



*Retirement Savings Accounts Act 1997*

**DETERMINATION**

**FORM OF NON WRITTEN CONSENT SUFFICIENT FOR ROLLING  
OVER OR TRANSFERRING BENEFITS**

I, Thomas Karp, Acting Insurance and Superannuation Commissioner, under paragraph 4.30(b) of the *Retirement Savings Accounts Regulations* (the "RSA Regulations"), DETERMINE that, for the purposes of Division 4.4 of Part 4 of the RSA Regulations, consent, other than written consent, shall be sufficient if it is in accordance with the form described in the Schedule.

This determination commences to have effect on 1 July 1998.

Dated 30 June 1998

Tom Karp  
Acting Commissioner

[NOTE: Where:

- (1) an amount proposed to be rolled over:
  - (a) out of an RSA is an eligible termination payment (within the meaning of subsection 27A(1) of the *Income Tax Assessment Act 1936*) (an "ETP"); or
  - (b) into an RSA is a qualifying ETP (within the meaning of subsection 27A(12) of the *Income Tax Assessment Act 1936*); and
- (2) the taxpayer wishes to utilise an RSA provider's arrangement under this determination to give non written consent to the rollover;

the taxpayer must give instructions to the payer of the ETP, in respect of the rollover, that are consistent with both:

- (3) Subdivisions 3, 3A and 3B of Division 2 of Part 7 of the *Income Tax Regulations*; and
- (4) this determination.]

## SCHEDULE

### Interpretation

- (a) “consent” means an RSA holder’s consent or authority, given to the RSA provider out of which, or into which, the RSA holder’s benefits are rolled over or transferred;
- (b) “convey” means transmitted verbally, electronically, or by any other means not in writing and “conveyed” has a corresponding meaning;
- (c) “default arrangement” means an arrangement that states how, if insufficient or incorrect instructions are received by the RSA provider with respect to a rollover or transfer, the RSA provider will deal with the amount;
- (d) “identifier” means a unique identifier allocated to an RSA holder by an RSA provider under item 2 of this Schedule, other than a Tax File Number, which may be, for example:
  - (i) a number or group of numbers; or
  - (ii) a password;
 that is capable of being conveyed to the RSA provider by non written means;
- (e) “RSA” has the same meaning as in the *Retirement Savings Accounts Act 1997*;
- (f) “RSA holder” means a person holding an RSA who makes a transaction;
- (g) “RSA provider” has the same meaning as in the *Retirement Savings Accounts Act 1997*; and
- (h) “transaction” means a rollover or transfer of an RSA holder’s benefits out of or into an RSA provider where the RSA holder gives their non written consent using the identifier given to that RSA holder by the RSA provider under item 2 of this Schedule.

**Consent may be verbal or in any other non written form, if, and only if, the procedure set out below is followed by the RSA provider in obtaining that consent.**

- (1) Prior to an identifier, which meets the conditions set out under item 2, being used in a transaction, the RSA provider shall give the RSA holder a document, comprising binding conditions of use (the “conditions”), setting out the respective rights and obligations of the RSA provider and the RSA holder with respect to a transaction, including:
  - (a) that the RSA holder shall not be liable for any losses arising from:
    - (i) fraudulent or negligent conduct of the RSA provider’s employees or agents in relation to a transaction; and
    - (ii) the RSA provider’s system or equipment malfunctioning, including non-completion of transactions and unreasonable delays in carrying out the RSA holder’s valid instructions; and

- (iii) any unauthorised transaction where the RSA holder has not contributed to such a loss; and
  - (iv) any unauthorised transaction occurring after the RSA holder has notified the RSA provider that the security of the RSA holder's identifier has been breached; and
- (b) subject to paragraph (c), how any other losses will be reasonably allocated between the RSA provider and the RSA holder, based on each party's contribution to the loss; and
  - (c) except in the case of the RSA holder's fraudulent conduct in relation to a transaction, placing a maximum limit on the RSA holder's liability for the loss, which must in no circumstances exceed the total amount of the RSA holder's benefits in the RSA; and
  - (d) describing any default arrangement that the RSA provider has in place.
- (2) The RSA provider shall allocate an identifier that is:
- (a) unique to the RSA holder; and
  - (b) capable of being solely held by, and confidential to, the RSA holder; and
  - (c) capable of verification by the RSA provider against its records.
- (3) A transaction can only be validly made:
- (a) after the RSA holder has properly conveyed his or her non written consent using the identifier; and
  - (b) after the identifier has been verified against the RSA provider's records; and
  - (c) after the RSA holder has been informed, at the time of the transaction, of any default arrangement that may apply to the transaction; and
  - (d) if the transaction is accurately recorded by the RSA provider (whether electronically or otherwise) in a form capable of being readily accessed and understood at any time during the period which records are required to be kept by or under law.
- (4) To avoid doubt, if the RSA provider alters any of the conditions after giving them to the RSA holder (including implementing a default arrangement for the first time, or changing an existing default arrangement) the RSA provider must notify the RSA holder as soon as is practicable (but need not allocate a replacement identifier to the RSA holder).