SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**DPP v Yeaman (No 2)**
Citation:	**[2026] ACTSC 284**
Hearing Dates:	26 – 28 March 2024; 16 May 2024; 3 December 2025; 13, 15 May 2026
Decision Date:	9 July 2026
Before:	Taylor J
Decision:	At [315]
Catchwords:	**CRIMINAL LAW** – JURISDICTION, PRACTICE AND PROCEDURE – Judgment – trial by judge alone – verdict – arson – actual bodily harm – act of indecency – diagnoses of multiple cognitive impairments and mental illnesses – plea of not guilty by reason of mental impairment – whether the accused was mentally impaired pursuant to s 28 of the *Criminal Code 2002* (ACT) – prosecution contests the entering of special verdict on some counts – a mix of guilty and special verdicts entered across the counts
Legislation Cited:	*Crimes Act 1900* (ACT), ss 14, 24, 60, 321 *Criminal Code Act Compilation Act* 1913 (WA), s 27 *Criminal Code Act 1899* (QLD), ss 27, 304A *Criminal Code 1995* (Cth), ss 7.3, 474.17 *Criminal Code 2002* (ACT), ss 27, 28, 29 *Criminal Law Consolidation Act 1935* (SA), s 269C *Evidence Act 2011* (ACT), ss 165, 191 *Family Violence Act 2016* (ACT), s 43 *Supreme Court Act 1993* (ACT), s 68C
Cases Cited:	*DPP v Kakar* [2023] ACTSC 236 *DPP v Smith* [2026] ACTSC 125 *DPP v Stacker* (No 2) [2025] ACTSC 29 *R v Cox* [2006] SASC 188 *R v Falconer* [1990] HCA 49; 171 CLR 30 *R v Milka* [2010] SASC 250 *R v Smith (aka Stella)* [2021] QCA 139 *Re Sam* [2003] QMHC 003 *R v Telford* (2004) 89 SASC 352 *R v Woutersz* [2018] ACTSC 36 *R v Yeaman* [2021] ACTSC 252

	R v Yeaman (No 2) [2021] ACTSC 287
	The Queen v Barker [2014] ACTSC 153
	The State of Western Australia v Siddique [No 2] [2016] WASC 358
	The State of Western Australia v Taylor [2021] WASC 470
	The State of Western Australia v Thomas [No 2] [2024] WASC 403
Texts Cited:	Criminal Law Officers Committee of the Standing committee of the Attorneys-General, *Review of Commonwealth Criminal Law,* Principles of criminal responsibility and other matters, *(Interim Report: 1990)* (Australian Government Publishing Service, July 1990)
	Criminal Law Officers Committee of the Standing Committee of the Attorneys-General, *General Principles of Criminal Responsibility (Chapter 1 – 2)* (Australian Government Publishing Service, December 1992)
Parties:	Director of Public Prosecutions (Crown)
	J Yeaman (Accused)
Representation:	**Counsel**
	M Howe (DPP)
	B Collaery (Accused)
	Solicitors
	ACT Director of Public Prosecutions
	Fraser Criminal Law (Accused) (3 December 2025; 13, 15 May 2026)
	Darryl Perkins Solicitors (Accused) (26 – 28 March 2024; 16 May 2024)
File Number:	SCC 30 of 2023
	SCC 220 of 2023
	SCC 175 of 2024
	SCC 96 of 2025

TAYLOR J:

Introduction

1. This judgment resolves the accused's liability with respect to two series of offences, made up of seven counts, to which pleas of not guilty because of mental impairment were entered.

2. The first series of charges consisted of five counts on two separate indictments.

3. The following count was contained on an indictment dated 5 October 2023, SCC 220 of 2023:

    (a) Count 1 (CC2023/4086) – act of indecency without consent, contrary to s 60(1) of the *Crimes Act 1900* (ACT) (the *Crimes Act*). This count was alleged to have occurred on 10 April 2022.

4. A further four counts were contained on an indictment dated 26 March 2024, SCC 30 of 2023, as follows:

    (b) Count 1 (CC2022/4472) – assault occasioning actual bodily harm, contrary to s 24 of the *Crimes Act.* This count was alleged to have occurred on 11 April 2022;

    (c) Count 2 (CC2022/7443) – contravention of family violence order, contrary to s 43(2) of the *Family Violence Act 2016* (ACT) (the *Family Violence Act*). This count was alleged to have occurred on 1 August 2022;

    (d) Count 3 (SCCAN2023/11500) – contravention of family violence order, contrary to s 43(2) of the *Family Violence Act.* This count was alleged to have occurred on 16 October 2022;

    (e) Count 4 (CC2022/11501) – use carriage service to menace, harass or cause offence, contrary to s 474.17(1) of the *Criminal Code 1995* (Cth) (*the Commonwealth Criminal Code)* This count was alleged to have occurred on 16 October 2022.

5. For convenience, I will refer to these five counts collectively as 'the first series' and to each count by their individual charge number to avoid confusion.

6. At the conclusion of the evidence in relation to the first series, I was asked to reserve judgment until such time as additional charges could be committed to this Court for trial. I was advised that the additional charges were also to be the subject of pleas of not guilty because of mental impairment. The additional charges were allegations of arson.

7. The first in time charge of arson was SCC 175 of 2024 (CC2024/1327) and the second in time charge of arson was SCC 96 of 2025 (CC2025/424). Both allegations arose out

of conduct engaged in by the accused whilst he was remanded in custody for the first series and were alleged to have occurred on 29 October 2023 and 21 August 2024 respectively.

8. SCC 175 of 2024 (CC2024/1327) was first before this Court on 19 June 2024. SCC 96 of 2025 (CC2025/424) was first before this Court on 7 May 2025.

9. For ease of reference, I will refer to the two additional arson counts collectively as 'the second series' and by their individual charge number.

10. The parties were united that the most appropriate course was for the trial with respect to the second series to be heard by me given the common issues for resolution. It was on that basis that judgment in the first series was reserved.

11. The proceedings were then drawn out for a substantial period. It must be recorded that this was not because of any maladministration on the part of the Court or the prosecution.

12. The second series was initially listed for trial before me on 8 September 2025 for four days after it was confirmed that they would be the subject of a plea of not guilty because of mental impairment would be entered for each count and the subject of an election for trial by judge alone.

13. On 27 August 2025 the matters were mentioned before me. The accused's solicitor at that time informed the court that he had been unsuccessful obtaining an expert mental health report. No explanation was advanced about why this had not been drawn to the Court's attention earlier. Absent any alternative, I ordered a forensic mental health assessment from ACT Forensic Mental Health and noted that such a report may not be available in time for the trial to commence. On 9 September 2025 it was confirmed that a report would not be available and the trial was vacated. Counsel for the accused maintained a position that all matters should be resolved together.

14. The report I ordered was produced on 28 October 2025 and authored by Dr Nadine Fox.

15. On 11 September 2025 the matters were listed for trial before me on 8 and 9 December 2025. On 3 December 2025 the accused, represented by a new solicitor (but not new counsel), applied for the trial to be vacated. I was advised that an expert report had been obtained from Dr Olav Nielssen but he was not available to give evidence in December 2025 or January 2026. Counsel for the accused submitted that it was necessary for Dr Nielssen to give evidence. The prosecution neither opposed nor supported the adjournment application.

16. I raised a concern that there was a risk that the period the accused had spent in pre-sentence custody would be longer than any sentence which would be imposed upon him if the matters were provided or period he would be detained if a mental impairment defence was successful. The prosecution expressed the same concern. Notwithstanding that concern the accused pressed the adjournment and acknowledged that the consequence of the granting of the application would be an extension of his remand there being no bail application contemplated. I note that the accused applied for bail on 30 June 2025 and 22 July 2025. He was self-represented for both applications and bail was refused on each occasion. No further bail application was made.

17. The adjournment was ultimately granted and the trial vacated. The trial of the second series was listed to commence before me on 13 May 2026.

18. On 13 May 2026 a second trial commenced before me in relation to the second series. The prosecution did not agree to the entry of a special verdict pursuant to s 321 of the *Crimes Act.*

19. The parties sought to make further submissions after the determination of liability was completed with respect to both series.

Procedure for the determination of liability where mental impairment is raised

20. The prosecution agreed to the entry of a verdict of not guilty by way of mental impairment for CC2023/4086.

21. Section 321 of the *Crimes Act* provides:

> **321 Supreme Court—plea of not guilty because of mental impairment**
>
> (1) This section applies if an accused pleads not guilty because of mental impairment to an indictable offence before the Supreme Court.
>
> (2) The Supreme Court must enter a special verdict that the person is not guilty of the offence because of mental impairment if—
>
> (a) the court considers the verdict appropriate; and
>
> (b) the prosecution agrees to the entering of the verdict.

22. A determination of whether it is appropriate to enter a special verdict of not guilty by reason of mental impairment is governed by the legislative framework contained in the *Crimes Act* and the *Criminal Code Act 2002* (ACT) (*the Criminal Code*)

23. In *DPP v Kakar* [2023] ACTSC 236 Baker J observed the following at [127]-[129]:

> Sections 68A and 68B of the *Supreme Court Act 1933* (ACT) require that "excluded" offences be tried by jury, rather than by judge alone. Offences of murder and attempted murder are excluded offences: Sch 2, Pt 2.2 of the *Supreme Court Act*; ss 44(7) of the *Criminal Code* and s 189 of the *Legislation Act 2001* (ACT).

However, the procedure provided for in s 321 is not a 'trial' within the meaning of those provisions; cf *Aleer* at [21]. Section 321 applies only where "the entry of a special verdict with the agreement of the prosecution will resolve the issues that need to be determined in the proceedings": *R v Jackson* [2021] ACTSC 120 at [3]. In those circumstances, "the need for a trial is avoided" and the Supreme Court may enter a special verdict under s 321: *Jackson* at [3] and *R v Aranyi* [2013] ACTSC 169; 278 FLR 409 at [29]. In cases where there is any dispute between the prosecution and the accused as to the physical elements of the offence (that is where the accused contends that the proper verdict is not guilty), or as to the special verdict (that is, where the prosecution contends that the proper verdict is guilty), the s 321 procedure is not available and the matter must proceed to trial: *Jackson* at [4].

Where the conditions set out in s 321 apply (that is, the accused enters a plea of not guilty by reason of mental impairment and the prosecution agrees to the entering of the verdict), the function of the Court is to determine whether a special verdict is "appropriate": *Jackson* at [3] and *Aranyi* at [27]-[30].

24. Her Honour then set out the procedure to be followed in case where an accused enters a plea of not guilty because of mental impairment at [132]:

(1) The accused should be arraigned in the usual way.

(2) If the accused enters a plea of not guilty by reason of mental impairment, the prosecution should be asked if it agrees to the entry of a special verdict. The agreement need not be in writing.

(3) If the prosecution does not agree to the entry of a special verdict, the trial proceeds in the usual way. Where an offence charged is an "excluded offence", the trial must by jury.

(4) If the prosecution agrees to the entry of a special verdict, the Court must consider whether a verdict of not guilty by reason of mental impairment is "appropriate".

(5) A verdict of not guilty by reason of mental impairment will be "appropriate" if:

(i) The Court is satisfied beyond reasonable doubt that the elements of the offence are proved, noting s 29 of the Criminal Code, which provides that a person "cannot rely on a mental impairment to deny voluntariness or the existence of a fault element, but may rely on mental impairment to deny criminal responsibility". See also *R v Jackson* [2021] ACTSC 120; 360 FLR 1 at [113] – [122]; and

(ii) The Court is satisfied on the balance of probabilities that, when carrying out the conduct required for the offence, the accused was suffering from a mental impairment that had the effect that the accused did not know the nature and quality of the conduct, or the accused did not know that the conduct was wrong, or the accused could not control the conduct (s 28 of the *Criminal Code*).

(6) The Court may be satisfied of the matters described in (5) above by the tender of statements, an Agreed Facts and/or expert reports, provided those documents are tendered by consent.

(7) If the Court is satisfied that the special verdict is "appropriate", that verdict must be entered.

(8) If the Court is not satisfied that the special verdict is "appropriate", the matter will proceed to trial: see similarly *Jackson* at [3]. Where the charges related to excluded offences, that trial will need to be by jury.

25. The prosecution did not agree to the entry of a special verdict of not guilty because of mental impairment for the counts remaining in the first series CC2022/4472, CC2022/7443, SCCAN2023/11500, CC2022/11501. In closing submissions, it was conceded that I would likely be satisfied that the accused had discharged his burden for the defence of mental impairment in relation to CC2022/4472 and acknowledged that the case with respect to SCCAN2023/11500 and CC2022/11501 was "more compelling" than the case established for CC2022/7443.

26. The prosecution did not agree to the entry of a special verdict of not guilty because of mental impairment for the arson offences in the second series.

27. The approach taken by Mossop J in *Jackson*, endorsed by Baker J in *Kakar* should apply. That is, with respect to the counts in the first series and the second series where the prosecution did not agree to the entry of a special verdict, s 321 has no application: s 321(2)(b).

28. Accordingly, those counts where there was no agreement by the prosecution proceeded to trial before me and require the application of general criminal trial directions.

29. Pursuant to s 68C (2) of the *Supreme Court Act 1993* (ACT) I am obliged to set out the principles of law applied and the findings of fact made. I am also required to take into account any warning or direction to be given, or comment to be made, that would have been made to a jury in the proceedings had the matter been tried before a jury: s 68C(3)

30. I have given myself the following directions.

31. The prosecution bears the onus to prove the guilt of the accused. The accused is presumed innocent unless and until the evidence which I accept satisfies me beyond reasonable doubt of the accused's guilt. If the evidence which I accept fails to satisfy me beyond reasonable doubt of the accused's guilt, then I must find him not guilty.

32. The facts I find must be based on the evidence. I must bring an open and unbiased mind to that evidence. I must view the evidence clinically and dispassionately and I must not let emotion enter into the decision-making process. The prosecution and the accused are entitled to my verdict free of partiality, prejudice, favour or ill will. I must determine the facts according to the evidence, considering it logically and rationally.

33. I may draw inferences from the facts that I find have been established by the evidence. I must examine any possible inference to ensure that it is a justifiable inference and I

must not draw an inference from the direct evidence unless it is a rational inference in the circumstances.

34. The accused did not give evidence in the proceedings. There is no obligation on him to give or call evidence in a criminal trial. I must draw no adverse inference from his decision not to give evidence. The accused is entitled to say nothing and make the prosecution prove his guilt according to the onus they bear, to the standard required. I cannot take into account the accused's decision not to give evidence in any way. I cannot use the absence of any evidence from him to fill any gaps in the prosecution case nor can I use it as strengthening the prosecution case. I must not speculate about what might have been said in evidence if the accused had given evidence.

35. Expert evidence was adduced from Dr Furst, Dr Nielssen and Dr Fox in relation to the accused's mental health. Reports authored by each expert was also before me. These topics are within each witness' expertise but are likely to be outside the experience and knowledge of the average lay person. By virtue of their training, study, and experience in psychiatry, each of the witnesses was qualified to give expert opinions about psychiatric matters. Where the opinions of the experts differed, I must consider the depth of the expertise of each witness, and whether their opinions were based on correct and thorough information. I must consider the expert opinions in the context of the relevant evidential burden and legal onus.

36. The value of any expert opinion very much depends on the reliability and accuracy of the material which the expert used to reach his or her opinion. It also depends on the degree to which the expert analysed the material upon which the opinion was based, and the skill and experience brought to bear in formulating the opinion given. Experts can differ in the level and degree of their experience, training and study, yet each can still be an expert qualified to give an opinion where that opinion is based on that witness' specialised knowledge.

37. The expert evidence is before me as part of all the evidence to assist me in determining whether the prosecution has proved the charges beyond reasonable doubt.

38. I bear in mind that if, having given the matter careful consideration, I do not accept the evidence of the experts, I do not have to act upon it. This will be particularly so if the facts upon which the opinion is based do not accord with the facts as I find them to be. I am also, to a degree, entitled to take into account my common sense and my own experiences if they are relevant to the issue to which the expert evidence relates.

39. I have also given myself a direction under s 165 of the *Evidence Act 2011* (ACT) in relation to admissions made by the accused about the offences alleged against him. I

warn myself that that evidence may be unreliable. I inform myself that the matters that may cause that evidence to be unreliable include that the accused may have been suffering from the effects of mental ill health or impairment. I warn myself of the need for caution in determining whether to accept that evidence and the weight to be given to it.

40. The same approach was taken by the parties with respect to the first and second series. An agreed statement of facts was tendered at the commencement of each trial.

41. The prosecution did not challenge that the accused has a mental impairment as defined.

42. The accused indicated that the only issue in both trials was the operation of his mental impairment at the time he engaged in the conduct. That is, there was no dispute that the physical elements of the offences in the first and second series were established beyond reasonable doubt.

43. For CC2023/4086 my function, in light of the prosecution agreement to the entry of a special verdict pursuant to s 321 of the *Crimes Act*, is to determine whether the entry of special verdict is 'appropriate'.

Mental Impairment

44. Sections 27 and 28 of the *Criminal Code 2002* (ACT) define mental impairment as follows:

> **27 Definition—mental impairment**
>
> (1) In this Act:
>
> ***mental impairment*** includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.
>
> (2) In this section:
>
> ***mental illness*** is an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition (a ***reactive condition***) resulting from the reaction of a healthy mind to extraordinary external stimuli.
>
> **28 Mental impairment and criminal responsibility**
>
> (1) A person is not criminally responsible for an offence if, when carrying out the conduct required for the offence, the person was suffering from a mental impairment that had the effect that—
>
> (a) the person did not know the nature and quality of the conduct; or
>
> (b) the person did not know that the conduct was wrong; or
>
> (c) the person could not control the conduct.
>
> (2) For subsection (1)(b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.
>
> (3) The question whether a person was suffering from a mental impairment is a question of fact.

(4) A person is presumed not to have been suffering from a mental impairment that had an effect mentioned in subsection (1).

(5) The presumption is displaced only if it is proved on the balance of probabilities (by the prosecution or defence) that the person was suffering from a mental impairment that had an effect mentioned in subsection (1).

(6) The prosecution may rely on this section only if the court gives leave.

(7) If the trier of fact is satisfied that a person is not criminally responsible for an offence only because of mental impairment, it must—

(a) for an offence dealt with before the Supreme Court—return or enter a special verdict that the person is not guilty of the offence because of mental impairment; or

(b) for any other offence—find the person not guilty of the offence because of mental impairment.

29 Mental impairment and other defences

(1) A person cannot rely on a mental impairment to deny voluntariness or the existence of a fault element, but may rely on mental impairment to deny criminal responsibility.

(2) If the trier of fact is satisfied that a person carried out conduct because of a delusion caused by a mental impairment, the delusion itself cannot be relied on as a defence, but the person may rely on the mental impairment to deny criminal responsibility.

45. There is a matter to observe with respect CC2022/11501. It is a federal offence pursuant to s 474.17 (1) of the *Criminal Code Act* 1995 (Cth) and accordingly chapter 2 of the *Criminal Code Act 1995* (Cth), which sets out the general principles of criminal responsibility, applies. The provisions in the *Commonwealth Criminal Code* in relation to mental impairment and criminal responsibility are in almost exactly the same terms insofar as the test for determining criminal responsibility where mental impairment is raised, the definition of mental impairment, the assessment of the existence of a fault element, and the requirement to return a special verdict if satisfied an accused is not criminally responsible for the offence only because of a mental impairment: see sub-ss 7.3 (1), (6) and (5) of the *Commonwealth Criminal Code Act 1995.*

The first series

Agreed Facts

46. Pursuant to s 191 of the *Evidence Act 2011* (ACT), the parties agreed the following facts.

47. The accused has been a patient residing in the Dhulwa Mental Health Unit at various points in time since 2019.

48. During the accused's most recent admission at Dhulwa, Dr Shweta Sharma, a forensic psychologist, was the accused's treating specialist, having been so since 21 March 2022.

49. At about 4:00pm on 8 April 2022, the accused absconded from Dhulwa and contacted his mother, Ms Yeaman. He told his mother that he had received $500 from his father, which he had spent on 'ice' and 'hookers'. The accused asked for money for an Uber ride and hookers. Ms Yeaman refused to provide the accused more money, suspecting he would use it to buy methamphetamine.

50. Shortly later, the accused again contacted his mother. He stated he was on ice and made a threat to stab her in the neck. He was highly agitated and aggressive.

51. At approximately 6:46pm, police arrested and cautioned the accused at Kingston Railway Station. The accused told police that he had paid $150 for about one and a half points of methamphetamine.

52. At about 7:22pm, police transported the accused to the Canberra Hospital so that he could be medically cleared. The accused was then returned to the custody of Dhulwa staff.

53. At about 7:35pm, police noted the accused saying the following:

> He viewed all of this as "fucking him and that is was not helping him. He stated that it all started with him making threats to his mum and getting imprisoned, and he told his mum then that he was not coming home and that he wanted to drag it out by continuing to offend while in prison, so he threatened her again while in prison with the email system, and they gave him another 12 months in prison. He was let out for six weeks, he hit the drugs hard and mental health told him that they could manage him in the community while he was on ice because he seemed adamant he was not going to give it up.

54. At about 7:55pm, police noted the accused further discussing:

> He told me about his trinity theory relating to how everything comes in threes, the colour red, blue and yellow, protons neutrons, electrons, the three states of matter, solid, liquid, gas, the holy trinity in the bible and various other things that come in threes that have similarities and in those things are formulae. These formulae help form a diagnostic tool to help identify where you fall on the spectrum.

55. When he was told by police that he was being taken to Dhulwa, the accused responded as follows:

> I can't guarantee that, um, I'm going to play nicely with Dhulwa, because I feel like they have let me down something wicked. So uh I don't have good intentions with them. But um if I could ask you to take me to the watch house or to AMC that would be more to my liking.

56. At about 7:58pm, the accused said the following to a nurse at Dhulwa:

    (a) He had broken out of Dhulwa and acquired some ice;

    (b) He was not mentally ill at the moment;

    (c) It was apparent he might not have mental illness at all; and

(d) You could say he has borderline personality disorder or something, which isn't like really mental illness.

57. The accused also told the nurse that he was not currently hearing voices and that "it was a flip coin" in regard to him having thoughts of self-harm or suicide.

Indictment dated 26 March 2024

Count 1 (CC2022/4472) – Assault occasioning actual bodily harm

58. At about 4:40pm on 11 April 2022, Dr Sharma was in a meeting with a number of other Dhulwa staff members, where she told participants that she was going to inform the accused that a number of his privileges were going to be revoked and that he would be moving within the facility to the seclusion room. The meeting participants, included the Clinical Nurse Consultant, formed the response team tasked with speaking to the accused.

59. At about 4:50pm, Dr Sharma and the response team attended the accused's room. The Clinical Nurse Consultant knocked on the accused's door.

60. The accused walked to the doorway. Dr Sharma was standing opposite to the accused in the corridor, leaning against the wall and door frame. She began to explain to the accused that, due to a revised care plan, his privileges would be revoked, including access to his iPad and removal of any strings or laces to prevent any potential for self-harm.

61. The accused took a couple of steps forward, out into the corridor. He placed his hands into the front pockets of his jumper.

62. The accused began to question Dr Sharma. As Dr Sharma continued to speak, the accused rushed towards her, punching her in the left temple using a closed right fist. As a result of this punch, Dr Sharma suffered bruising to her left eye.

63. Dr Sharma turned away from the accused in an attempt to shield her body. The accused pulled her hair and continued to attempt to strike her with a closed fist, as well as kick her using his right leg.

64. The response team converged towards the accused in an attempt to restrain him and prevent him from further assaulting Dr Sharma. The response team eventually separated the accused from Dr Sharma, and a colleague pulled her by her arm from underneath the pack of people. The accused was restrained and escorted to the seclusion room within Dhulwa.

65. The assault was captured on closured circuit television (CCTV).

66. Over the days following the incident, Dr Sharma took photographs of her developing injuries and bruising and provided these to police.

Count 2 (CC2022/7443) – contravention of family violence order

67. Ms Yeaman is the biological mother of the accused. She is defined as a "family member" of the accused, pursuant to s 9 of the *Family Violence Act*.

68. Ms Yeaman sought, and was granted, a family violence order (FVO 479/2022), of which the accused was named as the respondent. As part of this order, the accused was prohibited from being at premises where Ms Yeaman resides, as well as from engaging in behaviour that constitutes family violence towards Ms Yeaman, as the protected person.

69. The accused was personally served with the family violence order while at Dhulwa on 7 June 2022. Ms Yeaman sought this order as the accused was to be discharged from Dhulwa on 9 June 2022.

70. The accused has a subscribed mobile phone number of [redacted] Ms Yeaman has this number saved on her mobile phone under the contact "Julian", which includes a "thumbprint photograph" of the accused.

71. On 1 August 2022, the accused's brother, Mr Jay Yeaman, located images the accused had been disseminating to others in which he was dressed in women's clothing. The accused's brother approached the accused and told him that, if he continued sending these images to peers and friends, he would cease contact with him.

72. Believing that his brother had learnt of these images through their mother, the accused became enraged and angry at Ms Yeaman.

73. At about 9:13am on 1 August 2022, the accused commenced sending his mother a stream of messages, extracted below:

> ACCUSED: Fuck you're a shit person to speak with ever
>
> ACCUSED: Fuck you're a difficult mum
>
> ACCUSED: Fuck you cunt
>
> ACCUSED: Your not my mum
>
> ACCUSED: Your an old cranky cunt
>
> ACCUSED: Bitch
>
> ACCUSED: Fuck you!!

ACCUSED: Biiiiiiiiiiitch!!!

MS YEAMAN: I'm blocking you for a while

ACCUSED: You're a fucking dog [redacted]

ACCUSED: You are now [redacted]!

ACCUSED: You will never be mum again

ACCUSED: You are [redacted] from now on

ACCUSED: You will no longer retain the rank of mum

ACCUSED: ILL SMASH THIS FUCKING HOUSE TO DUST YOU CUNT

ACCUSED: PICK UP

ACCUSED: PIIIIIIIIIICK UUUUUUUUUP!!!

ACCUSED: ILL DESTROY THIS FUCKING ENTIRE BUILDING IF YOU TONG PICK UP NOW CUNT!!!!

ACCUSED: PICK UP NOW CUTN!!!

ACCUSED: PIIIIIIIIIIICK UUUUUUUUP!!!!

74. The text messages sent to Ms Yeaman by the accused caused her to fear for her safety and that of her family.

75. Between 6:28pm and 6:33pm that same day, the accused called Ms Yeaman seven times. In these phone calls, the accused made the following verbal threats:

(a) "I'm going to rape you";

(b) "I'm going to stab in the eye";

(c) "I'm going to cut your throat";

(d) "I'm going to burn your house down";

(e) "I'm going to trash my own house"; and

(f) "I'll stab myself in the face with a broken wine glass".

76. These telephone calls made by the accused caused Ms Yeaman to fear for her safety and that of her family.

77. Following a complaint made by Ms Yeaman and the recording of a family violence evidence-in-chief interview (FVEIC) at about 10:07pm on 1 August 2022, police attended the residence of the accused. Police were unsuccessful in locating the accused after knocking on his door and calling his mobile telephone.

78. At about 10:24pm, police contacted Ms Yeaman who, due to the accused's previous threats, was concerned that he may have self-harmed. Aware that the accused was the only resident of the premises, Ms Yeaman provided police with a code to access the spare key to the accused's residence.

79. Police found the accused asleep. They roused him, escorted him out of his bedroom and placed him under arrest.

Count 3 (SCCAN2023/11500) – contravention of family violence order; and Count 4 (CC2022/11501) – use carriage service with intent to menace, harass or cause offence

80. Following the accused's arrest on 1 August 2022, he was remanded in custody at the Alexander Maconochie Centre (the AMC). FVO 479/2022 was made final by Magistrate Lawton on 10 August 2022. The accused was served with that order on 23 August 2022 whilst on remand. That order remained in place on 16 October 2022.

81. At about 2:19pm on 16 October 2022, the accused made a telephone call via the Detainee Telephone System to Ms Yeaman.

82. As per normal procedure, the accused made a request to ACT Corrective Services staff to facilitate the call. He was then required to enter his individual PIN to make the call. On the commencement of the call, an automated alert was announced, reciting that the call may be monitored and recorded. The person receiving the call must also accept the call by remaining on the line, following a similar automated recording.

83. Following the completion of the automated recording, the ensuing conversation took place:

> ACCUSED: Mum?
>
> MS YEAMAN: Yep?
>
> ACCUSED: When I'm done murdering you you're not going to be fucking recognisable, I'm going to hang you up by your fucking entrails cunt. You're fucking dead!

84. Ms Yeaman then terminated the call (**Count 3**, **SCCAN2023/11500**).

85. At about 4:41pm the same day, the accused made a telephone call to ACT Policing Operations. The conversation that took place during that call is extracted below:

> ACCUSED: Hey I'd like to report a murder
>
> OPERATOR: Um, okay, what happened?
>
> ACCUSED: Um I am going to fucking murder my mother, I'm going to stab her fucking vagina into a bloody pulp, I'm going to cut every vital organ she has out of her fucking body and I'm going to hang her up by her fucking entrails and I'm going to fucking murder her in the most

disgusting and gruesome of ways the second I get out of this prison. I'll get in a fucking taxi, I'll go straight to her house.

OPERATOR: What prison are you in?

ACCUSED: …every fucking person in the house, anyone who tries to protect her, and the second you turn a blind eye on me I'm going to fucking make the world regret it.

OPERATOR: What prison are you in sir?

ACCUSED: I've done some pretty lowdown things in my time, but trust me I am going to kill her in the most cowardly of ways to dishonour her fucking kind to fucking being alive.

OPERATOR: Ah, okay, What prison are you in?

ACCUSED: AMC

OPERATOR: What's her name?

ACCUSED: [redacted]

OPERATOR: What is it, [redacted]

ACCUSED: [redacted]

OPERATOR: Can you spell Yeaman for me?

ACCUSED: Y E A M A N

OPERATOR: Where does she live?

ACCUSED: [redacted]

OPERATOR: What's your name sir?

ACCUSED: Julian Leslie Yeaman

OPERATOR: No worries sir, when do you get out of AMC?

ACCUSED: I got no idea, I'm in here for threats, um ah I think they are taking the threats seriously because I punched her in the head five times and she broke her leg umm a while ago, umm I'm in her for threatening her. I was trying to go to university and things like that to turn my life around. She is basically telling me that I can't be a woman and umm like I dunno how much, like I've already hit the point where it's not going to get any worse. So umm there is nothing you guys can actually do to me by law to fuck me over any more than you already have. And the police, the police showed no restraint in umm completely fucking derailing my life and the expense of fucking nothing.

86. The conversation continued for a further three minutes, during which time the accused spoke about his treatment in custody from fellow inmates.

OPERATOR: Okay no worries sir. I'll note that down and someone will probably have to speak to you about these claims.

ACCUSED: Yeah. I am going to fucking make you cunts regret knowing me. I am going to make the world regret me being born. I am going to go down in history like fucking Adolf fucking Hitler.

OPERATOR: Yeah no worries, ok. Alright, thank you for that call sir. Have a good day.

87. The call then terminated (**Count 4**, **CC2022/11501**).

Indictment dated 5 October 2023

Count 1 (CC2023/4086) – Act of indecency without consent

88. As of 10 April 2022, [redacted] had been employed as a registered nurse at Dhulwa for a few weeks. On this date, the accused was a patient on the low dependency ward, "Cassia". The [redacted] typically worked on the high dependency ward, so had not had any interactions with the accused prior to 10 April 2022.

89. Sometime after the [redacted] started her shift on 10 April 2022, the accused approached her. He asked her, "what's your name?", to which she replied, "[redacted]". The [redacted] noticed the accused staring at her with a fixed gaze a few times throughout her shift, however they had no further interactions until 3:29pm.

90. Shortly before 3:29pm, [redacted] left the nurse's station to tell two other patients "something about the computer room".

91. At 3:29pm, [redacted] was walking back towards the nurse's station. She raised her security pass to attempt to swipe to gain access into the station. The accused, who was wearing a maroon hooded jumper, approached her. The accused then briefly touched [redacted]'s left buttock with the palm of his right hand.

92. The accused said words to the effect of "how you going" or "how you doing" to [redacted] in a provocative and sexualised tone. [redacted] responded, "hey no" in a stern tone, after which the accused walked away from [redacted].

93. [redacted] had dropped her pass to the ground during the interaction. She kicked her pass into the nurse's station, entered the station and closed the door.

Expert Evidence

Report of Dr Richard Furst

94. Dr Richard Furst produced a report in relation to the accused dated 26 January 2023. He prepared the report after he assessed the accused via audio-visual link for a period of 60 minutes on 10 November 2022, when the accused was at the AMC. Dr Furst also had access to the accused's criminal history, Psychiatric Treatment Order dated 15 July 2021 and a psychiatric report authored by Dr Neil Wareing dated 27 October 2021. Dr

Furst was also given the judgments of Murrell CJ in a previous trial of the accused: *R v Yeaman* [2021] ACTSC 252, *R v Yeaman (No 2)* [2021] ACTSC 287.

95. At the time of the report, the accused was 33 years old. Dr Furst noted that the accused had been residing in custody or a secure hospital setting for the majority of the previous six years.

96. The reported recorded that the accused's mother and step-father reside in Canberra. The accused's father resides in Albury/Wodonga. The accused has three brothers and a sister and had an older sister who died at birth. The accused was born in Sydney; his family moved to Canberra during his early childhood. Dr Furst noted no significant early childhood medical problems.

97. The accused was unable to complete his education in mainstream schools but went on to study a bridging course at the University of Canberra and then maths at the Australian National University.

98. Dr Furst noted that "the onset of [the accused's] emotional disturbance and apparent mental health problems was in his teens, around the age of 15" around this time the accused also began to engage in deliberate self harm. The accused reported to Dr Furst being "rebellious and manic".

99. Dr Furst concluded that as a result of the accused's "negative and rebellious attitudes, but also as a product of his chronic mental illness", the accused has been in conflict with family members for many years, particularly his mother.

100. Dr Furst determined that the accused's requirement for treatment in the community, in the AMC and in Dhulwa was consistent with a "chronic schizophrenic illness".

101. When asked about previous offending against his mother, the accused told Dr Furst that his mother "kept pissing him off".

102. Dr Furst summarised previous psychiatric reports as having concluded that the accused suffered "from a complex serious mental illness" for which he had been treated with mood-stabilising medication. The accused had previously told psychiatrists that "he hated his mother" and that "hatred was the reason for his arson offence". Dr Furst found the accused "appears to struggle to cope at the best of times, finding life generally stressful and being both irritable and easily agitated", which Dr Furst attributed to an underlying personality disturbance or disorder.

103. Dr Furst referred to the report of Dr Lee, relied on in the accused's 2021 trial, which noted that the accused suffered from schizophrenia with persecutory/grandiose delusions and

functional decline, with a background of Attention Deficit Hyperactive Disorder, borderline personality disorder and impulsive tendencies/traits.

104. During his assessment, the accused said, “I have a lot of anxiety. I chew my fingers down. I get psychosis … delusional … paranoid … I think there are codes and messages.”

105. The accused explained to Dr Furst that he had been trying to “transition into a woman” and dressing as a woman since he was about 10 years old.

106. The accused commenced smoking cannabis when he was 13 years old, with heavy use between the ages of 15 to 18 and ongoing use of the substance until he was 21 years old. He began using MDMA as a teenager, including suffering an overdose when he was 16 years old. He continued to use MDMA intermittently after this and into 20s. The accused commenced using methamphetamine from when he was 21 years old. He continued to use methamphetamine daily until his incarceration at the AMC and subsequent management at Dhulwa.

107. The report noted that the accused was prescribed Clopixol Depot 400mg, administered intramuscularly fortnightly, Olanzapine 10mg, administered orally daily and Melatonin 4mg, administered orally at night.

108. Dr Furst suggested that the accused may suffer from Capgras’ delusions about his mother not being his real mother, noting the accused’s threats to stab, rape and burn the house of his mother on 1 August 2022 and earlier abusive text messages saying that she was “not his mother”. When asked about this, the accused told Dr Furst that he and his mother have a “terrible relationship”.

109. Dr Furst described the accused as being “somewhat disorganised in his thinking” and “not very insightful into his mental illness and personal limitations”. He noted “there were no indications of acute mood disturbance or psychosis” during the assessment. Dr Furst believed the material provided to him demonstrated “that the accused experiences delusional beliefs, disorganised thinking and behaviour and associated aggression during acute periods of psychosis, including threats … towards his mother”.

110. Dr Furst concluded that at the time of the alleged offending, the accused suffered from “emotional, cognitive and behavioural manifestations of a chronic schizophrenic illness, complicated by evidence of an underlying personality disorder with maladaptive function, especially in relation to interpersonal perceptions and function”. Dr Furst was satisfied that this satisfied the definition of mental impairment in s 27 of the *Criminal Code*. Dr Furst noted chronic schizophrenia is a condition that falls within the DSM-V diagnostic

criteria and that this mental-impairment existed well before 2022, referring to schizophrenia as a “life-long debilitating condition”.

111. Dr Furst’s report answered the following questions:

> At the time of the alleged offences, is it reasonably possibly that:
>
> a. **Mr Yeaman did not know the nature and quality of the conduct?**
>
> Answer: No. Mr Yeaman was aware of his behaviour towards [sic] at the time of the offending.
>
> b. **Mr Yeaman did not know that the conduct was wrong in the sense that he could not reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, was wrong?**
>
> Answer: Yes. Mr Yeaman suffers from a psychotic illness characterised by chronic impairment of judgement [sic], poor decision making, lack of insight, impulsivity and the negative effects of paranoid delusions and hallucinations on his actions. Those factors likely mean that the accused was likely unable to reason with a moderate degree sense [sic] and composure about the wrongfulness of his alleged conduct [i.e. in January, April and August 2022] as seen by a ‘reasonable person’.
>
> c. **Mr Yeaman could not control the conduct?**
>
> Answer: Yes. Mr Yeaman’s capacity for self control is impaired by his schizophrenic illness at times of greater stress and emotional instability. He tends to become agitated and disinhibited on those occasions, leading to threatening and/or aggressive conduct towards others.

112. Dr Furst concluded that the accused lacks insight and observed that his judgment has been impaired “over a number of years”. Dr Furst explained that the accused will require ongoing involuntary treatment indefinitely, “most likely alternating between periods of hospitalisation and periods of case management through his local community mental health service”.

Evidence of Dr Furst

113. Dr Furst was called by the accused.

114. Dr Furst assessed Mr Yeaman at the AMC on 10 November 2022 for approximately 60 minutes via audio-visual link

115. Dr Furst is a general adult and forensic psychiatrist with over 20 years’ experience in treating all common major mental disorders, including depression, anxiety and ADHD. He has experience in forensic psychiatry, criminal justice, risk assessment, and the assessment and treatment of mentally ill offenders.

116. He graduated in Medicine from the University of Sydney in 1997, completed specialist psychiatric training in Sydney, including forensic psychiatry and rehabilitation training at Cumberland Hospital, and was elected a Fellow of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) in 2004. He also holds a Master of Criminology from the University of Sydney and is a foundation member of the RANZCP Faculty of Forensic Psychiatry.

117. Dr Furst has prepared many reports for courts and tribunals throughout New South Wales and other Australian jurisdictions. He has provided expert evidence on numerous occasions in criminal and civil proceedings, particularly in relation to sentencing, fitness to stand trial, mental illness defences, substantial impairment by abnormality of mind, and applications concerning high-risk offenders. Dr Furts's forensic focus includes medicolegal reports for both male and female adult offenders, including custodial assessments and assessments of clients on bail.

118. There was no challenge to Dr Furst's expertise.

119. Dr Furst confirmed the opinion expressed in his report that the accused has a mental impairment which is chronic and permanent, namely schizophrenia. Dr Furst described schizophrenia as "widely regarded as the most serious mental illness in terms of functional impairment".

120. Dr Furst confirmed his conclusions that at the time of the commission of the alleged offences that accused was suffering a mental impairment as defined in s 27 of the *Criminal Code* which had the effect he recorded in his report.

121. In cross-examination, Dr Furst confirmed his view that the accurate diagnosis for the accused was schizophrenia and that this mental impairment had an effect upon the accused at the time he engaged in the conduct for each count. That meant he could not control his conduct. In support, Dr Furst referred generally to notes in the accused's medical records provided to him that recorded the accused as "loud, ranting, talking to himself, laughing … singing to himself loudly, shouting, having labile affect, screaming, being disinhibited", to inform his opinion that the accused was manic and suffering from psychosis during the period encompassing Count 1 (CC2022/4472).

122. Dr Furst stated that it was his opinion that as of April 2022 the accused was "out of control, like not in control of his actions".

123. Dr Furst agreed that "someone who's suffering from schizophrenia doesn't necessarily experience all of the symptoms that come with that illness to their maximum intensity at

one point in time" and further, that schizophrenia is an illness which does not "go away whether it's acute or not".

124. Dr Furst noted that "the rate of violence and assaults in people with schizophrenia is between three to five times higher than people without schizophrenia".

125. Responding to questions about borderline personality disorder, Dr Furst agreed with the proposition that the disorder is "often characterised by intense and unstable interpersonal relationships", "often in the context of a caregiver", with "sudden and dramatic shifts in self-image", "impulsiveness" and "extreme reactivity to interpersonal stresses". Dr Furst further agreed that individuals with the disorder can have "difficulty controlling their anger". Dr Furst acknowledged that the accused had a diagnosis of borderline personality disorder in his file and that he was "not in a position to challenge that", particularly due to the condition being "more of a longitudinal interpersonal pattern that you see". As such, Dr Furst said it was "very hard" for him to determine a "definitive diagnosis of personality disorder in an individual assessment of a patient".

126. The prosecutor suggested to Dr Furst that, as recorded by Dr Le and referred to in a previous trial before Murrell CJ, the accused has "a history of impulsive behaviour from childhood as evidenced by previous childhood diagnosis of ADHD and borderline personality traits which are likely to contribute to episode of impulsivity and dysregulated behaviour", and that these issues "are consistent with a person who has borderline personality traits". Dr Furst considered that these attributes "could be ADHD. Like in a young male it would more typically be seen as part of ADHD". Dr Furst further noted that while "impulsivity is a common feature" to both ADHD and borderline personality disorder, it is not a diagnostic feature, and that these disorders are "quite different".

127. Dr Furst disagreed with the assertion in the Tribunal Review Report, dated 1 July 2022, that the accused being informed that his privileges were being revoked led to emotional dysregulation. Instead, Dr Furst preferred the following analysis:

> I see that someone who's mentally ill being given bad news who then loses it, explodes. So the sequence is not the bad news causing the mental illness. The sequences is the bad news aggravating his already unstable mental illness.

128. Dr Furst agreed that it could be difficult to disentangle the effects of a mental illness from the consequences of consuming an illicit substance, however explained that the task was easier where there is "an established pattern or diagnosis".

129. Dr Furst agreed with the prosecutor that methamphetamine is a stimulant, that can increase agitation and cause people to become hostile and aggressive. Acknowledging that the accused absconded on 8 April, Dr Furst agreed that the accused used

methamphetamine between the afternoon and evening of 8 April. However, Dr Furst stated that, due to the half-life of methamphetamine being only eight hours, it would be "impossible, more or less" for a person using methamphetamine on 8 April to still be feeling the effect of it on 11 April.

130. When asked if it was more likely than not that the accused did not know that his conduct on 11 April as seen by a reasonable person was wrong, Dr Furst repeated his opinion that the accused suffers "from emotional, cognitive and behavioural manifestations of manic schizophrenia" and that this is a condition that has a broad effect on thinking and emotions. Dr Furst referred to his report to support his answer that the accused was suffering from "chronic impairment of judgement [sic], poor decision making, lack of insight, impulsivity and negative effects of paranoid delusions and hallucinations on his actions" at the time of the assault.

131. Dr Furst added that "acute mood elevation most likely mania given the observations of his pressured speech and shouting out and talking to himself". Dr Furst found these symptoms, viewed together, "would make it likely that someone cannot reason about the wrongfulness as viewed by another person".

132. Dr Furst agreed that it was possible that a person could apologise for their conduct not because they think what they did was wrong, but rather because they could be trying to "please somebody else because other people saw it as wrong".

133. Dr Furst agreed with the prosecutor that symptoms of a psychotic episode include grossly disorganised thinking, paranoid delusions and hallucinations, and that persons suffering from schizophrenia can continue to have "residual symptoms" such as these even when not experiencing an acute psychotic episode.

134. Dr Furst suggested that while a person experiencing an acute psychotic episode may "remember [their] symptoms", "whether [they] have insight into [their] behaviour is a different concept". Dr Furst suggested that "insight has been a problem for [the accused] in terms of insight into his illness and insight into his behaviour", as well as "insight into his treatment needs". Dr Furst explained that roughly one third of patients with schizophrenia "have fairly poor insight".

135. Dr Furst was taken to the notes of Dr Sharma the accused's treating psychologist, around the time CC2022/4472 occurred, in particular her notes following his absconding incident highlighting his strong cluster B personality structure. Dr Furst was asked whether he agreed with Dr Sharma's assessment of the accused at this time. He responded:

> Not – not particularly. I mean, it's not – it's not really specific as to – it's not really specific as to what, like, what his behaviour, if you like, when he left, or on 7 or 8 April, I think that's the

> reference to that time period – 7 or 8 April, is where as I understand it from the agreed facts, in the first few paragraphs, the first several paragraphs, he's got money, taken amphetamines, roughly $150 spent on amphetamines. So in the context of someone being drug affected, and I suppose in my formulation, the use of drugs aggravated his schizophrenia and made him immensely unstable. I would regard the two primary things being drug intoxication and destabilisation of schizophrenia, leading to exacerbation of symptoms, and I don't see how that means he – and then that explains his behaviour basically and why he was touching the nurse on the bottom and why he assaulted the doctor, and I don't see how that relates to personality.

136. Dr Furst agreed that taking "ice" can have a destabilising effect beyond the immediate consequences of its consumption on an existing mental illness. That is to say, he explained that the consumption of an illicit substance would have an effect for around 8 hours but the destabilising effect of the substance on an existing mental illness would extend beyond 8 hours. Dr Furst considered that the accused was both "manic" and "psychotic" when he engaged in the conduct for the alleged offending in April explaining that the accused displayed "a mixture of symptoms and behaviours which is quite abnormal" (such as threatening people, staring at people, being unsettled, having loud and pressured speech, as well as laughing, singing and talking to himself) and that these symptoms and behaviours were not present "before he went on the leave episode" and would suggest that "his illness had been acutely exacerbated".

137. Dr Furst described the clinical notes around the April allegations where they recorded the accused as "not psychotic as present" as "wrong". He explained this by reference to the behaviours observed in the accused (including references made by the accused recorded by arresting police to delusions about "triad" and "threes") which he identified as consistent with the "very potent" antipsychotic medication he was prescribed upon re-entry to the mental health facility.

138. With respect to the August and October offences Dr Furst described "underlying delusions" of the accused which include possessing an "irrational" hatred toward his mother and "gender ideas" which he considered part of the accused's serious psychotic illness as opposed to a manifestation of the accused truly experiencing gender dysmorphia. Dr Furst observed that the accused's "murderous hatred" toward his mother is part of his "delusional construct of the world" with respect to gender and he views her as "a major impediment to his happiness of becoming a woman and have a happy life and that's delusional. It's irrational". Dr Furst concluded that the accused's desire to become a woman was better explained by his psychotic illness, schizophrenia and not by reference to recognised transgender disorder. Dr Furst considered it "likely" that when the accused engaged in the conduct for the alleged offences in August and October he did not know his conduct was wrong and could not control his conduct.

139. Dr Furst went on to explain that in his view it was not especially significant from a treatment point of view whether the accused's behaviour could be explained by bipolar disorder or a personality disorder where it is certain that he is suffering a serious psychotic illness. Dr Furst stated that the accused was suffering from a very serious schizophrenic illness and "there may be shades of grey underneath, but I don't think they're very relevant. They might be interesting legally but they might not and I just don't think they change anything that I've given an opinion about".

140. Dr Furst also suggested that prevailing psychiatric practice was not to diagnose borderline personality disorder if a person has a major psychotic illness acknowledging that there are limitations on what can be known at a particular point in time and as time goes on a "better pattern" may assist to attain "more reliability of what the actual working diagnosis might be".

The second series

Agreed facts

141. Pursuant to s 191 of the *Evidence Act 2011* (ACT), the following facts for CC2024/1327 and CC2025/424 were agreed.

Arson 1: CC2024/1327

142. On 29 October 2023, the accused was housed in cell 5 within Remand Unit 2 of the Alexander Maconochie Centre.

143. Julian Yeaman (DOB 09/12/1989) ('the accused') has been transitioning to a woman for some time.

144. On the day of the fire, Corrections Officer Jane Bowen was assisting the accused who was looking online for a new wig to purchase as his old one was becoming "weathered".

145. At some point the accused was told that a more senior Corrections Officer had said that online purchases could not be made through the AMC and if the accused wanted a wig someone would have to bring one in for him. The accused thought this was unacceptable as his family did not support his transition and he had no friends. The accused was angry and said to Corrections Officer Bowen "you look like a cum dumpster yourself". The accused was told he would be "charged" for this comment.

146. At around 7:12pm, the accused got a roll of toilet paper, uncoiled it, and pushed the paper under the door of his cell. The accused then lit the toilet paper on fire. The fire burnt for around 3 minutes leaving a trail of black smouldering ash on the linoleum floor.

147. At 7:21pm, the accused pushed more toilet paper under the door and again set it alight. The fire burnt for around 5 minutes leaving another trail of black smouldering ash on the linoleum floor.

148. At 7:35pm, Corrections Officer Kristoffer Durrant attended Remand Unit 2 after other inmates had complained of smoke within the building. Corrections Officer Durrant located the remains of a fire in front of cell 5 before using cups of water to extinguish any heat from the ashes.

149. Corrections Officer Durrant asked the accused, who was laying on his bed with his blanket over himself, what had happened. The accused denied any knowledge about the fire.

150. On 8 November 2023, police were provided with an invoice that revealed the damage to the floor cost $2,345.30 to repair.

151. On 17 December 2023, the accused participated in a Record of Interview with police during which he made full admissions to the offence. The accused stated he lit the fire in order to cause trouble as he was angry about not being able to buy the wig he wanted.

152. ACT Corrective Services have not undertaken any disciplinary action against the accused in relation to the events.

Arson 2: CC2025/424

153. On 21 August 2024, Julian Yeaman (DOB 09/12/1989) ('the accused') was housed alone in cell 5 within the Special Care Centre (SCC) North of the Alexander Maconochie Centre. Inside cell 5 is a double bunk bed and a shower to the left of the entryway, a window at the far end of the cell. To the right of the cell is a toilet at the entryway followed by a desk that extends to the far righthand side of the cell.

154. The accused identifies as female and at the time of the fire was wearing a grey beanie, matching grey tracksuit jumper and pants along with black and white shoes. The accused was the only female in SCC North at the time.

155. On 21 August 2024 at around 17:41, the accused exited cell 5 and walked to the storage room located within SCC North to collect rolls of toilet paper. The accused then exited the storeroom and returned to cell 5 carrying multiple rolls of toilet paper.

156. Upon re-entering cell 5 the accused placed two stickers over the two smoke detectors within the cell to prevent the smoke detectors from activating. The first sticker was placed on the smoke detector sensor between the shower and the toilet with "Yeaman 98973" written on it. The second sticker was placed over the smoke detector sensor adjacent to

the window with "(Female) J SCC" written on it. The writing on both stickers was done by the accused.

157. The accused moved the mattress from the top bunk bed mattress with the end placed against the wall and the end hanging over the side of the bunk. Beside the bunk base the accused overturned a container which had a book, bedding and clothing inside. The accused then placed toilet paper on the chair between the container and the desk.

158. The accused placed a drinking cup which contained detergent directly underneath a power outlet located closest to the far wall of the cell on the desk.

159. The accused started a fire within the cell by inserting two metal prongs into a general power outlet located closest to the far wall of the cell and lighting the toilet paper. Once lit the accused deliberately used the toilet paper to ignite the contents of the container. As a result of this the fire spread to other areas of the cell including the mattress hanging over the side of the bunk.

160. At 17:41, once the fire had spread enough to cause damage to the building, the accused exited cell 5 and walked into the kitchen area of SCC North. A few minutes later the accused walked into the corrections security office while looking in the direction of cell 5.

161. Upon entering the corrections security office, the accused stated to Corrections Officer's LESKINEN, NORTON and WISEMAN words to the effect of:

    You might want to put that fire out

162. SCC North was placed into a state of lock down and moved all the detainees to a safe area. Corrections officers attended cell 5 and observed smoke wafting out of the ventilation door. Upon opening the cell door smoke billowed out of the cell and filled SCC North. To extinguish the fire in the cell corrections staff used fire extinguishers and a hose to put out the fire.

163. The cost of repairing the damage caused by the accused was $37,508.11 inclusive of GST.

164. ACT Corrective Services have not undertaken any disciplinary action against the accused in relation to the events.

Accused record of interview (17 December 2023)

165. The accused participated in a record of interview with police on 17 December 2023.

166. In that record of interview the accused explained that on 29 October 2023 he was attempting to purchase a new wig online when correction officer Bowen (CO Bowen)

explained to the accused that he would be unable to purchase a new wig himself online and instead that a family member or friend would need to bring a wig to the AMC for him. The accused explained that he did not have any friends and that his family were unsupportive of him identifying as a woman and so would not bring him a wig. The accused told police that CO Bowen then conveyed to him that a 'case note' would be 'put on the computer' so that no other CO1 (Correction Officer level 1) would raise the issue in the future.

167. The accused told police he was unhappy with this outcome and so then said to CO Bowen "well, you look like a cum dumpster yourself". CO Bowen told the accused that he would be 'charged' for the comment. The accused later clarified that he understood that to mean he'd be charged within the AMC and that he'd be taken to an area referred to as 'management'. He confirmed that he indeed was later taken to 'management'.

168. The accused explained that after this interaction with CO Bowen he had gone back to his cell and lit the fire. The accused told police he lit the fire by sliding pieces of toilet paper under the door piece by piece, uncoiling the roll as each piece was slid under. He then lit the end of the toilet paper that was in his cell. The accused could not recall how he lit the fire telling police "I can't remember honestly, it would have been a lighter or something".

169. The accused admitted to doing the 'same thing' a few minutes later. He told police that the fires burnt quickly.

170. The accused recalled correction officers then coming down and asking him about the fire, to which the accused told them that there wasn't a fire. He told police that the corrections officers could see the burnt toilet paper and told him that police would be contacted. In response the accused told the correction officers that he didn't care.

171. He told police that his intention was to cause trouble because he felt unhappy that he was not receiving help in purchasing a wig. He confirmed with police that he was later assisted by the AMC to purchase a wig online. He said he was able to do so because he was an 'enhanced AP holder' at the time and this allowed him access to privileges such as special orders.

Expert evidence

Report of Dr Olav Nielssen

172. Dr Olav Nielssen produced a report dated 18 January 2026.

173. He examined the accused on 16 January 2026 and observed:

> He was again relentless in his speech, uninhibited in many of his remarks and lost the thread of his conversation in a way that was typical of impairment in the function of the frontal lobes of the brain. His speech was disorganised in form and jumped from topic to topic, repeatedly returned to themes of his sexuality and gender identity. He had a wide vocabulary and was at times articulate in expressing his distress.

174. Dr Nielssen concluded that the accused has chronic, partially treatment resistant, schizophrenia and substance use disorder (in long term remission). He highlighted that the conduct occurred whilst the accused was on long-acting injections of medication such as zuclopenthixol. He considered this a reflection of the severity of the accused's 'treatment resistant schizophrenia'.

175. Dr Nielssen recorded that Mr Yeaman grew up in a "comfortable and caring environment, free from any form of neglect or trauma".

176. Dr Nielssen considered that the accused continued to express a delusional belief that his family are responsible for his 'situation'.

177. Dr Nielssen recorded that the accused has chronic impairment in his capacity for logical thinking and in the ability to consider the consequences of his actions; both of which arise from a severe and chronic mental illness. Mr Yeaman's manifests in impairment in the capacity to regulate his emotional reactions and exercise proper control over his actions.

178. Dr Nielssen recorded that "the main issue for Mr Yeaman is his rehabilitation and preparation for release into the community". Dr Nielssen concluded that the accused's medication regime required review as the current medication regime was not especially effective.

Evidence of Dr Nielssen

179. Dr Nielssen is an expert physiatrist who has specialised in schizophrenia treatment and research. He holds a graduated with a Bachelor of Medicine and Surgery in 1985, a master's in criminology in 1997 and PHD in 2011, all from the University of Sydney. He is a fellow of the Royal Australian and NZ college of Psychiatrists.

180. Dr Nielssen works as a visiting psychiatrist at the Matthew Talbot hostel. He has been in this role since 2006. Dr Nielssen oversees about 40 patients with schizophrenia. He is a consultant psychiatrist at Macquarie health. He was a member on the NSW Mental Health Review Tribunal for 10 years and held physiatrists and officer position in several medical institutions and hospitals, spamming back to 1985.

181. Dr Nielssen has taught and lectured at the University of New South Wales, the University of Sydney, Notre Dame and Macquarie University.

182. Dr Nielssen has known Mr Yeaman since 2019 and provided a series of reports which has involved several appointments with Mr Yeaman on at least six occasions.

183. Dr Nielssen explained that in preparing his report he had access to the agreed facts with respect to the offending alleged on 29 October 2023 and 21 August 2024, submissions prepared by Mr Colleary dated 11 November 2024, and the report produced by psychiatrist Dr Nadine Fox dated 28 October 2025.

184. The expertise Dr Nielssen was not the subject of any challenge by the prosecution.

185. Dr Nielssen confirmed his view that the accused suffers from treatment resistant schizophrenia and described the effects of schizophrenia which included delusions, hallucinations, disturbance in emotional regulation and illogical thinking, and psychotic episodes. Schizophrenia he explained is a neurodegenerative disorder palpable by an MRI of the brain.

186. Dr Nielssen concluded that the accused's reasoning processes are fundamentally impaired because of schizophrenia and consequently his responses to certain events are beyond his capacity to control.

187. Dr Nielssen agreed that whilst the accused might have the capacity to physically control his conduct his reasoning process is impaired and cannot be controlled.

188. Dr Nielssen considered that the recorded medical regime for the accused, namely a high dose of anti-psychotic injection paired with olanzapine, indicated to him that the accused is considered to suffer from a severe form of chronic schizophrenia.

189. Records proximate to the time the arson offences were provided to Dr Nielssen during cross examination.

190. Dr Nielssen observed that the records generally revealed to him that the accused was presenting with psychological issues including self-harming on 21 August 2024 and gender dysmorphia which Dr Nielssen stated had emerged since he had last assessed the accused in previous years.

191. Dr Nielssen identified that the detailed clinical entries captured communication issues such as tangential thinking on the part of the accused. This was consistent with the accused's presentation to him at each assessment he had performed.

192. Dr Nielssen explained his opinion that the accused has frontal lobe neuropathy and other manifestations of frontal lobe impairment, in communication, self-control, logical thinking. In his view the behaviours and attitudes attributed to borderline type personality are due to the underlying neurological condition, schizphrenia. The psychosis experienced by the

accused has been influenced by the accused's drug use but persists despite the accused being abstinent from illicit substance use around the time of the alleged offending.

193. Dr Nielssen's did not agree with Dr Fox that the accused suffers solely from 'borderline personality disorder' because his conduct was fundamentally influenced by a frontal neurological condition, namely schizophrenia.

194. During cross examination, Dr Nielssen was invited to respond to a conclusion contained in Dr Fox's report:

> It is also possible that Mr Yeaman has a diagnosis of borderline personality disorder with a comorbid chronic psychotic illness such as schizophrenia. However, this impression is less preferred given the association between Mr Yeaman's psychotic phenomena and periods of psychosocial stress and past experience of trauma, the limited response to antipsychotic therapy and Mr Yeaman not experiencing a worsening of symptoms in the absence of antipsychotic medication.

195. Dr Nielssen explained that it was his opinion that the accused has a chronic mental illness, schizophrenia, which affects aspects of his personality, interpersonal behaviour and his attitudes.

196. Dr Nielssen explained that some anti-psychotic medication for schizophrenia can have a calming and numbing effect and can reduce of emotional mobility. If considered to be 'treatment resistant' a sufferer could continue to experience hallucinations and have delusions. Dr Nielssen accepted that the accused may have multiple psychological challenges:

> There's self-harm, there's gender dysphoria and that there was administration of depo medication, but that does not ameliorate the effects of the symptoms of his schizophrenia, but rather a mix of mental illnesses, rather than a strict diagnosis of borderline personality disorder.

197. Dr Nielssen accepted that a person may be prescribed medication designed to reduce symptoms of schizophrenia and not be in a psychotic state. Dr Nielssen considered that a person may still be able to control their conduct or lack of capacity to control conduct

198. By reference to page 171 of the clinical notes (exhibit P3) which recorded the accused to have "thoughts of setting his cell on fire or throwing 'shit' at the officers". The following evidence was adduced:

> THE PROSECUTOR: …Does it suggest, though, that the setting of the fire on each instance wasn't an uncontrollable impulse? And by that, I mean, he has these thoughts, they may be pervasive otherwise, but he manages not to act on them and then ultimately that he does act on them. Does that suggest that he does retain a degree of control over his behaviour because he's not acting on these thoughts each time that he has them?

> DR NIELSSEN: Yes, I mean it was very interesting to see. Well, we're not sure why he - why he didn't start the fire, you know. It was a kind of interesting thing. I mean - I mean people with schizophrenia are quite literal and they tend to - and - and for example, disclosing thoughts of suicide doesn't predict subsequent suicide in everybody except people with schizophrenia, you know, because they're - they're more likely to carry out some those sorts of acts. That's what the research shows and - and perhaps it's similar in this instance, you know, that it just builds up until he, you know, can't control it anymore.

199. Dr Nielssen reiterated that the accused has treatment-resistant schizophrenia and as a result his illness remains “chronic”. Accordingly, the accused would only be in ‘partial remission’. Dr Nielssen highlighted that the accused has been prescribed the same medication for four years without significant positive effect and he does not ever return to ‘function’. The accused’s communication disorder has persisted and reflects his lack of capacity for reason with his speech generally mirroring his thought process. His gross overaction to certain events and situations reflects his impaired reasoning, regulation as well as the underlying delusion he has with respect to his family as the source of his predicament. Dr Nielssen accepted that the underlying delusion relating to the accused’s mother was not operative or relevant for the purposes of the arson allegations.

200. Dr Nielssen accepted that the accused’s treating psychiatrist would be well placed to make observations about the accused’s presentation and the extent to which it reflected his illness.

201. Dr Nielssen accepted that the accused may have been refused a wig and that the accused did not conjure that situation as a hallucination, and that the accused reacted to that, but with impaired reasoning by virtue of his schizophrenia. Dr Nielssen explained that the impaired reasoning process, which is a consequence of the accused’s schizophrenia, impairs to a significant degree his capacity to control his reaction to reality. Dr Nielssen accepted that the accused retained a degree of control of his conduct because he does not act on his thoughts whenever they occur to him.

202. The following evidence was adduced:

> THE PROSECUTOR: As I understand it his influential decision was on which a lot of the legislative is based is to do with the perspective of the affected person and in Mr Yeaman's case his ability to understand right from wrong as other people would see it was significantly impaired. And that's irrespective of whether he goes on to describe his behaviour as wrong or I think in some of the records he describes misbehaving essentially deliberately. This is this idea that he's conducting some kind of protest. So using language such as 'a protest' or 'misbehaving' is it your evidence that that doesn’t suggest his knowledge that other people would see his behaviour as wrong?
>
> DR NIELSSEN Yes. These are always retrospective kind of you know rationalisations for what's being irrational conduct, and he participates in it as much as the people who interview him and record his responses.

Report of Dr Nadine Fox

203. Dr Fox, a consultant psychiatrist employed by from Canberra Health Services (CHS), produced a report dated 28 October 2025 after I ordered in it August 2025. Dr Fox's report refers to offences not included in the proceedings and I have not have regard to those portions of the report.

204. Dr Fox assessed the accused in person on 14 October 2025 for around 100 minutes.

205. Dr Fox had regard to the following material as part of her assessment:

    (a) Mental Health Court assessment and Liaison Service Referral request for a report addressing mental impairment issues;

    (b) Case Statement for an abovementioned charge of arson, 29 October 2023;

    (c) Case Statement for an abovementioned charge of arson, 21 August 2024;

    (d) Psychiatric Report authored by Dr Richard Furst, dated 26 January 2023;

    (e) AFP Photograph "Drawing given to Victim", dated 31 May 2024; and

    (f) A perusal of Mr Yeaman's electronic mental health record (with Mr Yeaman's consent).

206. The accused first came into contact with ACT Mental Health Services in 2006 when he was 16 years old. He has been admitted to the Adult Mental Health Unit and the Dhulwa Mental Health Unit at various points since 2006. Dr Fox acknowledged that there have been differing opinions regarding the accused's psychiatric diagnosis. The accused's file documents the following diagnosis:

    (g) Borderline personality disorder;

    (h) antisocial personality disorder;

    (i) ADHD;

    (j) schizophrenia;

    (k) substance use disorder;

    (l) schizoaffective disorder;

    (m) drug-induced psychosis;

    (n) disruptive behaviour disorder; and

    (o) schizophreniform disorder.

207. The accused is currently treated with a long-acting injectable antipsychotic medication and oral antipsychotic medication under a Psychiatric Treatment Order. The most recent assessment of the accused was conducted on 13 October 2025 by consultant psychiatrist Dr Andrew Bailey. Dr Bailey's notes revealed that he considers the accused to be affected by "borderline personality disorder with intermittent periods of emotional dysregulation" and that the accused was "previously thought to meet the diagnostic criteria for schizophrenia".

208. Dr Fox had regard to contemporaneous assessment notes made by mental health professionals in the lead up to and the aftermath of the arson allegations.

209. The contemporaneous notes of Dr Bailey recorded that as at 19 October 2023, the date of the last assessment made prior to the alleged arson offence of 29 October 2023, the accused was thought to be affected by "borderline personality disorder with periods of significant emotional dysregulation". It was noted by Dr Bailey that the accused was diagnosed with schizophrenia but did not present with any evidence of psychotic symptoms. It was further noted that the accused did not present with disordered thoughts or hallucinatory behaviour. Dr Bailey noted that the accused "was able to appreciate how his threats might make people feel and the ongoing effect this might have on him." On 2 November 2023 it was noted that there the accused did not display any overt symptoms of psychosis.

210. With respect to the alleged arson offence on 21 August 2024, contemporaneous medical records described the accused's cognition as "grossly intact" on 19 August 2024. On 21 August 2024 it was noted that the accused has been referred to custodial mental health services for self-harming. The accused acknowledged he had self-harmed but denied having current thoughts of self-harm. No psychotic symptoms were observed.

211. Dr Fox briefly recorded the accused's childhood, noting that he had reportedly witnessed domestic violence prior to his parents' separation. It was otherwise noted that the accused had a privileged background and attended school in Canberra up until year 11.

212. The accused described to Dr Fox his dissatisfaction with his current psychiatric treatment, stating "there's no hope for me, I need to be euthanised". On multiple occasions throughout the assessment, the accused expressed a desire to access euthanasia. He described having no hope of being released. The accused indicated that if he was released, he would attempt to commit suicide or take illicit substances.

213. At the time of the assessment, Dr Fox noted that the accused's thoughts did not seem disordered, nor did he express overtly delusional thought content, nor did he appear to be reacting to hallucinations. The accused did however express what was described as

"prominent themes of persecution by Corrections" and appeared with red marks and scratches on his face and both wrists.

214. When asked about the alleged arson offence of 29 October 2023 the accused described his actions as "protest" and denied any connection between his mental illness and the conduct which constituted the arson. After being asked whether he thought he was doing the wrong thing, the accused responded, "yeah at the time, but then I thought in hindsight it was the right thing to do because my human rights should be stood up for".

215. With respect to the 21 August 2024 alleged arson offence the accused explained that this was a "symbol of my disagreement with insurmountable force". Again, when asked if there was any connection between his mental health and the offence the accused stated "I'm a product of this shit-filled environment, I'm terribly traumatised". He told Dr Fox that he "felt there was no choice but to light a fire".

216. Dr Fox recorded that the current working formulation of the accused diagnosis is borderline personality disorder (BPD), and that the diagnosis of a chronic psychotic illness (schizophrenia, schizoaffective disorder, schizophreniform disorder) should be considered as historical rather than current. Dr Fox explained that up to 50% of those with BPD can present with transient psychotic symptoms that may worsen during periods of stress. Dr Fox concluded that the accused's BPD would be considered a severe personality disorder due to the accused's extreme degree of emotional dysregulation, distress and behaviour disturbance. Dr Fox considered that it would be open to the court to find s 27 of the *Criminal Code 2002* satisfied.

217. Dr Fox further considered that the accused's BPD may be co-morbid with an illness such as schizophrenia but noted that this is a less preferred impression given the accused's limited response to antipsychotic therapy and the fact that he did not experience worsening symptoms in the absence of such medication. Whilst it was noted that the accused had expressed persecutory beliefs about Corrective Service staff members, Dr Fox did not consider this to rise to the level of delusional in nature or intensity.

218. Regarding the arson offences, Dr Fox concluded that the accused's mental impairment did not affect him to the extent that he could not recognise the nature and quality of his conduct or that he could understand that his conduct was wrong, or that he was unable to control his conduct.

Evidence of Dr Fox

219. Dr Fox has a Bachelor of Science with an extended major in psychology from the University of Queensland. Dr Fox also has a master's in medicine from the Australian

National University and has a fellowship with Royal Australia & New Zealand College of Psychiatry. Dr Fox has completed the requirements for advanced training in forensic psychiatry through the Royal Australia & New Zealand College of Psychiatrists and completed the requirements of their forensic mental health master's through the University of New South Wales.

220. Dr Fox has worked across the Mental Health Court Assessment Liaison Service and is currently placed at the AMC with the Custody Mental Health Service, and Dhulwa Mental Health Unit. Dr Fox first began working for the Forensic Mental Health Service in 2019. Since 2022, Dr Fox worked in a full-time capacity for the Forensic Mental Health Service.

221. There was not challenge to Dr Fox's expertise.

222. Within the AMC she explained that there are three full-time forensic psychiatrists working in public mental health in the ACT. Dr Fox is one and Dr Bailey, who is Mr Yeaman's treating psychiatrist, is another. Only Dr Fox and Dr Bailey work in a treating psychiatrist capacity at the AMC.

223. Dr Fox assists Mr Yeaman's treatment team at the AMC. Dr Fox noted in the month of March 2024, over a period of approximately two weeks, Mr Yeaman came off his medication due to an administrative error and reported feeling "completely the same".

224. Dr Fox did not meet Mr Yeaman prior to assessing him for her report but has been involved in treating team discussions in a multidisciplinary context regarding Mr Yeaman. For the purposes of Dr Fox's report, she spoke to the accused for approximately 100 minutes.

225. Dr Fox accepted that the accused's current medication regime is commonly prescribed for people with schizophrenia. However, explained that antipsychotic medications in general are often prescribed 'off label' for personality disorders such as borderline personality disorder, and other conditions such as depression and anxiety.

226. Dr Fox disagreed with the suggestion that the combination of medication prescribed to the accused made it clear that his primary diagnosis is schizophrenia. Dr Fox observed that there was not a significant change in Mr Yeaman's mental state when medicated and that the accused himself had described his mental state as unchanged when he had not received the medication. Dr Fox noted a discussion between Dr Bailey and the accused regarding a trial 'off medication', or a reduced dose of medication.

227. Dr Fox gave evidence that antipsychotic medication, might be prescribed to someone who has a personality disorder or borderline personality disorder, because this type of medication helps people control their emotional regulation, their stress and helps to calm

them. Dr Fox explained that “roughly 70 per cent of patients with borderline personality disorder, severe enough to come in contact with public mental health services, tend to be prescribed these sorts of medications”.

228. Dr Fox’s considered that irrespective of whether the accused ought to be properly diagnosed with borderline personality disorder or schizophrenia or a combination of both, at the time of engaging in the arson conduct he knew right from wrong, he knew the nature of his conduct, and he had control or did not completely lack control of his behaviour. Dr Fox confirmed that listening to and observing Dr Nielssen’s evidence did not shift her conclusions in that respect.

229. Dr Fox explained that the conduct was engaged in on the accused’s explanation as protest-type behaviour. This was inconsistent with a complete lack of control because the conduct came about as a consequence of a decision to engage in the conduct. Dr Fox drew support from the accused having previously made threats to engage in the conduct, made plans to do the conduct and brought about the plan by engaging in the conduct. Dr Fox concluded that it was “not fair to say that he completely lacked reason and that that reasoning behind that behaviour was irrational in any regard”.

230. The prosecutor asked Dr Fox about potential delusional beliefs and the following evidence was adduced:

> THE PROSECUTOR: So, the arsons that we have before the court today involve essentially a previous sort of thought or threat in the days beforehand to commit that particular offence. Some of them involve a degree of planning - whether based on bizarre reasoning or not, a degree of planning - and then ultimately a decision to engage in the actual conduct; so a somewhat thought-out process. Again, whether that's influenced by defective reasoning or not, a thought-out process. The other scenario I'm looking at is this more explosion that he might have where he hears some sort of bad news. It might also relate to an underlying delusional belief system - for example, in relation to his mother - and then he goes on to assault his mother or assault a nurse at Dhulwa sort of immediately after that occurs. What I'm trying to understand is, in terms of those two scenarios, is it your opinion that the schizophrenia is more operative in one as against the other? It sounds like we're trying to contrast a more instrumental type violence where the violence is to achieve a certain gain - for instance, for example the arson, he suggested the arson was as a protest - compared to a reactive violence where someone lashes out very quickly in regards to something. Is that correct?
>
> DR FOX: Yes. So, with someone with schizophrenia, if that were to be the accepted diagnosis, we may see instrumental violence… The delusional beliefs about his mother are irrelevant to the current arson charges. That wasn't something that he was experiencing at the time of the arson charges. It wasn't documented in any of the notes.

231. Dr Fox accepted that a person with schizophrenia has impaired reasoning but noted that the impaired reasoning is often related to psychotic symptoms. She explained that people with schizophrenia labour under a delusional belief system that is illogical and

their actions or conduct are related to the delusional belief system. Dr Fox agreed with Dr Nielssen that sufferers of schizophrenia might have impaired cognitive functioning which will affect their reasoning. Dr Fox noted that with this pattern the impaired cognitive functioning will be seen across a range of behaviours and a range of decisions. Dr Fox rejected a suggestion that one single action necessarily suggested impairment.

232. Dr Fox concluded that the accused's explanation for why he engaged in the arson conduct was not reflective of a delusional thought process or psychotic reasoning.

233. Dr Fox did not consider the self-defeating nature of the accused's 'protest' arson activity as necessarily symptomatic of schizophrenia explaining that impaired reasoning in schizophrenia is usually related to psychotic symptoms or more global in nature and scope. Dr Fox differentiated between impaired capacity to control conduct and a complete lack of control of conduct stating the accused:

> may have slightly impaired conduct in that his reasoning may be impaired to a degree and that he doesn't place the appropriate significance on the consequences of his behaviours, but he still knew what he was doing. He knew that it was wrong. He chose to do it anyway. He had made previous threats regarding it that suggested there's quite a significant degree of reasoning despite the consequence being significant for Mr Yeaman. He still chosen to engage in that action. The very fact that he had the ability to choose to do that as opposed to not to choose that, to choose to do that, suggests that there was a degree of control over his behaviours.

234. Dr Fox placed clinical significance on the fact that the accused himself described his conduct as wrong, as a form of "protest" and misbehaving.

235. Dr Fox noted that Dr Bailey has treated the accused for a number of years and considers that the diagnosis of borderline personality disorder, a disorder that can only be diagnosed through longitudinal contact with a patient is now more appropriate. As the accused's treating psychiatrist, Dr Fox considered Dr Bailey to be uniquely positioned to resolve these issues.

236. Dr Fox agreed with Dr Bailey that borderline personality disorder is the preferred diagnosis, as it fits the accused's symptomatic pattern more appropriately than schizophrenia.

237. Dr Fox considered that the clinical notes suggested the accused's beliefs are not to a delusional extent highlighting that they are not fixed beliefs or held with conviction. Dr Fox reiterated that the accused explained that he wanted something from Corrective Services officers, they told him he could not have it and then he acted out with 'protest' behaviour. The accused told Dr Fox that he "wanted to scare somebody" because he was unhappy that he had unfavourable outcome. This explanation was 'reality based' in

Dr Fox's view and the accused's explanation was not the product of a delusion, psychotic or delusions symptoms tend not to be reality based.

238. Dr Fox noted that Dr Nielssen did not have the advantage she had of being able to review the long-term mental health records prior to providing his report. These records are the product of the many clinicians and doctors who treat the accused weekly in the prison setting and observe his engagements with other people, his patterns of behaviour and his patterns of reaction when his perceived needs are not met. Dr Fox considered this to be critical to forming a view about diagnosis.

239. The following evidence was adduced:

> COUNSEL FOR THE ACCUSED: So is it your proposition that because he can say what he intends to do, and he can plan an arson and then talk about it later, is it your proposition that that somehow counteracts, absolves or evidences the abatement of an underlying schizophrenic condition? Does that evidence an abatement of his underlying schizophrenic condition?
>
> DR FOX: the evidence in conjunction with the record available where the clinicians have noted that he's not acutely psychotic in the lead-up to either of these events, and somebody who is so incapable of reasoning that they cannot control themselves, would usually be pervasive. We would see this across multiple different instances. It's not the control of one specific behaviour and then he's back to his usual self the next day. We would see, if he were acutely psychotic, a deterioration over days or weeks. If he had such impaired cognitive reasoning, as Dr Nielssen suggested, that he couldn't reason appropriately, we would see that across multiple domains, not just related to criminal behaviour.

Evidence of Dr Lee and Dr Nielssen from *Yeaman*

240. I was, without objection, taken to the evidence of Dr Lee and Dr Nielssen adduced in *Yeaman.* It is unnecessary to summarise that evidence in any detail. Murrell CJ set out the evidence at [60]-[87] and her findings with respect to it at [88]-[91]. Based on the evidence the accused was found at [102];

> I am satisfied on the balance of probabilities that, at the time of each incident, the accused was suffering from a mental impairment. He was suffering from a constellation of mental conditions (schizophrenia, borderline personality traits and ADHD) that, in combination, meant that his ability to regulate his emotions, impulses and behaviour was significantly reduced.

241. For the purposes of these proceedings, it is relevant to note that the evidence with respect to accused's beliefs towards his mother formed the basis for the finding at [89] that "the accused was heavily preoccupied with the "wrongs" of his mother. In that regard, his beliefs were both delusional (that she was persecuting him by controlling his mind) and somewhat rational (that she believed that, in his present condition, he was unfit to control his own personal and financial affairs)".

242. Of course, I am bound to assess all the evidence adduced in the trial of these offences and make my own determinations and findings, but the parties were agreed that I could have regard to the evidence adduced in *Yeaman*.

The application of s 28 and s 7.3

243. I have already recorded that there are textual differences between the Commonwealth and Territory Criminal Codes. Those differences are not of any moment for the purposes of resolving the issues in this trial and neither party suggested otherwise.

244. For a defence of mental impairment to succeed, the presumption that an accused person is not suffering from a mental impairment that had an effect that they did not know the nature and quality of their conduct or that they did not know it was wrong or that they could not control the conduct, must be displaced on the balance of probabilities.

245. The third limb of the defence directs attention to an accused's ability to control the conduct. An issue arose in the trial of the second series which requires resolution for the purposes of both series, and it relates to the extent to which an accused must establish that they could not control their conduct: s 28(1)(c) *Criminal Code 2002* and s 7.3 (1)(c) *Criminal Code Act 1995*.

246. This Court has previously held that to satisfy this limb it must be established on the balance of probabilities that an accused had no ability to control the conduct. A substantially reduced ability or an impaired ability would not suffice: see *R v Yeaman* [2021] ACTSC 252 at [130] – [132]; *The Queen v Barker* [2014] ACTSC 153 at [87] – [92]. I followed this approach in *DPP v Stacker* (No 2) [2025] ACTSC 29 at [52].

247. Counsel for the accused submitted this approach was wrong. Both counsel made helpful and comprehensive submissions. The prosecution noted that as a matter of judicial comity, a judge at first instance will usually follow a decision of another first instance judge unless possessed of an "appropriate level of conviction that the earlier decision was incorrect": per Mossop J *DPP v Smith* [2026] ACTSC 125 at [30].

248. The prosecution submitted that a plain reading of the provision, consideration of the extrinsic material and the law as it relates to diminished responsibility "not only demonstrates that the decisions in *Yeaman* and *Barker* could not be described as wrong, but in fact they are plainly correct".

249. Counsel for the accused submitted that I should not have regard to s 28(1)(c) as a "stand alone" provision "permitting the court to isolate one element of the cognitive conduct, the planning, from the failure to understand the moral wrongness of the effect of the effect of the conduct" and contended:

> The statutory test does not require an accused to have lacked all cognitive function; a person suffering from mental impairment may remain capable of performing organised acts while nevertheless being unable, in the relevant statutory sense, to know the nature and quality of the conduct; know conduct was wrong; or be able to control the conduct constituting the offence. Accordingly while s 28 (1)(a), (b) and (c) are expressed as statutory limbs, the evidence relevant to those limbs, and the conclusions drawn as a result, are composite.

250. The enactment of the defence of mental impairment under both the Territory and Commonwealth criminal codes in effect codified the *McNaghten* rules. Under those rules a person who engages in conduct the result of an 'irresistible impulse' would not necessarily have a defence, but evidence of this kind may provide the foundation for an inference that the person was operating under the effect of a mental illness to such an extent that they did not know their conduct was wrong: The enactment of the *Commonwealth Criminal Code* in 1995 (upon which the Territory Criminal Code was based) saw the addition of a third limb of the defence namely that the mental impairment had the effect that the person "could not control the conduct". The enactment of the Commonwealth Code occurred after years of work in which the codification of the principles of criminal responsibility was examined.

251. The Interim Report (produced by what became referred to as the 'Gibbs Committee') to which Murrell CJ referred in *Yeaman* (at [131]) was part of that work. So too the Final Report. The reports were produced by the Criminal Law Officers Committee of the Standing Committee of Attorneys-General (Interim Report: July 1990) which had become the Model Criminal Code Officers Committee by the time of the Final Report (December 1992). As her Honour noted, in *Yeaman*, the Interim Report did not recommend the introduction of a third limb as a separate test.

252. The Interim Report observed [at 9.22-9.23]:

> The incapacity of the accused to control his actions is not itself an excuse but, if the uncontrollable impulse results from mental disease, it may have caused or be evidence of an incapacity to know the nature and quality of the act or to know that it was wrong: Sodeman v. The King Brown; Attorney-General (S.A.) v. Brown.
>
> The common law rules as to insanity will apply in those jurisdictions, except perhaps New South Wales, which have not enacted Codes. The relevant sections of the Codes deal with this subject under the title "Insanity". The description of insanity contained in section 27 of the Criminal Codes of Queensland and Western Australia is based on the common law but includes irresistible impulses and mental infirmity which are not within the common law definition.

253. Before concluding at 9.38:

> On the whole, the Review Committee is disposed to think that evidence that the accused could not control his or her actions should be regarded as relevant to the quest ion whether the accused was suffering from mental illness, but that irresistible impulse should not be a separate test.

254. The Interim Report clearly contemplated the question of whether a person's mental illness had the effect that they could not control their conduct as capturing conduct engaged in because of an "irresistible impulse".

255. The Final Report (and ultimately the legislation enacted) *did* adopt the separate, third limb. The Final Report recorded the following:

> The section adds a third head to the McNaghten rules: inability to control conduct. This is available under the Griffith Codes but not at common law; see Brown [1960] AC 432. The Murray Report in WA (1983) and the O'Regan Report in Queensland (1991) recommended its retention. See too, the Mitchell Committee at para 13.4 and the Brisbane Seminar. On the other hand, the Gibbs Committee and the VLRC, Mental Malfunction did not recommend it.

256. It is important to note that which the prosecution highlighted. The Final Report referred to the third limb as an "inability" to control conduct, not an impaired capacity or reduced ability to control conduct. As the extract above demonstrates the Final Report observed that the Gibbs Committee did not recommend expansion. There is no support in the Final Report for the additional, separate third limb to be read as established by a *substantially* or *significantly* reduced capacity to control conduct. The text of the provision, "was unable to control the conduct" (s 7.3(1)(c) *Criminal Code Act 1995)* and "could not control the conduct" (s 28(1)(c) *Criminal Code 2002*) is expressed consistent with that reading.

257. Counsel for the accused submitted that Murrell CJ misapplied s 28 in *Yeaman.* This was said to be revealed in her Honour's analysis that whilst the accused's conduct in lighting the fire was based on "bizarre reasoning" he was nonetheless able to control his conduct when he lit the fire. Her Honour concluded that his conduct in lighting the fire was not an "uncontrollable impulse". Her Honour came to this conclusion having already determined that the accused knew the nature and quality of his conduct and that his conduct was wrong.

258. In summary, as I apprehend the contention for the accused, her Honour misapplied s 28 because her acknowledgement of the "somewhat bizarre" reasoning which underpinned the accused's conduct was recognition that his conduct was the product of his mental impairment and accordingly he could not control the conduct.

259. I do not read her Honour's analysis as suggesting that an accused person driven to engage in conduct by virtue of reasoning because of a delusion, psychosis or 'bizarre' reasoning brought about by the existence of such, would nonetheless always be capable of physically controlling the conduct. It seemed to me that her Honour was simply not satisfied that the evidence permitted a finding based on the evidence before her that the defence of mental impairment had been established, even accepting that the accused's reason for engaging in the conduct was 'somewhat bizarre'. Her Honour plainly

approached the question on the basis that an inability to control the conduct would not be established by a ‘reduced’ capacity or ‘substantially impaired’ capacity. Her Honour was right to do so.

260. I am not persuaded that the extrinsic material supports the interpretation pressed upon me by the accused namely that a significantly impaired or reduced capacity for control will satisfy the third limb. Nor am I persuaded that a consideration of the Griffith Code formulation supports an interpretation of ‘could not control’ as encompassing something less than a complete inability to control conduct.

261. Section 27 of both the *Criminal Code Act 1899* (QLD) and the *Criminal Code Act Compilation Act* 1913 (WA) permit a denial of criminal responsibility in circumstances where a person because of mental impairment is deprived of their capacity to control their actions.

262. The analysis in *The State of Western Australia v Siddique* [No 2] [2016] WASC 358 and *The State of Western Australia v Taylor* [2021] WASC 470 is instructive.

263. In *Siddique*, Jenkins J observed (drawing of the reasoning of the High Court in *R v Falconer* [1990] HCA 49; 171 CLR 30) at [57]-[58]:

> Thus, whilst the words in the phrase 'so as to deprive him ... of capacity to control his actions' should be given their ordinary meanings, I agree with the learned authors in *Criminal Law in Queensland and Western Australia* that the judgments in ***Falconer*** are to the effect that the meaning of the phrase should be narrowly construed. That is, a lack of capacity to control actions in s 27 is the insane equivalent of sane involuntariness, and so denotes an incapacity to control actions, as opposed to something less than that, such as significantly impaired capacity to resist an impulse or an emotion.
>
> The phrase 'so as to deprive him ... of capacity to know that he ought not do the act', is generally considered to be equivalent to the M'Naghten rules alternative that the accused was labouring under such a defect of reason as 'that he did not know that he was doing what was wrong'.

264. In *Taylor*, Derek J noted that the High Court in *Falconer* were called upon to consider the scope of automatism, which he considered required caution not to read the analysis as an attempt “to define the full meaning of the words 'capacity to control…actions' in s 27(1), before concluding at [51] and [53]:

> In my opinion the ordinary plain meaning of the words 'capacity to control' used in s 27(1) and a review of the relevant authorities supports the conclusion that a person is deprived of the capacity to control their actions within the meaning of the section if they are deprived of the capacity to make a conscious decision to act (that is, to act voluntarily) or if they are deprived of the capacity to refrain or restrain themselves from doing a willed act (sometimes also referred to as the capacity to exercise the power of choice to act). Thus, in my opinion, if the effect of a person's mental impairment is to deprive them of the capacity to refrain from doing an act, that is, to exercise the power of choice to act, they will, by reason of their mental

> impairment, be deprived of the capacity to control their actions within the meaning of s 27(1) even though the act was a willed or deliberate act; an act done as a result of a consciously made decision. It necessarily follows that in determining the effect of a person's mental impairment on their capacity to control their actions the focus will often be on the extent to which their delusions or hallucinations (if any) controlled their actions or deprived them of the power of choice.
>
> Nothing I have said should be taken as indicating that a person will be deprived of the capacity to control their actions merely by reason of them having a significantly impaired capacity to resist an impulse or an emotion. A significantly impaired capacity to resist an impulse or an emotion does not equate to a deprivation of a person's capacity to control their actions within the meaning of s 27(1).

265. This approach was applied in *The State of Western Australia v Thomas* [No 2] [2024] WASC 403 at [39]:

> A second capacity is raised on the evidence, being the capacity of Mr Thomas to control his actions. A person is deprived of the capacity to control their actions if, by reason of their mental impairment, they are deprived of the ability to make a conscious decision to do the relevant act and to exercise the power of choice to act. A person is not deprived of the capacity to control their actions merely by reason of having a significantly impaired capacity to resist an impulse or emotion.
>
> (Citations omitted.)

266. I do not consider this analysis to be at odds with *Re Sam* [2003] QMHC 003 where Wilson J stated at [31]:

> I respectfully agree that the capacity of control in s 27 is the capacity to control physical acts. The section is concerned with the criminal responsibility of a person deprived by mental illness of the capacity to control his or her physical acts. It is concerned with the loss of volitional control rather than motor control over physical acts. However, I do not accept that evidence of premeditation and preparation is necessarily or even generally indicative of the presence of some capacity of control. Certainly whether there has been a deprivation of capacity must be determined as at the very moment of the homicide, rather than at some earlier time. However insofar as conduct leading up to that moment can legitimately be considered as evidence from which the inference of a deprivation of capacity may be drawn, it is necessary to examine that conduct to see whether it was itself the product of mental illness.

267. The position in Queensland in my view only strengthens an approach which requires mental impairment to *entirely* deprive an accused person of capacity to control their conduct before criminal responsibility can be denied. There is a statutory distinction in that state between cases of 'insanity' under s 27 of the *QLD Criminal Code* and 'diminished responsibility' under s 304A. Section 304A has application where an accused does an act or omission 'which would constitute murder' but is in 'such a state of abnormality of mind' that their capacity to control their actions is 'substantially impaired': as to which see *R v Smith (aka Stella)* [2021] QCA 139 at [31]-[35].

268. This same statutory distinction exists in the Territory by virtue of s 14 of the *Crimes Act 1900.* In *R v Woutersz* [2018] ACTSC 36 at [146] Penfold J observed that s 14 was to be contrasted with s 28 of the *Criminal Code* stating, "s 14 refers to an abnormality of mind that **impairs** a person's mental responsibility (which presumably refer to impairing his or her mental capacity to understand, judge or control conduct) rather than **depriving** him of that capacity" (bolding in original).

269. The accused submitted that the approach taken by Murrell CJ in *Yeaman* is 'the test' when control alone (s 28(1)(c)) is the issue "but only if her Honour had rejected a finding of mental impairment that satisfied (b)". Her Honour did make such a finding at [128] and determined that the accused had not established the defence by reference to s 28(1)(a) or (b).

270. The approach taken in *Barker* supports the approach taken by Murrell CJ in *Yeaman*. In *Barker*, Reshauge J rejected that defence of mental impairment had been established by reference to s 28(1)(c) alone (at [192]), but accepted it was established by reference to s 28(1)(a) and (b). His Honour drew support in his analysis from three authorities from South Australia; *R v Telford* (2004) 89 SASC 352, *R v Milka* [2010] SASC 250 and *R v Cox* [2006] SASC 188. In *Telford,* Perry J determined at [100]-[101] that the words "unable to control" (s 269C(c) *Criminal Law Consolidation Act 1935* (SA)), "must be taken to identify a state of mind in which the accused is unable to form and implement a decision either to gamble or not. The word "unable" admits of no qualification".

271. In *Cox*, White J proceeded to consider s 269C(c) on the basis that an "accused would establish an inability to control the relevant conduct if he could establish an inability to refrain from a willed action". His Honour went on at [25]-[26]:

> Such an inability would exist if the accused had an uncontrollable impulse to carry out the actions which caused the fatal injuries to Nicole Mazey or if, although the relevant actions were willed, the mind of the accused was not able to control them [R v Radford (1985) 42 SASR 266 at 273 per King CJ: R v Harm (1975) 13 SASR 84 at 102 per Bright J]. Put slightly differently, the question is whether the accused lacked the capacity to exercise willpower to control his physical acts [Cf the judgment of Lord Parker CJ in R v Byrne [1960] 2 QB 396 at 403].
>
> The conduct which the accused must prove he was unable to control is the conduct comprising the objective elements of the offence, ie, the conduct comprising the actual assault on Ms Mazey resulting in her death. It is not sufficient for him to establish an inability to control his jealousy, or the manifestations of that jealousy such as his persistent suspicion and questioning of Ms Mazey, the checking of text messages on her mobile telephone, the checking of her clothing and the checking of her movements. I agree with the comments of Perry J on this topic in an analogous situation in R v Telford [[2004] SASC 248 at [1143]-[121]; (2004) 89 SASR 352 at 364].

272. This is the approach to the third limb of s 28(1)(c) adopted in *Barker*. I do not read his Honour's approach in *Barker* as inconsistent with the approach taken in *Yeaman*. The outcome in *Baker*, based on a consideration of the evidence was clearly different to the outcome in *Yeaman*, but the approach to principle in my view was the same.

273. A consideration of the extrinsic material, the approach taken in Griffith Code jurisdictions and the position with respect to diminished responsibility supports the approach that an accused must establish that they are entirely unable to control the conduct because of mental impairment to satisfy the third limb in s 28 and 7.3. This is consistent with the approach taken in *Yeaman* and *Barker* and is the approach I will apply. Accordingly, it will not be sufficient for the accused to establish that he had a reduced or impaired capacity to control the conduct nor that he could not control the emotions which led him to decide to engage in the conduct.

274. Suffice it to say, to resolve the effect of an established mental impairment it will be necessary to examine the evidence to determine the effect of the mental impairment.

Findings on the physical elements of each count

275. There was no dispute that the physical elements or the *actus reus* for each offence were established by the evidence adduced in the prosecution case (the agreed statement of facts).

276. Accordingly, I am satisfied beyond reasonable doubt that the accused engaged in the following conduct which constitutes the physical elements of each offence:

    (i) Intentionally touched the complainant on her buttock and that act was indecent and without her consent on 10 April 2022 (CC2023/4086);

    (ii) Intentionally punched the complainant on the left temple with a closed fist which caused bruising that constituted actual bodily harm on 11 April 2022 (CC2022/4472);

    (iii) Intentionally contacted his mother on 1 August 2022 in breach of a family violence order which was in place, which had been served on him, and which he knew was in place (CC2022/7443);

    (iv) Intentionally contacted his mother on 16 October 2023 in breach of a family violence order which was in place, which had been served on him, and which he knew was in place (CAN SCCAN2023/11500);

    (v) Intentionally contacted ACT policing on 16 October 2023 by telephone (carriage service) and expressed views and ideas which were menacing and offensive (CC2022/11501).

(vi) Intentionally lit a fire in his cell on 29 October 2023 by setting toilet paper alight. The fire caused damage to a cell which was part of a building, and the accused intended this result when he lit the fire.

(vii) The accused deliberately lit a fire in his cell on 21 August 2024 by inserting two metal prongs into a general power outlet located closest to the far wall of the cell and lighting toilet paper. The fire caused damage to a cell which was part of a building and the accused intended this result when he lit the fire.

Findings on mental impairment

277. I am satisfied that at the time the accused engaged in the physical elements of each offence he was suffering from a mental impairment as defined.

278. The evidence of Dr Furst was largely unchallenged. Certainly, the diagnosis he made of schizophrenia was not challenged. At times Dr Furst did appear dismissive and impatient with inquiries made of him in cross examination. That appearance seemed to me consistent with a professional witness with limited time and a reflection of the certainty he expressed with respect to his diagnosis. He was not provided with the entirety of the available clinical records in relation to the accused when he prepared his report. His evidence for the most part was more substantively directed toward the conduct which made up the allegations from April 2022.

279. The prosecution submitted that the opinion Dr Furst expressed about the accused's feelings toward his mother being part of an underlying delusion which is part of his illness, should be considered carefully. The evidence I was taken to from *Yeaman,* as well as the evidence from Dr Nielssen and Dr Fox, proceeded on the basis that some of the thought processes the accused engages in with respect to his mother is because of an underlying delusion he has about her and her role in his life, because of his mental impairment.

280. There was no challenge to the evidence Dr Furst gave about the accused 'gender ideas' being better explained as a delusion which arises from his schizophrenia. Dr Neilssen did not give evidence inconsistent with that view and Dr Fox, whilst preferring a diagnosis of severe borderline personality disorder did not offer a view about the source or basis of the accused's beliefs about his gender.

281. The challenge to Dr Furst's evidence in the end was to his opinion that the accused could not control his conduct with respect to the offending against his mother.

282. The prosecution accepted, appropriately so in my view, that the specific diagnosis for the accused may be the subject of reasonable disagreement on the evidence but submitted overall that the evidence did establish that the accused was suffering from a mental impairment as defined at the time he engaged in the conduct for both series of offences.

283. Dr Nielssen accepted that the accused's treating psychiatrist would likely be well placed to consider the appropriate diagnosis for the accused. Dr Fox highlighted that unlike Dr Nielssen she had access to voluminous medical records created because of the many years of treatment of the accused by Canberra Health Services. Dr Furst acknowledged some of the challenges in diagnosis and the interplay between schizophrenia and borderline personality disorder. Dr Furst acknowledged that he could not challenge a diagnosis of borderline personality disorder particularly due to the condition being "more of a longitudinal interpersonal pattern".

284. Dr Fox concluded that the borderline personality disorder she considered the accused was more appropriately diagnosed with, 'severe'. This conclusion would see it fall into the definition of mental impairment.

285. I am satisfied that at the time the accused engaged in the conduct which constituted the offences he was suffering from a mental impairment. He was suffering from the combined effect of mental illness, namely schizophrenia and/or a severe personality disorder, likely borderline personality disorder (potentially with co-morbid schizophrenia). The accused, as a result, would have gross overreactions, have impaired reasoning, experience delusional thought processes and an impaired ability to regulate his emotions and behavioural impulses.

286. Like Murrell CJ in *Yeaman*, I am satisfied that the accused does suffer with an underlying delusion about the role his mother plays in his life and the extent to which she is responsible or 'in control' of him. I am also satisfied that the accused's ideas about his gender identity arise from an underlying delusion.

287. I now turn to the 'effect' of the mental impairment at the time of the alleged offending with respect to each count.

The first series

Count 1, CC2023/4086 act of indecency without consent

288. I am also satisfied that because of the mental impairment the accused was unable to control the conduct which constituted this offence, and he did not appreciate that the conduct was wrong. The accused having entered a plea of not guilty because of mental

impairment, the prosecution agreeing to the entry of a special verdict, I am satisfied that the entry of a special verdict of not guilty because of mental impairment is appropriate for this count.

Count 1, CC2022/4472 assault occasioning actual bodily harm

289. The prosecution accepted that the Court would be satisfied that the accused had discharged his burden in relation to the second and third limbs of the mental impairment defence, being that he did not know that his conduct was wrong and that he could not control his conduct for this offence.

290. The prosecution highlighted the following uncontested facts as relevant to the finding with respect to this count:

(a) In April 2022, the accused was involuntary detained at Dhulwa;

(b) On 8 April 2022, the accused, his mother and his brother met with the accused's treating doctors. The accused expressed that he wanted to leave Dhulwa, an opinion his family disagreed with. The accused left this meeting unhappy;

(c) Later that same day, the accused absconded while he was on permitted leave at university, during which time he consumed methylamphetamine;

(d) That night, the accused was taken to the Canberra Hospital by police, before being returned to Dhulwa;

(e) The accused's behaviour was unsettled over the next few days; and

(f) At around 4:50pm on 11 April 2024, Dr Sharma informed the accused that various privileges were being revoked. It was at this point that the accused then assaulted Dr Sharma.

(g) There was no contrary expert evidence about the nature of the accused's mental impairment at the time he engaged in the conduct which constituted the offence.

291. The prosecution accepted, consistent with the evidence of Dr Furst, that the consumption of methylamphetamine by the accused on 8 April 2022 had a destabilising effect on his schizophrenia which consequently exacerbated his symptoms of schizophrenia. As a result, the accused's anger and agitation increased as part of an acute mood elevation, most likely a result of mania.

292. Clinical notes recorded that the accused's acute mood elevation persisted until at least 12 April 2022 with the accused observed to talking to himself, being excessively loud, and laughing with incongruent effect. The prosecution conceded that whilst experiencing

this acute mood elevation, the accused would not have been capable of reasoning about the wrongfulness of his conduct as viewed by another person, and further that the accused was "out of control" and thus not able to control of his conduct during this period in the way s 28 of *the Criminal Code* contemplates. That concession, based on the evidence, in my view was properly made.

293. I am satisfied, on the balance of probabilities, that the defence of mental impairment has been established with respect to the conduct which constitutes this count.

Count 2, CC2022/7443 contravene family violence order

294. The prosecution accurately asserted that their acceptance that the evidence had displaced the presumption with respect to Count 1 (CC2022/4472) does not result in an automatically conclusion that it has been similarly displaced for the remaining counts with occurred months later.

295. Dr Furst acknowledged "the fluctuating nature of the accused's schizophrenia" and accepted that "each 'situation' needs to be looked at separately".

296. Dr Furst was of the opinion that the accused possessed an irrational hatred towards his mother that could be considered part of his mental illness because it was "part of his delusional construct of the world" and "he sees his mother as a major impediment to his happiness of becoming a woman and having a happy life and that's delusional. It's irrational." Dr Furst explained the accused is "convinced" his mother is a barrier to his having a "happy life". Dr Furst recorded his view that this was irrational because it was based on "underlying delusional ideas which includes some gender ideas. There's also triad ideas. It's not just gender. It's things about electrons and patrons and colour."

297. There can be no doubt that the accused harbours anger toward his mother and this was plainly the case on 1 August 2022. The prosecution submitted that the accused's anger towards his mother was not on its face, irrational. So much may be accepted.

298. I have accepted Dr Furst's evidence that the accused's "ideas" about his gender are the product of an underlying delusion suffered because of mental impairment (and not a manifestation of genuine gender dysmorphia). The accused's view that his mother is a barrier to his capacity to live an authentic life may be entirely rational even though his views about his authentic self are the product of an underlying delusion.

299. In his interview many weeks after the 1 August 2022 event the accused explained his anger toward family members unsupportive of his gender transition and acknowledged his engagement with his mother was a reflection on his frustration in the face of her lack

of support. The accused acknowledged to a degree the wrongfulness of his engagement with his mother.

300. Whilst Dr Furst's evidence about an apology, which I accept, undermined the significance of remorse in determining the extent to which a person is mentally impaired when they engage in conduct, there was nothing about the accused's explanation about his anger which was irrational, bizarre or indicative of it being otherwise anchored in delusional thinking about his mother or family members. I am mindful of the direction pursuant to s 165. Notwithstanding that direction, I have determined that the accused's capacity to explain his conduct on this occasion was not just a retrospective analysis but did demonstrate to some extent his state of mind at the time he engaged in the conduct.

301. An assessment of his mental state made on 4 July 2022 recorded that on 14 June 2022 he was discharged after a long admission to the Dhulwa Mental Health Unit and since an earlier assessment "there had been no evidence of psychotic symptoms and it [his mental impairment] appears to be well controlled with current treatment regime". The record noted that he continued to experience vulnerability around "ongoing emotional dysregulation" and "periods of self-harm and anger". The accused appeared to be "logical and rational", was not "responding to internal stimuli" and no psychotic symptoms were noted during the 4 July 2022 assessment. The accused was considered to have "reasonable insight" but it was noted that his "capacity tend [sic] to fluctuate due to emotional dysregulation and when facing any exposure to stresses". A psychiatric treatment order (PTO) was made on 7 July 2022 with effect for 6 months from that date.

302. There is no evidence that the accused was suffering from an acute mood elevation, had consumed illicit substances (triggering an exacerbation of symptoms such as occurred in April 2022) or was non-compliant with his medication at the time he engaged in the conduct which constituted this offence on 1 August 2022. Dr Furst's evidence, in relation to this offence, was more general in nature. This is not a criticism of Dr Furst but rather a reflection of the material he had access to when asked to consider this incident.

303. It is significant in my view that there was nothing inherently deluded or bizarre in the nature of the conduct the accused engaged in *and* it was conduct which occurred in response to conduct his brother engaged in. The conduct described in the agreed statement of facts was typical of statements made at a time of anger or emotional upset in response to an event or conduct. The conduct was responsive to matters raised by the accused's brother and believing his mother responsible for drawing his brother's attention to his 'gender ideas', the accused sought to angrily remonstrate with her. This provides rational explanation for the accused's emotional reaction to his brother's

approach to him. The repeated nature of the sentiments expressed is not necessarily indicative of being a product of a deluded or psychotic state.

304. I am satisfied beyond reasonable doubt that the accused engaged in the conduct which constituted the offence. The onus is on the accused to displace the presumption with respect to mental impairment. I am not satisfied on the balance of probabilities that the presumption has been displaced. That is, I am not satisfied that his mental impairment had the effect that he could not control the conduct.

Count 3, SCCAN2023/11500 and Count 4, CC2022/11501

305. Whilst the prosecution did not accept that the defence of mental impairment had been established with respect to the conduct which constituted these offences, it did concede that there was a "more compelling argument" that the presumption had been displaced for these offences, acknowledging the following factors:

    (a) the conduct was particularly bizarre;

    (b) there is no reasonable alternative explanation, such as emotional dysregulation as a response to interpersonal conflict; and

    (c) there is no evidence that the accused later apologised for his conduct or otherwise had accepted or acknowledged that his conduct was wrong.

306. Unlike CC2022/7443, the conduct engaged in by the accused for these counts was not responsive to any specific event or the conduct of another. As the prosecution accepted, the conduct engaged in by the accused was 'particularly bizarre'. The accused, after engaging in the conduct toward his mother in breach of the family violence order, then specifically drew that conduct to the attention of police. The conduct was plainly against his own interest and demonstrative of the overall peculiar nature of the conduct. The report to police was unaccompanied by any acknowledgement of wrongdoing or any sense of circumspection. The conduct, both in terms of its scope and sentiment, was inherently and overtly irrational. The accused directly referenced his desire to be a woman (which I am satisfied is as a result of an underlying delusion) and his mother telling him that "he can't be a woman".

307. Taking into account the nature of the conduct engaged in and the circumstances in which it occurred, together with the unchallenged aspects of the expert evidence about the nature, scope and symptomology of the accused's ongoing serious mental impairment (which includes an underlying delusion about his gender), I am satisfied on the balance of probabilities that when the accused engaged in the conduct, his mental impairment had the effect that he could not control it and/or he could not reason with a moderate

degree of sense and composure about whether the conduct, as seen by a reasonable person, was wrong.

The second series

Arson(s), CC2024/1327 and CC2025/424

308. The post offence rationalisation or explanation offered by the accused with respect to each act of arson was indicative of a thought process which saw the accused contemplate the conduct and engage in it for a specific purpose. Whilst the conduct was self-defeating in the sense that it did not deliver to the accused a rational outcome, his explanation for it as a 'protest' necessarily infers that attention to his cause or plight was a dominant or sole purpose. There were no observations made of the accused or conduct engaged in by him simultaneous to lighting the fires, which suggested that he was operating under a delusion or in an acutely psychotic state.

309. The physical acts he engaged in were deliberate and considered. That is, he determined to light a fire, his conduct was directed to that task and was ultimately, successful. The accused was not observed to be expressing delusional beliefs, psychotic thoughts or disorganised thoughts at the time he engaged in the conduct. He appeared oriented to place and time. The accused's own explanation for his conduct was 'reality based'.

310. There was no evidence that the thought process which underpinned his conduct in lighting the fires was as a result of an underlying delusion or psychotic episode or state. The accused's explanation that he had "no choice" but to engage in the conduct was consistent with his view that his case was "hopeless" and not necessarily indicative of a delusion or psychotic thought process compelling him to engage in the conduct such that he was unable to resist the urge to do so or depriving him entirely of the capacity to control it. The accused view of his circumstances as 'hopeless' was not inconsistent with the period he had by then spent in custody and the complexity of the relationships he had with close family members. In this way, his views were reality based. Whilst a decision to light the fires was objectively unlikely to improve his circumstances, it was conduct likely to and successful in, drawing attention. The self-defeating nature of the conduct, whilst perhaps reflective of the impairment the accused experiences in thinking through the consequences of conduct he engages in impulsively, is not necessarily an indication that the conduct in lighting the fires can not be controlled or that the accused did not know it was wrong (in the sense required).

311. The conduct with respect to the first in time arson arose from the accused being dissatisfied with the response provided to him about his desire to obtain a wig. The accused engaged angrily with a Corrections officer about that response. The conduct of

lighting the fire occurred after this exchange. The accused later explained that he lit the fire to create trouble because he was feeling angry.

312. The conduct with respect to the second in time arson was consistent with the accused knowing the conduct was wrong at the time he engaged in it. Namely his conduct in covering the smoke detectors so that they would not be activated which reduced the likelihood that he would be caught in the act and increase the prospect of the fire being able to take hold and burn. The conduct of the accused in advising staff that they "might want to put the fire out" is similarly reflective of his desire to draw attention to himself and his 'protest' activity, as well as the potential for the fire to become uncontrollable and go beyond the intended 'protest' if intervention did not occur. This was also consistent with the effort the accused went to in order to have the fire take hold and spread in his cell.

313. Whilst I accept that planning and execution are not necessary inconsistent with a deluded or psychotic thought process, in this instance, there is no evidence before me that the accused engaged in the conduct because of a delusion which was driving or compelling him to engage in the conduct (an uncontrollable impulse) or as a result of a psychotic state or episode which meant he was unable to control the conduct or could not reason that the conduct was wrong.

314. Whilst I accept Dr Nielssen's evidence (and indeed the bulk of the expert evidence) that the accused was (and remains) significantly impaired because of mental impairment in a range of functional areas and experiences real difficulty regulating his emotional responses to stresses, I am not satisfied on the balance of probabilities that at the time he engaged in the arson conduct the mental impairment had one of the effects required in s 28 or s 7.3.

Verdicts

315. For those reasons, on 9 July 2026 I entered the following verdicts:

    (a) For the charge of act of indecency without consent (CC2023/4086), a special verdict of not guilty because of mental impairment.

    (b) For the charge of assault occasioning actual bodily harm (CC2022/4472), a special verdict of not guilty because of mental impairment.

    (c) For the charge of contravention of family violence order (CC2022/7443), guilty.

    (d) For the charge of contravention of family violence order (SCCAN2023/11500), a special verdict of not guilty because of mental impairment.

(e) For the charge of use carriage service to menace, harass or cause offence (CC2022/11501) a special verdict of not guilty because of mental impairment.

(f) For the charge of arson (CC2024/1327), guilty.

(g) For the charge of arson (CC2025/424), guilty.

I certify that the preceding three hundred and fifteen [315] numbered paragraphs are a true copy of the Reasons for Judgment of her Honour Justice Taylor

Associate: O Williams

Date: 10 August 2026