



SENATOR THE HON JANE HUME
MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND THE DIGITAL ECONOMY
MINISTER FOR WOMEN'S ECONOMIC SECURITY

Senator the Hon Slade Brockman
President of the Senate
Parliament House
Canberra ACT 2600

26 OCT 2021

Dear Mr President

I write in response to Senate Order for the Production of Documents No. 1249 (the Order) moved by Senator Louise Pratt and agreed by the Senate on Thursday 21 October 2021, relating to the Australian Securities and Investment Commission (ASIC) and the Sterling Group.

ASIC has informed me they have identified four documents in response to the Order.

ASIC note the disclosure of these documents may damage the personal reputation and privacy of persons named in them, and may prejudice (i) ASIC's investigation; (ii) any future prosecution of breaches of the law; and (iii) the fair trial or impartial adjudication of any future prosecution.

It is for these reasons more time is required for ASIC to respond to the Order. In particular it will afford ASIC the opportunity to consult with relevant third parties whose interests may be materially adversely affected by their public release, and to wholly consider the impact the disclosure of information contained in the ASIC Documents may have on ASIC's investigation or on any future prosecution, noting that a brief of evidence was delivered to the Commonwealth Director of Public Prosecutions on 15 October 2021.

I attach a copy of ASIC's correspondence.

Yours sincerely

Senator the Hon Jane Hume



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Level 7, 120 Collins Street,
MELBOURNE VIC 3001

Postal Address:
GPO Box 9827,
BRISBANE QLD 4001

Switch: +61 1300 935 075
www.asic.gov.au

COPY

26 October 2021

Senator the Hon Jane Hume
Minister for Superannuation, Financial Services
and the Digital Economy,
Minister for Women's Economic Security

JOSEPH LONGO
CHAIR

By email to: senator.hume@aph.gov.au

Dear Minister

ORDER FOR THE PRODUCTION OF DOCUMENTS IN RELATION TO STERLING GROUP

I refer to the order made by the Senate on Thursday 21 October 2021 that you produce to the Senate by midday Tuesday 26 October 2021, "*the internal review of ASIC's handling of the Sterling Group produced by a litigation counsel in the chief legal office which contains a factual analysis of the work undertaken by the relevant ASIC business units in relation to Sterling Group*" (**the Senate Order**).

ASIC has identified four documents in response to the Senate Order (**the ASIC Documents**). ASIC notes that the ASIC Documents contain information:

- a) disclosing the identity, or information enabling a person to ascertain the identity of a number of third parties including persons of interest, reporters of misconduct, whistle-blowers, witnesses and other persons assisting ASIC. ASIC has not had the opportunity to consult with third parties referred to in the ASIC Documents that may be materially adversely affected by the disclosure of information that may damage the personal reputation and privacy of those persons;¹ and

¹ ASIC's understanding is that the protections available to witnesses at Senate Committees apply equally in respect of evidence requested from the Senate including the protections afforded by the *Procedures to be observed by Senate Committees for the Protection of Witnesses* agreed by the Senate on 25 February 1988 (see Odgers' *Australian Senate Practice*, 14th Edition, Canberra, 2016 at pp 548, 551-552). We refer to the guidance on the protection of the reputation and privacy of witnesses referred to in the *Procedures to be observed by Senate Committees for the Protection of Witnesses* at [11], Odgers at pp 558-559 and 664-665 and the *Government guidelines for official witnesses before parliamentary committees and related matters*, February 2015 at [3.1.3] and Attachment A at [13].

- b) that may prejudice (i) ASIC's investigation; (ii) any future prosecution of breaches of the law; and (iii) the fair trial or impartial adjudication of any future prosecution.²

I note that the ASIC Documents were prepared by ASIC staff for the purposes of collating and summarising by way of an internal record, the inquiries made by and actions taken by ASIC in relation to Sterling Group. The ASIC Documents were not prepared for the purposes of an "internal review" of ASIC's handling of the matter, and in this regard, do not reflect any conclusions made by ASIC or its staff about the appropriateness of ASIC's inquiries and actions.

Despite ASIC's best endeavours, ASIC requires more time to properly respond to the Senate Order, in particular to afford ASIC the opportunity to consult with relevant third parties whose interests may be materially adversely affected by their public release. ASIC is also considering the impact that the disclosure of information contained in the ASIC Documents may have on ASIC's investigation or on any future prosecution, noting that a brief of evidence was delivered to the Commonwealth Director of Public Prosecutions on 15 October 2021.

For the purposes of the Senate considering ASIC's request for an extension of time to produce the ASIC Documents, ASIC is content for this letter to be tabled in the Senate.

Yours sincerely

JOSEPH LONGO
CHAIR

² We refer to the guidance on this issue referred to in *Odgers* at pp 662-663 and the *Government guidelines* at [4.6] and Attachment A at [8].