

CRIMINAL LAW JOURNAL

Volume 39, Number 4

August 2015

EDITORIAL

Uniform evidence law and the judiciary	183
-----------------------------------------------------	-----

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
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----

PHILLIPS' BRIEF	
The special jury in Australia – <i>Alana Piper</i>	218
BOOK REVIEW	
Power of Persuasion: Essays by a Very Public Lawyer by Sir Louis Blom-Cooper QC – <i>Gilles Renaud</i>	218
DIGEST OF RECENT CRIMINAL CASES	224