

# Crimes (Homicide) Act 2005

Act No. 77/2005

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Victoria

No. 77 of 2005

## Crimes (Homicide) Act 2005<sup>†</sup>

[Assented to 22 November 2005]

**The Parliament of Victoria enacts as follows:**

### PART 1—PRELIMINARY

#### 1. Purposes

The main purposes of this Act are—

- (a) to amend the **Crimes Act 1958**—
  - (i) to remove provocation as a partial defence to murder; and
  - (ii) to create a new offence of defensive homicide and revise the offence of infanticide; and

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- (iii) to provide expressly for self-defence, duress, sudden or extraordinary emergency and the relevance of intoxication in relation to homicide offences; and
- (b) to amend the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** to provide further for the defence of mental impairment.

**2. Commencement**

This Act comes into operation on the day after the day on which it receives the Royal Assent.

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**PART 2—AMENDMENT OF THE CRIMES ACT 1958 AND  
CONSEQUENTIAL AMENDMENT OF OTHER ACTS**

**3. New section 3B**

After section 3A of the **Crimes Act 1958** insert—

**"3B. Provocation no longer a partial defence to murder**

The rule of law that provocation reduces the crime of murder to manslaughter is abolished."

**4. New section 4 inserted**

Before section 5 of the **Crimes Act 1958** insert—

**'4. Alternative verdict of defensive homicide on charge for murder**

- (1) If on the trial of a person for murder the jury are not satisfied that he or she is guilty of murder but are satisfied that he or she is guilty of an offence against section 9AD (defensive homicide), the jury may acquit the accused of murder and find him or her guilty of defensive homicide and he or she is liable to punishment accordingly.
- (2) This section does not restrict the operation of section 6, 10(3) or 421.

Note: See section 9AC for "self-defence" exception to murder.'

See:  
Act No.  
6231.  
Reprint No. 18  
as at  
1 July 2005  
and  
amending  
Act Nos  
16/2004,  
18/2005 and  
56/2005.  
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gov.au](http://www.dms.dpc.vic.gov.au)

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**5. Section 6 substituted**

For section 6 of the **Crimes Act 1958**  
**substitute—**

**"6. Infanticide**

- (1) If a woman carries out conduct that causes the death of her child in circumstances that would constitute murder and, at the time of carrying out the conduct, the balance of her mind was disturbed because of—
- (a) her not having fully recovered from the effect of giving birth to that child within the preceding 2 years; or
  - (b) a disorder consequent on her giving birth to that child within the preceding 2 years—

she is guilty of infanticide, and not of murder, and liable to level 6 imprisonment (5 years maximum).

- (2) On an indictment or presentment for murder, a woman found not guilty of murder may be found guilty of infanticide.

Note: See sections 10(3) and 421 for other alternative verdicts.

- (3) Nothing in this Act affects the power of the jury on a charge of murder of a child to return a verdict of not guilty because of mental impairment."

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**6. New Subdivision (1AA) inserted in Division 1 of  
Part I**

After Subdivision (1) of Division 1 of Part I of the  
**Crimes Act 1958 insert—**

**'(1AA) *Exceptions to Homicide Offences***

**9AB. Definitions and application of Subdivision**

(1) In this Subdivision—

**"intoxication"** means intoxication because  
of the influence of alcohol, a drug or  
any other substance;

**"relevant offence"** means murder,  
manslaughter or defensive homicide.

(2) Without taking away from the law relating to  
any other offences and except as otherwise  
expressly provided by this Subdivision, this  
Subdivision applies only to relevant  
offences.

**9AC. Murder—"self-defence"**

A person is not guilty of murder if he or she  
carries out the conduct that would otherwise  
constitute murder while believing the  
conduct to be necessary to defend himself or  
herself or another person from the infliction  
of death or really serious injury.

Note 1: See section 4 for alternative verdict of defensive  
homicide where the accused had no reasonable  
grounds for the belief.

Note 2: This section does not apply where the response is to  
lawful conduct—see section 9AF.

Note 3: See section 9AH as to belief in circumstances where  
family violence is alleged.

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**9AD. Defensive homicide**

A person who, by his or her conduct, kills another person in circumstances that, but for section 9AC, would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.

Note: See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.

**9AE. Manslaughter—"self-defence"**

A person is not guilty of manslaughter if he or she carries out the conduct that would otherwise constitute manslaughter while believing the conduct to be necessary—

- (a) to defend himself or herself or another person; or
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—

and he or she had reasonable grounds for that belief.

Note 1: See section 9AH as to reasonable grounds for the belief in circumstances where family violence is alleged.

Note 2: This section does not apply where the response is to lawful conduct—see section 9AF.



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**9AF. Self-defence exceptions do not apply in the case of lawful conduct**

Sections 9AC and 9AE do not apply if—

- (a) the person is responding to lawful conduct; and
- (b) at the time of his or her response, the person knows that the conduct is lawful.

**9AG. Duress**

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her under duress.
- (2) A person carries out conduct under duress if and only if the person reasonably believes that—
  - (a) subject to sub-section (3), a threat has been made that will be carried out unless an offence is committed; and
  - (b) carrying out the conduct is the only reasonable way that the threatened harm can be avoided; and
  - (c) the conduct is a reasonable response to the threat.
- (3) However, a person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating for the purpose of carrying out violent conduct.
- (4) This section only applies in the case of murder if the threat is to inflict death or really serious injury.

Note: See section 9AH for evidentiary provisions where family violence is alleged.

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**9AH. Family violence**

- (1) Without limiting section 9AC, 9AD or 9AE, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary—
- (a) to defend himself or herself or another person; or
  - (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person—
- even if—
- (c) he or she is responding to a harm that is not immediate; or
  - (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.
- (2) Without limiting the evidence that may be adduced, in circumstances where family violence is alleged evidence of a kind referred to in sub-section (3) may be relevant in determining whether—
- (a) a person has carried out conduct while believing it to be necessary for a purpose referred to in sub-section (1)(a) or (b); or
  - (b) a person had reasonable grounds for a belief held by him or her that conduct is necessary for a purpose referred to in sub-section (1)(a) or (b); or
  - (c) a person has carried out conduct under duress.
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(3) Evidence of—

- (a) the history of the relationship between the person and a family member, including violence by the family member towards the person or by the person towards the family member or by the family member or the person in relation to any other family member;
- (b) the cumulative effect, including psychological effect, on the person or a family member of that violence;
- (c) social, cultural or economic factors that impact on the person or a family member who has been affected by family violence;
- (d) the general nature and dynamics of relationships affected by family violence, including the possible consequences of separation from the abuser;
- (e) the psychological effect of violence on people who are or have been in a relationship affected by family violence;
- (f) social or economic factors that impact on people who are or have been in a relationship affected by family violence.

(4) In this section—

**"child"** means a person who is under the age of 18 years;

**"family member"**, in relation to a person, includes—

- (a) a person who is or has been married to the person; or

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- (b) a person who has or has had an intimate personal relationship with the person; or
- (c) a person who is or has been the father, mother, step-father or step-mother of the person; or
- (d) a child who normally or regularly resides with the person; or
- (e) a guardian of the person; or
- (f) another person who is or has been ordinarily a member of the household of the person;

**"family violence"**, in relation to a person, means violence against that person by a family member;

**"violence"** means—

- (a) physical abuse;
- (b) sexual abuse;
- (c) psychological abuse (which need not involve actual or threatened physical or sexual abuse), including but not limited to—
  - (i) intimidation;
  - (ii) harassment;
  - (iii) damage to property;
  - (iv) threats of physical abuse, sexual abuse or psychological abuse;

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- (v) in relation to a child—
  - (A) causing or allowing the child to see or hear the physical, sexual or psychological abuse of a person by a family member; or
  - (B) putting the child, or allowing the child to be put, at real risk of seeing or hearing that abuse occurring.
- (5) Without limiting the definition of "violence" in sub-section (4)—
  - (a) a single act may amount to abuse for the purposes of that definition;
  - (b) a number of acts that form part of a pattern of behaviour may amount to abuse for that purpose, even though some or all of those acts, when viewed in isolation, may appear to be minor or trivial.

**9AI. Sudden or extraordinary emergency**

- (1) A person is not guilty of a relevant offence in respect of conduct carried out by him or her in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies if and only if the person carrying out the conduct reasonably believes that—
  - (a) circumstances of sudden or extraordinary emergency exist; and
  - (b) committing the offence is the only reasonable way to deal with the emergency; and

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- (c) the conduct is a reasonable response to the emergency.
- (3) This section only applies in the case of murder if the emergency involves a risk of death or really serious injury.

**9AJ. Intoxication**

- (1) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable belief, in determining whether that reasonable belief existed, regard must be had to the standard of a reasonable person who is not intoxicated.
  - (2) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on a person having reasonable grounds for a belief, in determining whether those reasonable grounds existed, regard must be had to the standard of a reasonable person who is not intoxicated.
  - (3) If any part of an element of a relevant offence, or of a defence to a relevant offence, relies on reasonable response, in determining whether that response was reasonable, regard must be had to the standard of a reasonable person who is not intoxicated.
  - (4) If a person's intoxication is not self-induced, in determining whether any part of an element of a relevant offence, or of a defence to a relevant offence, relying on reasonable belief, having reasonable grounds for a belief or reasonable response exists, regard must be had to the standard of a reasonable person intoxicated to the same extent as the person concerned.
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- (5) For the purposes of this section, intoxication is self-induced unless it came about—
- (a) involuntarily; or
  - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
  - (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of the person who prescribed it; or
  - (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.
- (6) Despite sub-section (5), intoxication is self-induced in the circumstances referred to in sub-section (5)(c) or (d) if the person using the drug knew, or had reason to believe, when the person took the drug that the drug would significantly impair the person's judgment or control.'

**7. New section 603 inserted**

After section 602 of the **Crimes Act 1958**  
insert—

**"603. Transitional provision—Crimes  
(Homicide) Act 2005**

- (1) An amendment of this Act made by section 3, 4, 5 or 6 of the **Crimes (Homicide) Act 2005** applies only to offences alleged to have been committed on or after the commencement of that Act.

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- (2) For the purposes of sub-section (1) if an offence is alleged to have been committed between two dates, one before and one after the commencement of the **Crimes (Homicide) Act 2005**, the offence is alleged to have been committed before that commencement."

**8. Amendments of Acts consequential on creation of new offence of defensive homicide**

- (1) In the **Children and Young Persons Act 1989**—
- (a) in section 16(1)(b), after "manslaughter," **insert** "defensive homicide,";
  - (b) in section 134(1), (2)(a), (3) and (4), after "manslaughter," **insert** "defensive homicide,".
- (2) In section 17(3)(a)(i) of the **Coroners Act 1985**, after "manslaughter," **insert** "defensive homicide,".
- (3) In the **Crimes Act 1958**—
- (a) in section 9—
    - (i) after "of manslaughter" **insert** "or of defensive homicide";
    - (ii) after "or manslaughter" **insert** "or defensive homicide";
  - (b) in section 423, for "or manslaughter" **substitute** ", manslaughter or defensive homicide";
  - (c) in section 464P(2)(a), for "or manslaughter" **substitute** ", manslaughter or defensive homicide";
  - (d) in section 464ZGA(2)(a), for "or manslaughter" **substitute** ", manslaughter or defensive homicide";
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(e) in Schedule 8, after item 3 **insert**—

"3A. Defensive homicide."

(4) In the **Sentencing Act 1991**—

(a) in section 3(1), in the definition of "serious offence", after paragraph (b) **insert**—

"(ba) defensive homicide; or";

(b) in clause 2 of Schedule 1, after paragraph (b) **insert**—

"(ba) defensive homicide;"

(5) In section 86(1) of the **Transport Act 1983**, in paragraph (a) of the definition of "level 1 offence", after "(1)" **insert** ", (1AA)".

**9. Statute law revision**

In section 336(2) of the **Crimes Act 1958**, for ", murder or an offence specified in section 4, 11 or 14 of this Act" **substitute** "or murder".

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Part 3—Amendment of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

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See:  
Act No.  
65/1997.  
Reprint No. 2  
as at  
1 July 2002  
and  
amending  
Act Nos  
44/2004,  
108/2004,  
10/2005 and  
18/2005.  
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**PART 3—AMENDMENT OF THE CRIMES (MENTAL  
IMPAIRMENT AND UNFITNESS TO BE TRIED) ACT 1997**

**10. When mental impairment is not in dispute**

- (1) In section 21(2)(b) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, after "(b)" insert "subject to subsection (4),".
  - (2) After section 21(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** insert—
    - "(4) If a person is charged with an indictable offence and, before the empanelment of a jury, the prosecution and the defence agree that the proposed evidence establishes the defence of mental impairment, the trial judge may hear the evidence and—
      - (a) if the trial judge is satisfied that the evidence establishes the defence of mental impairment, may direct that a verdict of not guilty because of mental impairment be recorded; or
      - (b) if the trial judge is not so satisfied, must direct that the charge for the offence be tried by a jury."
  - (3) In section 22(2) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**, after "impairment" (where first occurring) insert "and a jury has been empanelled".
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Endnotes

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**ENDNOTES**

† *Minister's second reading speech—*  
*Legislative Assembly: 6 October 2005*  
*Legislative Council: 27 October 2005*

The long title for the Bill for this Act was "to amend the law in relation to homicide offences, to amend the **Crimes Act 1958** and the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** and make consequential amendments to certain other Acts and for other purposes."