1 Introduction
The Legal Profession Act 2004 (“the Act”) prohibits a person from engaging in legal practice or representing or advertising that they are qualified to engage in legal practice, unless certain conditions are met, the culmination of which requires that person to have a current practising certificate (see section 2.2.2 of the Act).

2 What is Engaging in Legal Practice?
2.1 Engaging in legal practice is not defined in the Act, but has been enunciated by the Courts.
2.2 A person may engage in legal practice:-
   (a) By doing something which, though not required to be done exclusively by a solicitor, is usually done by a solicitor and by doing it in such a way as to justify the reasonable inference that the person was doing it as a solicitor;
   (b) By doing something that is positively proscribed by an Act or by the Rules of court unless done by a duly qualified legal practitioner; or
   (c) By doing something which, in order that the public might be adequately protected, is required to be done only by those who have the necessary training and expertise in the law.
   (Cornel v Nagle [1995] 2VR 188 at 210).

2.3 The Supreme Court has stated that “engaging in legal practice” means “to carry on or exercise the profession of law” ie “engaging in legal practice as a legal practitioner” (Felman v Law Institute of Victoria [1998] 4VR324 at 352).
2.4 It does not necessarily constitute engaging in legal practice for a person in the lawful pursuit of an occupation, other than law, to give advice on matters within his or her area of occupational expertise (eg. tax agents advising on the requirements of tax legislation).

3 Engaging in Legal Practice - Exemptions
Section 2.2.2 (2) of the Act provides that a person is not to be taken to engage in legal practice in any of the following circumstances:-
   (a) A person who engages in legal practice under the authority of a law of this jurisdiction or of the Commonwealth;
   (b) An incorporated legal practice that engages in legal practice in accordance with Part 2.7;
   (c) A community legal centre that engages in legal practice in accordance with Part 2.9;
   (d) An Australian-registered foreign lawyer who practises foreign law in accordance with Part 2.8;
   (e) A person who prepares an AWA or certified agreement within the meaning of the Workplace Relations Act 1996 of the Commonwealth on behalf of a party or proposed party to the agreement;
   (f) A person (other than an Australian legal practitioner) who represents another person in a proceeding before a court or tribunal, or in arbitration proceedings, if the person is so authorised by or under a law of this jurisdiction, or has leave of the court or tribunal or the arbitrator or umpire;
   (g) A person who does anything in the course of their employment with the Crown or a public authority or in the performance of duties under an appointment by the Governor in Council;
have an obligation under the Act
to advise the purchaser to obtain
independent legal advice prior to
the completion of the form or the
establishment of the structure.

7.4 Merely completing forms or
precedents by filling in the blanks can
be “clerical” or “administrative” tasks
and is unlikely to be engaging in legal
practice (eg. incorporating a shelf
company, inserting a company’s name
into a company constitution, inserting
names of parties and the name of a
family trust in a deed of settlement).

7.5 A person may be engaging in legal
practice if a legal form or precedent
is “adapted” to a particular case or
a person exercises the mind as to
what might be the appropriate form of
words to use in a particular case for a
third party.

8 Delegation of Legal Practitioners’
Work
A solicitor can delegate some of his or her
work to a law clerk, so long as the actions
are carried out with the supervision and
authority of the solicitor (eg. inserting
the name and address in a caveat and
the subsequent lodging of that caveat),
but this would not extend to situations
where only a legal practitioner can
perform certain tasks (eg. taking affidavits,
appearing in court).

Approved by the Council of the Law Institute
of Victoria on 17 June 2004.

Approved by the Law Institute of Victoria
Ethics Committee on 21 May 2004