



THE LAW SOCIETY  
OF NEW SOUTH WALES

24 January 2020

Ms Megan Pitt  
Chief Executive Officer, Legal Services Council  
Commissioner for Uniform Legal Services Regulation  
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Via email: [Megan.Pitt@legalservicescouncil.org.au](mailto:Megan.Pitt@legalservicescouncil.org.au)  
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Dear Megan

### **Review of managed investment scheme rules**

Thank you for your letter dated 2 December 2019 inviting the Law Society of NSW to respond to the *Consultation Paper on the Review of Managed Investment Scheme Rules*. The Law Society supports the review and provides the following feedback on the issues considered in the consultation paper:

#### **Issue 1**

As you know, the Law Society's Professional Support Unit has received very few queries on the operation of s 258 of the Legal Profession Uniform Law (LPUL) and the accompanying Legal Profession Uniform General Rules (General Rules). This may suggest a general lack of awareness or understanding of these provisions which could be ameliorated by the measures proposed in recommendations 1 and 2. In relation to recommendation 2, we suggest that examples be sought from affected law practices.

#### **Issue 2**

The Law Society agrees that rule 91B of the General Rules should be revised as proposed in recommendation 3. The wording should be as close as possible to rule 12 of the Australian Solicitors Conduct Rules (ASCR), except that it should refer to an associate of a law practice rather than an associate of a solicitor, i.e. "associate" in rule 91B should have the same meaning as in s 258 LPUL. It would also be helpful for the guidance proposed in recommendation 2 to include examples of "interests" in this context.

In relation to recommendation 4, we suggest the Legal Services Council consult affected law practices about practical steps to avoid conflict. We also note that under s 34 LPUL, each principal of a law practice is responsible for taking reasonable steps

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to ensure the legal services provided by the law practice are provided in accordance with LPUL, the Uniform Rules and other professional obligations. A principal may be liable for a contravention under s 35 LPUL, including if the principal failed to take reasonable steps to prevent the contravention as set out in s 35(1)(b).

### ***Issue 3***

The Law Society agrees that the drafting of rule 91C General Rules is complex and supports recommendation 5. We note that the Law Council of Australia is in the process of finalising its review of the ASCR which may have an impact on rule 41.

We hope this feedback is helpful.

Yours sincerely

Michael Tidball  
**Chief Executive Officer**