

TASMANIA

**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2005**

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**JUSTICE AND RELATED LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 2005**

*(Brought in by the Minister for Justice and Industrial
Relations, the Honourable Judith Louise Jackson)*

A BILL FOR

**An Act to amend the *Classification (Publications, Films and
Computer Games) Enforcement Act 1995, the Criminal Code
Act 1924, the Justices Act 1959, the Residential Tenancy Act
1997, the Sentencing Act 1997 and the Supreme Court Civil
Procedure Act 1932***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice and Related
Legislation (Miscellaneous Amendments) Act
2005*.

2. Commencement

- (1) This Act, except as provided in subsection (2),
commences on the day on which this Act
receives the Royal Assent.
- (2) Part 3 commences on the commencement of
Schedule 1 to the *Classification (Publications,*

s. 2

No.

*Justice and Related Legislation
(Miscellaneous Amendments)*

2005

*Films and Computer Games) Amendment Act
2004 of the Commonwealth.*

**PART 2 – CLASSIFICATION (PUBLICATIONS, FILMS
AND COMPUTER GAMES) ENFORCEMENT ACT 1995
AMENDED**

3. Principal Act

In this Part, the *Classification (Publications, Films and Computer Games) Enforcement Act 1995** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting “minor under 16” from the definition of “child” and substituting “person under 18”.

5. Section 81 amended (Defence to offences with respect to minors and children)

Section 81(2) of the Principal Act is amended by omitting “16” and substituting “18”.

*No. 105 of 1995

**PART 3 – CLASSIFICATION (PUBLICATIONS, FILMS
AND COMPUTER GAMES) ENFORCEMENT ACT 1995
AMENDED**

6. Principal Act

In this Part, the *Classification (Publications, Films and Computer Games) Enforcement Act 1995** is referred to as the Principal Act.

7. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “Code” and substituting the following definition:

“**Code**” means the National Classification Code, set out in the Schedule to the Commonwealth Act as originally enacted, as amended in accordance with section 6 of the Commonwealth Act;

- (b) by omitting “M(15+), MA(15+)” from the definition of “contentious material” and substituting “M, MA 15+”.

*No. 105 of 1995

8. Section 22 amended (RC or X 18+ film not to be exhibited in public place)

Section 22 of the Principal Act is amended by omitting “X” and substituting “X 18+”.

9. Section 23 amended (RC, X 18+, R 18+ or MA 15+ film not to be exhibited if visible from public place)

Section 23 of the Principal Act is amended as follows:

- (a) by omitting “X, R or MA” and substituting “X 18+, R 18+ or MA 15+”;
- (b) by omitting from paragraph (a) of the penalty “R or MA” and substituting “R 18+ or MA 15+”;
- (c) by omitting from paragraph (b) of the penalty “X” and substituting “X 18+”.

10. Section 24 amended (Unclassified RC, X 18+, R 18+ or MA 15+ film not to be exhibited if visible from public place)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting “X, R or MA” and substituting “X 18+, R 18+ or MA 15+”;
- (b) by omitting from paragraph (a) of the penalty “R or MA” and substituting “R 18+ or MA 15+”;

- (c) by omitting from paragraph (b) of the penalty “X” and substituting “X 18+”.

11. Section 25 amended (RC, X 18+ or R 18+ film not to be exhibited privately in presence of minor)

Section 25(1) of the Principal Act is amended as follows:

- (a) by omitting “X or R” and substituting “X 18+ or R 18+”;
- (b) by omitting from paragraph (a) of the penalty “R” and substituting “R 18+”;
- (c) by omitting from paragraph (b) of the penalty “X” and substituting “X 18+”.

12. Section 26 amended (Unclassified RC, X 18+ or R 18+ film not to be exhibited in presence of minor)

Section 26(1) of the Principal Act is amended as follows:

- (a) by omitting “X or R” and substituting “X 18+ or R 18+”;
- (b) by omitting from paragraph (a) of the penalty “R” and substituting “R 18+”;
- (c) by omitting from paragraph (b) of the penalty “X” and substituting “X 18+”.

13. Section 27 amended (R 18+ or MA 15+ film not to be exhibited on premises where films sold)

Section 27 of the Principal Act is amended by omitting “R or MA” and substituting “R 18+ or MA 15+”.

14. Section 28 amended (R 18+ film not to be exhibited in public place in presence of minor)

Section 28(1) of the Principal Act is amended by omitting “R” and substituting “R 18+”.

15. Section 29 amended (Parent not to allow minor to attend exhibition of R 18+ film)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “R” and substituting “R 18+”;
- (b) by omitting from paragraph (b) “R” and substituting “R 18+”.

16. Section 30 amended (Minor not to attend exhibition of R 18+ film)

Section 30 of the Principal Act is amended by omitting “R” and substituting “R 18+”.

17. Section 31 amended (MA 15+ film not to be exhibited in public place in presence of unaccompanied minor)

Section 31(1) of the Principal Act is amended by omitting “MA” and substituting “MA 15+”.

18. Section 32 amended (Unclassified film not to be sold or delivered)

Section 32(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “X” and substituting “X 18+”;
- (b) by omitting from paragraph (b) “MA or R” and substituting “MA 15+ or R 18+”.

19. Section 33 amended (Classified film not to be sold or delivered under different title or in altered form)

Paragraph (b) of the penalty under section 33 of the Principal Act is amended by omitting “MA or R” and substituting “MA 15+ or R 18+”.

20. Section 36 amended (RC or X 18+ film not to be sold or delivered)

Section 36 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “X” and substituting “X 18+”;

- (b) by omitting from paragraph (b) “X” and substituting “X 18+”.

21. Section 37 amended (R 18+ film not to be sold or delivered to minor)

Section 37(1) of the Principal Act is amended by omitting “R” and substituting “R 18+”.

22. Section 38 amended (MA 15+ film not to be sold or delivered to minor under 15)

Section 38(1) of the Principal Act is amended by omitting “MA” and substituting “MA 15+”.

23. Section 39 amended (Minor who is 15 or older not to buy R 18+ film)

Section 39 of the Principal Act is amended by omitting “R” and substituting “R 18+”.

24. Section 43 amended (Review Committee to make recommendation to Minister after review)

Section 43(1) of the Principal Act is amended by omitting “R” and substituting “R 18+”.

25. Section 53 amended (RC or MA 15+ computer game not to be demonstrated in public place)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “MA (15+)” and substituting “MA 15+”;
- (b) by omitting from paragraph (b) “MA (15+)” and substituting “MA 15+”;
- (c) by omitting from paragraph (b) of the penalty “MA (15+)” and substituting “MA 15+”.

26. Section 55 amended (MA 15+ computer game not to be sold or delivered to minor under 15)

Section 55(1) of the Principal Act is amended by omitting “MA (15+)” and substituting “MA 15+”.

27. Section 57 amended (Certain advertisements for films, publications and computer games not to be published)

Section 57(1)(c) of the Principal Act is amended by omitting “X” and substituting “X 18+”.

28. Section 58 amended (Film advertisement not to be screened during public exhibition of other film of lower classification)

Section 58 of the Principal Act is amended by omitting the table and substituting the following table:

Item	Column 1 Exhibited film	Column 2 Advertised film
1.	G	G
2.	PG	PG or G
3.	M	M, PG or G
4.	MA 15+	MA 15+, M, PG or G
5.	R 18+	R 18+, MA 15+, M, PG or G

29. Section 59 amended (Film not to be sold or delivered with advertisement for film of higher classification)

Section 59 of the Principal Act is amended by omitting the table and substituting the following table:

Item	Column 1 Film sold	Column 2 Advertised film
1.	G	G
2.	PG	PG or G
3.	M	M, PG or G
4.	MA 15+	MA 15+, M, PG or G
5.	R 18+	R 18+, MA 15+, M, PG or G

30. Section 60 amended (Computer game not to be sold or delivered with advertisement for computer game of higher classification)

Section 60 of the Principal Act is amended by omitting the table and substituting the following table:

Item	Column 1 Computer game sold	Column 2 Advertised computer game
1.	G	G
2.	PG	PG or G
3.	M	M, PG or G
4.	MA 15+	MA 15+, M, PG or G

31. Section 77A amended (Forfeiture of other seized publications, films and computer games)

Section 77A(7)(a)(i) of the Principal Act is amended by omitting “X” and substituting “X 18+”.

32. Section 88B inserted

After section 88A of the Principal Act, the following section is inserted in Division 2:

88B. Transitional provisions (2005 amendments)

- (1) The amendments made to the definition of “**contentious material**” in section 3 and to sections 22, 23, 24, 25, 26, 27, 28,

29, 30, 31, 32, 33, 36, 37, 38, 39, 43, 53, 55, 57, 58, 59, 60 and 77A by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2005* apply to the doing of things on or after the commencement of those amendments.

- (2) A film that, immediately before the commencement of the amendments made by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2005* to the provisions specified in subsection (1), had a classification of a type specified in column 2 of an item in the following table is, for the purposes of applying the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* after that commencement, to be taken to have, and to have had at all times before that commencement when it had that classification, the classification of the type specified opposite it in column 3 of that item.

Table – Film classifications		
Column 1	Column 2	Column 3
Item	Former type of classification	New type of classification
1.	MA	MA 15+
2.	R	R 18+
3.	X	X 18+

- (3) A computer game that, immediately before the commencement of the amendments made by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2005* to the provisions specified in subsection (1), had a classification of a type specified in column 2 of an item in the following table is, for the purposes of applying the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* after that commencement, to be taken to have, and to have had at all times before that commencement when it had that classification, the classification of the type specified opposite it in column 3 of that item.

Table – Computer game classifications		
Column 1	Column 2	Column 3
Item	Former type of classification	New type of classification
1.	G (8+)	PG
2.	M (15+)	M
3.	MA (15+)	MA 15+

PART 4 – CRIMINAL CODE ACT 1924 AMENDED**33. Principal Act**

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

34. Principal Act amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting in section 125A(1) “125B,” after “section 124,”;
- (b) by inserting the following section after section 356:

357. Standing mute, &c.

- (1) If an accused person, when called upon to plead to an indictment, stands mute or does not directly answer to the indictment and it appears to the judge that there is no reason to reserve the question of that person’s fitness to stand trial for investigation under Part 2 of the *Criminal Justice (Mental Impairment) Act 1999*, the judge may order a plea of not guilty to be entered on that person’s behalf.

*No. 69 of 1924

s. 34

No.

*Justice and Related Legislation
(Miscellaneous Amendments)*

2005

- (2) A plea endorsed under subsection (1) has the same effect as if it had been pleaded by the accused person.

PART 5 – JUSTICES ACT 1959 AMENDED**35. Principal Act**

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

36. Section 106A amended (Interpretation of Part XA)

Section 106A(1) of the Principal Act is amended by omitting paragraphs (b), (c), (d), (e) and (f) from the definition of “stalking” and substituting:

- (b) keeping another person under surveillance;
- (c) loitering outside the residence or workplace of another person;
- (d) loitering outside a place that another person frequents;
- (e) entering or interfering with the property of another person;
- (f) sending offensive material to another person or leaving offensive material where it is likely to be found by, given to or brought to the attention of another person;
- (g) publishing or transmitting offensive material by electronic or any other means in such a way that the offensive material

*No. 77 of 1959

is likely to be found by, or brought to the attention of, another person;

- (h) using the internet or any other form of electronic communication in a way that could reasonably be expected to cause another person to be apprehensive or fearful;
- (i) contacting another person by postal, telephonic, electronic or any other means of communication;
- (j) acting in another way that could reasonably be expected to cause another person to be apprehensive or fearful;

**PART 6 – RESIDENTIAL TENANCY ACT 1997
AMENDED****37. Principal Act**

In this Part, the *Residential Tenancy Act 1997** is referred to as the Principal Act.

38. Section 42 amended (Notice to vacate by owner)

Section 42(1)(d) of the Principal Act is amended by omitting “at least” and substituting “not more than”.

39. Section 43 amended (Effect of notice to vacate)

Section 43(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “section 42(1)(c), (d), (e) or (f).” and substituting “section 42(1)(c), (e) or (f); or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) at least 14 days after the notice is served, if the notice is for the reason referred to in section 42(1)(d), but not before the date of the expiry of the residential tenancy agreement.

*No. 82 of 1997

PART 7 – SENTENCING ACT 1997 AMENDED**40. Principal Act**

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

41. Section 42 amended (Breach of probation order)

Section 42 of the Principal Act is amended as follows:

- (a) by omitting subparagraph (iv) from subsection (5)(a) and substituting the following subparagraphs:
 - (iv) cancel the order and, if it considers it appropriate, deal with the offender for the offence in respect of which it was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence;
 - (v) cancel the order and, if it considers it appropriate, any other order made by the court in respect of the offence in respect of which the probation order was made, and deal with the offender for that offence in any manner in which the court could deal with the

*No. 59 of 1997

offender had it just found the offender guilty of that offence; or

(b) by omitting paragraph (d) from subsection (6) and substituting the following paragraphs:

(d) cancel the order and, if it considers it appropriate, deal with the offender for the offence in respect of which the order was made in any manner in which the court could deal with the offender had it just found the offender guilty of that offence; or

(e) cancel the order and, if it considers it appropriate, any other order made by the court in respect of the offence in respect of which the probation order was made, and deal with the offender for that offence in any manner in which the court could deal with the offender had it just found the offender guilty of that offence.

42. Section 81A amended (Court may receive victim impact statement)

Section 81A of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (2):

(2A) If a court finds a person guilty of an indictable offence, the court

may, if it considers it appropriate to do so, allow a person, other than the victim of that offence, to furnish to the court a written statement, in lieu of a statement under subsection (2), that –

- (a) gives particulars of the injury, loss or damage suffered by the victim as a direct consequence of the offence; and
 - (b) describes the effects on the victim of the commission of the offence.
- (b) by omitting from subsection (3) “The statement” and substituting “A statement referred to in subsection (2) or (2A)”;
- (c) by omitting subsections (4) and (5) and substituting the following subsection:
- (4) If the court finds a person guilty of an offence, the court must allow the victim, or the person who has furnished a statement under subsection (2A) (the “other person”), or another person nominated by the victim or the other person, to read his or her statement to the court if the victim or the other person has so requested at the time of furnishing the statement to the court.

**PART 8 – SUPREME COURT CIVIL PROCEDURE ACT
1932 AMENDED****43. Principal Act**

In this Part, the *Supreme Court Civil Procedure Act 1932** is referred to as the Principal Act.

44. Section 197 amended (Power of judges to make Rules of Court)

Section 197 of the Principal Act is amended by inserting after subsection (3A) the following subsection:

- (3B) Rules of Court made pursuant to this section may adopt, either wholly or in part and with or without modification, and either specifically or by reference, Rules of Court of the Federal Court of Australia or a Supreme Court of another State or a Territory as in force for the time being.

*No. 58 of 1932