



**LEGAL**  
CONSOLIDATED  
BARRISTERS & SOLICITORS

**National Law Firm**

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Your Reference: SMSF Vesting Deed  
Our Reference: 9581912104922  
Direct Telephone: 1800 141 612

Thursday, 19 December 20

SMSF Trustee Company Pty  
37 Concord Lane  
North Strathfield NSW 2137  
Australia

Dear Trustee,

*Build this legal document at  
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you complete the questions. But start the  
free building process first.*

## **Vesting the Smith Super Fund**

Attached are the documents to wind up your Self-Managed Superannuation Fund (**SMSF**). These documents are:

1. The Vesting Deed
2. Vesting Minutes
3. Checklist for Winding up an SMSF
4. Certificate of Vesting

Speak with your accountant and financial planner first. Once you are all satisfied that the documents are correct, please arrange for all parties to sign and date all copies.

### **How to print your document**

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Do not print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

Being the Trustee of the Self-Managed Superannuation Fund Deed entitled the Smith Super Fund (**Fund**) in which membership is comprised of:

John Allen Smith of 12 Archer Street, Concord NSW 2137, Australia

Jackie Robin Smith of 12 Archer Street, Concord NSW 2137, Australia

**(Membership)**

### Why terminate the Self-managed Super Fund?

We have provided no legal advice or general advice. The information below is of a general nature only and is not legal advice.

The ATO notes that there are a range of reasons why an individual may consider winding up their SMSF, including:

- a change in personal circumstances, eg a lack of time to manage the fund, permanent incapacity or failing health;
- poor performing investments, eg fund investments are incurring a significant loss, or the fund is unable to meet ongoing costs;
- all members have left the fund, eg they have rolled over all their benefits into another fund or have passed away;
- disputes between trustee, eg relationship breakdown, differing opinions on how the fund should be run or the other trustees have acted in bad faith;
- the fund no longer meets residency rules, eg the trustees have moved overseas.

### What do I need to terminate the SMSF?

We are not giving advice on the requirements to end your SMSF. We have not seen or reviewed any documents. We have not looked at or considered your SMSF Deed. This is of a general nature only.

1. You need to pay out or rollover the balance of members' super to another fund, which may involve selling assets.
2. A final audit is completed before you lodge the last SMSF annual return. Remember to let your auditor know that the fund is being wound up.
3. You pay any outstanding tax and other debts before you close your fund's bank account.
4. A resolution is passed determining that the Fund is to be vested (terminated).
5. The final accounts of the fund are prepared by your accountant

### Notify the ATO of the vesting within 28 days

As a trustee of an SMSF, notify the Australian Taxation Office (ATO) within 28 days of the vesting taking place. You can do this:

- online at <https://abr.gov.au/> (AUSkey or myGov)
- through your registered agent
- by phone on 13 10 20 (provided you are the authorised contact for your SMSF)
- by lodging the paper form *Change of details for superannuation entities* (NAT 3036) <https://www.ato.gov.au/assets/0/104/2244/2335/4718f022-9707-416d-8910-eb6eeb9b0613.pdf> order a copy from online ordering.

Subject to your accountant's advice, while you can, it may not be best practice to use the SMSF annual return to tell the ATO about the winding up of your SMSF.

<b>9</b>	<b>Was the fund wound up during the income year?</b>	Day Month Year	Have all tax lodgment and payment obligations been met?
<input checked="" type="checkbox"/>	Print Y for yes or N for no.	If yes, provide the date on which the fund was wound up	<input checked="" type="checkbox"/>
		30/06/2022	

We have included a checklist for your information which is attached. A summary of the requirements are:

1. All Fund property must be vested according to the Deed and Superannuation Law
2. Taxation obligations (in particular, CGT and Duty) taken into account
3. Fund liabilities discharged
4. Trustees have met and resolved to wind up the Fund
5. Deed of Vesting signed by Trustees and Members and witnessed.
6. Certificate of Vesting signed and dated
7. Final accounts of the Fund prepared
8. All activity statements up to date
9. All assets and member contributions dealt with as required by the Superannuation Laws and Deed
10. An audit conducted by an approved auditor for the income year to date (When you are winding up your fund, you still need to have an audit completed before you can lodge your SMSF annual return.)
11. The fund's final SMSF annual return is completed

#### **ATO Guide on winding up a SMSF**

The ATO has published a guide, *Winding up a self-managed super fund*, setting out the obligations when winding up a SMSF, including a checklist.

The ATO guide sets out the tax, reporting, audit and compliance obligations that must be completed before lodging a final annual return to wind up the fund. Lodging a final SMSF annual return will notify the ATO of the intention to wind up the SMSF. Once processed, the ATO will then confirm the SMSF has been wound up by sending a letter stating that the ATO has cancelled the fund's ABN and closed the SMSF's records in its system.

The ATO says it is important not to close the fund's bank account before paying all final liabilities, receiving all final refunds from the ATO and completing any rollovers using SuperStream.

When preparing an exit plan, the ATO says trustees should check that the trust deed allows for the actions in the exit plan. For example, the trust deed may require all assets to be sold rather than transferring ownership to members. The trustees should also hold a meeting and ensure all trustees agree with the decision to wind up the fund, and document this in the meeting minutes.

#### **SMSF Auditors to do a final check**

SMSF auditors are required to conduct extra audit checks when undertaking a final audit for an SMSF that is winding up: see ATO website.

#### **No checking of any of the parties**

We have not provided legal advice, or any advice or completed any form of identification of any of the persons. We have not looked at the veracity of the persons involved with the SMSF or members or trustee.

**Power to amend the Self-Managed Superannuation Fund deed**

We confirm that we have not reviewed or otherwise updated the Trust Deed or any variation of the Trust Deed. You need to check that the attached Deed is permitted under the Trust Deed or any variations of the Trust Deed.

If the Trust Deed or any variations are not authorised, allowed or sanctioned under the trust rules then this attached Deed does not operate.

We have provided no advice as to whether a local Supreme Court order is required in respect of approving this Deed to end the SMSF.

Legal Consolidated has not reviewed any Trust Deeds and has provided no advice as to whether this Deed is permitted under the trust rules. Legal Consolidated does not provide that service.

Legal Consolidated does not know your specific circumstances. This cover letter to the Deed of Variation is of a general nature only. The information in this letter is not advice and is not legal advice.

**Review your Family Trust Deed and Variations regularly**

Monitor your Family Trust Deed and Deeds of Variation to ensure that your trust remains up-to-date and have it reviewed regularly by both your lawyer and accountant, at least every four years.

**Conclusion**

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

## Checklist for Winding up the Smith Super Fund

You may want to use the checklist below to confirm that you have done everything required to vest your trust.

You need to have distributed all property and assets of the trust and paid all expenses and taxes.

<b>SMSF Wind-Up Checklist</b>	<b>Done</b> (tick box)
All Fund property has been vested according to the Deed and Superannuation Law	<input type="checkbox"/>
Taxation obligations (in particular, CGT and Duty) have been taken into account.	<input type="checkbox"/>
Fund liabilities have been discharged.	<input type="checkbox"/>
Trustees have met and resolved to wind up the Fund (Minutes signed)	<input type="checkbox"/>
Deed of Vesting has been signed by Trustees and Members and witnessed.	<input type="checkbox"/>
Certificate of Vesting signed and dated	<input type="checkbox"/>
Final accounts of the Fund have been prepared.	<input type="checkbox"/>
Read your super fund's Deed, as it may contain vital information about winding up your fund.	<input type="checkbox"/>
All activity statements are up to date.	<input type="checkbox"/>
All assets and member contributions have been dealt with as required by the Superannuation Laws and Deed.	<input type="checkbox"/>
the income	<input type="checkbox"/>
eed to have an SF annual	<input type="checkbox"/>
ed	<input type="checkbox"/>
change of	<input type="checkbox"/>

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# Vesting Minutes for the Smith Super Fund

Resolution by the Trustees

On ..... day of .....20.....

SMSF Trustee Company Pty Ltd of 37 Concord Lane, North Strathfield NSW  
2137, Australia  
ACN 543 436 755

(Trustee)

John Allen Smith of 12 Archer Street, Concord NSW 2137, Australia

Jackie Robin Smith of 12 Archer Street, Concord NSW 2137, Australia

(Membership)

**Quorum:** It was noted that a quorum was present at the meeting.

**Notice of Meeting:** It was confirmed that the Trustee received notice of this meeting and that there is unanimous consent to the meeting being held and waive the requirement for any specified period of the notice of the meeting. It was resolved unanimously that the meeting is validly constituted regardless of any failure to give notice as required under the *Corporations Act*.

**Person chairing the meeting:** It was resolved that the person chairing the meeting (Person chairing the meeting)

## Minutes

The minutes of the previous meeting of the Trust

## Exercise of powers

The chairperson noted that the resolutions to exercise the powers and discretions conferred on the settlement establishing this Trust.

## Resolution to allocate Fund Capital

The Trustee notes that all income and capital is to be appointed to or for the benefit of those beneficiaries named in the Deed. It is further noted that the Trustee settles the beneficiary's loan accounts as well as all tax

## Certificate of Vesting

The Trustee and Member have agreed and have signed

## Vesting of Trust

The Trustee and Member, acting unanimously, have determined the Fund according to the authority of the Deed is now fully vested and has now determined

The parties acknowledge that:

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*<https://legalconsolidated.com.au/smsf>*

*[-vesting-deed/](#) – telephone us, we*

*can help you complete the questions.*

*On our law firm's website, you:*

*1. Retain legal professional privilege*

*2. Receive legal advice document*

*build.*

*3. Get a signed letter on our law*

*firm's letterhead with the legal*

*4. We take responsibility for the legal*

*document.*

*Only a law firm provides the above.*

*Adj Professor, Dr Brett Davies- Partner*

**No checking of any of the parties**

The law firm that prepared the Deed has not prepared or completed any form of identification of any of the parties or the veracity of the persons involved with the SMSF.

**Power to amend the Self-Managed Superannuation Trust Deed**

Further, the law firm has not reviewed or otherwise advised on any variation of the Trust Deed. The parties need to ensure any variation is permitted under the Trust Deed or any variation to the Trust Deed.

If the Trust Deed or any variations are not authorised or permitted under the trust rules then this attached Deed cannot be used.

The law firm has provided no advice as to whether the Deed is required in respect of approving this Deed to effect the variation.

The law firm has not reviewed any Trust Deed or any variation to determine whether this Deed is permitted under the trust rules.

The law firm does not know your specific circumstances and cannot provide specific advice, legal advice or any advice.

*Without a binding nomination, the Superannuation trustee has the unfettered discretion. This is to pay the benefits as it deems appropriate. The trustee:*

- is only bound by the superannuation trust deed;*
- and*
- is not bound by any supplementary direction – your wishes and Will are not relevant.*

**Closure:** There being no further business the meeting is closed.

SMSF Trustee Company Pty Ltd (Trustee)

.....

Date: ..... 20

John Allen Smith (Member)

.....

Date: ..... 20

Jackie Robin Smith (Member)

.....

Date: ..... 20

*This is a sample of the SMSF Deed of Variation to allow for Non-lapsing Binding Nominations.*

*For can start the educational and free building process here:*

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*can help you complete the questions.*

*But start the free building process first.*

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## **Vesting Deed Deed of Variation for the Smith Super Fund**

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9581912104922

Your Reference: SMSF Vesting Deed



This Deed of Variation is made by:

SMSF Trustee Company Pty Ltd of 37 Concord Lane, North Strathfield NSW 2137,  
Australia  
ACN 543 436 755

(Trustee)

## 1 Fund Winding up

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- 1.1 The Trustee are the current trustees of the self-known as the Smith Super Fund Fund establish that deed is amended from time to time (**Deed**).
- 1.2 Current membership comprises of:  
John Allen Smith of 12 Archer Street, Concord  
Jackie Robin Smith of 12 Archer Street, Concord
- 1.3 The Trustee has satisfied itself, or sought professional advice, for variations, such as the variations contained in the Deed.
- 1.4 The Smith Super Fund contains assets and has liabilities.
- 1.5 The Trustee varies the Deed effective from, unless the Trustee decides otherwise, when the Deed of Variation is signed (**Start Date**).
- 1.6 The parties acknowledge that the law firm that prepared this Deed has not reviewed any documents or given any advice or any legal advice.

*Binding death benefit nominations provide certainty. They ensure that upon your death, your super is paid according to your wishes and are not left to the trustee's discretion.*

## 2 Dictionary

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- 2.1 Unless a contrary intention appears:

**Beneficiary** a person immediately and absolutely entitled to a Benefit under this Deed for a member and it only includes a member where that member is immediately and absolutely entitled to a Benefit for another member

**Benefit** an amount payable out of the Fund to or for a member or Beneficiary

**expenses** whether payable, likely to become payable, current, future, contingent or actual all liabilities, costs and expenses in maintaining the Fund including, reimbursements, tax (including on contributions, shortfall components, surcharge and income, on unrealised gains, advanced tax instalments and notional surcharge amounts), tax credits, levies, charges, fees adjustment credits, roll-over payments, payment from a pension account, insurance and annuity policies, forfeited amounts, negative earnings, contributions splits, valuation deficiency, disposal losses and an equalisation account

**Member** a person admitted as a member under the terms of the Deed, duly recorded as a member and has not ceased to be a member and currently:

John Allen Smith of 12 Archer Street, Concord NSW 2137, Australia

Jackie Robin Smith of 12 Archer Street, Concord NSW 2137, Australia

**Responsible Authority** as the case requires, the relevant superannuation including the Australian Taxation Office, the Australian Prudential Regulation Authority and the Australian Securities & Investments Commission

**SIS Act** the *Superannuation Industry (Supervision) Act 1993*

**SIS Legislation** all superannuation acts, including, to the extent that they apply, the following administrative guidelines, including, by way of example:

- a. *SIS Act and SIS Regulations*
- b. *Superannuation Legislation (Consequential Provisions) Act 2011*
- c. *Superannuation (Financial Assistance) Act 1993, Superannuation (Resolution of Complex Superannuation (Rolled-Over Benefits) Levy Act 1993*
- d. *Superannuation Industry (Supervision) Consequential Amendments Act 1993, Superannuation Supervisory Levy Amendment Act 1993*
- e. *Occupational Superannuation Standards Amendment Act 1993*
- f. *Superannuation Act 2005, Superannuation Act 1990, Superannuation Act 1976*
- g. *Superannuation (Productivity Benefit) Act 1998*
- h. *Superannuation Benefits (Supervisory Mechanisms) Act 1990*
- i. *Superannuation (Family Law - Superannuation Act 1922) Orders 2004 and Superannuation (Family Law - Superannuation Act 1976) Orders 2004*
- j. *Superannuation Guarantee (Administration) Act 1992*

**SIS Regulations** *Superannuation Industry (Supervision) Regulations 1994*

**Superannuation law** includes:

- a. SIS Legislation
- b. any common law or law including the *Corporations Act 2001* and the *Social Security Act 1991*, relating to superannuation or the taxation of superannuation
- c. any lawful requirement to the Fund by a Responsible Authority
- d. any other body that has responsibility for the regulation of superannuation including an Asset-test Exempt Pension
- e. changes to any superannuation law after the date of this Deed
- f. any proposed law or lawful requirement that the Trustee believes may have retrospective effect

**Tax Act** *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* as appropriate

1. Unless the Trustee, from time to time, states otherwise, and subject to a contrary intention, these terms have the same meaning, as per the SIS Legislation, as the case requires:

Superannuation is for your retirement. However, a dead person no longer needs retirement money. Therefore, the Superannuation must leave the low taxation environment. It is paid out at death.

actuary, annuity, approved auditor, approved deposit fund, binding death benefit notice, cash, civil penalty order, eligible roll-over fund, gainful employment, growth pensions, interdependency relationship, mandated employer contributions, non-binding nomination form, pension age, pension dependant, preservation age, regulated superannuation fund, shortfall component, to retirement pension, unrestricted non-pre

and also under the Tax Act

approved deposit fund, excess contribution transitional employment termination paym

*However, your Superannuation is not an estate asset. It does not automatically go into your Will. What happens if you have no binding nomination?*

### **3 No Resettlement**

- 3.1 This Deed of Vesting is supplemental to the Deed of Vesting in all Australian jurisdictions.
- 3.2 If any of the terms of the Deed are inconsistent with the terms of this Deed of Vesting, then the terms of this Deed of Vesting prevail. Vesting in no way constitutes a resettlement of the Smith Super Fund or any part of it. If anything in the Deed of Vesting establishes a resettlement of the Smith Super Fund then the applicable words are read down so as not to constitute a resettlement.
- 3.3 The Deed of Vesting is interpreted to avoid any illegality. If any clause is nonetheless illegal, it is severed from the Deed of Vesting to the extent of the illegality.
- 3.4 The Deed of Vesting is read down so that no mandatory superannuation law, taxation law, duty or impost (both State and federal) or Responsible Authority direction from time to time, is contravened that would lead to an unfavourable taxation position.
- 3.5 Every part of this Deed of Vesting, every clause and term are subservient to the above clauses.

*The SMSF trustee pays out your Super as it sees fit.*

### **4 Protecting grandfathered structures & defined benefits**

#### **4.1 In house asset rules**

- 4.1.1 If any clause in this Deed of Vesting adversely affects the grandfathering provisions for any structures or transactions that the Smith Super Fund has in place for the in-house asset rules including for sections 71A to 71E Superannuation Industry (Supervision) Act 1993 then the offending words are read down so as not to adversely affect any such transactions or structures that are in place.

#### **4.2 Defined Benefit Pensions**

- 4.2.1 The Deed of Vesting is read down so as to preserve any payments of defined benefit pensions and any other pensions and payments. Any power to pay a defined benefit pension (under the Deed) is preserved.

#### **4.3 Accrued Benefits preserved**

- 4.3.1 This Deed of Vesting is not intended to prejudicially affect or reduce any entitlement or Benefit that has accrued. This Deed of Vesting is read down, as required, to give effect to this clause.

## 5 Vesting

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As of the Start Date, there being:

1. no tax owing under the Tax Act
2. no expenses
3. no benefit owing to a Beneficiary or member
4. no assets or entitlements

the Smith Super Fund is now vested and wound up pursuant to the SIS Legislation and Superannuation law.

## 6 Signing the Deed in different locations

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The Deed of Vesting may be executed by signing ider

## 7 Interpreting the Deed

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In the Deed of Vesting unless the context indicates a

- 7.1 headings are for convenience only and do not a
- 7.2 a reference to a person includes a reference to:  
(wherever incorporated); body politic; associatio  
or unincorporated) partnership; trust; superannu  
as a trustee, custodian or personal representati
- 7.3 the plural includes the singular and vice versa a  
include every other gender or no gender
- 7.4 a reference to the Deed or Deed of Vesting incl  
amendment, novation, Vesting, supplemental deed or replacement from time to  
time
- 7.5 references to any party to this Deed of Vesting include its successors or permitted  
assigns
- 7.6 references to laws in the Deed of Vesting refer to those laws as amended as  
consistent with the overall purpose of the Deed of Vesting and does not lead to an  
anomaly
- 7.7 reference to any statute, subordinate legislation or instrument includes all statutes,  
subordinate legislation and instruments amending, modifying, consolidating, re-  
writing, re-enacting or replacing them and a reference to a statute include all  
subordinate legislation and instruments made under that statute
- 7.8 if any part of the Deed of Vesting is or becomes invalid, then that does not affect  
the validity of the remainder of the Deed of Vesting

*If your super goes to an adult child then the tax rate can be 17% or 32% tax. A superannuation testamentary trust in your Will often reduces that non-dependency death tax to zero.*

Executed as a Deed on .....20.....

EXECUTED for and on behalf of  
**SMSF Trustee Company Pty Ltd**  
**ACN 543 436 755**  
by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

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Signature of Director or Secretary

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Signature of Director (if a 2<sup>nd</sup>)

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Adj Professor, Dr Brett Davies – Partner



# CERTIFICATE

of

# VESTING

## for the Smith Super Fund

**By this deed and according to the applicable laws of the relevant jurisdictions, the Smith Super Fund vests absolutely. This certificate serves as a receipt and discharge of all liabilities and obligations of the Trustees and officials of the Smith Super Fund.**

\_\_\_\_\_  
Trustee(s)

Date \_\_\_\_\_

\_\_\_\_\_  
Members(s)

Date \_\_\_\_\_

5581912104922