

First print



New South Wales

# **Superannuation Administration Amendment Bill 1997**

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to amend the *Superannuation Administration Act 1996* to enable beneficiaries under certain State superannuation schemes to retain their benefits through the amalgamated State superannuation fund.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedule of amendments to the *Superannuation Administration Act 1996*.

## Schedule 1 Amendments

### Amendments relating to deferred payment reserve

**Schedule 1 [4]** inserts proposed Division 5A of Part 3 relating to the deferred payment reserve.

Proposed section 87A defines expressions for the purposes of the proposed Division.

Proposed section 87B requires the SAS Trustee Corporation ("STC") to establish a deferred payment reserve in the amalgamated fund continued under the Principal Act. Former members of those public sector superannuation schemes known as "STC schemes" will be able to have benefits under those schemes credited to the new reserve, as well as other subsequent eligible termination payments. Administration costs may be paid from the reserve. The proposed section also makes it clear that the provisions of the Principal Act applying to STC funds and schemes extend to the deferred payment reserve.

Proposed section 87C requires STC to establish separate accounts for persons who elect to have amounts credited or paid to the deferred payment reserve.

Proposed section 87D enables a person entitled to receive a benefit under an STC scheme to elect to have the whole or part of the amount of the benefit credited to the deferred payment reserve and requires an election complying with the proposed section to be accepted by STC.

Proposed section 87E enables a person for whom a benefit may be preserved under an STC scheme, and paid to another superannuation scheme or approved deposit fund, to have the whole or part of the amount of the benefit credited to the deferred payment reserve and requires an election complying with the proposed section to be accepted by STC.

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Proposed section 87F enables a person who has had a benefit credited to the deferred payment reserve to elect to pay any eligible termination payment subsequently payable to the person to the reserve and requires an election complying with the proposed section to be accepted by STC.

Proposed section 87G allows STC to credit a benefit or other amount to the reserve, despite any provision of any other Act or regulation or rule.

Proposed section 87H requires STC to deduct money for income tax and other tax liabilities from members' accounts.

Proposed section 87I enables STC to recover money owed by a person to the deferred payment reserve.

Proposed section 87J gives a person the opportunity to exercise rights or enjoy privileges or benefits under the proposed Division that the person might have lost because of a failure to take appropriate action, subject to STC being satisfied that it is just and equitable to restore that right, privilege or benefit.

Proposed section 87K enables regulations to be made for or with respect to specified matters relating to the operation of the deferred payment reserve, including the persons who may elect to have amounts credited or paid to the reserve, elections, the establishment of accounts, the identification of separate asset portfolios, the circumstances when an account must or may be closed and amounts must or may be paid, the provision of annuities or pensions and other matters.

Proposed section 87L enables STC to make rules with respect to certain matters, including the allocation of assets to particular asset portfolios, charges for administration costs, the operation of accounts in the deferred payment reserve and the default allocation of accounts to asset portfolios. The rules must be approved by the Minister and will be subject to the same requirements (relating to publication in the Gazette and disallowance) as statutory rules under the *Interpretation Act 1987*.

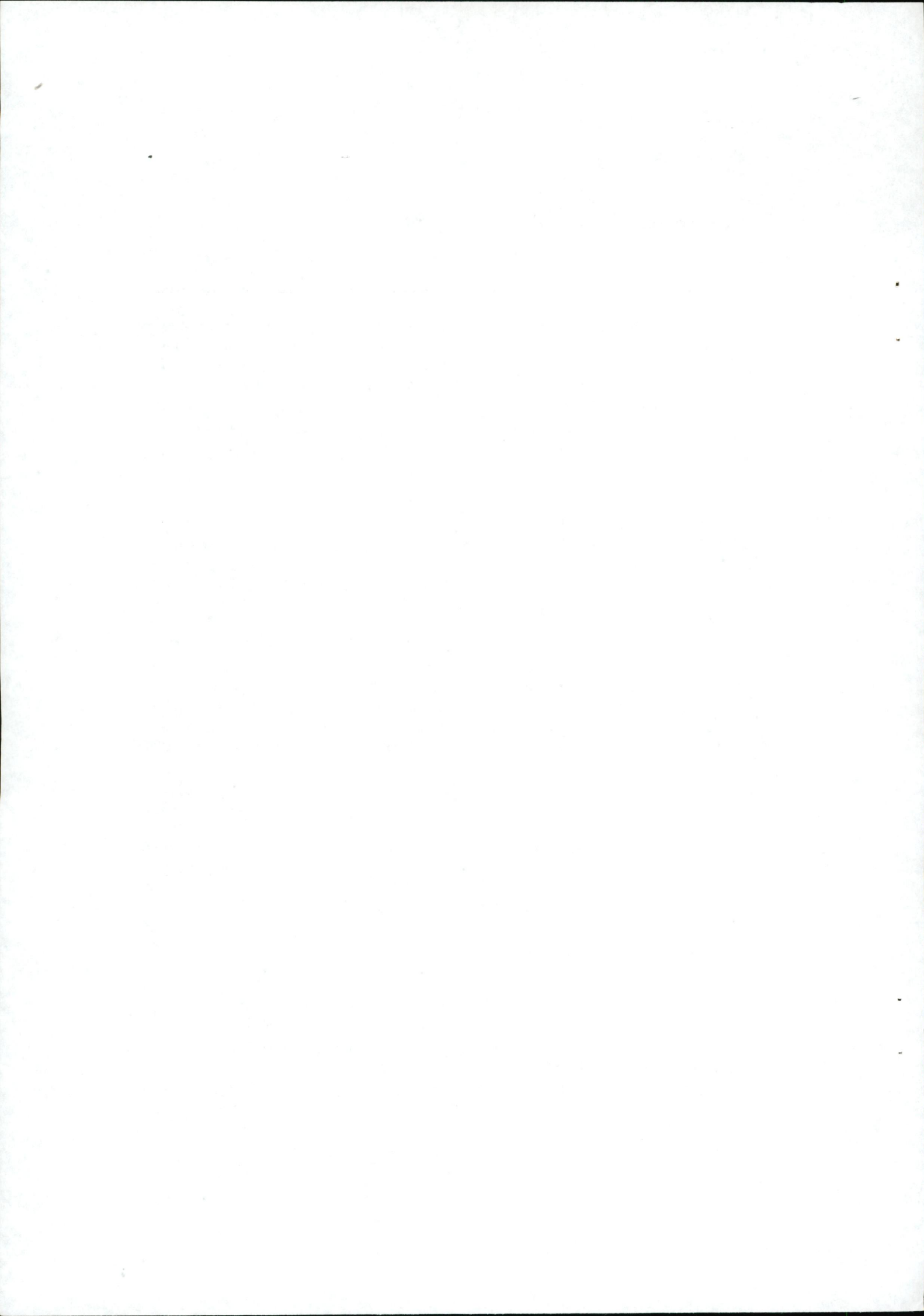
### **Consequential amendments**

**Schedule 1 [1]** inserts a definition of *deferred payment reserve*.

**Schedule 1 [2]** makes it clear that STC may determine disputes relating to the deferred payment reserve.

**Schedule 1 [3]** enables administration costs related to the deferred payment reserve to be paid by persons having accounts in the reserve.

**Schedule 1 [5]** enables savings and transitional regulations to be made as a consequence of the proposed Act.





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New South Wales

## **Superannuation Administration Amendment Bill 1997**

No. , 1997

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### **A Bill for**

An Act to amend the *Superannuation Administration Act 1996* to enable beneficiaries under certain State superannuation schemes to invest their benefits and certain other amounts through the amalgamated State superannuation fund; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Superannuation Administration Amendment Act 1997*.

**2 Commencement**

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This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Superannuation Administration Act 1996 No 39**

The *Superannuation Administration Act 1996* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

**[1] Section 4 Definitions**

Insert in alphabetical order:

*deferred payment reserve* means the reserve established under section 87B. 5

**[2] Section 67 Determination of disputes**

Insert "or any dispute relating to the deferred payment reserve" after "scheme" in section 67 (1).

**[3] Section 85 Administration costs generally**

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Insert after section 85 (3):

(3A) The administration costs (including costs related to preserved benefits and investment management) that STC incurs in relation to the deferred payment reserve are payable by persons who have accounts in the reserve. 15

(3B) Without limiting subsection (3A), STC may determine administration costs for particular actions taken in relation to the deferred payment reserve and accounts in the reserve.

**[4] Part 3, Division 5A (sections 87A–87L)**

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Insert after Division 5:

**Division 5A Deferred payment reserve**

**87A Definitions**

In this Division:

*amalgamated fund* means the fund referred to in section 81 (1). 25

*eligible termination payment* has the same meaning as in Subdivision AA of Division 2 of Part III of the *Income Tax Assessment Act 1936* of the Commonwealth.

**87B Establishment of deferred payment reserve**

- (1) STC must establish and maintain within the amalgamated fund a deferred payment reserve.
- (2) STC is to maintain a separate account in the amalgamated fund in relation to the deferred payment reserve. 5
- (3) There may be credited to the deferred payment reserve:
  - (a) any amount that may be credited to the deferred payment reserve under section 87D or 87E, and
  - (b) any amount that may be paid to the deferred payment reserve under section 87F, and 10
  - (c) income or profit allocated to the reserve or any part of the reserve by STC, and
  - (d) any other amounts payable to the reserve.
- (4) There may be debited from the deferred payment reserve: 15
  - (a) the administration costs incurred by STC in relation to the reserve, and
  - (b) amounts payable to a person who has an account in the reserve, and 20
  - (c) losses allocated to the reserve or part of the reserve by STC, and
  - (d) any other amounts payable from the reserve.
- (5) A reference in any provision of this Act or the regulations to an STC fund is taken to include a reference to the deferred payment reserve that is maintained for the purposes of this section. 25
- (6) A reference in any provision of this Act or the regulations to the administration of an STC scheme, or the functions of STC in relation to an STC scheme, includes a reference to the administration of the deferred payment reserve or the carrying out of those functions in relation to the deferred payment reserve. 30

**87C Accounts for individuals**

- (1) STC is required to establish and maintain within the deferred payment reserve a separate account for each person who makes an election under this Division.
- (2) STC need not establish more than one account for a person who makes an election under section 87D or 87E and who subsequently makes one or more elections under this Division. 5

**87D Crediting of benefit to deferred payment reserve**

- (1) A person who is entitled to be paid a lump sum benefit under an STC scheme may elect to have the whole or part of the amount of the benefit credited to his or her credit in the deferred payment reserve. 10
- (2) The election is to be made in accordance with the regulations. 15
- (3) An election complying with this section must be accepted by STC.

**87E Crediting of preserved benefit to deferred payment reserve**

- (1) A person in respect of whom a benefit is preserved under an STC scheme, and who is entitled, under that scheme, to transfer the benefit to another superannuation scheme or approved deposit fund, may elect to have the whole or part of the amount of the benefit credited to his or her credit in the deferred payment reserve. 20
- (2) The amount of a preserved benefit credited to the account of a person in the deferred payment reserve under this section is payable by STC to or in respect of the person only:
  - (a) if the person dies, or 30
  - (b) if the person ceases to be employed in the circumstances in which a benefit is payable for the purposes of complying with the requirements of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth for a regulated superannuation fund, or 35



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- (c) in any other circumstances in which a benefit is payable to comply with any such requirements.
- (3) The whole or part of any such amount may be paid to a person if such a payment is permitted under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth in the same circumstances in respect of a regulated superannuation fund. 5
- (4) The whole or part of any such amount must be paid by STC to the person if such a payment is required, under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, to be paid by a trustee in the same circumstances in respect of a regulated superannuation fund. 10
- (5) Despite subsections (3) and (4), a person who is entitled to be paid an amount under this section may elect to retain the whole or part of the amount in his or her account in the deferred payment reserve and, on any such election taking effect, the amount so retained is to be treated in the same way as an amount credited under section 87D. 15 20
- (6) An election under this section is to be made in accordance with the regulations.
- (7) An election complying with this section must be accepted by STC.
- 87F Payment of benefits from other schemes to deferred payment reserve** 25
- (1) A person who has made an election under section 87D or 87E may, at any time while the person has an account in the deferred payment reserve, elect to pay the whole or part of any eligible termination payment payable to the person to the credit of the person in the reserve. 30
- (2) The election is to be made in accordance with the regulations.

- (3) An election complying with this section must be accepted by STC.

**87G Payment of benefits under STC schemes**

STC may credit the whole or part of the amount of a benefit to the deferred payment reserve in accordance with an election in force under section 87D or 87E, despite the provisions of any other Act or regulation or rule relating to the payment of the benefit.

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**87H STC must deduct tax liabilities from members' accounts**

Whenever STC has paid (or is liable to pay) an amount of income tax or other tax under a Commonwealth taxation law in respect of an employer's contributions to an amount held in a person's account in the deferred payment reserve, STC is required to debit to the account the amount of any such tax.

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**87I Recovery of money owing to deferred payment reserve**

- (1) STC may recover any money owing to the deferred payment reserve by a person, together with interest on that money as provided by subsection (2):
  - (a) where any amount is, or becomes, payable from the reserve to the person—by deduction from that amount, or
  - (b) in any other case—as a debt in a court of competent jurisdiction.
- (2) Interest at a rate determined by STC is payable on any amount owing to the deferred payment reserve calculated from the date on which the amount became due for payment until the date on which the amount is recovered under subsection (1) or is otherwise paid.

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**87J Restoration of lost right under Division**

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- (1) If a person is entitled to exercise a right or enjoy a privilege or benefit under this Division and, without having exercised the right or enjoyed the privilege or



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benefit, the person ceases to be entitled to do so, the person may exercise the right or enjoy the privilege or benefit if:

- (a) STC, being satisfied that it is just and equitable that it should do so, gives its consent to the exercise by the person of the right or the enjoyment by the person of the privilege or benefit, and 5
  - (b) the person fulfills any conditions imposed, and complies with any requirements made, by STC in giving its consent. 10
- (2) If under this section STC consents to an election, or an application to STC, being made after the time before which, but for that consent, it should have been made, STC may, if it thinks fit, deal with the election or application as if it had been made before that time. 15

**87K Regulations relating to deferred payment reserve**

The regulations may make provision for or with respect to the following matters:

- (a) persons who may elect to have amounts credited to, or make payments to, the deferred payment reserve, 20
- (b) elections to pay money to the deferred payment reserve,
- (c) the establishment of accounts in the deferred payment reserve, 25
- (d) the identification of separate asset portfolios by reference to assets of the reserve nominated by STC,
- (e) the treatment or deeming of a person's account in the deferred payment reserve as being notionally invested in a particular asset portfolio or portfolios, 30

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- (f) elections to treat or deem amounts in the deferred payment reserve as being notionally invested in a particular asset portfolio or portfolios,
- (g) the amendment and revocation of elections,
- (h) amounts to be credited to and debited from accounts in the deferred payment reserve, including adjustment of accounts having regard to the income, profit and losses attributable to the reserve and any applicable asset portfolio of the reserve, 5 10
- (i) the withdrawal by a person of the whole or part of funds credited to the person's account in the deferred payment reserve and adjustment of the account for that purpose,
- (j) the circumstances when an account must or may be closed and when funds credited to an account must or may be paid, 15
- (k) the payment of money when an account is closed or money is withdrawn, including the form of payment and the persons to whom the money may be paid, 20
- (l) the allocation of income and profit derived from, and losses incurred in respect of, the deferred payment reserve,
- (m) the provision of an annuity or allocated pension to a person having an account in the deferred payment reserve, 25
- (n) the provision of financial advice (by a person other than STC or a person associated with STC) to persons having accounts in the deferred payment reserve, 30
- (o) the provision of information to persons having accounts in the deferred payment reserve,

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- (p) the adjustment and recovery, within the amalgamated fund, to enable correction of amounts payable in respect of the deferred payment reserve.

**87L Rules relating to deferred payment reserve** 5

- (1) STC may make rules not inconsistent with this Act, regulations under section 87K or standards applying to regulated superannuation funds under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth, for or with respect to the following matters: 10
- (a) the assets of the amalgamated fund to be allocated to particular asset portfolios for the purposes of the deferred payment reserve,
- (b) charges for administration costs in respect of the deferred payment reserve, 15
- (c) the operation of accounts in the deferred payment reserve,
- (d) the allocation of accounts in the deferred payment reserve to asset portfolios in the event of there being no election by persons having the accounts. 20
- (2) STC must not, except as provided by subsection (1) (b), make a rule which reduces or compromises the accrued rights, privileges or benefits of persons having accounts in the deferred payment reserve. 25
- (3) A rule may not be made except with the Minister's approval.
- (4) Part 6 (other than section 45) of the *Interpretation Act 1987* applies to a rule made under this section in the same way as it applies to a statutory rule. 30

**[5] Schedule 3 Savings and transitional provisions**

Omit "this Act and the *Superannuation (Axiom Funds Management Corporation) Act 1996*" from clause 1 (1).

Insert instead:

this Act and the following Acts:

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*Superannuation (Axiom Funds Management Corporation) Act 1996*

*Superannuation Administration Amendment Act 1997*



