

## Queensland Law Society Solicitor's Certificate – Guarantor

For use where a solicitor is asked to provide a certificate to confirm that they have provided independent legal advice to a surety (howsoever described) under a financial arrangement. The surety may, for example, be a third party guarantor, a mortgagor, or an indemnifier.

### 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 Guarantor 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 practicing certificate under the Legal Profession Act 2007 (Qld).

I have been asked to interview:

of:

(the “**Guarantor**”) and to advise the Guarantor in respect of the proposed guarantee and any other Document (as defined below) to be executed by the Guarantor.

The person named as the 'borrower' in the Documents (as defined below) is:

(the “**Borrower**”)

I act for (tick applicable):

the Guarantor

the Borrower<sup>1</sup>

Other:

<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.

(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.
2.
3.
4.
5.
6.

## 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 (including, without limitation, the Borrower) and any representative of any such person; and
  - b) before the Guarantor signed the Documents or, if signed before the interview, before the Guarantor delivered the signed Documents to the Lender:
1. I EXPLAINED to the Guarantor the general nature and effect of the Documents and that:
    - if the Borrower defaults in payment or in other obligations owed to the Lender, the Guarantor would be liable to make good the default which could involve the Guarantor being liable for all amounts owed by the Borrower to the Lender and substantial arrears of interest and costs;
    - in certain circumstances the Guarantor would be liable even if the Borrower is not liable to pay the Lender; and
    - the giving of a guarantee involves considerable risk, including the risk of losing any asset over which the Guarantor has granted security in favour of the Lender and requires very careful thought; and
  2. I ADVISED the Guarantor that solicitors by virtue of their profession possess no special skill to give financial (as distinct from legal) advice and that the Guarantor should:
    - carefully consider the financial risks involved in giving the guarantee and entering into the Documents and in particular:
      - the level of risk that the Borrower will default; and,
      - the ability of the Guarantor to make good any default including arrears of interest and costs which might significantly exceed the current size of the debt;
    - make enquiries about the:
      - risk involved in any business the Borrower is undertaking with the proposed loan;
      - risk of the Borrower defaulting;
      - possible extent of any default which the Guarantor may have to meet; and,

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<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.

- adequacy of any security being given by the Borrower or others and the likely level of exposure of the Guarantor,
- and, if the Guarantor is in any doubt as to the level of financial risk involved, the Guarantor should obtain independent financial advice before signing (or becoming bound by) the Documents to which the Guarantor is to be a party.

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### **PART C EXCLUDED ADVICE**

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

- the viability of the transaction;
- the Borrower's ability to make the required payments to the Lender and to otherwise comply with the terms of the Documents; or
- the Guarantor's ability to make payment to the Lender.

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

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

- 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:
  - the general nature and effect of the Documents; and
  - the obligations and risks involved in signing the Documents; and
- signed (or will sign) the Documents freely, voluntarily and without pressure from the Borrower or any other person.

### **PART E IDENTIFICATION OF PERSONS SIGNING DOCUMENTS**

The identity of the Guarantor 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 Guarantor:

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

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

- the Guarantor appeared to me to not be in the physical presence of any other person otherwise interested in the contemplated transactions (including, without limitation, the Borrower) 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 Guarantor'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 Guarantor 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 Guarantor) and were:

- fluent in the English language and the customary language of the Guarantor;
- professionally qualified and competent to translate between those languages; and
- not related to the Guarantor, 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 Guarantor 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

**GUARANTOR'S CERTIFICATION**

I CERTIFY that:

- I have been handed a copy of this Certificate;
- I have read this Certificate;
- I am the Guarantor 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