



Australian Citizens Party

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MEDIA RELEASE

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Labor's Stephen Jones is wrong! Treasury confirms ASIC victims can apply for Act of Grace compensation

If Labor won't compensate Sterling First victims, they won't compensate anyone. Treasury has just ripped away their lame excuse.

The Morrison government is one of the most reprehensible governments in Australian history. They have shown callous disregard for the common good of Australians on so many fronts that people lose count. On just one issue—the financial system—this banker-dominated government has slavishly served the banks above all else, first trying to protect them from the royal commission into their myriad abuses, and then making a joke of that royal commission by going back on its recommendations, and abandoning the hundreds of thousands of financial victims whose lives have been ruined by the banks and financial predators who were allowed to run riot by deliberately weak and ineffective regulators.

Financial victims want to know the Labor Party will be different, and will actually be able to be relied upon to address the decades of financial carnage they have experienced. But Labor's current excuse for not compensating [the victims of the Sterling First collapse](#), who were badly failed by the Australian Securities and Investments Commission (ASIC), is not good enough.

What's more, new Treasury advice reveals the excuse is wrong.

Western Australia-based victims of Sterling First who met Stephen Jones on 4 April reported that he insisted that no government would compensate them for ASIC's negligence, which led to their losses, through an "act of grace" payment from the Department of Finance.

Yet, in an answer to questions on notice from Labor MP Julian Hill about the Compensation for Detriment from Defective Administration (CDDA) that were received by the Joint Committee on Corporations and Financial Services on 25 March 2022, Treasury explained that the act of grace scheme is an alternative to the CDDA scheme, and it does apply to ASIC victims:

"The act of grace scheme is similar to the CDDA scheme, and is capable of considering ASIC-related claims, including those relative to defective administration by ASIC." (Emphasis added.)

This advice from Treasury settles the question as to whether an act of grace payment can be used to compensate the victims of defective administration by ASIC; the remaining question is whether that applies to Sterling First victims?

The February 2022 report of the Senate Economics References Committee's inquiry into Sterling Income Trust (SIT) acknowledged ASIC's defective administration. The relevant paragraphs state (emphasis added):

"4.105 That said, the committee also has serious concerns about the performance of ASIC with respect to the Sterling Group matter, including its under-assessment of the gravity of the risks, the timeliness of its response, and its failure to act proactively. The committee is mindful of the requirements for ASIC to obtain proper evidence and follow due process before undertaking investigations and enforcement actions. The committee is also conscious that ASIC's regulatory role does not involve preventing all consumer losses or ensuring compensation for consumers in all cases where losses arise. However, in this instance the committee believes that ASIC had sufficient evidence and grounds for concern in 2017 to refer the matter to its enforcement division for investigation.

"4.106 In fact, the issues identified in ASIC's Statement of Concerns were serious and appeared to establish possible contraventions of the Corporations Act 2001 (Corporations Act). Furthermore, these concerns should have been further strengthened when ASIC was provided with a qualified audit report from the auditor of the SIT which raised a 'material uncertainty' over the trust's ability to continue as a going concern on 29 September 2017. Despite these matters, ASIC did not commence a formal investigation until 29 May 2018.

"4.110 ... Additionally, the committee considers that ASIC should have been more proactive in publicising its regulatory actions, particularly when they relate to potential harms caused to consumers by managed investment schemes."

Moreover, the report identifies the obvious reasons for ASIC to have exercised special care in the Sterling First case:

"4.50 That said, there is still an important role for monitoring and proactive action by ASIC where the risk profile warrants it. In the case of the SIT and Silverlink returns funding the rental payments of the SNLLs [Sterling New Life Lease], there are questions about what the level of risk was and what should have been an appropriate regulatory response. Compared to other managed investment schemes, the risks associated with the combination of the SIT/Silverlink returns and SNLL product appear to have been heightened by the following factors:

- *tenant-investors were elderly and retired, and were less likely to be able to recover financially if the scheme failed;*
- *tenant-investors often had to sell their principal residence to fund their investment in the SNLL product, thereby risking their housing security if the SNLL product failed;*
- *the highly complex and interrelated structure of the Sterling Group whereby tenant-investors' access to housing was dependent on the financial performance of the investments;*
- *directors and key executives with connections to questionable schemes that had previously failed; and*
- *unrealistic prospective returns from the SIT and Silverlink products and unviable pricing structures of the SNLL product."*

"4.51 Given that each of the risks outlined above should have been of serious concern, a question arises as to why ASIC did not consider the combined risks to be of sufficient gravity to act sooner. ...

"4.52 Also of note is ASIC's lack of concern regarding the involvement of questionable directors and key personnel."

In response to these criticisms of and concerns about ASIC's actions and attitudes relating to this matter, Chairman Joe Longo would only concede that ASIC should have publicised its 2017 stop order on the Sterling Income Trust more widely. This is nevertheless a significant concession, because it acknowledges that ASIC's negligence contributed to the Sterling directors being able to draw in \$11 million more from unsuspecting consumers before their scheme collapsed in 2019.

The importance of Labor committing to compensating the Sterling First victims directly, is it is the only way to demonstrate they acknowledge ASIC's regulatory failings, and are committed to overhauling Australia's dysfunctional regulatory system so ASIC is actually feared by banks and financial predators.

[Click here to sign the Citizens Party's petition for a post office people's bank, to break the monopoly of the Big Four banks, which use their power over politics to deliberately keep the regulator ASIC weak and ineffective.](#)