

## Queensland Law Society Solicitor's Certificate – Borrower

For use where a solicitor is asked to provide a certificate to confirm that they have provided independent legal advice to a borrower (howsoever described) under a financial arrangement.

### WARNING TO SOLICITORS

Making a false statement in this certificate (e.g. where you certify that you have given advice but have not) or using any form of certificate other than those prescribed by rule [6.3] and [6.4] of the *Legal Professional Legal Practice (Solicitors) Rules 2023 (Qld)* may result in you not being able to make a valid claim under your professional indemnity insurance and/or disciplinary proceedings against you.

Please read and understand the [**Practice notes for solicitors signing certificates of independent legal advice**] before advising the Borrower and completing this certificate. If unsure, do not sign this certificate.

### PART A

To:

(the “**Lender**”).

This certificate is provided by:

I certify that I am a legal practitioner holding a current unrestricted practising certificate under the Legal Profession Act 2007 (Qld).

I have been asked to interview:

of:

(the “**Borrower**”) and to advise the Borrower in respect of the proposed Documents and the transactions contemplated under them.

I act for (tick applicable):

- the Borrower  
 the Guarantor<sup>1</sup>  
 Other:

(all collectively “**Clients**”)

I do not act for any other party in the transactions contemplated under the Documents (as defined below) (other than the Clients).

I have been provided with the following documents (the “**Documents**”):

1.

<sup>1</sup> Only suggested to be used in limited circumstances. Solicitors should refer to the [**Practice notes for solicitors signing certificates of independent legal advice**] for further guidance.

2.

3.

4.

5.

6.

DRAFT

**PART B EXPLANATIONS GIVEN BY THE LEGAL PRACTITIONER**

I CERTIFY that:

- a) (except as disclosed at (\*) below)<sup>2</sup> in the absence of any other person otherwise interested in the contemplated transactions (or any representative of any such person); and
- b) before the Borrower signed the Documents or, if signed before the interview, before the Borrower delivered the signed Documents to the Lender:
  1. I EXPLAINED to the Borrower the general nature and effect of the Documents (including its obligations to repay the debt and the risk of loss of its assets if it fails to do so); and
  2. I ADVISED the Borrower that solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice, and if the Borrower is in any doubt as to the level of financial risk involved, the Borrower should obtain independent financial advice before signing (or becoming bound by) the Documents.

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**PART C EXCLUDED ADVICE**

I ALSO CERTIFY that I informed the Borrower that I was not expressing any opinion nor advising on:

- the viability of the transaction; or
- the ability of the Borrower (or any other person) to make the required payments to the Lender or to otherwise comply with the terms of the Documents.

**PART D STATEMENTS BY THE PERSONS SIGNING DOCUMENTS**

FOLLOWING THE ABOVE EXPLANATIONS AND ADVICE, the Borrower stated to me that the Borrower:

- had read the Documents (or, where applicable, translations of them) and understood the general nature and effect of the Documents;
- understood my advice as to:
  - a) the general nature and effect of the Documents; and
  - b) the obligations and risks involved in signing the Documents; and
- signed (or will sign) the Documents freely, voluntarily and without pressure from any other person.

**PART E IDENTIFICATION OF PERSONS SIGNING DOCUMENTS**

<sup>2</sup> Only suggested to be used in limited circumstances. Solicitors should refer to the [**Practice notes for solicitors signing certificates of independent legal advice**] for further guidance.

The identity of the Borrower has been verified in accordance with rule [6.2] of the Legal Profession Legal Practice (Solicitors) Rules 2023 (Qld).

## PART F REMOTE ADVICE\*\* OR IN PERSON

The interview was conducted with the Borrower:

- in person
- remotely via audio/visual conferencing technology.

If conducted by audio/visual conferencing technology, I CONFIRM:

- the Borrower appeared to me to not be in the physical presence of any other person otherwise interested in the contemplated transactions (or any representative of any such person) (except as disclosed at (\*) above); and
- I was satisfied with the general technical quality of the audio/visual conference itself and it appeared to me there were no technical or other difficulties that occurred that caused me to believe that the interview was significantly disrupted or otherwise incomplete from the Borrower's perspective.

I also CONFIRM that:

- I was not a witness to the execution of the Documents.
- I was a witness to the execution of the Documents.

\*\* Solicitors should carefully consider whether remote advice is appropriate in all the circumstances.

## PART G TRANSLATION/INTERPRETATION

I also CONFIRM that an independent translator / interpreter was:

- not present at this interview as the Borrower confirmed to me that they have an adequate command of the English language; or
- present at this interview.

The independent translator / interpreter was called

and interpreted the statements made by all parties. The translator/interpreter confirmed to me that they had also translated the Documents (a copy of which was provided to the Borrower) and were:

- fluent in the English language and the customary language of the Borrower;
- professionally qualified and competent to translate between those languages; and
- not related to the Borrower, was independent of all other parties to the Documents and of me and had no interest in the transactions contemplated under the Documents.

I provided the prescribed form of QLS translator / interpreter certificate to the translator / interpreter and asked them to fill it out and sign it. Their signed certificate is attached to this certificate.

## PART H GENERAL

This certificate may be signed by:

- the legal practitioner and the Borrower in separate counterparts, and each counterpart constitutes an original of this certificate and all together constitute one certificate; and
- any method of electronic signature (including by signing on an electronic device or by digital signature).

**AUSTRALIAN LEGAL PRACTITIONER'S CERTIFICATE**

I CERTIFY that the above information is true to the best of my knowledge and has been based upon the information provided to me. My duties and liability to the Lender are limited solely to the matters expressly set out in this certificate and if any person assigns to the Lender any rights against me, such assignment is subject to this same limitation.

[Request for comments: Please let us know if you think it would be helpful to have the opportunity to add some further text into this certificate (e.g. to explain that your advice was that the client should not proceed until they received further information). This issue will be further considered before the form of this certificate is finalised]

SIGNED:

DATED:

DRAFT

**BORROWER'S CERTIFICATION**

I CERTIFY that:

- I have been handed a copy of this Certificate;
- I have read this Certificate;
- I am the Borrower named in this Certificate and my name and address is correctly recorded on this Certificate and I have provided proof of my identity in the manner recorded in this Certificate;
- I met with the Australian legal practitioner on the date, and in the manner (i.e. in person or by audio/visual technology), recorded in this Certificate for the purposes of receiving legal advice on the nature and effect of the Documents before I signed the Documents or delivered the signed Documents to the Lender;
- I have received the explanations referred to in this Certificate and have stated to the Australian legal practitioner that I understand those explanations;
- the information and matters recorded in this Certificate are true; and
- I confirm these matters by my signature to this certification.

A Translator / Interpreter was present and translated the Documents and all written or spoken words to me and my responses.

A Translator / Interpreter was not required by me as I have an adequate command of the English language.

SIGNED:

DATED:

DRAFT