

28 August 2020

Ms Megan Pitt  
Chief Executive Officer, Legal Services Council and  
Commissioner for Uniform Legal Services Regulation  
PO Box H326  
AUSTRALIA SQUARE NSW 1215

By email: [REDACTED]  
CC: [REDACTED]

Dear Ms Pitt

## REVIEW OF MANAGED INVESTMENT SCHEMES GUIDANCE

Thank you for your letter dated 24 July 2020 in which you sought comments on the draft Information Sheet intended to be issued by the Legal Services Council (**LSC**) to explain how the LSC interprets both the Uniform Law and Uniform Rules relating to Mortgage Financing and Managed Investment Schemes.

The Law Council supports the comments already provided by the Law Society of New South Wales on the Information Sheet.

In particular, the Law Council agrees that Rule 41 of the Australian Solicitors' Conduct Rules (**ASCR**) should not figure prominently in the second paragraph as the primary source of the prohibition. The Law Council has endorsed the omission of Rule 41 from the ASCR, on the basis that the Uniform Law and General Rules now provide a complete regulatory response to the involvement of solicitors and law practices in managed investment schemes and mortgage financing.

The Law Council appreciates that the Information Sheet will need to be revised in light of the recent changes to the treatment of litigation funding arrangements under Commonwealth regulations, and the subsequent making of the *Legal Profession Uniform General Amendment (Litigation Funding Schemes) Rule 2020*, as outlined in your letter dated 21 August 2020.

The Law Council also notes your advice that a 'no action' position on Rule 41 is to be adopted by designated local regulatory authorities as an interim position on litigation funding schemes. This will be necessary until such time as new *Legal Profession Uniform Law Australian Solicitors' Conduct Rules* omitting Rule 41 are made and come into effect. It is suggested that the Information Sheet might draw the attention of the profession to this approach.

The Law Council also suggests the Information Sheet explain the purpose of the cessation date of 22 August 2021 in Rule 91BA(4), to avoid potential confusion and uncertainty among practitioner's and law practices about the treatment of litigation funding schemes into the future

The Law Council's contact officer is [REDACTED], telephone [REDACTED] and email [REDACTED].

Yours sincerely

[REDACTED]

**Michal Tidball**  
**Chief Executive Officer**