



Australian Citizens Party

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MEDIA RELEASE

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ASIC victims: no justice without compensation

The current Senate inquiry into the Australian Security and Investments Commission's (ASIC) handling of the Sterling First collapse is not off to a good start.

Last week, ASIC and the government failed to comply with a Senate order to produce documents about the Sterling case by 26 October. In their letters making excuses as to why, Financial Services Minister and "Senator for Bankers" Jane Hume, and ASIC chair Joe Longo, claimed they needed more time as the disclosure of the documents may damage the reputations and privacy of persons named in them, and may prejudice ASIC's investigation, any future prosecutions, and the possibility of a fair trial.

In Senate Estimates on 28 October, Labor Party Senator Deb O'Neill called these excuses "spurious" and attacked the government and ASIC's "culture of secrecy".

Senator Hume's letter did reveal some good news, however: that after two long years ASIC finally submitted a brief of evidence on the Sterling case to the Commonwealth Director of Public Prosecutions on 15 October. Well, well, well. While this undoubtedly is good news (although it doesn't guarantee a prosecution), the timing is more than curious. ASIC has kept the victims in the dark for two years, and in that time even indicated it was no longer investigating the case. Following a burst of intense campaigning by the victims, however, assisted by the Citizens Party and its supporters, which included a flood of phone calls to Senators demanding an inquiry into ASIC's handling of the case, and an ABC 7.30 report on 14 October featuring an energetic protest in front of the Western Australia State Parliament and WA Labor Senator Louise Pratt announcing she would be moving for an inquiry, suddenly ASIC submits its evidence to the DPP the very next day?

ASIC would deny it, but this sure looks like it has only acted under public pressure. While it is good that public pressure works, it shouldn't have to be this way—ASIC, the self-styled "tough cop on the beat", should act on wrongdoing regardless. The fact that it doesn't reflects the government's longstanding policy to keep ASIC weak and ineffective, so it cannot interfere with the unbridled profiteering of the big banks. This is why there are so many financial victims in Australia, who are in fact victims of the government and ASIC, as well as of the banks and other financial predators.

Full compensation

While prosecution of the Sterling First perpetrators is very important, it does not equate to justice. For too long, while some financial crimes may have led to prosecutions, most victims have remained uncompensated, their lives ruined through no fault of their own. They have been left to pursue the perpetrators through expensive legal action, in which, especially if it's against the banks, the perpetrators have had the upper hand. Most victims end up falling by the way, unable to match the banks, and only a few last the distance, when, more often than not, the banks will then settle out of court to avoid a ruling against them. This system, stacked in the perpetrators' favour, is *not* justice.

Following a recommendation of the 2018 banking royal commission, the government has announced a Compensation Scheme of Last Resort (CSLR); however, typical of this government, its scope is pathetic, both in terms of the kinds of victims it covers and the amount of compensation it will pay out. One category the proposed CSLR excludes is victims of managed investment schemes; perniciously, when Sterling First collapsed in 2019, an inquiry by receivers Ferrier Hodgson correctly identified the victims as "tenants", but a subsequent ASIC inquiry, conducted by global accounting firm KPMG, re-labelled them as "investors". This designation covers ASIC's tracks, as "investors" are responsible for their own fate under the doctrine of *caveat emptor* ("let the buyer beware"), and excludes the Sterling victims from any compensation under the CSLR.

In the 28 October Senate Estimates hearing, One Nation Senator Malcolm Roberts fired a shot across ASIC's bow ahead of the inquiry, by asking ASIC chair Joe Longo:

"Sterling First victims paid hundreds of thousands of dollars upfront, believing they would essentially receive a 40-year lease in return. This would appear to be a long-term lease, where the victims are better classified as tenants instead of investors. Can you explain why someone in this situation would be classified as an investor instead of as a tenant?"

In his reply Longo chose his words carefully, essentially claiming they were both tenants and

investors; his answer was clearly mindful of the upcoming inquiry, of which, he said, he was “very aware”.

ASIC’s games in relation to Sterling First and compensation underscores the need for the Sterling victims to be compensated independently of the CSLR. There are around 140 elderly pensioners and retirees whose lives have been ruined by a financial scam that ASIC allowed to run. They face being evicted onto the streets, and there’s nothing they can do. They cannot start over; many are battling cancer and chronic illnesses; and 16 have died in the two years they have been fighting for their survival. This group of Australians must not be allowed to slip between the cracks of bureaucratic schemes like the CLSR simply because callous, petty politicians like Scott Morrison, Josh Frydenberg, and Jane Hume, and captured bureaucrats at ASIC, want to cover their tracks in order to maintain the system of weak regulation that serves the banks. This inquiry, the Senate generally, and indeed all Australians, must demand the government pay the \$18 million needed to fully compensate these victims, because that is the right thing to do.

The first stage of the inquiry, receiving submissions, closes on Monday, 8 November. This is a reminder that any Australian who has been a victim of ASIC should take advantage of this opportunity to make a quick submission, emphasising your experience with ASIC, so the inquiry is forced to acknowledge that ASIC’s failings are systemic, and recommend far-reaching changes to improve financial regulation for all Australians.

Making a submission

Tell your story, and emphasise your experience with ASIC. The easiest way is to email to the committee email address, below. Address your submission to:

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

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