

3. Interpretation

(1) In this Act, unless a contrary intention appears —

“accused” includes —

- (a) a person charged with, convicted of, or found guilty of an offence;
- (b) a person whose conviction for an offence is stayed;
- (c) a person in respect of whom an appeal relating to an offence is pending;
- (d) a person in respect of whom a new trial for an offence has been ordered;

“adjournment”—

- (a) means any order of a court by which proceedings for an offence are postponed or interrupted or are to be held at a different time or place before the same court; and
- (b) is deemed to include any order of a court, other than a committal to the Supreme Court or District Court, by which the venue of any proceedings for an offence is changed to another court or a court at another place whether by way of a remand, referral, or recommittal of the accused or otherwise;

“appeal” includes an application for leave to appeal;

“appropriate judicial officer”—

- (a) subject to paragraphs (b) and (c), means a judicial officer who is empowered to exercise jurisdiction in the court before which the accused is required to appear pursuant to his bail undertaking;
- (b) if the court is the Court of Appeal, means a judge of appeal;
- (c) except in section 49, also means a Judge of the Supreme Court or a Judge of the Children’s Court in any case where —
 - (i) only a Judge of the Supreme Court or a Judge of the Children’s Court has power to grant bail under section 15, or a judicial officer has exercised the power contained in section 31(2)(d); or
 - (ii) a Judge of the Supreme Court or a Judge of the Children’s Court has granted bail under section 14,

for the appearance in question;

“as soon as is practicable” means as soon as is reasonably practicable;

“authorised community services officer” means any of the following persons —

- (a) the CEO (Justice) or a delegate of the CEO (Justice) under subsection (5);
- (b) a registrar of the Children’s Court;
- (c) a superintendent of a detention centre under the *Young Offenders Act 1994*;

- (d) the officer for the time being in charge of any detention centre under the *Young Offenders Act 1994* or departmental facility under the *Child Welfare Act 1947*;

“authorised officer” means an authorised police officer or an authorised community services officer;

“authorised police officer” means a police officer who holds the rank of sergeant, or a higher rank, or is for the time being in charge of a police station or lock-up;

“bail undertaking” means an undertaking described in section 28(2);

“CEO (Justice)” means the chief executive officer of the department of the Public Service principally assisting the Minister to whom the administration of the *Sentence Administration Act 2003* is for the time being committed by the Governor in the administration of that Act;

“child” has the same meaning as “young person” has in the *Young Offenders Act 1994*;

“community corrections officer” has the same meaning as in the *Sentence Administration Act 2003*;

“court” means each of the following —

- (a) the Magistrates Court;
- (b) the Children’s Court;
- (c) a Coroner’s Court;
- (d) the District Court;
- (e) the Supreme Court;
- (f) the Court of Appeal;

“early release order” means an early release order made under the *Sentence Administration Act 1995* or *Sentence Administration Act 2003*;

“home detention condition” means a home detention condition imposed under clause 3 of Part D of Schedule 1;

“judicial officer” means any person empowered to exercise jurisdiction in a court whether or not he is sitting as a court, and includes a single justice;

“lock-up” includes a place prescribed as a lock-up for the purposes of the *Court Security and Custodial Services Act 1999*;

“offence” means any act, omission or conduct which renders the person doing the act, making the omission or engaging in the conduct liable to any punishment, and includes an alleged offence; but nothing in this definition shall limit the operation of subsection (4);

“police officer” means any member of the Police Force of Western Australia;

“prosecutor” includes —

- (a) in the case of an offence charged in a prosecution notice, the prosecutor;
- (b) in the case of an offence charged in an indictment, the State or the Commonwealth, as the case may be;

“serious offence” means —

- (a) an offence against section 51(2a); and

- (b) an offence described in Schedule 2;
- “**surety**” and “**surety undertaking**” have the meanings assigned to them by section 35;
- “**trial**” means all proceedings for an offence between —
- (a) the time when the accused is called upon to plead to the prosecution notice or the indictment; and
 - (b) the time when the accused is found not guilty or is sentenced.
- (2) A reference in this Act —
- (a) to a power to grant bail includes a reference to a power to refuse bail;
 - (b) to a grant of bail includes a reference to a grant of bail by the exercise of a power in section 31(2).
- (3) Where in this Act there is a reference to a requirement that an accused appear in court, the reference is to a requirement, unless a contrary intention appears, that the accused —
- (a) surrender himself into the custody of the court or, in the case of a bail undertaking, of the court specified therein, or of such person as the court may direct, to be dealt with according to law;
 - (b) submit himself to a search of his person and any property then in his possession (which is hereby authorised) and allow to be taken from him, to be dealt with according to the relevant law and procedures, anything so found; and
 - (c) remain in custody until authorised to be released therefrom.
- (4) If a person is arrested under a warrant issued —
- (a) under section 50, 79 or 129 of the *Sentencing Act 1995* in connection with a possible breach of a conditional release order, a sentence of suspended imprisonment, or a community order imposed under that Act; or
 - (b) under section 43 of the *Young Offenders Act 1994* in respect of an alleged breach of a youth community based order, an intensive youth supervision order or a conditional release order made under that Act,
- then —
- (c) the person is to be taken as having been arrested and to be in custody awaiting an appearance in court for the offence for which the sentence was imposed;
 - (d) the first appearance in court after the arrest is to be taken, for the purposes of sections 5(1) and 8(1) and clause 1 of Part A and clause 7 of Part C of Schedule 1, to be the initial appearance for that offence; and
 - (e) the proceedings following the arrest are to be taken to be proceedings for that offence and to be a trial for the purpose of the definition in subsection (1) of “trial”.
- (5) The CEO (Justice) may by writing signed by him delegate to any officer of the department of which he is the chief executive officer any function he has under this Act as an authorised community services officer.

[Section 3 amended by No. 74 of 1984 s. 3; No. 15 of 1988 s. 4; No. 49 of 1988 s. 78; No. 61 of 1990 s. 4; No. 31 of 1993 s. 6; No. 45 of 1993 s. 4 and 12; No. 78 of 1995 s. 7; No. 57 of 1997 s. 21(1); No. 54 of 1998 s. 4 and 14; No. 47 of 1999 s. 7; No. 50 of 2003 s. 29(3); No. 65 of 2003 s. 121(2); No. 45 of 2004 s. 28(4); No. 59 of 2004 s. 141; No. 84 of 2004 s. 11, 82 and 83(2).]