

Sterling scandal caused by regulation designed to fail

The catastrophic collapse of the Sterling First group's managed investment scheme, which has left over one hundred elderly victims robbed of their life savings and now facing eviction, is a horrific but entirely predictable outcome of deliberate government policies.

Expanding on the financial deregulation kicked off in the 1980s, from the late 1990s the Howard government introduced a series of financial policies which consumer advocates such as founder of the Banking and Finance Consumers Support Association and advocate for Sterling victims, Denise Brailey, have fiercely criticised. Brailey has slammed the Howard Government's watered-down obligations for company directors, extreme staff cuts to the regulators, and regulatory "loopholes" which left the door wide open for serial white-collar criminals to scam Australians out of hundreds of millions of dollars and just walk away.



The Howard Government's 1997 Wallis Inquiry report recommended that responsibility for consumer protection for financial products be transferred from the Australian Competition and Consumer Commission (ACCC) and be given instead to the Australian Securities and Investments Commission (ASIC). Over two decades later, one of the Wallis report's authors who is now a Reserve Bank Board member, Professor Ian Harper, admitted these and other recommendations were a mistake. In a parliamentary inquiry hearing on 18 November 2020, Harper said he had now "changed [his] mind" and believed that consumer protection should be returned to the ACCC—decades too late for thousands of Australian consumers ruined by numerous Ponzi schemes enabled by ASIC, a spineless and corrupted regulator captured by the institutions it is supposed to police.

Dr Wilson Sy, a whistleblower who has formerly worked at ASIC and as Principal Researcher at the banking regulator, the Australian Prudential Regulation Authority (APRA), exposed that "enforcement failures are predictable because Australian financial regulation was *designed* to be weak and ineffective" (emphasis added) under deregulation policies, resulting in entrenched "fake regulation", which actually works to benefit the industry instead of the public (AAS, 25 Sept. 2019). According to Dr Sy, "by its legislative efforts to protect the banks and the financial system, [the government] is actually concentrating political and economic power in a de facto collusion with major banks. ... APRA and ASIC both work for their paymasters who decide how they want to be regulated in an arrangement of self-regulation, approved by Government policy."

As reported by the Citizens Party in an [8 August 2018 press release](#), ASIC, APRA and the Treasury have a revolving door with the predatory banks: "Far from protecting the public, the financial regulators have aided and abetted the predators who have corrupted Australia's financial system. And the government, instead of going after the banks, is putting the onus on bank victims to take 'personal responsibility' to avoid being devoured." Instead of criticising failed regulators, then-Treasurer Scott Morrison blamed victims for being too passive, saying "[t]oo often we, the customers, have also become complicit in allowing the deck to be stacked against us". Morrison's stance echoed the chair of APRA, Wayne Byres, who "took aim at the Financial Services Royal Commission, insisting that financial dealings must be governed by the principle of *caveat emptor*—Latin for 'let the buyer beware', meaning that if a seller swindles a buyer, it's the buyer's own fault." A January 2008 consultation paper authored by employees of Treasury's Competition and Consumer Policy Division acknowledged the adage of "buyer beware" was the attitude underlying the development of consumer regulation in Australia.¹

According to Dr Wilson Sy, "ASIC has published little data or information ... to help the public to identify potential financial services risks, to enable the practice of *caveat emptor* ('let the buyer beware') to work." Dr Sy asks: "How could 'buyers beware' when buyers are kept in the dark about other buyers' complaints? The simplest way to prevent wrongdoing is to alert potential victims, but the regulators do the opposite."² There are countless examples of the appalling failure of Australia's financial regulators and the government to protect the public from financial predators. Sterling First victims have every right to feel betrayed, given the track record of the Sterling First directors, and one in particular, Simon Bell. Thousands of Australians have lost their life savings in numerous financial schemes in which Bell has been personally involved. Yet while the elderly victims of his most recent scheme face eviction from their homes, Bell remains untouched.

Westpoint

Sterling director Simon Bell was formerly a director of Westpoint, a property development Ponzi scheme which offered unsecured "mezzanine" finance products (used as topup funding for property development) to small investors. Westpoint collapsed into receivership in early 2006 with total losses of \$680 million, of which less than half could be recovered for Westpoint's 4,000 investors. Denise Brailey reports Westpoint was set up in 1999 to take advantage of the "loophole" created by the

Howard government's then-recent decision to change disclosure requirements for those selling investment products if the investor was deemed "sophisticated", which has been manipulated to take advantage of unsophisticated mum and dad investors.

In a 2013 federal court hearing following Westpoint's collapse, the court heard that Simon Bell asked Westpoint's lawyer, Andrew Shearwood, about alternatives to raising funds via a prospectus (a legally required disclosure document). Shearwood suggested the alternative of mezzanine finance, which could be raised by issuing promissory notes, an unsecured high-risk lending product.³ The 7 July 2006 *AFR* reported that in 2000 ASIC approved Westpoint's activities, writing a letter to Westpoint's lawyers confirming it would take no enforcement action against the group's promissory note investment schemes. According to Brailey, ASIC was first alerted to Westpoint's activities in 2001, however ASIC only began raising concerns about Westpoint in 2003 and only commenced court action on a technicality in 2005, shortly before the company collapsed.

Westpoint director Bell was also a co-founder and director of Kebbel, a company which raised most of the funds poured into Westpoint and falsely claimed it was a bank until APRA finally told them to stop in 2005. Kebbel directors earned handsome commissions by approaching about one hundred financial planners, who then advised their clients to invest in Westpoint. The financial planners typically raised \$10 million to \$15 million each for Westpoint and earned an unusually high 10 per cent split of commissions.

In parliament on the 29 March 2006, Minister for Finance and Administration representing the Treasurer, Liberal Senator Nick Minchin, was asked why the government had failed to act on urgent and specific warnings the Treasurer had received about Westpoint from the Western Australian government in mid-2002, when it could have acted to regulate the "promissory note" products Westpoint was spruiking. As usual for the government, Minchin handballed responsibility, saying it was a "matter for ASIC" to conduct regulatory activities. Global Big Four accounting firm KPMG came under fire as Westpoint's auditor and for KPMG's dubious links to a Westpoint director,⁴ but this hasn't stopped ASIC paying KPMG \$440,000 to conduct an inquiry into the role of directors of Sterling First—which includes former Westpoint director Simon Bell! Nor has ASIC objected to the fact that through a recent acquisition, KPMG are now Sterling's administrators.

Finchley

In 2006, Kebbel changed its name to Finchley and raised another \$40 million from the public to be on-lent to property developers, in a managed investment scheme comprising two trusts. One of these, Gilead Trust, raised \$25 million for the development of the Gilead Retirement Resort in NSW. The 12 May 2008 *Australian* reported Finchley was paid 11 per cent commissions for its role (\$1.6 million in a two-month period alone), and that Gilead's developer had spent the entire \$25 million raised for construction without building a single unit. The other, Riverside Pier Trust, raised \$16 million to develop the Riverside Pier Hotel on the Swan River in Perth.

A 22 September 2009 federal court judgement found Finchley had contravened the terms of its product disclosure statement, was likely insolvent, failed to lodge audited financial statements, and did not maintain an insurance policy covering professional indemnity and fraud by its directors; the judgement noted the prospects of investors getting any returns from Finchley were slim. The court observed Finchley director Simon Bell had a clear conflict of interest in the scheme, as he was also a director with substantial control over the developer of the Riverside Pier Hotel project. Finchley was ordered to be wound up, and Bell evidently moved on to his next scheme, Heritage, which would become Sterling First.

Heritage

After the wreckage of the Westpoint and Finchley schemes, Simon Bell and other Sterling leaders set up investment company Heritage, which Denise Brailey reports cost hundreds of investors \$15 million in a fake share scandal. Brailey reports that ASIC held meetings with Heritage in 2012 and 2013, but permitted the company to change its name to Sterling in 2013, with full knowledge that the share listing Heritage had promised had never taken place.



Sterling

In 2015 Sterling (formerly Heritage) initiated its “rent for life” investment scheme, targeting elderly retirees. Brailey reports that Sterling directors and their lawyer Andrew Shearwood (identified in court as having suggested Westpoint’s promissory finance notes scheme to Bell years earlier) were meeting with ASIC in 2015 and 2016, relating to their proposal to list on the Australian Stock Exchange, and ASIC lawyers assisted Sterling with its Product Disclosure Statements obligations, which were intentionally never given to elderly victims before they signed up and handed over their life savings. So not only did the regulator turn a blind eye to Sterling’s directors, who were well known to ASIC for having been embroiled in numerous financial scams dating back to the 1990s, it *assisted* Sterling to carry out its predatory scam in 2015-16—even though Brailey reports ASIC had acknowledged complaints about Sterling in 2015.

Protected white-collar crime

It is evident that Australia’s financial regulators ignore financial Ponzi schemes like Westpoint, Kebbel/Finchley, Sterling and others that cost Australian citizens hundreds of millions of dollars when they collapse, while the directors who are often serial Ponzi offenders are never charged. Government policies have protected and enabled corruption in the financial system, as exposed by Dr Wilson Sy, who writes that “[t]he collusion of government legislative power with private bank economic power satisfies the general definition of fascism.”

The government consistently refuses to accept responsibility for the predictable outcomes of its policies, as evidenced by the catastrophe of another failed managed investment scheme founded in 1999, agribusiness juggernaut Timbercorp, which Simon Bell invested in through his company Jase Nominees, which is also a shareholder of Sterling subsidiary Acquest. Over 18,500 Australians sunk more than \$2 billion into the scheme, taking on loans from Timbercorp Finance to buy Timbercorp products, on advice from their financial advisors and accountants who were paid large commissions to spruik Timbercorp. Timbercorp’s directors scored millions of dollars in cash, consulting agreements and shares which were offloaded before Timbercorp’s 2009 collapse.

ANZ was a key profiteer and influential player in the scandal. After Timbercorp’s collapse, mum and dad investors owing hundreds of millions of dollars in loans for worthless products and accrued interest on their debts were pursued aggressively in the courts by Timbercorp’s liquidator KordaMentha, acting on behalf of creditors including ANZ.

The 8 November 2014 *Sydney Morning Herald* reported that red flags, whistleblower reports and explosive internal documents were raised about Timbercorp years before its collapse, which “raise[d] questions about the role of ANZ, ASIC, the research houses who rated Timbercorp’s flawed products and the financial planners who made a killing on flogging Timbercorp’s schemes.”

But in parliament on 18 June 2014, Acting Assistant Treasurer Senator Matthias Cormann emphatically denied that the Liberal government, as the architect of managed investment schemes in Australia, bore any responsibility for the regulatory and policy failures surrounding Timbercorp and “completely reject[ed] the assertion that ‘many financial advisers’ have done the wrong thing”, blaming a few “bad apples”. Brailey reports that Cormann later refused to meet with Sterling First victims.

Denise Brailey observes that Prime Minister Scott Morrison was Treasurer from September 2015 to August 2018—during which time he was presumably briefed about Sterling in Treasury’s monthly meetings with ASIC. Yet Morrison did nothing to regulate to prevent the ruin of elderly Australians embroiled in Sterling’s schemes before it collapsed in 2019. “Mr Caveat Emptor” Morrison, who voted 26 times against the Financial Services Royal Commission, continues to run a protection racket for organised white-collar crime while failing in his legislated duty to serve the interests of the Australian public.

By Melissa Harrison, Australian Alert Service, 9 June 2021

Footnotes

[1.](#) Stephen Hally-Burton et al., “Harnessing the demand side: Australian consumer policy”, (treasury.gov.au), Jan. 2008.

[2.](#) Wilson Sy, “[The Farce of Fake Regulation: Royal Commission Exposed Australia](#)”, (ssrn.com), 29 Mar. 2019.

[3.](#) “Westpoint founder’s attempt to blame lawyer thrown out of court”, (investsmart.com.au), 21 Sept. 2013.

[4.](#) Adam Schwab, “Westpoint paper trail snares KPMG”, (crikey.com.au), 18 Aug. 2009.

