and would be assigned to a new owner as the ownership passed (Sterling New Life, 2018). In addition, if the tenants elected to terminate the lease, they could redeem their investment by providing 180 days’ notice.

The product appeared to fill a gap in the market (with regard to the availability and affordability of retirement living options) and was an appealing option to those who wanted to downsize. Promotional materials included information on how to sell your existing home, payout your mortgage and then use the funds to “invest” in a secure, lifetime lease arrangement. In some instances, the Sterling Group purchased the investors’ home, and then signed them up to a lifetime lease a lease in their own home (now owned by the Sterling Group or one of its associated entities), for which the investors then handed over the proceeds from the sale of their own property. Please refer to Attachment 8 for copies of the promotional materials.

OWNERS/LANDLORD PERSPECTIVE

There are two classes of investment property owners who have suffered losses as a result of the Sterling Group collapse. Firstly, we have those with established or partially constructed investment properties looking to secure tenants. Rental Management Australia (as part of the Sterling Group) promoted the SNL leases as an alternative to a traditional lease/tenancy arrangement, with the owner securing a long term tenant for their property. The tenant would pay a sum equal to 60% of the purchase price of the property into the Sterling

¹⁴ DH Flinders Pty Limited v Australian Financial Complaints Authority Limited [2020] NSWSC 1690

Income Trust¹⁵. This amount was intended to act as a bond, with the income paying the agreed rental amount back to the owners.

Secondly, we have owners who signed up for the Sterling Investor Buy Back Program. In this instance the owners were responsible for construction of the investment property, with Sterling required to purchase the property from the owners after an agreed period of time. SNL leases were arranged by Sterling, with similar rental payment arrangements to owners as mentioned above. Upon the collapse of the Sterling Group, rental payments from the SIT ceased, and owners were left with a property in which the tenants had paid all of the rent to the Sterling Group. Please refer to Attachment 9 for copies of promotional materials and buy-back contracts.

ToR5: Why the scheme collapsed and here the money went

The lack of information from the government and KMPG acting as liquidators of the Sterling Group means the victims have been kept in the dark about where their money went. KPMG have indicated the following underlying causes of failure:

- Complexity of the organisational and operational structure which ultimately resulted in higher operational costs and a level of dysfunctionality
- Uncommercial pricing structure under the Master Deed of Assignments which as a result of a reduction in rental income failed to reflect the cost to run RMA's business (putting it into a loss-making position); and
- The reliance on capital raising to fund operations.

We understand that there was a significant flow of funds through Rental Management Australia (one of the Sterling group of companies) estimated to be approximately \$600,000 per month but this asset was sold off by the liquidators.

There has been mention of unfavourable market conditions but just what this relates to we are unsure. The fact that the scheme collapsed after only 3 years of operation would seem to indicate that funds were misused but in the absence of evidence from the liquidator this remains pure speculation.

ToR6: Any related matters

Since the collapse of the Sterling Group, we have collected hundreds of pieces of documentation that may be beneficial to this inquiry. Any evidence not already referred to above can be found in Attachment 10.

¹⁵ Sterling First Limited (SFL), *February 2016 Update*, pg 2

Appendix 1 – AFCA Referrals Timeline

Since the collapse of the Sterling Group in May 2019, victims who suffered financial losses have been repeatedly urged to pursue compensation by lodging a complaint with AFCA. The table below provides examples of the instances when this advice was provided. Links have been supplied to any online sources; electronic or hard-copies of other sources can be supplied (with personal or identifying information redacted) can be obtained by emailing cath.dall@bigpond.com

Date	Originator	Subject Matter	Notes
09/05/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
14/06/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
21/06/2019	6PR	Interview with Federal Assistant Treasurer Michael Sukkar; discusses AFCA complaints (00:09:20 timestamp)	https://www.6pr.com.au/podcast/asic-launches-investigation-over-its-handling-of-sterling-first/?fbclid=IwAR1iiqNihNHwOxG8tVogYBKQaizol8pCc-STwE-ZsTa4Kjnz3qJRc_3R8ZE
02/07/2019	Mark McGowan	Response to letter from Sterling Group victim; information on lodging an AFCA complaint	Email attachment
25/07/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
26/07/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	Website snapshot
31/07/2019	WA Consumer Protection (DMIRS)	Response to enquiry from Sterling Group victim; information on lodging an AFCA complaint	Email with above snapshot attached
02/08/2019	ASIC – Sterling Investigation Team	Response to letter from Sterling Group victim	Letter with ASIC website update snapshot
16/09/2019	House of Representatives	Motion by Andrew Hastie MP about the Sterling Group collapse; recommendation to lodge AFCA complaint. Seconded by Madeline King MP.	https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/6cd30e15-83c4-4db4-bebc-e1033048fb66/&sid=0290
17/09/2019	The West Australian	Report on Andrew Hastie MP and Madeline King MP addressing parliament; recommendations to lodge AFCA complaint received bipartisan support	https://www.pressreader.com/australia/the-west-australian/20190917/281543702629548
21/10/2019	The Treasury	Response to letter from Sterling Group victim; information on lodging a complaint with Commonwealth Ombudsman	Letter
11/12/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
Sept 2019	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/september-2019

Date	Originator	Subject Matter	Notes
13/09/2019	PJC on Corporations & Financial Services; Oversight of ASIC	Patrick Gorman MP; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
21/12/2019	The West Australian	Report on ASIC court case against Theta Asset Management and ASICs recommendation of lodging AFCA complaints	https://www.pressreader.com/australia/the-west-australian/20191221/282170768051147
31/01/2020	Worrell's Solvency & Forensic Accountants	Report to Creditors - Theta Asset Management Ltd; information on lodging an AFCA complaint	Email attachment
31/01/2020	Clayton Utz	Forwarding copy of Worrells Report to Creditors	Email with above report attached
Feb 2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/february-2020
28/02/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
27/03/2020	AFCA	Statement on Sterling complaints	https://www.afca.org.au/news/latest-news/statement-on-sterling-complaints
15/04/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
23/04/2020	Finance Feeds	Report on ASICs recommendation of lodging AFCA complaints	https://financefeeds.com/asic-insists-interest-sterling-group-investors-lodge-complaints-afca/
09/05/2020	The West Australian	Report on Sterling Collapse, AFCA determination for SIT complainant, reiterated ASIC advice to lodge AFCA complaint	https://thewest.com.au/business/sterling-first-fight-rages-on-for-elderly-victims-ng-b881542023z
20/07/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/july-2020
15/07/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair); Daniel Crennan (ASIC Deputy Chair); Warren Day (ASIC Executive Director); James Shipton (ASIC Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
04/08/2020	Mandurah Mail	Report on court cases; comments from Consumer Protection commissioner Lanie Chopping – coordinating with AFCA for compensation claims for loss of investment money.	https://www.mandurahmail.com.au/story/6861824/i-can-actually-hear-my-wife-sobbing-peel-residents-face-court-to-get-their-life-savings-back/?fbclid=IwAR2kEDEYUE668q0QU38sZqBV0XEKx3RvEUokN6LofaW23EIOKC RspJ9HDGc

Date	Originator	Subject Matter	Notes
07/08/2020	Money Management	Report on PJC, ASIC recommendations to lodge AFCA complaints	https://www.moneymanagement.com.au/news/policy-regulation/asic-urges-continuing-complaints-despite-afca-pause
24/08/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
26/08/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
09/09/2020	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group
17/09/2020	Heritage Radio	Interview with Andrew Hastie MP, recommendation to lodge AFCA complaints (00:02:51 timestamp)	Audio recording available upon request
14/10/2020	ABC 7.30 Report	Report on CSLR delays, ASIC recommendations	https://www.abc.net.au/news/2020-10-14/the-people-left-waiting-for-new-compensation-scheme/12726518 https://www.abc.net.au/7.30/people-left-in-limbo-waiting-for-new-compensation/12767788
20/11/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
18/01/2021	ASIC – Sterling Investigation Team	Recommendation to contact AFCA	Response to letter sent by Sterling First Action Group
19/03/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
19/03/2021	Senator Jane Hume (Minister for Superannuation, Financial Service, and the Digital Economy)	References the Government commitment to establish CSLR	Email response to letter sent by Sterling First Action Group
25/03/2021	Independent Financial Advisor	Report on PJC, Armour and Chester recommendations to lodge AFCA complaints	https://www.ifa.com.au/news/29347-cslr-delays-keep-scam-victims-waiting
12/04/2021		Reiterated Government commitment to establish CSLR; encouraged lodgement of AFCA complaints	Teleconference with committee members of Sterling First Action Group
04/06/2021	WA Consumer Affairs	Encouraged all Sterling Group victims to lodge AFCA complaint	Phone call with committee member of Sterling First Action Group

Date	Originator	Subject Matter	Notes
18/06/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Justin Untersteiner (COO AFCA); David Locke (CEO AFCA); Dr June Smith (Deputy Chief Ombudsman AFCA); Cathie Armour (Commissioner ASIC) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
23/07/2021	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group

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Compensation Scheme of Last Resort – Consultation Process

Submission by
Sterling First Action Group

August 2021

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About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e., family members acting on behalf of elderly parents).

In the 2 years since the collapse, the Sterling First Action Group has continued to support victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state, and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services (September 2019, February 2020, July 2020, March 2021, June 2021); and raising awareness through the media.

In preparation for this submission, we also conducted a short online survey of victims who suffered financial losses associated with the collapse of the Sterling Group. The survey was designed to show the amount invested by victims and highlight the impact of the current proposal of a CSLR compensation cap of \$150,000 per claimant. This data will be referenced throughout our submission, with a full copy of the survey results available in the Appendix.

The majority of Sterling Group victims have lodged complaints with AFCA, either against Theta Asset Management Ltd (victims with investments in the Sterling Income Trust), or Libertas Financial Planning Pty Ltd (victims with investments in Sterling Corporate Services and the Silverlink Investment Company).

Affiliations

In June this year we became aware of a campaign being mounted by consumer advocacy group, CHOICE, calling on the Federal Government to establish the Compensation Scheme of Last Resort (CSLR) as a top priority. As our objectives were identical, the Sterling First Action Group and CHOICE mutually agreed to cooperate and align our campaigns. Since that time, we have been in regular contact and have contributed material to their forthcoming media campaign.

Our Experience & Recommendations

In responding to the CSLR Proposal Paper, we have elected to focus on key areas we believe the proposed financial services compensation scheme of last resort (CSLR) will most impact Sterling Group victims. As such, our submission will concentrate on **Scope**, **Payment Arrangements** and **Funding Arrangements**

Scope

It is proposed that the CSLR will be limited to five financial products and services: personal advice on relevant financial products to retail clients; credit intermediation; securities dealing; credit provision; and insurance product distribution. However, it is also proposed that managed investment schemes (MIS) are to be excluded from the scope of the CSLR. This directly contradicts the Ramsey Review recommendations¹ and the Federal Government commitment to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry². AFCA also support the inclusion of MIS in the CSLR, in particular the issue of fairness and potential for consumer confusion if specific financial services are excluded.

Of note is AFCA's comment on the importance of the CSLR covering MIS due to *"the involvement of other financial firms or their subsidiaries in the funding, distribution or other arrangements with MIS"* (Australian Financial Complaints Authority, 2020). This is of critical importance to Sterling Group victims, as the vast majority were not aware that they were investing in a MIS; they believed they were paying rent in advance into a secure trust account.

It is recognised that existence of a CSLR may present a moral hazard where both the promoters of a MIS and investors in it may consider the existence of a safety net (i.e., the CSLR) will provide them with the incentive to indulge in more speculative behaviour than is prudent. However, we contend that this caveat should not apply to historical cases as they transpired prior to the existence of a CSLR, and hence there was no safety net that influenced the behaviour of the either scheme promoter or the investors.

It is also important to note that Sterling Group investors relied on financial advice that was misleading and deceptive³ and were provided with defective product disclosure statements that contained misleading or deceptive information⁴. As such, the issue of a moral hazard in this scenario is not applicable. Furthermore, the Ramsay Review determined the moral hazard concerns raised during consultation for the CSLR in 2019/2020 could not be substantiated⁵.

Should MIS be totally excluded from the scope of the CSLR, it would deliver a devastating injustice to the victims of the Sterling Group collapse who, for over 2 years now, have been repeatedly advised by Treasury, DMIRS (WA Consumer Protection), and ASIC to seek compensation through AFCA and then, when that proved inadequate, to wait for the introduction of the CSLR. More specifically from ASIC that *"it is in the interests of investors in the Sterling Group of Companies to lodge and maintain their complaints with AFCA"* (ASIC, 2020). Refer to Appendix 2 for a comprehensive timeline of referrals to lodge complaints with AFCA.

RECOMMENDATION 1.1

Scope of the CSLR to include managed investment schemes. CSLR scope to be clearly prescribed in primary legislation.

¹ Ramsay Review Supplementary Final Report, para 4.59

² Government response to Royal Commission, pg 36

³ AFCA Case Determinations 667682 and 655484

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

⁵ Ramsay Review Supplementary Final Report, para 3.52

RECOMMENDATION 1.2

If the previous recommendation is not viable, eligible AFCA cases and unpaid determinations associated with managed investment schemes that arose between 1 November 2018 and before scheme establishment, to be funded as part of the one-off ‘accumulated unpaid determinations’ levy.

Payment Arrangements

Eligibility for CSLR payment – Financial firm unable or unwilling to pay

Insolvency is not the only issue to consider in the event of a CSLR claim being in the event of an unpaid or delayed payment of an AFCA determination. AFCA Case 655484 (against Libertas Financial Planning Pty Ltd) is another example of the inadequacies in the proposed CSLR scheme, which will continue unless MIS are included, and the determinations arising from AFCA investigations are enforced (either by ASIC or the CSLR operator).

Case 655484 was related to the Silverlink Investment Company and the sale of S Preference Shares, where AFCA found in favour of the complainant. The transactions were carried out by the Sterling Group as an agent of Libertas Financial Planning Pty Ltd, who hold a financial services provider license. Libertas disputed the recommendation, and it was escalated to the Ombudsman, who also found in favour of the complainant. In August 2020 a final determination was made in favour of the complainant, with Libertas ordered to pay compensation of \$268,207.57 for losses suffered because of the authorised representatives misleading and deceptive conduct.

Following the ombudsman decision, several other complaints against Libertas proceeded to the initial recommendation and loss calculation stage. However, Libertas continued to dispute these recommendations, using NSW Supreme Court decision⁶ in support of their refusal to comply with AFCA’s determinations. All complaints against Libertas stalled as a result, with AFCA stating they were “*proactively contacting Sterling complainants saying [they were] reviewing the NSW Supreme Court decision*” (Prior, 2020). No further progress has been made on any complaints associated with Libertas.

RECOMMENDATION 2

CSLR operator to waive 12-month notification requirement for all eligible, pre-existing AFCA cases and unpaid determinations associated with managed investment schemes, that arose between 1 November 2018 and before scheme establishment.

Claims payment process – Compensation cap

Responses to our survey overwhelmingly revealed that the maximum proposed compensation cap of \$150,000 for each AFCA determination will be inadequate to cover the financial losses of Sterling Group victims. Results indicate that 66% of victims suffered losses greater than the proposed cap, with 23% at \$151,000 - \$200,000; 32% at \$201,000 - \$250,000; and 11% over \$251,000. Refer to the Appendix for more detailed information on our survey results.

Whilst we acknowledge the proposed maximum compensation amount for the CSLR is broadly aligned with the United Kingdom’s Financial Services Compensation Scheme’s maximum of £85,000; this cap does not align with the Federal Government’s agreement⁷ to implement a CSLR consistent with the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Likewise,

⁶ DH Flinders Pty Limited v Australian Financial Complaints Authority Limited [2020] NSWSC 1690

⁷ Government response to Royal Commission, pg 36

it also contradicts The Hon Scott Morrison’s agreement⁸ to enhance access to redress for consumers by ensuring the CSLR will have the compensation caps recommended in the Ramsay Review.

As such, we feel it is necessary to highlight these recommended compensation caps in further detail, as well as the strong industry support identified during consultation for the CSLR in 2019/2020.

The Ramsey Review recommended aligning compensation limits of the CSLR with those imposed by AFCA⁹, which is currently \$542,500 compensation in most claims of direct financial loss¹⁰. The proposed CSLR cap of \$150,000 equates to less than 30% of the limit recommended, and agreed upon, by the Federal Government.

Equally, the alignment of the CSLR compensation cap with AFCA limits was evident in many submissions to the Treasury Discussion Paper. AFCA’s own submission¹¹ supported aligning the CSLR claim limits with compensation caps with AFCA’s limits and caps. Numerous industry bodies and/or organisations that support this alignment, including: CHOICE, Consumer Credit Legal Service (WA) Inc, Financial Counselling Australia, Financial Rights Legal Centre, SR Group, Legal Aid (NSW), Consumer Action Law Centre, CPA Australia, The Association of Superannuation Funds of Australia (ASFA), and Industry Super Australia (ISA).

The Sterling First Action Group strongly oppose setting a CSLR compensation cap; however, if a cap is to be imposed, it should be aligned with AFCA claim limits, be indexed accordingly to increase, and continue to align over time.

RECOMMENDATION 3.1

Align CSLR compensation limits with AFCA claim limits. Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 3.2

If the previous recommendation is not viable, CSLR compensation limits to be set at 80% of the maximum AFCA claim limit (i.e., the maximum compensation to be paid is 80% of the current AFCA limit of \$542,500 for direct financial loss). Ensure prescribed CSLR compensation limits are indexed accordingly to increase and remain aligned with AFCA claim limits in the future.

RECOMMENDATION 3.3

If the previous recommendation is not viable, CSLR compensation limits to be aligned with APRA Financial Claims Scheme limit of \$250,000.

Funding Arrangements

AFCA Case 667682 (against Theta Asset Management Ltd) is a very good example of why injustices can occur without a comprehensive CSLR in operation. In March 2020 determination was made in favour of the complainant, with the financial firm ordered to pay compensation of \$118,957.60 for losses suffered due to the authorised representatives misleading and deceptive conduct.

⁸ Government response to Ramsey Review, Attachment B

⁹ Ramsay Review Supplementary Final Report, para 4.170

¹⁰ AFCA Rules; Rule D.4.3

¹¹ AFCA Submission on CSLR; pg 9

As the responsible entity for the Sterling Group, Theta Asset Management should have been responsible for paying the determination, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants appointed as the administrators. As a result, the complainants were required to liaise directly with Worrells to make a claim against Theta's PI insurance policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. Therefore, the actual amount of compensation that was paid was reduced to \$18,957.60 from which the liquidator then deducted a \$614.60 administration fee.

Despite enquiries by AFCA and lawyers representing Mr & Mrs F, the insurer has refused to provide a copy of the PI insurance policy (citing confidentiality), so we have been unable to verify the veracity of the excess amount. They have however, confirmed that the excess clause would be applied against every claim made. Without a CSLR in place this is a clear miscarriage of justice and reveals a potential opportunity for financial firms to avoid paying the full amounts of compensation as determined by AFCA.

This also raises the important point that if Professional Indemnity insurance existed, even with the excess clause, why did AFCA not continue to process more determinations so that victims could at least recover part of their losses? It appears the answer lies in the fact that AFCA were not receiving remuneration for any work once Theta were placed in liquidation, as AFCA "*...gets most of its revenue from fees charged to companies for resolving complaints*" (Roddan & Shapiro, 2020). This was further confirmed by AFCA CEO David Locke in June 2020, as he reportedly stated "*When we take on cases with organisations that are or become insolvent, we are doing work that we don't get paid for*" (Roddan & Shapiro, 2020).

As a not-for-profit organisation, we understand that AFCA rely solely on fees/levies (membership and complaint resolution) for revenue. However, it is clearly evident the two major protections that should apply to an independent EDR scheme have failed:

1. An effective EDR cannot exist when it is dependent upon payment of fees by one of the parties; and
2. No verification to ensure PI insurance policy terms of members are adequate to provide true protection to the people most vulnerable – the investors.

Once again this reveals the dire need for the CSLR to be implemented without delay.

RECOMMENDATION 4

Scope of the CSLR to include disputes where misconduct is proven by AFCA investigation (irrespective of the financial product and/or service involved).

RECOMMENDATION 5

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

Appendix 1 – Survey on CSLR Draft Legislation

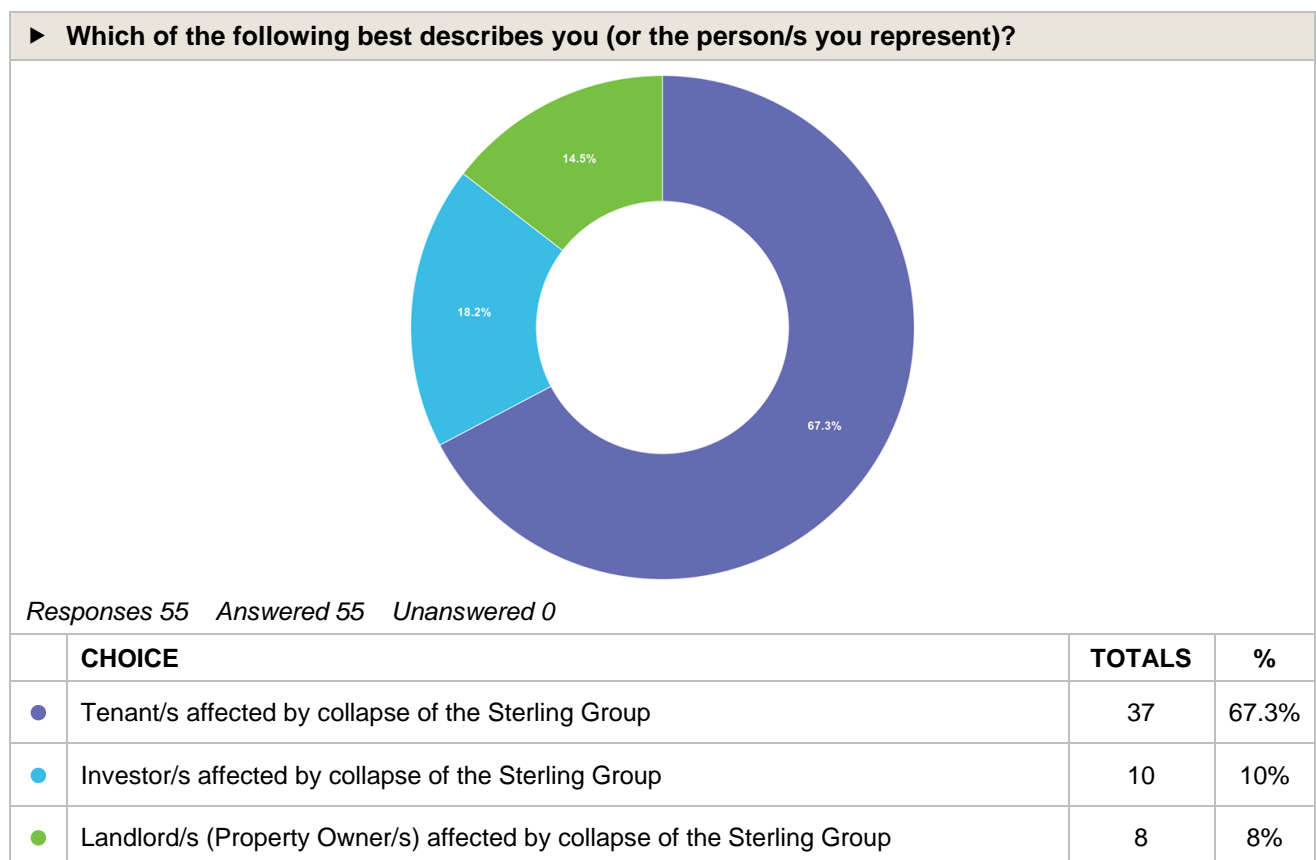
A total of 55 victims participated in the *Sterling First Action Group: Submission on CSLR Draft Legislation*.

We received responses from a variety of victims of the Sterling Group collapse. For ease of data collection, the victims are categorised into three broad categories:

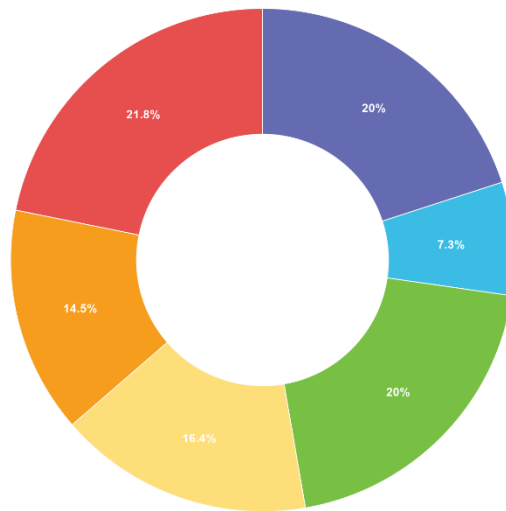
1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the Silverlink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 2 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e., Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to SIT).

In some instances, tenants and owners/landlords were also encouraged to invest in shares/units. To ensure accuracy of the data collection, survey respondents were asked to categorise themselves into one of the three categories that best described their situation.

Survey Results



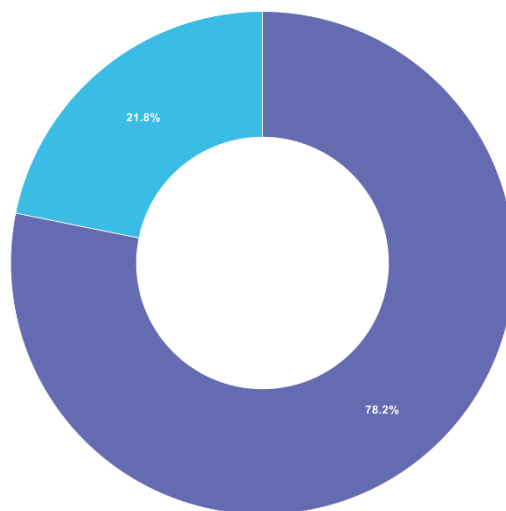
► **When did you submit your AFCA complaint?**



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Prior to July 2019	11	20%
● July - September 2019	4	7.3%
● October - December 2019	11	20%
● January - March 2020	9	16.4%
● After March 2020	8	14.5%
● Other (please specify): <i>Unsure of date; Can't remember.</i>	12	21.8%

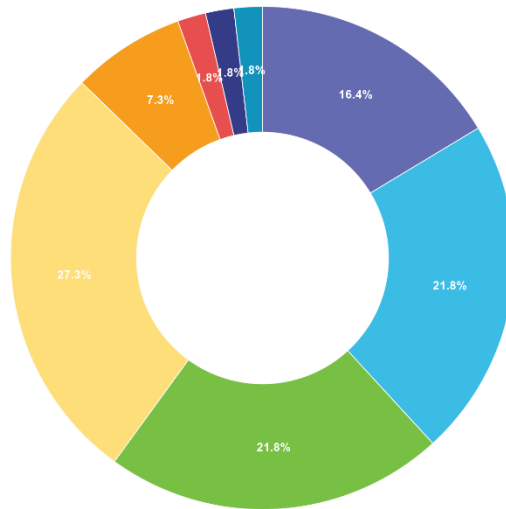
► **Who was your AFCA complaint against?**



Responses 55 Answered 55 Unanswered 0

CHOICE	TOTALS	%
● Theta Asset Management Ltd (SIT/Sterling Income Trust victims)	43	78.2%
● Libertas Financial Planning Pty Ltd (Silverlink victims)	12	21.8%

► Please indicate the total amount of funds you invested into the Sterling Group.



Responses 55 Answered 55 Unanswered 0

	CHOICE	TOTALS	%
●	Under \$100,000	9	16.4%
●	\$100,000 - \$150,000	12	21.8%
●	\$151,000 - \$200,000	12	21.8%
●	\$201,000 - \$250,000	15	27.3%
●	\$251,000 - \$300,000	4	7.3%
●	\$301,000 - \$350,000	1	1.8%
●	\$351,000 - \$400,000	1	1.8%
●	Over \$400,000	1	1.8%

► Please indicate how your total investment was distributed*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by emailing cath.dall@bigpond.com

SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$280,000				
\$173,989	\$16,790	\$55,174	\$4,544	\$25,000
\$110,000	\$9,680			
\$179,063	\$17,424			\$3,613 in rent
				Rental income (\$350 a week + 2% increments every year)
		\$70,000		
\$150,000	\$15,000		\$20,000	
\$143,000	\$12,000	\$10,000 in Development Units	\$3,000	
\$228,000	\$22,000		\$15,000	Have paid over \$16,000 in rent to stay in the house; still paying \$290 per week.
\$154,000	\$13,500		\$15,000	
\$189,916	\$18,480			\$1604 (rent paid for 1 month)
		\$100,000 into shares \$30,000 into RMIT		
\$208,152	\$20,240		\$1,608	
\$229,000				
\$145,000				
\$300,000	\$17,000	\$500,000	\$12,000	
\$104,781	\$22,506	\$230,531		
		\$40,000		
		\$100,000		
			\$553,885 (total house/land package)	Purchased land, built to SNLL specs.
\$122,000	\$13,200	\$78,800	\$580	
\$230,000	\$20,000	\$209,760		

SNL/Sterling New Life Lease	Administration Fees	Shares	Rental Property Improvements	Other
\$193,344	\$18,656		\$3740	
		\$100,000		
\$179,426	\$17,447		\$1,700	\$1,387 (first month's rent)
		\$40,000		Rent loss of \$44,000 (+ legal costs)
\$315,000			\$12,000	
\$157,000	\$7,800			
\$175,000	\$20,000			
		\$55,000		
\$192,000	\$18,000			
		\$400,000 Development units		
\$125,000	\$8000	\$25,000	\$2,000	
\$219,000	\$20,000	Income units 40% (\$79,285) Growth units 60% (\$118,927)		
\$201,000	\$19,000			
\$122,000	\$13,0000		\$7,250	\$2,500
\$234,000		\$20,000	\$8,000	
\$199,000	\$20,000			
\$190,000	\$18,000			
\$182,284	\$15,851		\$10,000	\$8,600 (ATO taxes)
\$189,674	\$16,494		\$2,096	
\$130,000	\$12,408	Income units \$51,041 Growth units \$76,561	\$8,000	
\$165,000	\$15,000			
\$208,512	\$20,240	\$83,261 into income units \$124,891 into growth units		\$1608 (first month rent)
\$140,000	\$12,320	\$137,680		
\$139,000	\$12,500		\$5,000	

Feedback Received*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by emailing cath.dall@bigpond.com

► Do you have any other comments?
<i>I can't recall the breakdown of the payment. The lease was in the name of [REDACTED] and [REDACTED]. [REDACTED] passed away on 13/7/2019.</i>
<i>We are landlords who have been affected by the tenants refusing to move out of our property and have had to pay huge legal fees to get our property back. They have contravened the rental agreement and not paid any rent. All the tenants have done is exacerbated a terrible situation for everyone and refused no matter what to negotiate. We have repeatedly tried to negotiate.</i>
<i>Please up the limit to recover funds for such instances to at least \$250,000 to cover such loses.</i>
<i>I regret investing in Sterling every day.</i>
<i>Due to default by SNLL and non-payment of rent, [REDACTED] has been forced to sell her family residence and the Bank has acquired the rental property,</i>
<i>We had loss through shares, as well as no payment of rent for 2 years, then legal fees on top.</i>
<i>Before signing my mother was told that if she passed away the SNL fund would be returned back to the estate to be distributed as per the will. She has now passed away and no recourse for her sons to obtain what is rightfully theirs.</i>
<i>Yes, as landlords, we were treated badly by the tenants as a group. The tenants took out their anger on us. We DID not take the money. We lost the lease rental amount for 2 years, but still had to pay the mortgage. Almost broke us financially and definitely broke us emotionally.</i>
<i>I am 83 years of age, I am living in a camper van and just surviving on my pension. My health has deteriorated to a point where I struggle to breath most days. I defy anyone at my age to live this way. Sterling should be prosecuted to the full force of the law. They still have a roof over their heads, we do not.</i>
<i>Please compensate the victims ASAP. It has been more than 2 years and it's not acceptable</i>
<i>I live just around the corner from Travis Jones, who signed me up even knowing they were failing. He has a home and drives a BMW. My \$50,0000 was my nest egg. I think I bought his car. I think of my gullible behaviour every day. Lies, lies, lies. I also think of all those people who lost their homes, the Jones I believe own theirs. Why wasn't this red flagged?</i>
<i>Also made a claim of \$10,000 for hardship suffered due the collapse of SNL</i>
<i>CSLR cap should be aligned with AFCA compensation caps.....as per previous Commission Recommendations. Caps (and levies) could be reviewed in time once more white-collar criminals are caught and weeded out of the financial systems. Less crooks = lower costs of potential compensation.</i>
<i>I'd be interested to know if the \$8,600.00 I paid to ATO on my own money, as my own money became interest earnt by Theta - will this be refunded?</i>
<i>Yes. I am 42 years old (not a senior) - 2 kids and stuck in the rent trap. My future is really screwed, can't afford to live, no security of a home. Biggest mistake of my life!</i>

Appendix 2 – AFCA Referrals Timeline

Since the collapse of the Sterling Group in May 2019, victims who suffered financial losses have been repeatedly urged to pursue compensation by lodging a complaint with AFCA. The table below provides examples of the instances when this advice was provided. Links have been supplied to any online sources; electronic or hard-copies of other sources can be supplied (with personal or identifying information redacted) can be obtained by emailing cath.dall@bigpond.com

Date	Originator	Subject Matter	Notes
09/05/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
14/06/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
21/06/2019	6PR	Interview with Federal Assistant Treasurer Michael Sukkar; discusses AFCA complaints (00:09:20 timestamp)	https://www.6pr.com.au/podcast/asic-launches-investigation-over-its-handling-of-sterling-first/?fbclid=IwAR1iiqNihNHwOxG8tVogYBKQaizol8pCc-STwE-ZsTa4Kjnz3gJRc_3R8ZE
02/07/2019	Mark McGowan	Response to letter from Sterling Group victim; information on lodging an AFCA complaint	Email attachment
25/07/2019	Theta Asset Management	SIT unit holder update; information on lodging an AFCA complaint	Email attachment
26/07/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	Website snapshot
31/07/2019	WA Consumer Protection (DMIRS)	Response to enquiry from Sterling Group victim; information on lodging an AFCA complaint	Email with above snapshot attached
02/08/2019	ASIC – Sterling Investigation Team	Response to letter from Sterling Group victim	Letter with ASIC website update snapshot
16/09/2019	House of Representatives	Motion by Andrew Hastie MP about the Sterling Group collapse; recommendation to lodge AFCA complaint. Seconded by Madeline King MP.	https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/6cd30e15-83c4-4db4-bebc-e1033048fb66/&sid=0290
17/09/2019	The West Australian	Report on Andrew Hastie MP and Madeline King MP addressing parliament; recommendations to lodge AFCA complaint received bipartisan support	https://www.pressreader.com/australia/the-west-australian/20190917/281543702629548
21/10/2019	The Treasury	Response to letter from Sterling Group victim; information on lodging a complaint with Commonwealth Ombudsman	Letter
11/12/2019	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
Sept 2019	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/september-2019

Date	Originator	Subject Matter	Notes
13/09/2019	PJC on Corporations & Financial Services; Oversight of ASIC	Patrick Gorman MP; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
21/12/2019	The West Australian	Report on ASIC court case against Theta Asset Management and ASICs recommendation of lodging AFCA complaints	https://www.pressreader.com/australia/the-west-australian/20191221/282170768051147
31/01/2020	Worrell's Solvency & Forensic Accountants	Report to Creditors - Theta Asset Management Ltd; information on lodging an AFCA complaint	Email attachment
31/01/2020	Clayton Utz	Forwarding copy of Worrells Report to Creditors	Email with above report attached
Feb 2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/february-2020
28/02/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; John Price (ASIC Commissioner) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
27/03/2020	AFCA	Statement on Sterling complaints	https://www.afca.org.au/news/latest-news/statement-on-sterling-complaints
15/04/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
23/04/2020	Finance Feeds	Report on ASICs recommendation of lodging AFCA complaints	https://financefeeds.com/asic-insists-interest-sterling-group-investors-lodge-complaints-afca/
09/05/2020	The West Australian	Report on Sterling Collapse, AFCA determination for SIT complainant, reiterated ASIC advice to lodge AFCA complaint	https://thewest.com.au/business/sterling-first-fight-rages-on-for-elderly-victims-ng-b881542023z
20/07/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/july-2020
15/07/2020	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair); Daniel Crennan (ASIC Deputy Chair); Warren Day (ASIC Executive Director); James Shipton (ASIC Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
04/08/2020	Mandurah Mail	Report on court cases; comments from Consumer Protection commissioner Lanie Chopping – coordinating with AFCA for compensation claims for loss of investment money.	https://www.mandurahmail.com.au/story/6861824/i-can-actually-hear-my-wife-sobbing-peel-residents-face-court-to-get-their-life-savings-back/?fbclid=IwAR2kEDEYUE668g0QU38sZqBVoXEKx3RvEUokN6LofaW23EIOKC RspJ9HDGc

Date	Originator	Subject Matter	Notes
07/08/2020	Money Management	Report on PJC, ASIC recommendations to lodge AFCA complaints	https://www.moneymanagement.com.au/news/policy-regulation/asic-urges-continuing-complaints-despite-afca-pause
24/08/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
26/08/2020	ASIC	Update from ASIC regarding Sterling Group investigation; information on lodging an AFCA complaint	https://asic.gov.au/about-asic/news-centre/key-matters/update-from-asic-regarding-sterling-group-investigation/
09/09/2020	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group
17/09/2020	Heritage Radio	Interview with Andrew Hastie MP, recommendation to lodge AFCA complaints (00:02:51 timestamp)	Audio recording available upon request
14/10/2020	ABC 7.30 Report	Report on CSLR delays, ASIC recommendations	https://www.abc.net.au/news/2020-10-14/the-people-left-waiting-for-new-compensation-scheme/12726518 https://www.abc.net.au/7.30/people-left-in-limbo-waiting-for-new-compensation/12767788
20/11/2020	AFCA	Advice to Sterling Group investors on making a complaint	https://www.afca.org.au/news/current-matters/sterling-group-investors/august-2020
18/01/2021	ASIC – Sterling Investigation Team	Recommendation to contact AFCA	Response to letter sent by Sterling First Action Group
19/03/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Cathie Armour (ASIC Commissioner); Karen Chester (ASIC Deputy Chair) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of46thParliament/Public_Hearings
19/03/2021	Senator Jane Hume (Minister for Superannuation, Financial Service, and the Digital Economy)	References the Government commitment to establish CSLR	Email response to letter sent by Sterling First Action Group
25/03/2021	Independent Financial Advisor	Report on PJC, Armour and Chester recommendations to lodge AFCA complaints	https://www.ifa.com.au/news/29347-cslr-delays-keep-scam-victims-waiting
12/04/2021	Amelia Hamer (Financial Services Policy Lead Adviser to Senator Jane Hume)	Reiterated Government commitment to establish CSLR; encouraged lodgement of AFCA complaints	Teleconference with committee members of Sterling First Action Group
04/06/2021	WA Consumer Affairs	Encouraged all Sterling Group victims to lodge AFCA complaint	Phone call with committee member of Sterling First Action Group

Date	Originator	Subject Matter	Notes
18/06/2021	PJC on Corporations & Financial Services; Oversight of ASIC	Senator Louise Pratt; Justin Untersteiner (COO AFCA); David Locke (CEO AFCA); Dr June Smith (Deputy Chief Ombudsman AFCA); Cathie Armour (Commissioner ASIC) Questions about Sterling Group, recommendation to lodge AFCA complaint	https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Corporations and Financial Services/No1of46thParliament/Public Hearings
23/07/2021	AFCA – Justin Untersteiner	References the Government commitment to establish CSLR, discusses CSLR scope.	Response to letter sent by Sterling First Action Group

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Review of the Australian Financial Complaints Authority

Submission by
Sterling First Action Group

March 2021

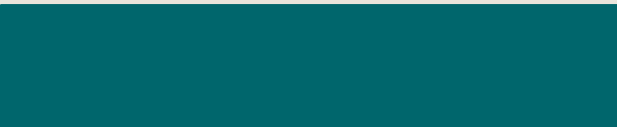


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About Us

The Sterling First Action Group initially began as a Facebook group, following the collapse of the Sterling Group of entities in May 2019. The group was originally intended to be a place where all victims of the Sterling Group collapse could exchange views, discuss how the collapse had impacted them, and to share information. The group is managed/administrated by a committee of volunteers who have been affected, be it directly or indirectly (i.e. family members acting on behalf of elderly parents).

In the 22 months since the collapse, the Sterling First Action Group has continued to support victims. This has included assistance with preparation of AFCA complaints and proof of debt lodgements with insolvency administrators; lobbying local, state and federal MPs; submission of questions to be raised at the PJC on Corporations & Financial Services (September 2019, February 2020, July 2020); and raising awareness through the media.

In preparation for this submission, we also conducted a short online survey of victims who had lodged complaints with AFCA. The survey was designed to collect data on their interactions with AFCA during the complaints process. This data will be referenced throughout our submission, with a full copy of the survey results available in the Appendix.

Against this background, we can declare we have experience with the AFCA process for complaints against both Theta Asset Management Ltd (victims with investments in the Sterling Income Trust), and Libertas Financial Planning Pty Ltd (victims with investments in Sterling Corporate Services and the Silverlink Investment Company).

Historical Context

In June 2019, the Sterling First Action Group engaged Denise Brailey to act as an advocate, and we organized a public rally in Mandurah. During her opening address at the rally, Ms. Brailey stated she “...*intend(ed) to get that money, \$20 million, back through a series of efforts within two months*” (McKnight & Hildebrandt, 2019). Her first actions were to instruct everyone to start writing letters demanding compensation be paid to victims. Hundreds of letters were sent to dozens of different people, political parties, and banking organisations, with many recipients being sent letters on multiple occasions.

Responses from letter recipients were to the effect that complainants should seek redress through AFCA, as the only government body with a mandate to provide a road to compensation. Ms. Brailey advised victims not to do this, as in her experience AFCA acted as a cover-up to let the Government off the hook where ASIC had failed to stop financial firms acting improperly, and that they (AFCA) would bury our cases.

Critically, ASIC and Treasury responses explicitly stated that they were unable to pay compensation and again urged victims to seek compensation by submitting a claim through AFCA.

Eventually Ms. Brailey reluctantly agreed to put through six “test” cases in September 2019. As it became increasingly obvious that other avenues to compensation were not proving fruitful, she eventually advised all victims to submit complaints in December 2019. We understand about 160 complaints were initially submitted, and we believe she did this to overwhelm the system so she could then vindicate her own stance and say the process was too slow.

In March 2020 Ms Brailey recommended that victims withdraw their complaints from AFCA, stating that so doing would put pressure on the Government to pay compensation out of public funds.

The committee of the Sterling First Action Group had considerable reservations about her strategies and demeanour prior to this incident, and we strongly disagreed with the recommendation to withdraw from AFCA. As such, we ceased affiliation with Ms Brailey in April 2020.

Our Experience & Recommendations

In responding to the Terms of Reference and Guidance for Submissions, we have elected to focus on the areas where we believe the operation of AFCA can be enhanced, and improvements to the external dispute resolution (EDR) scheme should be implemented. As such, our submission will concentrate on the first point only - **Delivering against statutory objectives**. In the following pages we have used AFCA case records and observations to make suggestions as to how to improve the consumer experience. We have also included the results of our survey to highlight the complainants experiences in dealing with AFCA.

Whilst we recognise the importance of having a working remedy for people with valid complaints against financial firms, we also note the fact that the corporate regulator ASIC was, in our opinion, negligent in allowing the circumstances that gave rise to the collapse of the Sterling Group in the first place. In particular, the fact the Sterling Group were able to restructure and move on from using a **Responsible Entity** (Theta Asset Management Ltd) with a defective PDS for the Sterling Income Trust (ASIC issued a stop order in September 2017), to using a **Corporate Authorised Representative** of Libertas Financial Planning Pty Ltd (with no PDS) for Sterling Corporate Services and the Silverlink Investment Company. As a result, the Sterling Group were able to collect a further \$10 million from vulnerable investors.

Fair, efficient, timely and independent complaint resolution

1. Is AFCA meeting its statutory objective of resolving complaints in a way that is fair, efficient, timely and independent?

Responses to our survey overwhelmingly revealed that **timeliness** is the key issue affecting all complainants. Results indicate that almost 60% of complaints did not get past the second phase of the complaint process (allocation of a Case Manager), with 37% halted upon lodgement of their complaint. Refer to the Appendix for more detailed information on our survey results.

We acknowledge that AFCA paused complaints against insolvent financial firms in April 2020 (affecting victims with complaints against Theta Asset Management Ltd), until the scope and timing of the Compensation Scheme of Last Resort (CSLR) is established. We also understand that AFCA has paused investigation of complaints against Libertas Financial Planning Pty Ltd due to a judgement handed down by the NSW Supreme Court regarding DH Flinders Pty Limited v Australian Financial Complaints Authority.

The result of the pauses, however? Of all the Sterling Group complaints submitted to AFCA since May 2019, only 3 reached determination stage. The most concerning aspect of this is ongoing delays complainants have experienced after lodging their complaints. More specific case examples are detailed below to highlight the discrepancies in the timely resolution of complaints.

► Case 605932 – Mr C; complaint against Theta Asset Management Ltd	
Lodgement Date:	March 2019
Summary of Complaint:	Investment into Sterling Income Trust (acquisition of Development, Management Company and Growth Units)
Complaint Progress:	Determination issued in favour of financial firm (April 2020)
Approximate Timeline:	13 months
► Case 788910 – Mr H; complaint against Theta Asset Management Ltd	
Lodgement Date:	May 2019
Summary of Complaint:	Investment into Sterling Income Trust (acquisition of Income and Management Company Units)
Complaint Progress:	Case manager allocated
Current Status:	Paused
Approximate Timeline:	22 months (ongoing)

► Case 667682 – Mr & Mrs F; complaint against Theta Asset Management Ltd	
<i>Lodgement Date:</i>	September 2019
<i>Summary of Complaint:</i>	Investment into Sterling Income Trust (linked to Sterling New Life lease)
<i>Complaint Progress:</i>	Determination issued in favour of complainants (March 2020)
<i>Current Status:</i>	Claim made against professional indemnity insurance policy
<i>Approximate Timeline:</i>	6 months
► Case 667733 – Mr & Mrs S; complaint against Theta Asset Management Ltd	
<i>Lodgement Date:</i>	September 2019
<i>Summary of Complaint:</i>	Investment into Sterling Income Trust (linked to Sterling New Life lease)
<i>Complaint Progress:</i>	Telephone interview with case manager
<i>Current Status:</i>	Paused
<i>Approximate Timeline:</i>	18 months (ongoing)
► Case 655484 – Mr & Mrs B; complaint against Libertas Financial Planning Pty Ltd	
<i>Lodgement Date:</i>	December 2019
<i>Summary of Complaint:</i>	Investment into Silverlink Investment Company (linked to Sterling New Life lease)
<i>Complaint Progress:</i>	Determination issued in favour of complainants (August 2020)
<i>Current Status:</i>	Unknown
<i>Approximate Timeline:</i>	8 months
► Case 691448 – Mr & Mrs S; complaint against Libertas Financial Planning Pty Ltd	
<i>Lodgement Date:</i>	January 2020
<i>Summary of Complaint:</i>	Investment into Silverlink Investment Company (linked to Sterling New Life lease)
<i>Complaint Progress:</i>	Preliminary assessment provided by case manager (October 2020)
<i>Current Status:</i>	Paused
<i>Approximate Timeline:</i>	14 months (ongoing)
► Case 692385 – Mrs P; complaint against Theta Asset Management Ltd	
<i>Lodgement Date:</i>	January 2020
<i>Summary of Complaint:</i>	Investment into Sterling Income Trust (linked to Sterling New Life lease)
<i>Complaint Progress:</i>	Complaint lodged; no case manager allocated
<i>Current Status:</i>	Paused
<i>Approximate Timeline:</i>	14 months (ongoing)

The second major issue highlighted in our survey was **efficiency** of the complaints process, with 30% of respondents indicating they had difficulty lodging a complaint. Examples of feedback we received have been provided in the Appendix.

RECOMMENDATION 1

Where there are multiple complainants with comparable circumstances, a precedent case should determine the culpability of the financial firm, allowing case managers to concentrate on the quantum of compensation, rather than having to establish the same pattern of behaviour in each individual case.

Consistent, predictable, and quality outcomes

1.1 Is AFCA's dispute resolution approach and capability producing consistent, predictable, and quality outcomes?

The cases detailed above also demonstrate the lack of **consistency** in both the management and outcome of complaints. A good example of this is Cases 667682 and 667733 against Theta Asset Management Ltd, and Cases 655484 and 691448 against Libertas Financial Planning Pty Ltd. The table below shows a comparison of these against each other. This comparison highlights issues with the management of complaints that are almost identical, yet have been handled differently, indicating a lack of consistency in AFCA's dispute resolution approach.

► Case 667682 – Mr & Mrs F compared to Case 667733 – Mr & Mrs S		
Complaint Against:	Theta Asset Management Ltd	Identical in both cases
Lodgement Date:	September 2019	Similar lodgement dates
Summary of Complaint:	Investment into Sterling Income Trust (linked to Sterling New Life lease)	Identical in both cases
Complaint Progress:	Case 667682 – Mr & Mrs F: Determination issued in favour of complainants (March 2020) Case 667733 – Mr & Mrs S: Telephone interview with case manager	No consistency
Approximate Timeline:	Case 667682 – Mr & Mrs F: 6 months Case 667733 – Mr & Mrs S: 18 months (ongoing)	No consistency
► Case 655484 – Mr & Mrs B compared to 691448 – Mr & Mrs S		
Complaint Against:	Libertas Financial Planning Pty Ltd	Identical in both cases
Lodgement Date:	Case 655484 – Mr & Mrs B: December 2019 Case 691448 – Mr & Mrs S: January 2020	1 month difference in lodgement dates
Summary of Complaint:	Investment into Silverlink Investment Company (linked to Sterling New Life lease)	Identical in both cases
Complaint Progress:	Case 655484 – Mr & Mrs B: Determination issued in favour of complainants (August 2020) Case 691448 – Mr & Mrs S: Preliminary assessment provided by case manager (October 2020)	No consistency
Approximate Timeline:	Case 655484 – Mr & Mrs B: 8 months Case 691448 – Mr & Mrs S: 14 months (ongoing)	No consistency

Another critical concern is that AFCA currently will not consider complaints against insolvent companies “*Until there is certainty provided about the scope and timing of the Compensation Scheme*” (AFCA, 2020). This provides an enormous hole in the capability to provide a quality outcome. Equally, it seems that AFCA does not have the authority to demand access to the Professional Indemnity insurance policy held by its members, or the administrators of their members (in the case of insolvency).

In the case of Mr & Mrs F (Case 667682 against Theta Asset Management Ltd), a determination was made in their favour, with the financial firm ordered to pay compensation of approximately \$120,000 for losses suffered because of the authorised representatives misleading and deceptive conduct. As the responsible entity for the Sterling Group, Theta Asset Management should have been responsible for paying Mr & Mrs F, however they declared insolvency in December 2019, with Worrells Solvency & Forensic Accountants appointed as the administrators. As a result, Mr & Mrs F were required to liaise directly with Worrells to make a claim against Theta's PI insurance policy. The claim was successful, however an amount of \$100,000 was deducted, with the insurer claiming this was the amount of excess stipulated in the policy. To add insult to injury, Worrells then deducted a further amount of \$613.80 for expenses incurred in submitting the insurance claim.

Despite enquiries by AFCA and lawyers representing Mr & Mrs F, the insurer has refused to provide a copy of the PI insurance policy (citing confidentiality), so we have been unable to verify the veracity of the excess

amount. They have however, confirmed that the excess clause would be applied against every claim made. Without a CSLR in place this is a clear miscarriage of justice and reveals a potential opportunity for financial firms to avoid paying the full amounts of compensation as determined by AFCA.

Members of AFCA should be required to lodge a copy of their PI insurance policy for their membership to be considered valid. It may also indicate that perhaps a mechanism should be in place to ensure determinations made can be delivered. In Mr & Mrs F's case, once their AFCA determination was finalised, their case was closed, and it was up to them to liaise with the financial firm (or in this case the administrator, Worrells), to obtain the compensation deemed payable by AFCA. If AFCA are unable to hold their members accountable for decisions made against them, what is the point of the entire complaints process?

RECOMMENDATION 2

Introduction of the Compensation Scheme of Last Resort (CSLR) to be accelerated and in operation no later than the end of this calendar year (2021). Scope to be determined, published and open for public consultation as soon as reasonably practicable.

RECOMMENDATION 3

Current and prospective members of AFCA to provide a copy of their current PI insurance policy to be deemed eligible for an AFCA membership.

RECOMMENDATION 4

Determinations made against a financial firm to be followed up by AFCA to ensure compensation deemed payable has been received by the complainant.

Responding to systemic issues arising from complaints

1.2 Are AFCA's processes for the identification and appropriate response to systemic issues arising from complaints effective?

In the case of complaints arising from the collapse of the Sterling Group, many of the circumstances were common between the complainants, yet the AFCA case officers continued to ask the complainants the same questions. We have also received reports of complainants being asked to supply the same information to their case manager on multiple occasions.

Numerous victims of the Sterling Group are elderly, with limited access to technology (some do not have a mobile phone or email address). Many also struggle with the amount of work required in lodging and managing an AFCA complaint (i.e. gathering the evidence required, responding to requests for additional information, etc.). As an example, in the case of Mrs L (Case 692338 against Libertas Financial Planning Pty Ltd), an additional six supplementary evidence submissions were requested by her AFCA case manager.

Due to the commonality in circumstances of the victims, we published a variety of resources to assist them with collating their information and lodging their AFCA complaints (i.e. timeline templates, advice on preparing for a tele-interview with their case manager, processes for reinstating withdrawn or cancelled complaints, etc.).

RECOMMENDATION 5

Implementation of an online complaints portal that allows complainants to access data and evidence they have submitted, and view progress of their complaint. This can be used by case managers to provide updates and cross reference information between similar complaints, reducing the reliance on email attachments for submission of supplementary information.

Enhancements to funding model

1.3 Do AFCA's funding and fee structures impact competition? Are there enhancements to the funding model that should be considered by AFCA to alleviate any impacts on competition while balancing the need for a sustainable fee-for-service model?

As a not-for-profit company, we understand that AFCA are heavily reliant on fees (membership and complaint resolution) for revenue. However, the two major protections that should apply to an independent external dispute resolution (EDR) scheme have failed:

1. An effective dispute resolution scheme cannot exist when it is dependent upon payment of fees by one of the parties; and
2. No verification to ensure PI insurance policy terms of members are adequate to provide true protection to the people most vulnerable – the investors.

Considering AFCA “...gets most of its revenue from fees charged to companies for resolving complaints” (Roddan & Shapiro, 2020), it is not surprising that AFCA paused complaints against insolvent financial firms in April 2020. This was further confirmed by AFCA CEO David Locke in June 2020, as he reportedly stated “When we take on cases with organisations that are or become insolvent, we are doing work that we don't get paid for” (Roddan & Shapiro, 2020). This is further evidence that the current AFCA funding and fee structures are inadequate, as an EDR scheme cannot be effective, independent, and sustainable if there are no means to support the costs of investigating insolvent companies.

This situation also reveals the dire need for the CSLR to be implemented without delay. Although the Government has not yet settled the scope and timing, our greatest concern is the scope will not include disputes relating to firms that are insolvent.

Whilst we acknowledge that excluding these types of disputes would significantly lower the costs associated with the CSLR, it goes directly against the Government's commitment to establish a CSLR “to ensure that consumers and small businesses receive compensation where a financial service provider is found to have engaged in misconduct and the provider is unable to pay” (The Australian Government - The Treasury, 2019).

RECOMMENDATION 6

Scope of the CSLR to include disputes where misconduct is proven (irrespective of the members insolvency).

RECOMMENDATION 7

Allocate funding to cover the costs associated with the investigation of complaints against insolvent financial firms.

Appendix – Survey on AFCA Effectiveness

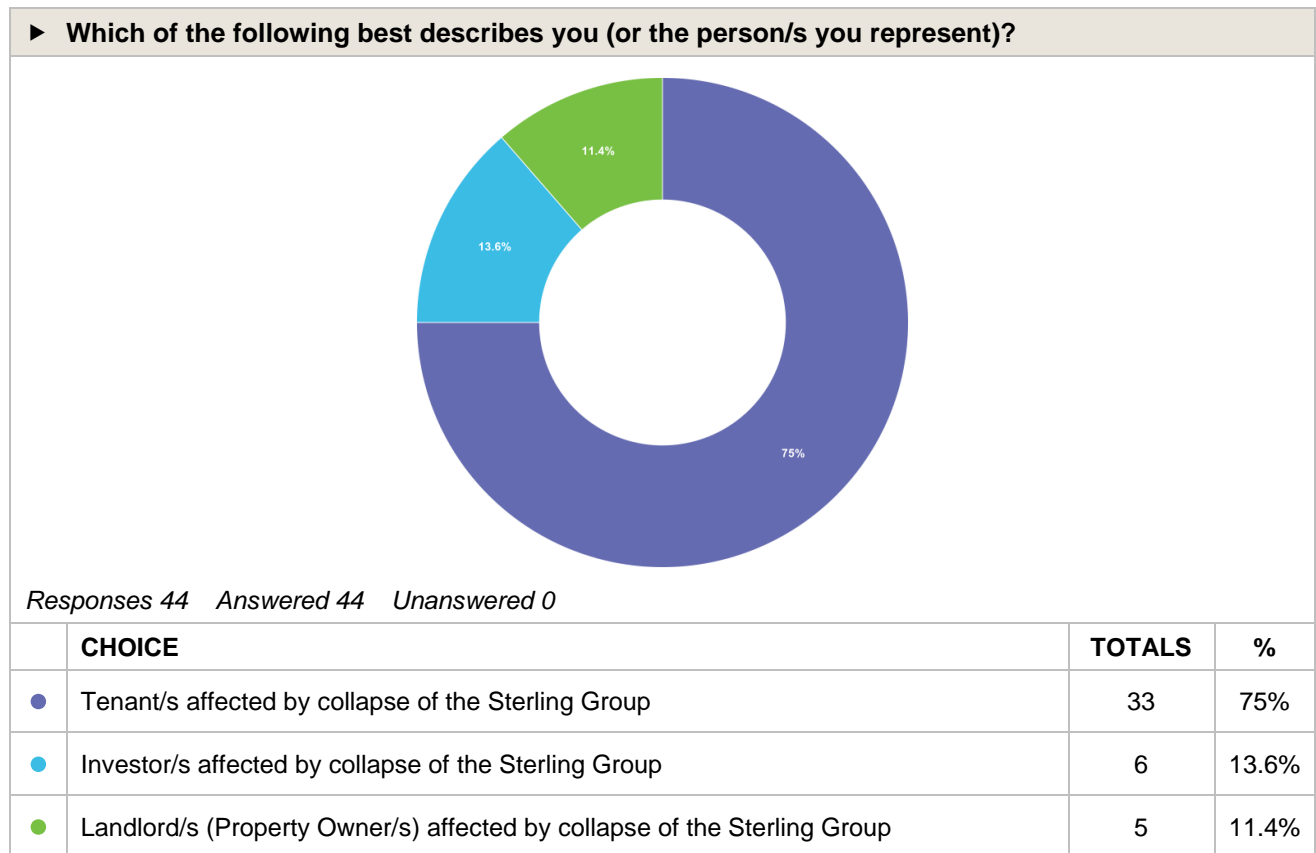
A total of 44 victims participated in the *Sterling First Action Group: Submission on AFCA Effectiveness*.

We received responses from a variety of victims of the Sterling Group collapse. For ease of data collection, the victims are categorised into three broad categories:

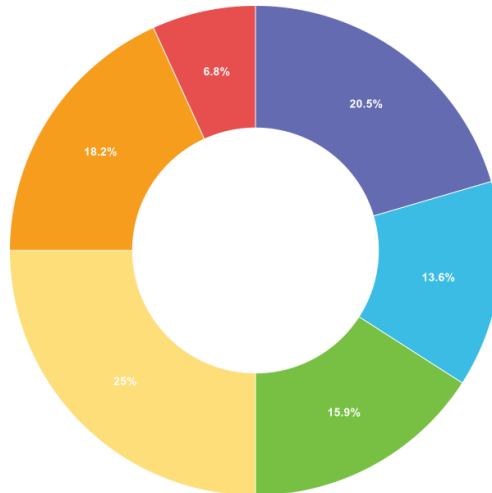
1. **TENANTS WITH STERLING NEW LIFE (SNL) LEASES:** The tenants upfront rental payment (their investment) went into two different funds – either the Sterling Income Trust or the Silverlink Investment Company.
2. **PROPERTY OWNERS/LANDLORDS:** Leased their property to the tenants via a subsidiary of the Sterling Group. Lease arrangements were complex and varied significantly, with many owners not having received rental income for over 2 years.
3. **SHAREHOLDERS:** Invested in a variety of shares or units in different Sterling Group entities. Some shareholders have had their original investment rolled over several times (i.e. Heritage to RMIT, RMIT to Sterling First Australia, Sterling First Australia to SIT).

In some instances, tenants and owners/landlords were also encouraged to invest in shares/units. To ensure accuracy of the data collection, survey respondents were asked to categorise themselves into one of the three categories that best described their situation.

Survey Results



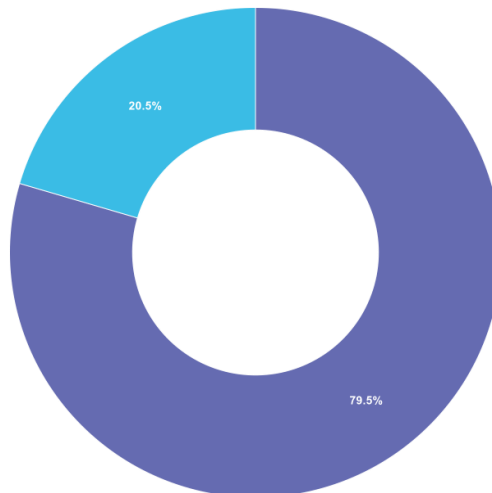
► **When did you submit your AFCA complaint?**



Responses 44 Answered 44 Unanswered 0

CHOICE	TOTALS	%
● Prior to July 2019	9	20.5%
● July - September 2019	6	13.6%
● October - December 2019	7	15.9%
● January - March 2020	11	25%
● After March 2020	8	18.2%
● Other (please specify): <i>Unsure of date; Can't remember.</i>	3	6.8%

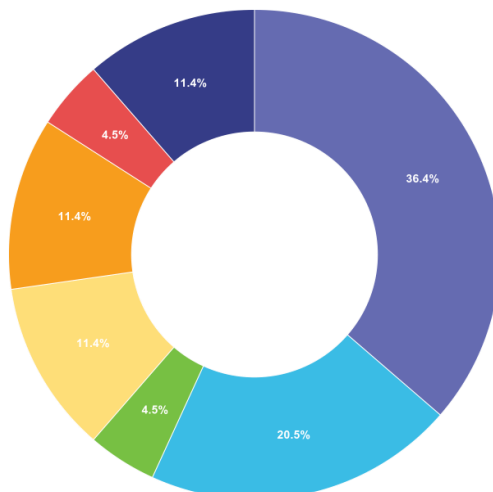
► **Who was your AFCA complaint against?**



Responses 44 Answered 44 Unanswered 0

CHOICE	TOTALS	%
● Theta Asset Management Ltd (SIT/Sterling Income Trust victims)	35	79.5%
● Libertas Financial Planning Pty Ltd (Silverlink victims)	9	20.5%

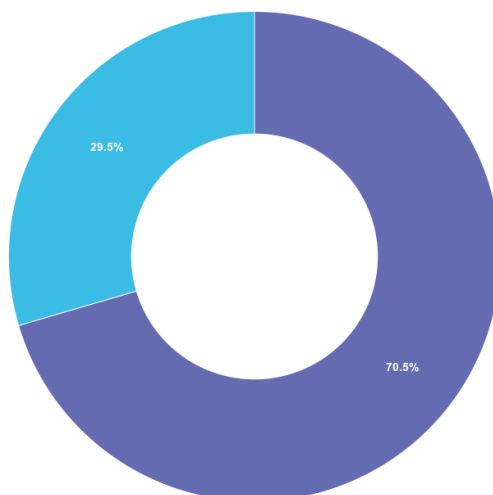
► Please indicate how far your AFCA complaint progressed?



Responses 44 Answered 44 Unanswered 0

CHOICE	TOTALS	%
● Step 1: Complaint lodged.	16	36.4%
● Step 2: Allocated case manager.	9	20.5%
● Step 3: Telephone interview with case manager.	2	4.5%
● Step 4: Provided case manager with supplementary information.	5	11.4%
● Step 5: Preliminary assessment provided by case manager.	5	11.4%
● Step 6: Case referred to ombudsman for final determination.	2	4.5%
● Other (please specify): <i>Rejected; I was told it was not a financial complaint and that AFCA would not be handling it; No feedback so far.</i>	5	11.4%

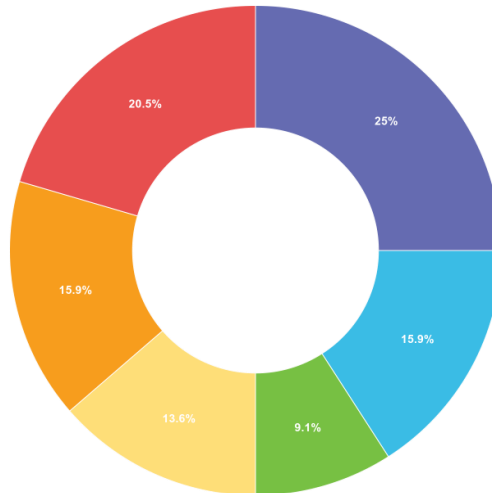
► Did you find the process of lodging an AFCA complaint easy to follow?



Responses 44 Answered 44 Unanswered 0

CHOICE	TOTALS	%
● Yes	31	70.5%
● No	13	29.5%

► Overall, how long from lodging your complaint did it take before AFCA contacted you?



Responses 44 Answered 44 Unanswered 0

	CHOICE	TOTALS	%
●	Less than 1 month	11	25%
●	Between 1 to 2 months	7	15.9%
●	Between 2 and 3 months	4	9.1%
●	More than 3 months	6	13.6%
●	Not sure	7	15.9%
●	Other (please specify): <i>Only contact was acknowledging the claim lodgement. There was never any proactive contact from AFCA in the period from lodgement and the pausing of the claim.</i> <i>Still not heard back. I received an email saying it will be looked at and that's about it. Pretty poor effort really!</i> <i>Never had any contact.</i>	9	20.5%

Feedback Received*

*Comments/feedback with personal or identifying information have been edited for privacy purposes. Spelling and/or grammatical errors have also been corrected for the purposes of this submission. Original survey results (with personal or identifying information redacted) can be obtained by emailing cath.dall@bigpond.com

<p>► Do you have any suggestions on how to make lodging a complaint easier? In your opinion, how could AFCA make it easier for you to lodge a complaint?</p>
<i>Make the questions simpler, easier for a lay person to understand to avoid misrepresentation.</i>
<i>Phone call would be nice, or just agree that money is owing.</i>
<i>My first application to AFCA, was (completed) with a friends help.</i>
<i>Timely action on complaint</i>
<i>Takes a long time to get your complaint assessed.</i>
<i>Provide a centralised complaint handling process that allows individuals to access details, provide updates and cross reference information.</i>
<i>Would love to have had some sort of follow up and indication of time frame and if I had filled all the docs out properly. By the time I hear back from them I will have forgotten what I wrote or probably have a lot more info now to add to the case file.</i>
<i>Scrap the whole process, start again this time have the process unequivocally serve and resolve the issue for the victim as it should have been right from the inception of the AFCA.</i>
<i>Application was straight forward unfortunately we never got passed that.</i>
<i>Communicate with people especially if elderly. We ring up and you pass the buck.</i>
<i>Speed things up. 10 months to reach Preliminary Assessment is a joke. Collating documents and doing some reasonably simple Math should not have taken more than 2 months. Certainly not five times that long.</i>
<i>Needs an independent adviser to assist in following the process and to act as an advocate on behalf of the claimant. Where there are multiple complainants with basically the same complaint there should be no need to repeat the questions being asked of each of them Scope needs to be increased to help claimants against insolvent companies.</i>
<i>Having somebody to assist who understands.</i>
<i>Initial lodgement seemed fairly easy and user friendly. It was the lack of proactivity and customer facing intent and lack of empathy for the position that victims/claimants were, and are still in.</i>
<i>Have an easier online system. Seem to go over the same information a few times.</i>
<i>List the companies affected - provide a centralised information portal and guides, timelines and easy to follow steps.</i>
<i>As we had a significant volume of documents to upload, it was easier to copy and send by post, make it easier to upload a large volume of documents.</i>
<i>The victim must be able to submit a joint written complaint with others involved and AFCA must serve as a conduit so that the matter can be heard in court.</i>
<i>Talk to us don't be an anonymous person who cannot wait to hang up.</i>

A centralised, online complaint handling portal that allows complainants to access the data and evidence they have provided, which can also be used to provide updates by case managers and cross reference information. This would prevent double handling of information and reduce the reliance on email attachments (especially when there are dozens of documents to submit).

The process is reasonably easy to follow for an educated person, but some independent assistance should be available if the claimant's having difficulty.

In our opinion dealing with AFCA was ok until the PAUSE came into effect, we don't think they could make it easier to be honest.

Somebody to assist.

Action it quicker once lodged and allocate a case manager.

How can you complain when they don't want to talk?

► Is there anything else you would like to add about your experience with AFCA?

My parent died waiting for a result. Theta misappropriated the funds which we due to go back to my mother's estate after vacating the property.

Waste of time because they don't care one iota.

It seems you don't believe us.

AFCA have kept in touch with me but with long intervals between when I heard from them and you wonder if you will ever get anywhere.

Good but light on detail though this was not their fault as scheme for compensation has not been set up yet.

Not proactive. Inability to quickly assess original claim. Seemingly lack direction with respect to complex claims Unable or unwilling to bundle initial claims (in the case of Theta Asset Management), to research baseline issues or contributing factors. Unclear rules/guidelines (as in dealing with insolvent entities). Inability or unwillingness to review Insurance Policies that their members hold.

Received letter that the complaint had been delayed indefinitely.

Very disappointed - The process was and still is not understood. Advised because of backlog that it would be delayed. An example, please note we were advised that the affected company (theta) was not ruled against so no action could be taken.

Our Case Manager contacted us regularly with so called updates before all Sterling complaints were put on hold, but in reality, the "updates" contained very little information of value. When I questioned our case manager for more detail the response, I generally got was that he wasn't made aware of or couldn't comment as his senior people were the only people who could comment. On one occasion he commented to a question with "This is above my pay level" I should say our case manager is a very nice person, always polite and courteous, but clearly was given little information by his seniors.

In the past I have made a complaint which was followed up with very fast and efficiently. This one was different. I have had zero phone communication or even an email letting me know how the complaint has progressed. It's frustrating that I am the one following this up and not them.

AFCA only further victimised those persons involved in SNL who had their hard earned life savings stolen. No different than a thief stealing from your wallet whilst you weren't looking.

Absolutely disgraceful, just another organisation that refuses to help.

<i>Disappointed that no complaints manager was assigned, updates slow and spent most of the time wondering what was happening.</i>
<i>I have had only phone calls which I have made you have never contacted me. I have every right to get my money back and absolutely NOONE will help me.</i>
<i>I found the AFCA people courteous and helpful. However, I believe the process is very slow and they could make quicker decisions once they have all the facts. Also, I am not sure how strong they are legally, and have they got all legal bases covered?</i>
<i>Speed up the process; provide more regular feedback to complainants.</i>
<i>The people I have dealt with seem to be very nice and helpful, so I assume the AFCA structure and ways of working are the problem.</i>
<i>More feedback as to the status of the complaint. The data cube is practically useless as it is always many months out of date.</i>
<i>Seems AFCA has no intention to help.</i>
<i>We were very angry having got so far along in the process, probably about halfway only to be told by our case manager everything had been stopped indefinitely. Also, it was very hard to get any answers after that, nobody wanted to know.</i>
<i>They haven't done much. The only thing they done is reply to on the 17/1/2020 with a case number, since then I have lost my partner of 20 years.</i>
<i>Unable to answer as I have had little or no contact.</i>
<i>I haven't heard much from them really. Had an email saying they had lodged my complaint.</i>
<i>Just too slow, we would like to know the insurance company if they can't help us.</i>
<i>Still waiting and appears no-one is interested in following up my case as COVID is the excuse.</i>
<i>Don't just allocate a case number and then advise because they are now in receivership you can't help. How do you think we feel when we hear because a complaint was received 3 months earlier with the same circumstances that their case is now resolved whilst we wait and wait and wait? To be given Coronavirus as an excuse is not good enough. Surely you all didn't go on holidays whilst the rest of Australia worked from home. We have been left in limbo this is not good enough. Rents are increasing we live in fear that we may not be able to survive financially on a pension. We need our claims actioned now. ASIC have been aware of our situation for years; they rang me in 2018 and advised me all ok not to worry. 6 months later we had plenty to worry about didn't we. We want AFCA to act on our behalf now.</i>
<i>They don't care.</i>

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