



PRACTISING IN NSW UNDER THE UNIFORM LAW MANAGED INVESTMENT SCHEMES

Section 258(1) (a) of the Uniform Law prohibits a law practice from promoting or operating a managed investment scheme.

In addition, section 258(3) of the Uniform Law prohibits a law practice from providing legal services in relation to a managed investment scheme if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme. The Law Society Council may grant exemptions from this prohibition on a case by case basis.

Section 258(1)(a) and (3) of the Uniform Law do not reflect the existing position under the Legal Profession Act 2004 (“the LPA”) in relation to managed investment schemes which is as follows:

- incorporated legal practices must not conduct managed investment schemes¹
- solicitors must not negotiate the making of, or act in respect of, a regulated mortgage unless the mortgage forms part of a managed investment scheme²
- solicitors are not prevented from carrying out any legal services in connection with a managed investment scheme that is operated by a responsible entity, or from having an interest in such a managed investment scheme or in the responsible entity for such a managed investment scheme.³

The prohibition on promoting and operating a managed investment fund under section 258(1) (a) of the Uniform Law is broader than the existing prohibition under the LPA.

Although section 258(3) of the Uniform Law allows solicitors to provide legal services in relation to managed investment schemes, this permission is revoked where an associate of the law practice has an interest in the scheme or the responsible entity for the scheme. This is a change from the existing regime where, under section 486(1) of the LPA, solicitors are not prevented from having such an interest. However, as noted above, there is scope under the Uniform Law for the Law Society Council to grant exemptions from this prohibition on a case by case basis.

In addition, section 258(3) of the Uniform Law applies to “law practices” whereas section 486(1) of the LPA only applies to “solicitors”. A “law practice” is defined in the Uniform Law to include a sole practitioner, a law firm, a community legal service, an incorporated legal practice and an unincorporated legal practice.

NSW Application Act

The NSW Application Act (as amended) includes, at clause 10 of Schedule 9, transitional provisions in relation to managed investment schemes. In summary, these provide that, until 1 July 2018:

- section 135(2) of the LPA continues to apply to an incorporated legal practice (and to any related body corporate),
- Part 3.5 of, and Schedule 8 to, the LPA continues to apply in respect of mortgages that were entered into before the repeal of the 2004 Act and to matters connected with managed investment schemes,
- Section 258 of the Uniform Law does not apply in NSW.

This means that law practices have three years to ensure compliance with section 258 of the Uniform Law in NSW. Similar transitional arrangements are in place in Victoria.

¹ Legal Profession Act 2004, s135 (2)

² See note 1 above, s479 (1)(c)

³ See note 1 above, s486(1)