

Dormant balances in the trust account

By Ros Burke, Director, Professional Standards

Dormant balances refer to client trust ledger balances which remain unchanged for 12 months or more. They give rise to the following issues:

- Practitioners are under an obligation to complete work on behalf of a client as soon as possible. A matter can't be considered to be completed while the trust ledger relating to that matter remains open and continues to show a balance.
- By receiving trust monies, practitioners become trustees and as such, have duties to exercise care and skill in the management of trust monies. The existence of a dormant balance might be an indication that the requisite level of care and skill is not being observed by the practitioner.
- Dormant balances result in additional work in order to continually carry the balances forward. The longer the balances are carried, the more trouble it is to identify the correct recipient when trying to clear the balance.

Practitioners should therefore ensure that dormant balances are prevented as much as possible and, when they occur, are dealt with properly.

Dormant balances may be the result of arithmetical errors when accounting to

clients, or can arise when stale cheques are written back into the ledger. Both of these occurrences can be addressed by correcting the error or by issuing a fresh cheque or payment.

They may also be the result of a matter that is progressing slowly to completion, such as a litigated personal injury matter. If the practitioner can demonstrate that he or she is acting diligently to progress the matter, that the dormant balance is reasonable under the circumstances and that there has been proper accounting to the client with respect to the balance, its existence will not amount to a breach of ethical obligations on the part of the practitioner.

Dormant balances may also be the result of being unable to locate the client. In such cases, the practitioner may be able to rely on the *Unclaimed Moneys Act* to clear the balance.

If the *Unclaimed Moneys Act* applies, it may permit the practitioner to charge a fee for trying to locate the client. As long as a bill for that fee is generated in accordance with Section 41 of the *Legal Practitioners Act 1981*, the practitioner can appropriate that sum out of the dormant balance. Then the remainder, if any, can be transferred in accordance with the *Unclaimed Moneys Act* to Treasury.

Dormant balances may also be the result of a client refusing to accept a reimbursement of monies paid by them into trust either by not presenting a cheque for payment or not providing account details for an EFT. In such circumstances practitioners should consider purchasing a bank cheque for the requisite amount and sending that as payment of the reimbursement to the client.

Please give Professional Standards a call on 8229 0229 to discuss any questions that you may have with respect to dormant balances. **B**

By receiving trust monies, practitioners become trustees and as such, have duties to exercise care and skill in the management of trust monies.

BRI Ferrier

Business Reconstruction & Insolvency

Ph: 08 8233 9900 Fax: 08 8211 6644 Email: info@briferriersa.com.au Web: www.briferrier.com.au

Business Reconstruction & Insolvency Services

BRI Ferrier (SA) Pty Ltd Chartered Accountants focus on achieving the best possible outcome for unsecured creditors by providing practical assistance in the following areas:

- Acting as Voluntary Administrators for companies experiencing difficulties
- Designing and implementing debt recovery strategies for creditors
- Acting as Liquidators of debtor companies
- Acting as Trustee of Bankrupt estates and Part X administrations
- Preparing prompt and thorough expert's reports for parties to litigation

Principals and senior staff welcome the opportunity to discuss any issue on a confidential, no cost, no obligation basis.

Principals:
Nick Cooper • Alan Scott • Andre Strazdins

Directors:
Des Munro • Maris Rudaks

