

# client alert

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## Super sector must address trust deficit

In a speech to the Financial Services Council Summit on 26 July 2018, Australian Securities and Investments Commission (ASIC) Chair James Shipton said the superannuation sector must restore the “trust deficit” and be more mindful of the responsibilities that come with being the custodians of other people’s money. Mr Shipton said the super industry has been exploiting opportunities to make money from members, citing examples of conduct that could lead to poor member outcomes, including poor advice, treatment of customers and defensiveness when it came to transparency about fund operations.

Mr Shipton said there is an urgent need for super funds to invest in systems, procedures and policies that can quickly identify emerging conduct and systemic issues. A recent ASIC review of 12 banking groups found that it took an average of four years between an issue occurring and being identified internally for investigation, before a significant breach report was finally lodged with ASIC.

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## Call to boost instant asset write-off to \$100,000

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, has called for the \$20,000 instant asset write-off for small businesses to be embedded in legislation and extended up to \$100,000 every three years. Ms Carnell said increasing the instant asset write-off to \$100,000 every three years would enable small businesses with higher costs for key equipment to participate.

These recommendations stem from the Ombudsman’s November 2017 paper, *Barriers to investment: a study into factors impacting small to medium enterprise investment*.

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## Tax return required for excess super non-concessional contributions

The ATO has reminded taxpayers that they need to lodge a tax return for any financial year in which they exceed their non-concessional contributions cap, and that making excess contributions may lead to having to pay extra tax.

The annual non-concessional cap for individuals is \$100,000 (or \$300,000 over three years for people aged under 65), provided you have a total superannuation balance of less than \$1.6 million at 30 June of the prior year. The ATO determines if you have exceeded the non-concessional cap by looking at your date of birth and the information reported by your super funds and in your tax return.

Taxpayers who go over the non-concessional cap can withdraw the excess non-concessional contributions (plus 85% of the associated earnings). The full amount of the earnings (100%) are then included in the taxpayer’s assessable income (and subject to a 15% tax offset). If an individual does not withdraw the excess contributions they are taxed at the top marginal tax rate (plus the Medicare levy).

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## APRA’s response to Productivity Commission draft report

The Australian Prudential Regulation Authority (APRA) has released its submission in response to the Productivity Commission’s draft report on superannuation efficiency and competitiveness. APRA agreed with a number of the Commission’s findings and the direction of many, but not all, of the recommendations in the draft report.

However, APRA has rejected the Commission’s claim that APRA’s powers and role, and their significant overlap with the powers and role of the Australian Securities and Investments Commission (ASIC), have resulted in “confusing and opaque” regulatory

arrangements, poor accountability and a lack of strategic regulation. APRA Deputy Chair Helen Rowell said APRA's role is to administer the prudential and retirement income provisions of the *Superannuation Industry (Supervision) Act 1993*. In that context, APRA is primarily responsible for ensuring that registrable superannuation entity (RSE) licensees manage their business operations to deliver quality member outcomes. By comparison, ASIC's role is to oversee specific conduct obligations that apply to RSE licensees dealing with individuals in relation to disclosure, financial product advice and complaints.

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## Protecting Super Bill: Senate Committee report

The Senate Economics Legislation Committee has released its report on the *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018*, and has recommended that the Bill be passed.

The Bill, which is still before the Senate, contains the following measures to prevent the erosion of super balances:

- super fees capped at 3% per year for balances less than \$6,000;
- exit fees banned for all super accounts, regardless of the balance;
- an insurance opt-in rule for:
  - account balances less than \$6,000;
  - new members under age 25;
  - accounts that have not received a contribution for 13 months; and
- inactive low-balance accounts (ie balance less than \$6,000) will be transferred to the ATO.

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## First Home Super Saver scheme: ATO guidance

Law Companion Ruling LCR 2018/5, issued by the ATO on 15 August 2018, provides guidance on the First Home Super Saver (FHSS) scheme.

**TIP:** The FHSS scheme is designed to help eligible first-home buyers by allowing them to make voluntary superannuation contributions and then withdraw those amounts and associated earnings to use when purchasing a first home.

People who meet the eligibility criteria can access the scheme by applying to the ATO for a determination and a release authority. They must make superannuation contributions that are eligible for release under the scheme, namely voluntary concessional or non-concessional contributions that come within the relevant contributions cap.

There are limits on the amounts withdrawn (\$15,000 per financial year and \$30,000 in total, subject to the contribution caps).

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## ATO targeting car sharing platforms

The ATO has announced it will turn its attention to anyone earning income through car sharing platforms. ATO Assistant Commissioner Kath Anderson said there is evidence that some people who are undertaking sharing activities using third-party services such as Car Next Door, Carhood and DriveMyCar Rentals might not understand the taxation implications involved.

**TIP:** You must declare in your tax return any income you receive, and you cannot avoid tax by calling the car sharing a hobby.

While any car sharing expenses you claim as tax deductions must relate directly to the renting, hiring or sharing of your car, the Assistant Commissioner has said that most car sharers can legitimately claim deductions for costs like platform membership fees, availability fees, cleaning fees and car running expenses.

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## Delay in extending reportable payments to courier and cleaning services

The legislative logjam in Federal Parliament is affecting the implementation of a wide range of tax measures, and the ATO is having to implement some practical work-arounds.

In the 2017–18 Federal Budget the Government announced that from 1 July 2018, businesses that supply courier or cleaning services will need to report payments they make to contractors for courier or cleaning services. The payments must be reported to the ATO each year using the taxable payments annual report (TPAR). However, legislation to implement this is still before the Senate.

The ATO will not require TPARs to be lodged up until the law change is passed by Parliament. Taxpayers will be expected to keep sufficient business records to enable a TPAR to be prepared and lodged "as soon as is reasonably practicable after the law is enacted".

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## GST: supplies of real property connected with Australia

GST Ruling GSTR 2018/1, issued on 22 August 2018, sets out the ATO's view on when supplies of real property are connected with the indirect tax zone (Australia).

It states that a supply of real property is connected with Australia if the real property, or the land to which it relates, is in Australia. The ATO stresses that the test is the physical land's location, not the location of the interest or right over the land. The supply of a right to accommodation in Australia also constitutes the supply of real property connected with Australia.

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