



## **COMMONWEALTH BANK STORM FINANCIAL RESOLUTION SCHEME**

### **LEGAL COSTS EXPLAINED**

We have been asked by a number of eligible Scheme participants how legal costs are dealt with in the Scheme. Below we have tried to respond to a number of the more frequently asked questions we have received.

#### **What will Slater & Gordon charge for providing me with legal advice in connection with a Proposal under the Scheme?**

If you retain us, Slater & Gordon will not charge you for advice and assistance given in relation to a Proposal made under the Scheme by CBA. As part of our negotiations with the CBA which resulted in the Scheme, CBA agreed to pay \$5000 to meet the reasonable costs of customers participating in the Scheme. That amount is payable regardless of whether you accept or reject the CBA's Proposal. Where appropriate, we will also submit a counter-offer and negotiate with the CBA on your behalf to obtain a Revised Proposal, at no charge to you.

#### **Why is the CBA paying for me to receive legal advice?**

The payment of reasonable customer legal costs connected with participation in the Scheme was one of the matters we negotiated with the CBA when the Scheme was created.

Slater & Gordon has been involved in the creation and operation of a number of similar settlement or resolution schemes over the years. Usually, the organisation involved in compensating claimants, pays legal costs. The CBA's willingness to pay reasonable legal costs represents an acknowledgment that many eligible participants are unable to afford to pay a lawyer to provide the advice they need in order to participate in the Scheme. Subject to the Scheme Rules, the CBA have agreed to cover your legal fees for the purpose of assessing your individual claim under the Scheme.

It is important to remember that:

1. The payment of legal costs for advice is made irrespective of whether the CBA's Proposal is accepted or rejected. In other words, it will have no influence on the advice we give; and
2. In our legal system, it is common place for one party (usually the loser) to pay the other party legal costs after a case has finished.

#### **What happens with legal costs after the Proposal Stage? What will I be charged if I refer my matter to the Scheme's Independent Panel for Evaluation or Determination?**

If you choose not to accept CBA's Revised Proposal, you can refer the matter to the Independent Panel for an Evaluation.

If you or CBA are dissatisfied with the Evaluation, either party may refer the matter to the Panel Chairman, Mr Callinan AC, for a final Determination.

The CBA may pay Slater & Gordon additional amounts of \$2,000 if you refer your matter to Evaluation, and \$1,000 if either you or the CBA refer your matter to Determination. For the reasons set out below, the CBA will usually pay this amount if you "do better" after Evaluation or Determination.

Before your matter goes to the Independent Panel for Evaluation and/or Determination we will ask you to sign a new legal costs retainer. Under that agreement we expect to limit any legal costs to \$2,000 at the Evaluation Stage or \$1,000 at the Determination Stage.

However, if your case has particularly complex factual or legal issues we reserve the right to negotiate a different fee arrangement with you at that time. If this occurs, then you would cover any fees payable in addition to the standard amounts paid by the CBA. Importantly, we would advise you of this prior to you deciding to refer your matter to Evaluation or Determination.

### **Are there any circumstances in which I might have to pay Slater & Gordon?**

You will never have to pay any fees for Slater & Gordon's assistance at the Proposal stage. Subject to the Scheme Rules, the CBA has covered the cost of advising you of the merits of your claim against the CBA / Colonial, and whether to accept any Offer made to you by the CBA during the Proposal stage. This applies even if you proceed to the Evaluation and/or Determination stages.

If at the Evaluation or Determination stages the Evaluator or Chairman comes to a conclusion that is more favourable to you than the offer made by the CBA, then the cost of the Evaluation process (\$2,000) or the Determination process (\$1,000) will be covered by the CBA.

However, if you (rather than the CBA) choose to proceed to Determination and the Panel or Chairman's decision is less favourable than the offer made by the CBA, or if you exit the Scheme prior to a decision being delivered, you will have to pay Slater & Gordon's costs of \$2,000 (Evaluation stage), or \$1,000 (Determination stage).

### **Are there any circumstances in which I might have to pay the CBA's legal costs?**

If you refer your matter to the Independent Panel for Evaluation, and the Panel's decision is less favourable than the offer made by the CBA, or if you exit the Scheme prior to a decision being delivered, you would also be liable to pay an amount of \$5,000 towards the Bank's costs.

Following Evaluation by the Independent Panel, if you refer your matter to the Chairman for Determination, and his decision is less favourable than the offer made by the CBA, or if you exit the Scheme prior to a decision being delivered, you would also be liable to pay an amount of \$10,000 towards the Bank's costs. Where the CBA refers your matter to the Chairman for Determination, you will not be liable to pay this amount.

If you are required to pay \$5,000 or \$10,000 towards the Bank's costs, these amounts can be off-set against any offer the CBA makes to you. For example, if the CBA's offer to you has a value of \$200,000 and the Panel's decision at Evaluation is less favourable than that offer and you decide to accept the offer, then the offer of \$200,000 would be reduced by an amount of \$5,000 to \$195,000.

This mechanism is important because it encourages anyone considering Evaluation or Determination to take care before deciding to proceed. This will ensure that the resources of the Panel are not diverted to considering claims that lack merit. It is also worth noting that our rules of court provide that if you proceed with court action which is unsuccessful then you are almost always liable for the legal costs of the successful party.

Importantly, the Scheme Rules provide that the Panel can make recommendations regarding any unfair cost consequences.

### **I can't afford to pay any legal costs. Can I make sure I don't incur any?**

Slater & Gordon will provide you with legal advice regarding any steps you may take in the Scheme which might have costs implications for you. You can always choose to exit the Scheme before taking any step that might incur costs.

A further feature of the Scheme is that the first 15 claims to reach the Evaluation and/or Determination stage are “immune” from the above cost penalties. This is designed to encourage early cases to go forward so that guidance from the Panel can be obtained early in the process which will benefit later participants. It is also anticipated that some form of summary of earlier decisions (disguising individuals’ identities) will be circulated to give a guide to how the Panel is likely to decide future cases.

This means that we will be able to advise you as to whether referring your matter to Evaluation and/or Determination is the right thing for you to do.

### **What are Slater & Gordon’s credentials?**

Slater & Gordon was founded in 1935 and is widely regarded as Australia’s foremost consumer law firm. Whilst traditionally known as a personal injuries law firm, over the last 20 years Slater & Gordon has developed expertise in class action and commercial litigation. At the same time we have remained true to our founding ideals and have developed a reputation as Australia’s pre-eminent firm acting on behalf of investors who have been aggrieved by wrongdoing in financial services and capital markets.

With more than 50 dedicated commercial & project litigation lawyers spread among offices throughout Australia, Slater & Gordon is one of only a very small number of firms with the resources, skills and experience to be capable of acting for the large numbers of clients affected by Storm who may wish to participate in an alternative dispute resolution scheme of this kind.

### **Why should I retain Slater & Gordon to provide me with advice in connection with the Scheme?**

Since the beginning of 2009, Slater & Gordon has been involved in discussions with the CBA which has led to the establishment of the Scheme. We are now focused on ensuring that our clients participate in the Scheme in a way that maximizes their interests.

We have established a dedicated Storm Resolution team involving about 15 lawyers (drawn from our various offices) in order to complete the claims process as quickly and effectively as possible. We are currently undertaking a significant amount of legal work on the types of claims that would be brought against the CBA if this matter were to proceed to Court. The reason this work is being undertaken is that the legal arguments and submissions that will be advanced in your favour during the Scheme are the same arguments that would be made if the matter were to go to court.

Next, we will begin reviewing and analysing Bank documents that we are entitled to receive as part of the Scheme. It is very important that this legal work is undertaken by lawyers with relevant expertise and experience. Slater & Gordon’s resources and our prior investigations into the circumstances surrounding the collapse of Storm Financial have positioned the firm to provide effective and efficient individual advice to Scheme participants. Additionally, Slater & Gordon can draw on its in-depth knowledge of the Scheme, the relevant legal principles and the Bank’s conduct in relation to Storm investments, in order to advocate strongly on behalf of its clients. We intend to provide legal submissions of up to 20 pages in length to Panel members at the Evaluation Stage and Determination Stage when the first cases are considered.

Our lawyers have an in-depth understanding of the operation of the Scheme and a high level of familiarity with the difficulties facing many ex-Storm customers. This will make it easier for you to instruct us regarding your potential claim against the CBA/Colonial, and to understand the advice we provide you. Each client’s matter will be examined and assessed on a case by case basis, to ensure that we advise you correctly regarding your options.