Supreme Court of Victoria

Director of Public Prosecutions v GR [2025] VSC 490 (14 August 2025)

Last Updated: 15 August 2025

IN THE SUPREME COURT OF VICTORIA	Not Restricted

AT MELBOURNE

CRIMINAL DIVISION

S ECR 2023 0233

DIRECTOR OF PUBLIC PROSECUTIONS — Prosecuti

v

GR — Accus

JUDGE:	Elliott J
WHERE HELD:	Melbourne
DATE OF HEARING:	13, 14 August 2025
DATE OF JUDGMENT:	14 August 2025
CASE MAY BE CITED AS:	Director of Public Prosecutions v GR
MEDIUM NEUTRAL CITATION:	[2025] VSC 490

CRIMINAL LAW – Murder – Consent mental impairment – Verdict of not guilty by reason of mental impairment – Accused declared liable to supervision – Matter adjourned to allow for report and certificate of available services to be obtained – *Crimes Act 1958* (Vic), ss 323, 324 – *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), ss 3, 20, 21, 24, 41, 47, 38G, 38H, 38Z – *Criminal Organisations Control and Other Acts Amendment Act 2014* (Vic), s 1 – *Children, Youth and Families Act 2005* (Vic), s 534 – *Interpretation of Legislation Act 1984* (Vic), s 35 – *Charter of Human Rights and Responsibilities Act 2006* (Vic), ss 23, 32.

PRACTICE AND PROCEDURE – Use of artificial intelligence to prepare written submissions filed with the court – Misinformation produced by artificial intelligence – Hallucinated case references – Irrelevant case references - Accuracy of quotations and citations not verified – Responsible use of artificial intelligence – Accuracy of submissions fundamental to due administration of justice.

APPEARANCES:	Counsel	Solicitors
For the prosecution	D Porceddu	Office of Public Prosecutions
For the accused	R Nathwani KC with A Beech	James Dowsley & Associates

HIS HONOUR:

A. Introduction

1. On the night of 5 April 2023, the accused ("GR") and a co-accused ("XQ"), killed XQ's mother ("the Deceased"). [1]

2. At the time of the killing, GR was aged 14 and XQ was 15. The Deceased was aged 41.

B. The offending and surrounding circumstances

3. GR and XQ were friends who shared a strong interest in politics, military history and paraphernalia. Some months prior to the offending, GR and XQ created a group called the "Anti-Communist Front". The objective of this self-styled paramilitary group was to stop communism. GR and XQ formulated a grandiose plan to achieve this end. The plan, referred to as "Operation Continuity", involved taking steps to establish an army to rid Australia of communism and to restore Christian values to society. Over time, GR and XQ sought to recruit others to the Anti-Communist Front.

4. GR and XQ became driven by the prospect of carrying out the objectives of Operation Continuity. They exchanged text messages over many months on the subject, and took various steps directed towards bringing Operation Continuity to fruition. They collected camouflage clothing, World War 2 helmets, ration packs and other equipment they deemed necessary. XQ purchased 2 machetes in February 2023 that were intercepted by his mother and returned. These events were the subject of numerous messages between GR and XQ.

5. Initially, GR and XQ intended to stay at the home of a mutual friend ("Friend 1") for a sleepover. It was intended to steal Friend 1's father's car and drive to the Grampians region in Victoria to blow up a bridge and then create an army to take over Australia. This version of their plan was thwarted when the sleepover was cancelled on 2 occasions in February and March 2023.

6. Ultimately, GR and XQ decided that Operation Continuity would be initiated by them in early April 2023 (with the possible involvement of others, though ultimately no one else actually participated in any meaningful way).

7. On the morning of 5 April 2023, whilst at school on the final day of the school term, XQ and GR arranged for GR to stay at XQ's family home that evening. They agreed the pair would steal the Deceased's car and drive to the Grampians to carry out their plan.

8. After school, GR went to XQ's family home with XQ and a different mutual friend ("Friend 2"). The group used the gym facilities within the apartment complex. Friend 2 left at about 4.20pm, after XQ hinted that Friend 2 should leave.

9. In the hours immediately preceding the killing, XQ exchanged messages with Friend 1. These included XQ sending Friend 1 a photograph of XQ and GR dressed in camouflage clothing and holding unopened bottles of alcohol, with GR holding a combat-style knife. GR sent messages and photographs to a separate friend, and exchanged messages with Friend 1 around the time of the killing.

10. Sometime around 10.30pm, XQ's younger brother was in his bedroom upstairs and heard shouting coming from downstairs. He heard what sounded like his mother screaming "What are you doing, stop stop!" and "You're killing me!". XQ's brother ran downstairs to check on his mother. He knocked on the door of his mother's room. XQ opened the door and assured his brother that everything was okay. XQ's brother could see over XQ's shoulder that his mother was lying in bed, with blood all over the room. He saw GR standing next to his mother, holding 2 knives in his right hand.

11. XQ's brother ran from the house and, unsure of what to do, hung around outside the property for a few minutes. After seeing GR and XQ in the Deceased's car and that the car had blood on it, and then hearing a crash, XQ's brother ran to the local police station to report what had happened.
12. Police arrived at the property at 11.13pm. Paramedics were already at the scene. Police found the Deceased laying on the floor of her bedroom, covered in blood. The Deceased told police that XQ had caused her injuries, and that she did not know why. The Deceased was transported to hospital, where she died that evening from her injuries.
13. Meanwhile, GR and XQ drove the Deceased's car to Elwood to collect their bag of equipment from a bush outside Friend 1's family home. GR and XQ dumped the Deceased's vehicle nearby. They walked some distance from St Kilda to Southern Cross Railway Station, before boarding the train bound for Wendouree. They got off the train early in the morning of 6 April 2025, continuing on foot. Later that same day, GR and XQ were arrested.
14. Prior to being interviewed by police on 7 April 2023, GR and XQ were both examined by forensic medical officers for fitness for interview, and were both deemed fit to participate. During his record of interview, GR made no comment to questions related to the Deceased, and to most questions relating to the Deceased's vehicle.
15. GR was charged with murder, and has been held on remand in a youth justice centre since his offending.
16. On 5 August 2024, XQ pleaded guilty to murder.

C. The parties' agreed position on the defence of mental impairment

17. The prosecution put its case against GR (and also XQ) on the basis of complicity pursuant to sections 323 and 324 of the *Crimes Act 1958* (Vic). That is, it was alleged the pair entered into an agreement, arrangement or understanding with one another to kill or cause really serious injury to the Deceased, and thereby commit the offence of murder.
18. The defence does not contest the factual allegations made by the prosecution in respect of GR. Further, the prosecution and defence agree that the expert psychiatric evidence establishes the defence of mental impairment with respect to GR's offending.
19. Consequently, the defence has invited the court to make a finding that the evidence establishes the defence of mental impairment and to direct that a verdict of not guilty because of mental impairment be recorded pursuant to section 21(4)(a) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) ("the Act").

D. Expert reports supporting a finding of mental impairment

20. On 21 October 2024, the defence obtained a forensic psychiatric report in respect of GR from Associate Professor John Kasinathan (the "Kasinathan Report"), which was supplemented by a second report from Dr Kasinathan dated 6 August 2025 ("the Supplementary Report").[2]
21. On 17 March 2025, the prosecution obtained a forensic psychiatric report from Dr Yolisha Singh ("the Singh Report").[3]
22. Each report was based, in part, on an assessment of GR. Dr Singh met GR in-person. Dr Kasinathan (who is based in Sydney) consulted with GR by audio-visual link.
23. As this matter is being dealt with by consent,[4] there is no need to go over GR's psychiatric history in detail. However, some matters contained in the expert reports should be referred to.
24. Both experts diagnosed GR with schizophrenia and autism spectrum disorder, with schizophrenia being the diagnosis of primary relevance. Dr Singh further diagnosed GR with attention deficit hyperactivity disorder and post-traumatic stress disorder.
25. According to both experts, at the time of his offending GR's schizophrenia was characterised by significant disturbance of thought, including delusions (for example, that he was a prophet of God and a scion) and thought insertion (the belief that God was putting thoughts in his head).
26. At the time of the Kasinathan Report, Dr Kasinathan formed the view that GR's psychotic symptoms were still present. Dr Singh considered, at the time of her report, that GR's psychotic symptoms were no longer evident. In the Supplementary Report, Dr Kasinathan maintains his original psychiatric diagnosis of schizophrenia and autism

spectrum disorder, but notes that, following adherence to antipsychotic treatment and based on GR's reporting, GR's previously held paranoid delusions, grandiose delusions, thought insertion and hallucinations have been resolved since December 2024. Dr Kasinathan expects that if GR were to stop taking his antipsychotic medication his psychotic symptoms would return.

27. In the Supplementary Report, Dr Kasinathan recommends a treatment plan for GR that involves assertive adolescent forensic mental health care and treatment. He considers this treatment should occur in a dedicated, high security forensic mental health inpatient unit for adolescents, provided by a multidisciplinary mental health team clinically led by a formally trained adolescent forensic psychiatrist.

28. Unlike New South Wales, Victoria does not have a dedicated health unit of the type that Dr Kasinathan recommends for GR. While Victoria does have access to a very limited number of mental health beds for mentally ill young people in custody, GR would be unlikely to access those beds unless he experiences marked deterioration in his mental state and requires acute inpatient care.

29. Dr Kasinathan advises that, were GR to be remanded in a youth justice centre, he would continue to receive outpatient mental health care and treatment via clinicians who attend this centre. If GR were to suffer a marked deterioration in his mental state prior to age 18 and require acute inpatient care, he would be admitted to a mental health inpatient unit for treatment, but upon stabilisation of his mental state, he would be expected to return to a youth justice centre. Finally, Dr Kasinathan indicates that, once GR turns 18, and subject to the availability of treatment beds there, he will be able to transfer to Thomas Embling Hospital to commence forensic psychiatric rehabilitation. However, in light of the current extensive waiting list for treatment beds at Thomas Embling Hospital (which continues to be an ongoing problem), there is a real possibility that after turning 18 years of age GR will need to be remanded in custody for a further period.

30. Despite holding differences of opinion on some points, the experts agree that the defence of mental impairment under section 20(1)(b) of the Act is available to GR on the basis that at the time GR engaged in conduct constituting the offence he was suffering from a mental impairment that had the effect that he did not know his conduct was wrong. In the Kasinathan Report, Dr Kasinathan also expressed the view that section 20(1)(a) of the Act was satisfied, namely that an effect of GR's impairment was that he did not know the nature and quality of his conduct. Dr Singh did not hold the same view.

31. On the basis of the Kasinathan Report and the Singh Report, the parties agreed that the proposed evidence established the defence of mental impairment. Consequently, the matter came before me to determine whether the evidence did in fact establish this defence.

E. Conclusion on mental impairment

32. Having read the evidence and considered the submissions made, I am satisfied that the defence of mental impairment under section 20(1)(b) of the Act has been established, as GR was suffering from a mental impairment at the time of engaging in the conduct constituting the offence, the effect of which was that he could not reason with a moderate degree of sense and composure about whether his conduct, as perceived by reasonable people, was wrong.

33. Accordingly, I direct a verdict of not guilty because of mental impairment be recorded,[5] and declare GR liable to supervision under Part 5 of the Act.

F. Extent of this court's power to remand a child under section 24(1) of the Act

F.1 Relevant provision, context and issue defined

34. Section 24(1) of the Act sets out the orders the court may make after declaring a person liable to supervision, pending the making of a supervision order. Section 24 of the Act provides, relevantly:

> **24 Court may make orders pending making of supervision order**

> (1) If the court declares a person liable to supervision, the court may make any one or more of the following orders pending the making of a supervision order—
>
> (a) an order granting the person bail;
>
> (b) subject to subsection (2),[6] an order remanding the person in custody in an appropriate place;
>
> (c) subject to subsection (3),[7] an order remanding the person in custody in a prison;
>
> (d) if it is of the opinion that it is in the interests of justice to do so, an order—
>
> (i) that the person undergo an examination by a registered medical practitioner or registered psychologist; and
>
> (ii) that the results of the examination be put before the court;
>
> (e) any other order the court thinks appropriate.

35. As may be seen, the only options for remand expressly provided for by section 24(1) are "in an appropriate place",[8] being a designated mental health service or a residential treatment facility,[9] or "in a prison".[10] These options are supplemented by the court's power to make any other order it considers to be appropriate.[11]
36. Section 24(1), therefore, does not grant the court an express power to remand a child in a youth justice centre where the child is the subject of an indictable proceeding *in the Supreme Court*.
37. The position is different when the child is within the jurisdiction of the Children's Court.
38. The Act was amended in 2014 to enable the Children's Court to determine the issue of fitness to stand trial in relation to offences within the jurisdiction of the Children's Court, and to declare a child liable to supervision after a finding of not guilty because of mental impairment for offences within the jurisdiction of the Children's Court.[12]
39. Section 38Z of the Act was introduced with this suite of amendments in Part 5A, making express provision for remanding a child in a youth justice centre or a youth residential centre.[13] However, that section applies to proceedings in the Children's Court and appeals from those proceedings.[14]
40. The Act therefore provides a clear legislative basis for remanding a child in a youth justice centre if the defence of mental impairment gives rise to a not guilty verdict with respect to indictable offences heard in the Children's Court. However, no equivalent exists when the court is dealing with children with indictable proceedings in the Supreme Court.
41. Accordingly, the question arises whether the absence of express provision for remand in a youth justice centre in section 24(1) means the options provided by paragraphs (b) and (c), namely "an appropriate place" or "prison", are exhaustive.

F.2 Submissions initially filed - and subsequent submissions

42. The parties were invited to make submissions on whether the court has the power to remand a child in a youth justice centre in circumstances where section 24(1) of the Act does not expressly contemplate this course.
43. Submissions were filed in response to that request which advanced the position that section 24(1)(e) of the Act, being a broad discretionary power for the court to make any other order the court thinks appropriate, would permit an order remanding GR in a youth justice centre.[15] However, as explained below,[16] ultimately GR was the only party to make written submissions of substance on this issue.
44. There were 2 principal bases put by GR in support of this position. *First*, a purposive interpretation of the Act should be adopted. *Secondly*, the Act should be interpreted consistently with other relevant legislation.

F.2.1 Purposive interpretation

45. GR referred to the requirement for legislation to be interpreted in a manner that promotes its purpose[17] and submitted that, while the Act does not expressly address appropriate and therapeutic treatment as a purpose of the Act, this is nonetheless a clear focus of the Act.

46. To support this view, GR referred to the Second Reading Speech introducing the *Crimes (Mental Impairment and Unfitness to be Tried) Bill 1997* ("the Second Reading Speech") and the Victorian Law Reform Commission's final report following its review of the Act in 2014 ("the Commission's Report"). The latter report was delivered shortly before the *Criminal Organisations Control and Other Acts Amendment Act 2014* (Vic) was passed by Parliament.[18]

47. During the Second Reading Speech, the Attorney-General stated that one of the aims of the Bill was:[19]

> ...to set out the matters to which a court should have regard and, in so doing, to strike the appropriate balance between the protection of the community on the one hand and the *clinical or therapeutic needs of the person* on the other.
>
> (Emphasis added.)

48. The Second Reading Speech also referred to the Bill facilitating "the tailoring of appropriate conditions in each individual case"[20] and to the Bill putting in place a system "that is just and responsive to the needs of the individual".[21]

49. The Commission's Report noted that:[22]

> The [Act] affects some of the most vulnerable members of our society and seeks to provide a *humane and appropriate response in process and outcome.*
>
> (Emphasis added.)

50. The Commission's Report also addressed the manner in which the community's interests may best be served by providing appropriate treatment to persons within the purview of the Act:[23]

> Cases under the [Act] require consideration of how best to ensure the safety of the community and also to provide treatment and support to a person in the least restrictive way appropriate. A successful therapeutic pathway – that ensures the person's recovery or improvement in functioning so that they may return as a well and functioning member of society – also serves to protect the community.

51. As part of expanded terms of reference, the Law Reform Commission was asked to consider matters regarding the operation of the Act for young people in the Children's Court. In relation to the application of the Act to children, and on the theme of what a "successful therapeutic pathway" may entail or require insofar as children are concerned, the Commission's Report expressed the view that:[24]

> ...the extension of the [Act]'s application in the Children's Court should not occur without the establishment of a youth forensic facility. Such a facility is *necessary to provide a secure and therapeutic environment* – which currently does not exist in Victoria – to conduct assessments, undertake treatment, and provide services to optimise fitness and protect the community through secure supervision of young people on therapeutic supervision orders.

(Emphasis added.)

52. While acknowledging the requirement under the Act to balance appropriate treatment and care with the need to protect the community, GR submitted that these apparently competing concerns need not be considered to be mutually exclusive. Further, it was submitted that the Second Reading Speech and the Commission's Report are

indicative that one of the purposes of the Act is to facilitate the least restrictive therapeutic treatments that are available in the circumstances.

F.2.2 Statutory consistency

53. GR submitted that the Act must be interpreted consistently with the *Children, Youth and Families Act 2005* (Vic), which it was submitted prohibits the detention of a child in an adult prison.[25] The effect of this, GR contended, is that section 24(1)(c) of the Act cannot apply to children.
54. GR referred to section 32(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ("the Charter"), which provides that other legislation must be interpreted in a way that is compatible with human rights (insofar as that is possible to do consistently with the other legislation's purpose). Reference was also made to section 23(1) of the Charter, which requires that an accused child who is detained, or a child detained without charge, must be segregated from adults.[26] These rights were said to support an interpretation of section 24(1) of the Act that would enable a child to be remanded in a youth justice facility under that provision.
55. GR submitted section 24(1)(e) operates as a safety net where other custodial options under section 24(1) are unavailable or unlawful and that, given the prohibition on imprisoning children under the *Children, Youth and Families Act*, section 24(1)(e) permits a lawful and appropriate custodial option; namely, remand in a youth justice centre.

F.2.3 Prosecution's position

56. Although the prosecution made no substantive written submissions on the point,[27] its written submissions adopted the defence position that section 24(1)(e) of the Act gives the court power to remand GR in a youth justice centre. Further, oral submissions were made today affirming the position and referring to GR's specific circumstances and medical needs in submitting the only appropriate place to remand GR was in a youth justice centre.

F.3 Consideration

57. Plainly, it would be inappropriate to remand GR in an adult prison. Further, the type of specialised adolescent forensic inpatient unit recommended by Dr Kasinathan in his supplementary report, and recommended in the Commission's Report in 2014, remains unavailable to children in Victoria. In these circumstances, the most suitable place for GR to be remanded is a youth justice centre. This will allow him to continue to receive outpatient mental health care and treatment by attending clinicians until he turns 18 years of age, at which point he will become eligible to be transferred to Thomas Embling Hospital to commence forensic psychiatric rehabilitation (if any place is available at that time).[28]
58. I am satisfied the court has the power under section 24(1)(e) of the Act to remand GR in custody in a youth justice centre. As stated above, this is the most appropriate course to adopt. To find otherwise would require GR to be held in remand in an adult prison as there is no other available option. It would be an absurdity to construe the Act to reflect an intention of Parliament to mandate that a very unwell child who has been found not guilty by reason of mental impairment should be incarcerated in such an inappropriate manner when facilities are available that are dedicated to the detention of children.
59. Further, such a construction would be inconsistent with the important protections in the Charter. Furthermore, by the combined operation of sections 23(1) and 32(1) of the Charter,[29] section 24(1)(e) should be interpreted as including a power to remand a child in a youth justice centre in appropriate circumstances.[30]
60. Accordingly, it will be ordered that GR is to be remanded in a youth justice centre pending the preparation of a further report on his mental condition as required by section 41(1), and the provision of a certificate of available services pursuant to section 47 of the Act.

G. Use of artificial intelligence

61. A further matter needs to be raised concerning written submissions filed with the court. More specifically, the matter concerns the due administration of justice and the use of artificial intelligence in the preparation of submissions or other materials filed or otherwise put before the court.
62. As is apparent from the above reasons, an issue arose in this proceeding on the power of the court to make particular orders under section 24(1) of the Act. In seeking to obtain assistance from the parties on this issue, an email was sent to them on 30 July 2025. That email noted that the materials filed to date did not address the fact that section 24(1) did not expressly provide for a child to be remanded in a facility under the control of youth justice. The parties were invited to provide an outline of submissions on the extent of the power of the court to remand GR at various locations in the event that he was declared liable to supervision under Part 5 of the Act. The email concluded in the following terms:

> His Honour requests that, if the parties are able to reach agreement, a written outline of joint submissions on this issue be filed by 4.00pm on Wednesday 6 August 2025. If the parties are unable to reach agreement, then separate written outlines of submissions are to be filed by the same time and date.

63. At 4.54pm on 5 August 2025, my associates received an email from a partner of the law firm acting for GR which stated that the parties had conferred on the issue. The addressees of the email included the prosecution's counsel and solicitors, and defence counsel. The email "attached submissions as to the joint position agreed by both the prosecution and defence", and foreshadowed the document being filed. This in fact occurred shortly after. The document filed by GR's solicitors was entitled "Submissions on Custodial Remand under s 24 of the [Act]" and was not signed by counsel or solicitors for either party.
64. In preparation for the hearing, the court considered these filed submissions. However, it was not possible to locate some of the materials referred to in those submissions, including what purported to be direct quotes from cases recorded as being decisions of this court.
65. Accordingly, my associates emailed the parties and their counsel the morning before the hearing requesting the parties provide copies of those cases, together with the Second Reading Speech and the Commission's Report that had also been referred to and purportedly quoted.
66. Later that morning, GR's senior counsel sent an email to my associates stating that the filed submissions were wrong. Further, the email stated that the citations were wrong on the basis that "[t]hey do not exist". It was further noted that the cases referred to were incorrectly cited and did not apply to this matter. Senior counsel took full responsibility for the errors, apologised and foreshadowed amended submissions being filed in the near future.
67. Early that afternoon, revised submissions filed on behalf of "The Accused" were emailed to my associates by senior counsel. The covering email stated that the prosecution were aware of the contents of the revised submissions and did not seek to make any further submissions. An apology was again made for the errors in the previous document.
68. The revised submissions unsurprisingly made no reference to the non-existent cases. They also removed fictitious quotes from what were previously said to be parts of the Second Reading Speech and the Commission's Report.
69. An email was then sent by the court noting receipt of the revised submissions. The email acknowledged the initial submissions had been filed by the defence and that GR's senior counsel had taken responsibility for the state of those initial submissions. However, it was further noted that the submissions had been filed on "a joint basis" and accordingly the parties were directed to provide either a joint explanation or individual explanations as to how those initial submissions had come to have been filed.
70. Later that afternoon, the court received an email from GR's senior counsel explaining that artificial intelligence had been used to assist with the joint submissions. The court was informed that the initial citations were checked and were accurate and that an assumption was made, wrongly, that the later cases and citations were also correct. On this basis, the submissions were forwarded to the prosecution for its approval. Again, senior counsel took responsibility for the "fault" and made an unreserved apology to the court.
71. The draft submissions that had been forwarded by the defence as referred to in the preceding paragraph were reviewed upon receipt by both counsel and solicitors acting for the prosecution. In an email sent at 4.38pm on 5

August 2025, the prosecution advised defence counsel and solicitors that “we agree with the position expressed in the submissions you provided”.[31] The email invited GR’s solicitors to file the submissions “noting they were agreed by us”, and expressed appreciation if that were done. The email stated the prosecution’s intention to file written submissions that “speak to the entire process” and stated that those submissions would include the following:

> In the present case, we agree with the defence that if the court declares [GR] liable to a supervision order he may be remanded in a youth justice centre under s 24(1)(e), which empowers the court to make “any other order the court thinks appropriate”.

To be clear, there was no suggestion that the prosecution took any issue with the draft submissions that were intended to be filed.

72. In an email sent to the court the afternoon before the hearing commenced, the prosecution explained its position in relation to the “joint submissions document”. The prosecution stated the joint submissions document was not checked “because we ultimately agreed with the conclusion at paragraph 20”. It was further stated that the prosecution should have checked all references in any documents provided. It was acknowledged that the position was unsatisfactory and an apology was also proffered by the prosecution.
73. The pervasiveness of potentially misleading information caused by the use of artificial intelligence did not end there. The revised submissions filed the afternoon before the hearing were not properly reviewed by defence or prosecution counsel.[32] Indeed, the revised submissions referred to legislation that did not exist, and also a provision in the Act that was said to have been inserted and then repealed, which in fact never occurred and which provision never existed.
74. These matters were raised with counsel at the start of the hearing yesterday. After appropriate apologies were given, it was agreed that GR’s counsel would be given the opportunity to file and serve further submissions that did not contain inaccuracies as a result of misinformation provided by artificial intelligence.
75. Accordingly, it was not possible to conclude the hearing yesterday (as had been expected prior to this issue arising) and the matter resumed today after the court had the benefit of further revised submissions from the defence.
76. At the risk of understatement, the manner in which these events have unfolded is unsatisfactory.
77. Observations have been previously made in other cases about the unsatisfactory consequences that may flow from litigants using artificial intelligence in the preparation of materials to be relied upon for court purposes.[33] The comments in these cases have been confined to circumstances where self-represented litigants have utilised this technology in an attempt to present their case.
78. In May 2024, this court published “Guidelines for litigants. Responsible use of artificial intelligence in litigation”.[34] It is essential that all litigants and practitioners adhere to these guidelines.
79. The ability of the court to rely upon the accuracy of submissions made by counsel is fundamental to the due administration of justice. Self-evidently, as was immediately and unequivocally acknowledged by counsel in this case, any use of artificial intelligence without careful and attentive oversight of counsel would seriously undermine the court’s processes and its ability to deliver justice in a timely and cost-effective manner.
80. Regrettable as it is to single out counsel and their instructing solicitors in this case for what has occurred, in light of the matters set out above it is important to record that counsel must take full and ultimate responsibility for any submissions made to the court. To this end, it is not acceptable for artificial intelligence to be used unless the product of that use is independently and thoroughly verified. The same may be said for solicitors responsible for producing or filing court documents.

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[1] Pseudonyms have been used for the accused and non-identifying definitions have been used for other persons as both accused are children: see *Children, Youth and Families Act 2005* (Vic), s 534(1).

[2] Dr Kasinathan is senior forensic psychiatrist and child psychiatrist, certified in both forensic psychiatry and adolescent psychiatry. Dr Kasinathan is conjoint associate professor with the University of New South Wales School of Psychiatry, Faculty of Medicine, and has experience preparing forensic psychiatric reports and expert opinions in legal proceedings.

[3] Dr Singh is a senior consultant of forensic, adult and child psychiatry at Forensic, Adult and Child Expert Psychiatry. Dr Singh is certified in the fields of forensic psychiatry and child & adolescent psychiatry, and has extensive experience providing psychiatric reports and expert opinions in legal proceedings.

[4] And therefore may be heard by a judge alone under s 21(4) of the Act.

[5] Pursuant to s 21(4)(a) of the Act.

[6] Section 24(2) imposes a requirement before any order is made for the court to receive a certificate under s 47 that the necessary facilities or services are available.

[7] Section 24(3) imposes a requirement that the court is satisfied there is no practicable alternative in the circumstances.

[8] Section 24(1)(b).

[9] Section 3(1), definition of “appropriate place”.

[10] Section 24(1)(c).

[11] Section 24(1)(e).

[12] *Criminal Organisations Control and Other Acts Amendment Act 2014* (Vic), s 1(4).

[13] See the definition of “custody”: the Act, s 38H. See also amendments that were made to sections 39, 40(1) and 47 of the Act to make those provisions applicable to a child liable to, or the subject of, a supervision order under Part 5 of the Act: see *Criminal Organisations Control and Other Acts Amendment Act*, ss 126, 127, 128. See also *CL (a minor) v Lee* [2010] VSC 517, [81] (Lasry J) for a discussion of the need for legislative amendments.

[14] Section 38G.

[15] This is discussed in further detail below. The prosecution filed additional “Prosecution submissions for consent mental impairment hearing” which “agree[d] with the defence” that the court had the power to remand GR in a youth justice centre under s 24(1)(e). This document contained no substantive submissions on this issue.

[16] See pars 61-72 below.

[17] *Interpretation of Legislation Act 1984* (Vic), s 35(a).

[18] See pars 38-39 above.

[19] Victoria, *Parliamentary Debates*, Legislative Assembly, 18 September 1997, 185.7 col 2 (Jan Wade, Attorney-General).

[20] Ibid, 186.7 col 2.

[21] Ibid, 188.6 col 2.

[22] Victorian Law Reform Commission, *Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, Final Report (June 2014), preface x.

[23] Ibid, xii.

[24] Ibid, xxix.

[25] Section 516(1) was referred to. GR also referred to provisions in the Act that made express reference to the *Children, Youth and Families Act*: see for example the definition of "child" in s 3.

[26] Section 23(3) also provides that a child who has been convicted of an offence must be treated in a way that is appropriate for that child's age. While it may be said that GR's circumstances upon declaration of his liability to supervision under Part 5 of the Act do not fall precisely within the circumstances described in each of the 3 subsections of section 23 of the Charter, the intent of that provision of the Charter in affording certain conditions of custody to children deprived of their liberty is clear.

[27] At the hearing, the prosecution sought to disown any adoption of the submissions that were filed on 5 August 2025 in response to the court's request. Ultimately, the prosecution's counsel refrained from pressing this position so there is no need for the court to determine any issue in this regard. But see pars 63, 71-72 below.

[28] Any question of where GR should be remanded if no "appropriate place" is available at that time is a matter for another day.

[29] See also the Charter, s 1(2)(b) and (c) and the definition of "human rights": s 3.

[30] See also the discussion on the principle of legality in the authorities referred to in *Director of Public Prosecutions v Kaba* [2014] VSC 52; (2014) 44 VR 526, 580-581 [188]-[193] (Bell J). For completeness, although the question before the court concerns remand, it is noted that GR is now 16 years old and under s 467 of the *Children, Youth and Families Act*, the Youth Parole Board may, on the application of the Secretary to the "Department of Human Services" (now the Department of Families, Fairness and Housing), transfer a child who has been sentenced as a child to an adult prison to serve the unexpired portion of her or his detention as imprisonment.

[31] The email was also addressed to prosecution counsel.

[32] The court was informed that the prosecution was made aware of the contents of the revised submissions before they were provided to the court.

[33] *Nikolic v IDAZ09 Pty Ltd* [2025] VSCA 112, [36]-[39] (Beach JA); *May v Costaras* [2025] NSWCA 178, [3]-[17] (Bell CJ, with whom Payne and McHugh JJA agreed), [49] (Payne JA, with whom Bell CJ and McHugh JA agreed); *Kaur v Royal Melbourne Institute of Technology* [2024] VSCA 264, fn 19 (Walker JA).

[34] A copy of the guidelines is available at: https://www.supremecourt.vic.gov.au/forms-fees-and-services/forms-templates-and-guidelines/guideline-responsible-use-of-ai-in-litigation.