

The FlackSmith Superannuation Fund

Deed of Variation of Superannuation Trust Deed

Prepared for **The FlackSmith Superannuation Fund**
Matter name **The FlackSmith Superannuation Fund**
Prepared by **John Hamilton**
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What to do next

Arrange for the documents to be signed

You need to:

- arrange for the Deed of Variation and the Minutes to be signed by all parties listed;
- arrange for the Notice to Members to be given to each of the members of the SMSF. This 'Notice to Members' is to be in the form of a copy of the Deed of Variation and a copy of the new terms of SMSF Trust Deed. You should draw each Member's attention (perhaps in a meeting or in your covering letter) to the Product Disclosure Statement in Schedule 6 of those new terms; and
- attach the new terms of the SMSF Trust Deed (that Cleardocs emailed to you with this document) to the back of the Deed of Variation (after the signing clauses). The document you need to attach there is headed:

'Schedule A

The new terms for the Superannuation Trust Deed for the

The FlackSmith Superannuation Fund

as updated by a Deed of Variation'

The new terms of the SMSF Trust Deed in the Schedule do not need to be signed. The only documents that need to be signed are the Deed of Variation itself, and the Minutes.

Company signing If a company needs to execute the Deed of Variation (either as the trustee or a party consenting to the variation), then the Deed of Variation can be executed by:

- using the company's seal; or
- being signed by any of:
 - any 2 directors;
 - a director and the company secretary; or
 - if the company has only 1 director, that director.

The documents will include execution clauses which are determined according to your answers to certain questions on the Cleardocs site.

More information? If you are uncertain about the requirements for executing legal documents, then please see our FAQ on this on www.cleardocs.com. Follow the links to 'Resources', then 'Frequently asked legal questions', then 'signing and witnessing documents'. If the FAQ does not resolve your queries, then call the Cleardocs helpline on 1300 307 343 and Cleardocs will put you in touch with a lawyer from Maddocks.

Arrange for stamping, if necessary

You need to consider whether the Deed of Variation needs to be stamped. This is required in some states and territories. You should contact the relevant revenue office in your state or territory to check the current requirements – the details of each revenue office in Australia is set out below:

State/Territory	Revenue office contact details
Victoria	State Revenue Office GPO Box 4389 Melbourne VIC 3001 Ph: 13 21 61 www.sro.vic.gov.au
Queensland	Office of State Revenue GPO Box 2593 Brisbane QLD 4001 Ph: 1300 300 734 www.osr.qld.gov.au
New South Wales	Office of State Revenue GPO Box 4042 Sydney NSW 2001 Ph: (02) 9689 6200 www.osr.nsw.gov.au
Tasmania	State Revenue Office GPO Box 1374 HOBART TAS 7001 Ph: 03 6166 4400
South Australia	Revenue SA GPO Box 1353 Adelaide SA 5001 Ph: (08) 8226 3750 www.revenuesa.sa.gov.au
Western Australia	Office of State Revenue GPO Box T1600 Perth WA 6845 Ph: (08) 9262 1100 www.finance.wa.gov.au
ACT	ACT Revenue Office GPO Box 293 Civic Square ACT 2608 Ph: (02) 6207 0028

State/Territory	Revenue office contact details
	www.revenue.act.gov.au
Northern Territory	Territory Revenue Management GPO Box 154 Darwin NT 0801 Ph: 1300 305 353 www.revenue.nt.gov.au

Questions or further information

If you have any questions, you can call Cleardocs on 1300 307 343.

Cleardocs will answer all your administrative queries. These include, queries about our service, our website, registering as a user, payment or feedback.

Maddocks will answer all your questions about the nature, content, use, consequences, drafting and effectiveness of our documents.

All the legal information contained in this document is provided by our lawyers at Maddocks.

**Deed of Variation of Superannuation Trust Deed for the
The FlackSmith Superannuation Fund**

09 June 2017

Trustees:

Michelle Anne Flack and Marcus Richard Smith

Members:

Michelle Anne Flack and Marcus Richard Smith

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Table of contents

Background	1
Variation of fund's current deed	1
The parties consent to the variation	1
Compliance with current deed	1
Compliance with superannuation law	2
Continued operation	2
Definitions and interpretation	2
Execution	3

Deed of Variation of Superannuation Trust Deed for the The FlackSmith Superannuation Fund.

Between

Michelle Anne Flack of 48 George Street, Dulcot TAS 7025 and **Marcus Richard Smith** of 48 George Street, Dulcot TAS 7025 (together, Trustee)

and

Michelle Anne Flack of 48 George Street, Dulcot TAS 7025 (Member) and **Marcus Richard Smith** of 48 George Street, Dulcot TAS 7025 (Member)

Background

- 1 This deed supplements the fund's current deed.
- 2 The trustee is the trustee of the fund, the members are the members of the fund and prior to the date of this deed, the fund was governed by the fund's current deed.
- 3 Clause 29 of the fund's current deed provides that the trustee may by deed vary the provisions of the fund's current deed subject to the limitations contained in the fund's current deed and superannuation law.
- 4 The parties wish to vary the fund's current deed by deleting all of its provisions and replacing them with the provisions contained in Schedule A to this deed.

This Deed witnesses

Variation of fund's current deed

- 1 The fund's current deed is varied by this deed, with effect from the effective date, by deleting all the provisions of the fund's current deed, including any schedules or appendices, and replacing them with the provisions contained in Schedule A to this deed.
- 2 If any clause of the fund's current deed cannot be amended or replaced then clause 1 does not operate in relation to that clause, and that clause is preserved to the extent required by the current deed (Preserved Clause). Any Preserved Clause must be read together with the provisions contained in Schedule A to this deed and in the event of any inconsistency between the clauses the Preserved Clause prevails to the extent of the inconsistency.

The parties consent to the variation

- 3 The parties consent to the variation of the fund's current deed by this deed and each of them (with the exception of the members) has passed a resolution to this effect.

Compliance with current deed

- 4 The parties are satisfied that the requirements of the fund's current deed have been complied with in this deed.
- 5 The parties do not consider that this deed has either of the following effects:
 - reducing or adversely affecting the rights of a member to accrued entitlements that arose before the effective date;
 - reducing the amount of any other entitlement that is or may become payable in relation to a time before the effective date.

6 Furthermore, the parties do not consider that this deed will allow any further amendments to the terms governing the fund that will have the effect of:

- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
- unless the sole or primary purpose of the fund is to provide old age pensions to members, allowing any person except a corporation to be appointed trustee of the fund.

Compliance with superannuation law

7 The parties are satisfied that the requirements of the superannuation law have been complied with. They will, if required to do so by superannuation law, notify the fund's members of the variation to the fund's current deed effected by this deed.

Continued operation

8 The original deed remains effective and unaltered, except as varied by this deed. The trustee declares that as from the effective date, it will stand possessed of the assets of the fund and the income of the fund upon the trusts and with and subject to the powers and provisions contained in the fund's current deed as varied by this deed.

9 This deed does not vary or otherwise affect the terms of any nomination, notice or agreement relating to a member's death benefits, nor the terms of any member's pension or pension payment agreement.

Definitions and interpretation

10 Unless the context otherwise requires the words defined in the fund's current deed have the same meaning whenever they appear in this deed.

11 In this deed, unless expressed or implied to the contrary:

Deed means this deed of variation.

Effective date means the date of execution of this deed.

Fund means the trust fund known as The FlackSmith Superannuation Fund.

Fund's current deed means the document entitled 'The FlackSmith Superannuation Fund' made on 01/09/2015 between Michelle Anne Flack and Marcus Richard Smith which currently governs the fund, and where the fund has previously been amended: in succession to the deed which established the fund, and all subsequent variations, with the exception of clauses expressly or impliedly preserved, which continue to form part of the fund's governing rules.

Governing rules has the same meaning given to it in the Superannuation Industry (Supervision) Act 1993.

Superannuation law means any law of the Commonwealth of Australia which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund of the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes any change to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

Execution

Executed as a deed.

Signed sealed and delivered by Michelle
Anne Flack, in the capacity of trustee, in the
presence of:

Signature of witness

Signature of individual

Name of witness (please print)

Signed sealed and delivered by Marcus
Richard Smith, in the capacity of trustee, in
the presence of:

Signature of witness

Signature of individual

Name of witness (please print)

Signed sealed and delivered by Michelle Anne Flack, in the capacity as member, in the presence of:

Signature of witness

Signature of member

Name of witness (please print)

Signed sealed and delivered by Marcus Richard Smith, in the capacity as member, in the presence of:

Signature of witness

Signature of member

Name of witness (please print)