



Information Fact Sheet 6

Form 8 - Surety Undertakings

1. WHAT IS A SURETY UNDERTAKING?

A surety undertaking is needed when it has been decided that it is necessary to ensure that the accused complies with his/her bail obligations.

A surety is a person who as a condition of the grant of bail to an accused undertakes / agrees to forfeit a specified amount of money if the accused fails to appear in court.

The intention of the condition of surety is to have someone (the surety) accept the responsibility to ensure that the accused appears in court when required.

2. WHO HAS AUTHORITY TO APPROVE A SURETY APPLICATION?

Persons who are entrusted under Section 29 of the *Bail Act 1982* to complete bail undertakings, are permitted to approve sureties. Authorised persons include: [section 36]

- A Judicial Officer (including a JP)
- A Registrar of a court (other than a Deputy Registrar)
- An authorised police officer
- An associate of a judge (Supreme/District/Children's)
- Where the accused is in a lock-up or prison, any person for the time being in charge of the lock-up or prison
- Where the accused is in court custody centre, any approved person for the time being in charge of the centre
- Where the accused is a child, any authorised community services officer.

Note:

- The power to approve sureties cannot be exercised by a Deputy Registrar of the Magistrates court or Children's Court.
- A JP who has reached the age of 75 years must not perform any functions under the *Bail Act 1982*

3. PERSONS DISQUALIFIED FROM BEING A SURETY

A person is not qualified to be approved as a surety if

[section 38]

- they are under 18 years of age;
- their net financial worth is less than the amount they would have to pay if the accused were to default (does not appear at the place and time notified); or
- it appears that the accused or some other person will be compensating the surety for any loss incurred.

4. MATTERS TO BE CONSIDERED WHEN APPROVING SURETIES

In determining whether an applicant is suitable to be a surety, the surety approval officer shall have regard to:

[section 39]

- the character and antecedents of the applicant; and
- the proximity to or connection with the accused, whether by kinship, place of residence or otherwise; and
- the ability to pay, without severe hardship, if the accused were to default.

5. FORM 8 – THE SURETY UNDERTAKING FORM

The Form 8 surety undertaking is the written record of:

[section 37]

- the surety application,
- the approval or refusal of surety, and
- if approved, the surety undertaking.

Similar to the Bail undertaking, one document may be completed for an accused on multiple charges, but a separate document is required if the accused is to be released to different dates/times or different courts.

Note:

The court may approve more than one surety and the surety amount in that case may be split as ordered by the court.

The Surety Undertaking Form must show the surety's residential, street address. A PO Box address is not allowed.

6. THE FORM 8 SURETY APPLICATION CONSISTS OF THREE PARTS, A, B & C

Part A is the Notice to Surety as to terms of bail. This part of the form will be completed [section 37] with the same information as the bail undertaking for the accused. Where the form is produced at a court or a prison, this information is usually automatically completed.

Part B is completed by the surety applicant. (Note: If using a self-carbonating form, remove pages 2 and 3)

When the applicant has completed **Part B** ensure that:

[section 37]

- they have signed the declaration
- they have indicated by necessary deletions whether
 - it is the intention to act as surety for the next appearance only, or for all future appearances
 - if going surety for future appearances, whether or not notice is required of such future appearances.

9. I, Donna Jane Smith.....hereby apply for approval of myself as a surety.
(full name)

I DECLARE THAT —

(a) the above particulars relating to me are true;

(b) I have not received any money or other compensation, or promise of money or other compensation, to cover any liability I may incur as a surety.

I ACKNOWLEDGE that I have been given —

(a) Part A of Form 8 (Notice to Surety as to Terms of Bail) duly completed; and

(b) Form 9 (Information for Proposed Surety).

I STATE that —

(a) ☒ do not * agree to my obligations as a surety being extended to any time, or time and place, appointed for the accused's appearance which is different from that shown in paragraph 4 of the notice.

(b) ☒ do not * require notice to be given to me of any such different time or time and place.

(c) ☒ do not * agree to my obligations as a surety being extended to a different time substituted during trial. →

* show which

Signature of applicant. [Signature]

Date. 2 / 1 / 2001

NOTICE TO PROSECUTOR

Prosecutor notified of application orally/in writing

Date.....Time.....Name of person notified.....

Signature.....

Designation.....

Response by prosecutor (if any):

DECISION

Applicant approved/not approved ←

Reasons for refusal to approve: ←

Applicant informed of reasons:

Signature and designation of surety approval officer. [Signature] Jeff Melwood
Justice of the Peace, WA, Reg. no. 29461

One "do/do not" MUST be selected. If an option is not selected at (a)(b)(c) the accused may spend time in custody after their next appearance unnecessarily.

JP must delete approved or not approved as appropriate

If refused JP must write brief details why refused here and inform applicant

Part C is completed by you by:

[section 37]

- writing clearly;
- inserting the full name and current residential address of the surety;
- inserting the amount of the surety obligation;
- reading, translating or giving the undertaking to the surety to read and then getting them to sign the undertaking and reflect such method on the undertaking;
- check to receive notices & whether ongoing. (see paragraph (c) Surety undertaking)
- signing and stamping or clearly printing your name & JP registration number;
- handing the copy of the undertaking to the surety and getting them to sign the acknowledgement.

Example

	PART C SURETY UNDERTAKING	
(1) For an explanation see Form 9.	I, <u>Donna Jane SMITH</u> of <u>53 Black Road Jarrahdale</u>	<p>In this example, note:</p> <ul style="list-style-type: none">• that the surety has deleted paragraphs (b) & (c) indicating she only wishes to be surety to the next hearing date; and• the amendments are initialled by the surety and JP
(2) Delete (b) if surety's obligations are not to cover this.	undertake and agree, to forfeit \$. <u>5,000</u> ...to the State, in terms of section 49 of the <i>Bail Act 1982</i> ⁽¹⁾ , if the abovenamed accused.	
(3) Delete words in brackets if notice is not required.	(a) fails to appear at the time and place specified in Part A above; or DS (b) (2) fails to appear at a different time, or time and place, at which he is duly required to appear (provided that I have been notified of such time, or time and place) ⁽³⁾, or	
(3A) Delete (d) if surety's obligations are not to cover this.	JS (c) upon a failure to so appear, also fails to appear as soon as is practicable thereafter at the court when it is sitting; or DS (d) fails to appear at a different time substituted during his trial (3A).	
(4) Delete as appropriate.	JS Under section 44(4) of the Act the undertaking in (d) applies despite an amendment to the bail conditions if a statement that the amendment is of a minor nature has been made under section 31.1(4) of the Act. I acknowledge that before entering into this undertaking ⁽⁴⁾ I read/had read to me/had translated to me Part A of this form duly completed, Form 9, and this undertaking. Signature of Surety... <u>Donna Smith</u>	
	The above undertaking was entered into by the abovenamed, before me after I had ⁽⁴⁾ been informed by him that he had read/read to him/had translated to him Part A of this form duly completed, Form 9 and this undertaking; and after I had ensured that he had complied with all conditions imposed on him. Signature... <u>John Simpson JP (Registration No 9285)</u> Official Designation... <u>Justice of the Peace</u> Date... <u>9th June 2014</u>	
	I acknowledge that I have been given a copy of the above undertaking as completed Signature of Surety... <u>Donna Smith</u> Date... <u>9th June 2014</u>	

Endorsements in PART C

I acknowledge that I have been given a copy of the above undertaking as completed	
Signature of Surety..... <i>Donna Smith</i>	Date..... <i>9th June 2014</i>
ENDORSEMENT UNDER SECTION 45(3)	
I certify that on.....I required the accused to appear aton day the.....day of20 at.....a.m./p.m. and that, under section 45(1)(a) of the Act, I orally notified the surety thereof.	
Signature.....	
Official Designation..... Date.....	
Authorised Officer who is to issue certificate under section 11(3) of the Act advised (show date, time, place and name of person advised)..... <i>Terrence Johnson, Bail Coordinator, Hakea Prison advised at 2.50pm on 9 June 2014</i>	
Signature <i>John Simpson JP (Registration No 9285)</i>	
<i>Justice of the Peace</i>	

The endorsement under section 45(3) will NOT be completed by a surety approval officer when signing up a surety – this section is reserved for the very rare instances when the court remands the accused and then also orally notifies the surety of the new date. This notice is always given in writing "notice to surety as to different time and place" as the surety who extends is rarely sitting in the back of the court to be orally advised and even if they are at court the magistrate would not be aware.

7. FORM 9 – INFORMATION FOR THE SURETY

Form 9 Information for Surety is a two page document that contains a summary of the main provisions of the Bail Act which relate to sureties for bail.

The approval officer must:

- give this form to the proposed surety by the approval officer.
- ensure the Surety understands the possible consequences, if the accused does not attend court at the place and time notified.

(See Heading 8 – Surety's Liability below)

<p style="text-align: center;">Form 9 <i>BAIL ACT 1982</i> Sections 37 (1) (b)</p> <p>NOTE: If a proposed surety has difficulty with reading English he may ask to have this form translated to him</p> <p>1. Contents of this form This form contains a summary of the main provisions of the <i>Bail Act 1982</i> which relate to sureties for bail. Only the general effect of those provisions is stated.</p> <p>2. Meaning and function of surety A surety, or a number of sureties, may be required as a condition of the release of an accused on bail.</p> <p>The intention is to have someone to make sure that the accused appears in court when required.</p> <p>It is the duty of a surety to do this.</p> <p>A person becomes a surety by agreeing in writing to pay an amount of money to the State if the accused does not appear. This agreement is called a surety undertaking (see Part C of Form 8).</p> <p>It may also be a bail condition that a surety deposit cash or other security to cover the amount referred to.</p> <p>3. Information to be given to surety As well as this form, a proposed surety must be given a form (Part A of Form 8) showing details of the accused's bail. The proposed surety must read the forms or have them read to him.</p> <p>4. Application for approval A proposed surety must apply for approval and be approved by an authorised official. He must complete a form (Part B of Form 8) for this purpose.</p> <p>5. Disqualified persons A person cannot be approved as a surety if:</p> <ul style="list-style-type: none">a) he is under 18 years of age; orb) his net financial worth is less than the amount he would have to pay if the accused were to default, except where security is provided; orc) it appears that the accused or some other person will be compensating the surety for any loss he incurs. <p>6. Points to be Considered Whether a person is suitable to be a surety depends mainly on:</p> <ul style="list-style-type: none">a) his character and past history;b) his connection with the accused;c) his ability to pay, without severe hardship, if the accused were to default. <p>Reasons for not approving a proposed surety must be given by the official concerned.</p>

8. SURETY'S LIABILITY IF THE ACCUSED DOES NOT ATTEND COURT AT THE PLACE AND TIME NOTIFIED

The authorised person approving a surety must advise the surety of the consequences in the event that the accused does not attend court at the place and time specified in Part A – Notice to Surety as to Terms of Bail. [sections 44 - 49]

Form 8		[reg. 6]
Bail Act 1982		
Sections 35 and 37(1)(a) & (c)		
PART A — NOTICE TO SURETY AS TO TERMS OF BAIL		
1.	NAME AND ADDRESS OF ACCUSED	
SMITH.....David.....	
	Surname	Other Names
53 Black Road Jarrahdale.....	
	Address	
2.	CHARGE(S)/APPEAL/PROCEEDINGS	
 Possession of Heroin, Possession of smoking implement, Steal M/V	
3.	COURT AND CHARGE NOS.PE 3458-9/16, PE 2564/16.....	
4.	WHERE AND WHEN ACCUSED REQUIRED TO APPEAR Perth Magistrates Court 501 Hay Street Perth	
	Name and location of court	
	on.....Monday the.....15th day of.....February..... 2016.....at.....10.....a.m./p.m	
5.	BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.	
	\$5,000 JP approved Surety. To reside at 53 Black Road JARRAHDALE	
	Curfew between 8pm and 7am. To report daily to Armadale Police Station.	
	SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER	
Sign JP JP Number	

Where a surety believes the accused is likely to:

- Not appear in court; and/or
- A bail condition is being, has been or is likely to be broken

the surety must advise the prosecutor or a police office in writing and the prosecutor/police officer may have the accused before the court.

In cases of urgency where a surety believes the accused is likely to not appear in court, the surety has the power to arrest the accused and deliver the accused into the custody of a police officer. [section 46]

Importantly – the surety's obligations continue until the accused is brought before the court.

If the accused fails to appear at the place and time specified, it is likely the court will order the surety to pay the sum specified in the surety undertaking.

For more information on this Fact Sheet, please refer to the Justice of the Peace Handbook available on www.dotag.wa.gov.au

Alternatively, you may contact:

Justices of the Peace Branch
GPO Box F317
PERTH WA 6841
Phone: 9425 2827
Email: jps@justice.wa.gov.au