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ARTICLES

Issues for the defence in trials with pre-recording of the evidence of vulnerable
witnesses – Scott Corish

Pre-recording of vulnerable witnesses is common in all Australian jurisdictions except
NSW, which is currently considering the use of intermediaries and pre-recording. This
article examines practical issues and challenges for defence lawyers appearing for
accused in pre-recordings. ......................................................................................... 187

Prosecutors' perceptions of the utility of video-evidence for adult complainants
of sexual assault – Nina J Westera and Martine B Powell

Playing an adult sexual complainant’s video-recorded police interview as the basis for his
or her evidence-in-chief is a reform Australia could adopt to help improve criminal justice
responses to these cases. This article presents a qualitative evaluation of prosecutor’s
support for this reform and their views about what conditions would determine its utility.
Focus groups were held with 13 prosecutors from across New Zealand (which already has
this reform) and Australia. Collectively, prosecutors supported the availability of
video-evidence for adult complainants. They perceived the utility of this reform depends
on the following conditions: (1) the quality of the police interview; (2) how credibly the
complainant presents on video; (3) contextual factors that influence the complainant’s
ability to give live evidence; and (4) the degree of stakeholder support. These findings
suggest that Australia should extend video-evidence to adult complainants of sexual
assault guided by careful planning around these four areas. ................................. 198

The limited impact of Facebook and the displacement effect on the admissibility of
identification evidence – Paul McGorrery

Eyewitness identification evidence is perhaps the most common and most crucial evidence
in successfully prosecuting many alleged offenders. It is also a type of evidence that is
highly susceptible to fallibility. One cause of this fallibility is the displacement effect, a
psychological phenomenon in which the memory of a person’s appearance can be
unconsciously, and falsely, displaced with a subsequent conception of what that person
might have looked like. With the advent of Facebook and other social networking sites,
there is now a very real risk of witnesses searching Facebook and displacing their memory
of an actual offender with an image of someone else. There are two issues arising from
this. First, the Facebook identification itself can tend to occur in relatively suggestible
circumstances, which may render it unreliable and therefore inadmissible. Second, any
subsequent identification procedure conducted by police may be tainted by the
displacement effect superimposing the unreliable Facebook identification onto their
memory of the crime. The years 2013 and 2014 saw five cases across Australian
jurisdictions consider how Facebook has exacerbated the potential unreliability of
identification evidence, in particular due to the displacement effect. ...................... 208
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