

# 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 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.

section 5 – Justice of

• A JP who has reached the age of 75 years must not perform any functions

the Peace Act 2044

# 3. Persons disqualified from being a Surety

A person cannot be approved as a surety if -

- (a) the person is under 18 years of age; or
- (b) the person's net financial worth is less than the amount the person would have to pay if the accused were to default, except where security is provided; or

Section 38

(c) the person's net financial worth is less than the amount the person would have to pay if the accused were to default, except where security is provided; or

- (d) it appears that the accused or some other person will be compensating the proposed surety for any loss the proposed surety incurs; or
- (e) there is a current restraining order between the person and the accused under the *Restraining Orders Act 1997*; or
- (f) the person is in a family relationship with the accused and was a victim of an offence for which the accused has been convicted within the last 10 years; or
- (g) the person is in a family relationship with the accused and is an alleged victim of the offence of which the accused has been charged.

If the accused is a child, a person may be approved as a surety even if the circumstances in paragraphs (d), (e) or (f) apply.

### 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
- 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 and C

**Part A** is the Notice to Surety as to terms of bail. This part of the form will be completed 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.

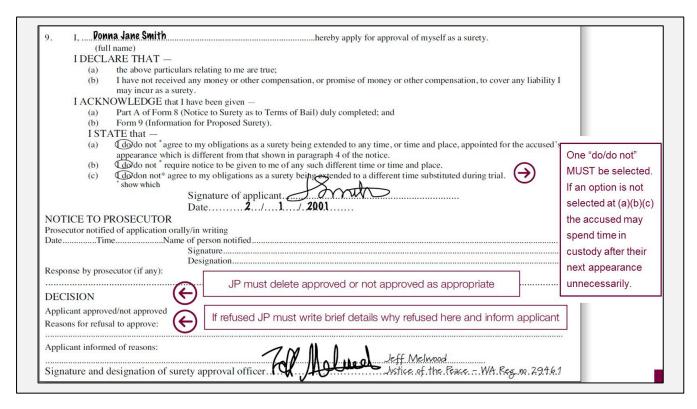
section 37

**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.

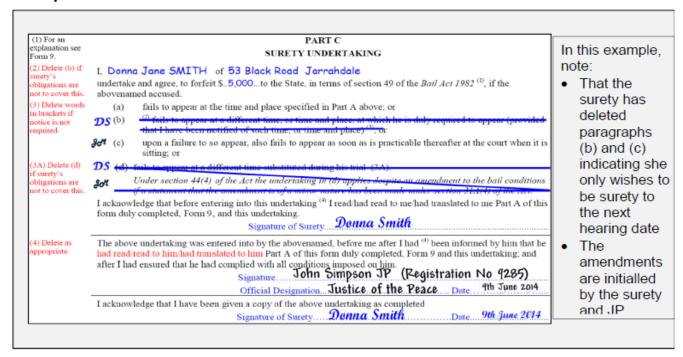


### Part C is completed by you by:

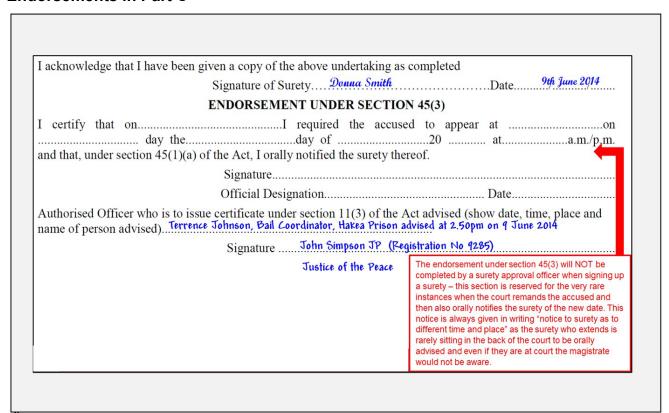
section 37

- 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 and whether ongoing. (see paragraph (c) Surety undertaking)
- signing and stamping or clearly printing your name and JP registration number
- handing the copy of the undertaking to the surety and getting them to sign the acknowledgement.

### **Example**



### **Endorsements in Part C**



### 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.

#### Form 9

#### BAIL ACT 1982

Sections 37 (1) (b)

NOTE: If a proposed surety has difficulty with reading English he may ask to have this form translated to him

#### 1. Contents of this form

This form contains a summary of the main provisions of the Bail Act 1982 which relate to sureties for bail. Only the general effect of those provisions is stated.

### 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.

The intention is to have someone to make sure that the accused appears in court when required.

It is the duty of a surety to do this.

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).

It may also be a bail condition that a surety deposit cash or other security to cover the amount referred to.

#### 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.

#### 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

#### Disqualified persons

A person cannot be approved as a surety if:

- a) he is under 18 years of age; or
- b) 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; or
- it appears that the accused or some other person will be compensating the surety for any loss he incurs.

### 6. Points to be Considered

Whether a person is suitable to be a surety depends mainly on:

- 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.

Reasons for not approving a proposed surety must be given by the official concerned.

(See **Heading 8 – Surety's Liability** below)

### 8. Surety's Liability if the accused does not attend court at the place and time notified

Form 8

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

[reg. 6]

Bail Act 1982 Sections 35 and 37(1)(a) & (c) PART A — NOTICE TO SURETY AS TO TERMS OF BAIL NAME AND ADDRESS OF ACCUSED Other Names Surname .....53 Black Road Jarrahdale Address CHARGE(S)/APPEAL/PROCEEDINGS COURT AND CHARGE NOS. .... PE 3458-9/16, PE 2564/16..... 3. WHERE AND WHEN ACCUSED REQUIRED TO APPEAR Perth Magistrates Court 501 Hay Street Perth 4. Name and location of court BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING 5. 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

Where a surety believes the accused is likely to:

.....Sign JP JP Number .....

- 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.

sections 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 <u>Justice of the Peace Handbook</u> available on <a href="https://www.wa.gov.au/organisation/department-of-justice/become-justice-of-the-peace">https://www.wa.gov.au/organisation/department-of-justice/become-justice-of-the-peace</a>.

Alternatively, you may contact:

Justices of the Peace Branch GPO Box F317 PERTH WA 6841

Phone: 9425 2525

Email: jps@justice.wa.gov.au