

SUPREME COURT OF QUEENSLAND

CITATION: *R v Sutton* [2015] QSC 110

PARTIES: **R**
v
SUTTON, Paul Bruce
(respondent)

FILE NO/S: SC No 678 of 2014

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 4 May 2015

DELIVERED AT: Brisbane

HEARING DATE: 15, 23 April 2015

JUDGE: Burns J

ORDER: **Directions made on 23 April 2015 that:**

- 1. pursuant to s 39PB of the *Evidence Act 1977*, Alex Olumbe, Diane Howard, Brendan Young and Brett Schnitzerling give their evidence in person at the trial;**
- 2. pursuant to s 39R of the *Evidence Act 1977*, the evidence of Melissa Brose, Candace Harper, Lisa Presnell, Paul Presnell, Rickey Hazard, Wayne Bushnell, Jason English, Jake Bayliss, Waverley Wilton, Greer Wade, Hayley Borg, Toni Phillips-Petersen, Chantelle Richardson, Robert Howard, Bryce Jensen, Graeme Howell, Kerry Johnson and Duane Frank be received at the trial by audio visual link;**
- 3. pursuant to s 39R of the *Evidence Act 1977*, the evidence of Alexander Campbell be received at the trial by audio link.**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – WITNESSES – POWERS OF JUDGE – OTHER MATTERS – where the accused has been charged with manslaughter under ss 300, 303 and 310 of the *Criminal Code (Qld)* – where the Crown makes application pursuant to s 39PB of the *Evidence Act 1977* for expert witnesses to give evidence in person at the trial – where the application is unopposed – where the expert witnesses will need to refer to photographic and other exhibits – where some

of the evidence of the expert witnesses may be controversial – whether it is in the interests of justice for witnesses to give evidence in person

CRIMINAL LAW – PROCEDURE – WITNESSES – POWERS OF JUDGE – OTHER MATTERS – where the accused has been charged with manslaughter under ss 300, 303 and 310 of the *Criminal Code (Qld)* – where Crown makes application pursuant to s 39R of the *Evidence Act 1977* and r 53 of the *Criminal Practice Rules 1999* for witnesses to give evidence at the trial by audio visual link and audio link – where the application is unopposed – where the evidence of the witnesses is uncontroversial – whether Crown required to make out case for use of audio visual link and audio link – whether it is in the interests of justice for witnesses to give evidence via audio visual link and audio link

Criminal Practice Rules 1999 (Qld), r 53
Evidence Act 1977 (Qld), s 39PB, s 39R

Australian Competition and Consumer Commission v World Netsafe Pty Ltd (2002) 119 FCR 303
Australian Medical Imaging Pty Ltd v Marconi Medical Systems Australia Pty Ltd (2001) 53 NSWLR 1
Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3) (2009) 181 FCR 152
Dorajay Pty Ltd v Aristocrat Leisure Ltd [2007] FCA 1502
R v O’Neill [2009] QCA 210
Sunstate Airlines (Qld) Pty Ltd v First Chicago Australia Securities Ltd, unreported, Giles CJ, NSWSC, 11 March 1997
Tetra Pak Marketing Pty Ltd v Musashi Pty Ltd [2001] FCA 1269

COUNSEL: B J Merrin for the applicant
A J Bellanto QC for the respondent

SOLICITORS: Director of Public Prosecutions (Queensland) for the applicant
McGirr Lawyers for the respondent

- [1] Paul Bruce Sutton was charged on indictment with manslaughter, which offence was alleged to have been committed on or about 23 May 2013 at Kingaroy. Mr Sutton’s trial commenced before me on 29 April 2015 but, on the third day, the Crown entered a *nolle prosequi* and Mr Sutton was discharged.
- [2] Prior to the commencement of the trial, the Crown applied for directions to permit the calling of evidence at the trial from a number of expert witnesses in person, from several other witnesses by audio visual link and from one witness by audio link. In none of these respects was the Crown’s application opposed by the defence.

- [3] After hearing the application on 23 April 2015, I gave each of the directions sought by the Crown. These are my reasons for doing so.

The Crown case

- [4] The deceased, Shaun Miles, was a Kingaroy local and unknown to Mr Sutton who was from out of town. Mr Sutton arrived in Kingaroy on the morning of 23 May 2013 for the purpose of attending a rugby league carnival in his capacity as an NRL player agent. By early evening, the deceased and Mr Sutton were both in attendance at the public bar of the Club Hotel in Kingaroy and came into contact after the deceased overheard part of a conversation in which Mr Sutton was engaged. Angered by a derogatory remark that he appears to have attributed to Mr Sutton, the deceased shouted at him. According to the Crown outline, Mr Sutton attempted an explanation but the deceased remained angry.¹ The Hotel manager then intervened – warning the deceased to “calm down” – and, with that, this brief exchange “ended without incident”.²
- [5] Mr Sutton and his companions later left the Hotel to attend dinner at another location. They returned one or two hours later and, by approximately 9:30 pm, were gathered in the beer garden of the Hotel. The deceased was also present in the same area. At some point, the deceased suddenly “burred up” towards Mr Sutton. A physical altercation ensued, and this was captured to some degree on CCTV footage. On the case outlined by the Crown for the purposes of this application, the deceased ended up on the concrete floor with witnesses hearing a “thud” when the back of his head made contact.
- [6] According to the Crown, the deceased lost consciousness for approximately one minute, but he was assisted onto a chair and given a glass of water. He then walked back into the bar area of the Hotel where he told a number of people that he was “okay”. A number of witnesses also reported that the deceased did not appear to be injured. Shortly thereafter, the deceased told the Hotel manager that he was going home. He then left the premises and was last seen by himself walking away down the street.
- [7] At approximately 7:00 am the next day, the deceased’s body was found in a supine position on the front lawn of a residential property situated approximately 850 metres from the Hotel and only some 210 metres from the deceased’s home. The deceased’s left cheek was resting against a water meter and his face was bloodied “from his nose to his neck”. During the ensuing police investigation, a number of witnesses were identified who had seen or heard things in the vicinity of the location where the deceased’s body was found after the time when the deceased left the Hotel. One witness saw a man standing near that location,³ another saw a man coming from the direction of that area,⁴ another saw a man running away⁵ and another heard the “slamming” of car doors.⁶

¹ See Outline of Submissions (Crown); paragraph 7.

² Ibid, paragraph 8.

³ Borg.

⁴ Howell.

⁵ Jensen.

⁶ Johnson.

- [8] According to the post-mortem examination of his remains, the deceased sustained injuries to his skull and brain as well as bruising to his torso and arm. The pathologist, Dr Olumbe, has expressed the opinion that death was caused by an impact to the back of the right hand side of the deceased's head, resulting in a severe contrecoup injury.
- [9] When the application was argued, it was obvious that the nature of the altercation between Mr Sutton and the deceased in the beer garden of the Hotel would be the principal focus of attention at the trial. In this respect, the Crown submitted that defences under ss 23(1)(b) and 271 of the *Criminal Code (Qld)* would likely be raised on the facts. It was also apparent at that time that the jury would also be asked to consider the content of the verbal exchange between Mr Sutton and the deceased earlier in the evening, the observations made by various witnesses of the deceased subsequent to the altercation in the beer garden and the evidence raising the possibility of some intervening event having occurred between the time when the deceased left the Hotel and the time when his body was found the next morning.

The statutory powers

- [10] To the extent that the application sought a direction permitting the expert witnesses to give evidence in person, it was brought pursuant to s 39PB of the *Evidence Act 1977*. The balance of the application was brought pursuant to s 39R of the *Evidence Act 1977* and r 53 of the *Criminal Practice Rules 1999*, each of which empower the court to direct that evidence be received by, *inter alia*, video link and audio or telephone link.
- [11] Section 39PB of the *Evidence Act 1977* is in these terms:

“Expert witnesses to give evidence by audio visual link or audio link

- (1) This section applies if a person is called to give evidence as an expert witness in the proceeding.
- (2) Subject to subsection (3) and any rules of the court, the person is to give the evidence to the court by audio visual link or audio link.
- (3) The court may, on its own initiative or on the application of a party to the proceeding, direct that the person is to give oral evidence to the court other than by audio visual link or audio link if the court is satisfied it is in the interests of justice to give the direction.
- (4) In deciding whether it is in the interests of justice to give a direction under subsection (3), the court may have regard to the following matters—
 - (a) the nature and scope of the evidence the person is to give in the proceedings;
 - (b) whether the use of audio link or audio visual link is likely to affect the court's or a jury's ability to assess the credibility or reliability of the person or the person's evidence;
 - (c) the availability of appropriate audio or audio visual facilities in the court to which the person is to give evidence;

- (d) any submission made to the court by the person or any party to the proceedings about the way in which the person should give evidence.
- (5) Subsection (4) does not limit the matters the court may have regard to in deciding whether it is in the interests of justice to make a direction under subsection (3).
- (6) The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.
- (7) The court must not give the person's evidence any more or less weight, or draw any adverse inferences against a party to the proceeding, only because the person gave the evidence by audio visual link or audio link."

[12] Section 39R of the *Evidence Act 1977* provides:

“Queensland courts may take evidence and submissions from external location

- (1) Subject to any rules of the court, the court may, on the application of a party to the proceeding before the court, direct that a person appear before, or give evidence or make a submission to, the court by audio visual link or audio link from a location inside or outside Queensland, including a location outside Australia.
- (2) The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.”

[13] Rule 53 of the *Criminal Practice Rules 1999* is similar in effect to s 39R. The rule provides:

“The court may decide to receive evidence or submissions by telephone, video link or another form of communication in a proceeding.”

[14] Section 39PB was inserted in the *Evidence Act 1977* on 15 August 2014,⁷ and sets the default position for the reception of evidence from expert witnesses – that is, subject to any rules of court, such evidence is to be given by audio visual link or audio link unless the court is satisfied in the interests of justice that the expert should give oral evidence. The provision applies to any proceeding before a Queensland court.⁸ In deciding whether it is in the interests of justice that oral evidence be given, s 39PB(4) supplies an inclusive list of considerations to which the court may have regard.⁹

⁷ See *Criminal Law Amendment Act 2014*, s 50.

⁸ Section 39PA.

⁹ See s 39PB(5) which makes it clear that the court is not limited to a consideration of those matters when deciding whether it is in the interests of justice to make a direction under subsection (3).

- [15] Section 39R is an older provision. It was introduced along with other provisions of Part 3A of the *Evidence Act 1977* by the *Audio Visual and Audio Links Amendment Act 1999*. By and large, Part 3A implements an agreement reached by the Standing Committee of Attorneys-General to enact provisions enabling the taking or receiving of evidence and the making or receiving of submissions by audio visual link or audio link within Australia.¹⁰ Unlike s 39PB, s 39R is expressed as a general discretionary power without any prescription of the test to be applied by the court in the exercise of that discretion. In this, its free expression is akin to r 53 of the *Criminal Practice Rules 1999*.
- [16] It might be thought curious that the Legislature incorporated a statutory test in the 2014 provision¹¹ in circumstances where such an approach had not been taken with respect to either of the 1999 provisions.¹² However, as appears from the second reading speech for the relevant Bill,¹³ the inclusion of “an express statement that the use of audio visual and audio links in a proceeding (should) only occur where it was in the interests of justice” was considered, but then rejected because it was thought “inconceivable that the courts would not consider the interests of justice when deciding whether or not to allow the use of audio visual and audio links”.¹⁴
- [17] There was thus an expectation on the part of the lawmakers at least that a court considering the exercise of the discretion conferred by s 39R would have regard to the “interests of justice”, and so much so that the inclusion of such a test was thought to be quite unnecessary. Be that as it may, I have little doubt in any event that the discretion falls to be exercised by reference to the interests of justice.
- [18] Such a conclusion is consistent with the reasoning in *R v O’Neill*.¹⁵ There, Applegarth J (with whom Holmes JA and McMurdo J agreed on this point) held that, on an application pursuant to r 53 of the *Criminal Practice Rules 1999* to give evidence by telephone, the trial judge had to consider “whether it was in the interests of justice” to permit that course.¹⁶ It is also a conclusion that is generally in line with the approach taken by courts in other jurisdictions to the interpretation of analogous legislation.¹⁷
- [19] It follows that, when considering whether in the exercise of the discretion under s 39R it is in the interests of justice for a witness to give his or her evidence by audio visual or audio link, the court should have regard to similar considerations to those specified in s 39PB, that is: the nature and scope of the evidence the witness is to give, including whether that evidence is likely to be in contest; whether the credit or reliability of the witness will be in issue and, if so, whether the use of an audio visual link will be likely to affect the jury’s ability to assess those matters; the availability of appropriate facilities to ensure that the evidence that is proposed to be received by audio visual link or audio link

¹⁰ See Explanatory Notes to the *Audio Visual and Audio Links Amendment Bill 1999*.

¹¹ Section 39PB.

¹² Section 39R of the *Evidence Act 1977* and r 53 of the *Criminal Practice Rules 1999*.

¹³ *Audio Visual and Audio Links Amendment Bill 1999*.

¹⁴ Queensland, *Parliamentary Debates* (13 April 1999), p 960.

¹⁵ [2009] QCA 210.

¹⁶ At [20].

¹⁷ See, for example, *R v Kim* (1998) 104 A Crim R 233, 235-237 per Coldrey J; *DPP v Weiss* [2002] VSC 15, [5] per Cummins J; *R v Goldman* (2004) 148 A Crim R 40, [35] per Redlich J; *R v Wilkie* (2005) 64 NSWLR 125, [25] per Spigelman CJ; *R v Lodhi* (2006) 163 A Crim R 508, [53]-[55] per Whealy J.

is of an acceptable visual and/or audio quality; and any submission made to the court about the way in which the person should give evidence.

- [20] In addition to those matters, it seems to me that it will also be necessary for the court to consider whether receiving evidence by audio visual or audio link is practical. That will not always be so where, for example, the witness is likely to be referred to documentary or other exhibits, and especially not if it is a prospect that the witness will be asked to mark or annotate an exhibit. Although the current technology allows for a document to be placed on the visualiser in court and seen by the witness in a remote location, there is no facility for such a witness to place an enduring mark or annotation on the image he or she is viewing.
- [21] On the other hand, there may be reasons personal to the witness preventing him or her from attending court, such as an incapacity or illness. In addition, travel and accommodation expenses associated with bringing the witness to court to give evidence in person may also need to be weighed in the exercise of the discretion, although it is unlikely that this factor will alone be enough to justify the conclusion that the evidence of the witness should be taken remotely.
- [22] Of course, it should not be overlooked that the technology and facilities now available in the courts for the reception of evidence by audio visual or audio link are of a high quality. The sound heard and vision seen by the jury when evidence is received in this way is now, more than ever, an “instantaneous reflection of the physical image and of the words of the witness”.¹⁸ But, even so, it would be wrong to think that the discretion to be exercised under s 39R is simply there for the asking. So, too, would it be wrong in my opinion to regard evidence taken in this way to be a ready and unquestionable substitute for *viva voce* evidence.
- [23] Applications such as the one at hand should ordinarily be supported by evidence and the onus will be on the applicant to persuade the court that the making of a direction sought is in the interests of justice. Further, although what remains of the common law right of an accused to be confronted in person by his or her accusers is open to debate,¹⁹ it has nonetheless been the usual practice in Queensland for witnesses to attend court to give their evidence to the jury in person.²⁰ Although that practice has given ground over time to a number of statutory exceptions,²¹ there are good reasons for upholding it.
- [24] In a civil case, *Campaign Master (UK) Ltd v Forty Two International Pty Ltd (No 3)*,²² Buchanan J had cause to consider an application to cross-examine two witnesses by audio visual link from London. After noting the acceptance by the parties of the proposition that, “generally, oral evidence should be given directly to, and in the presence of, the Court”, his Honour said:

¹⁸ Per Spigelman CJ said in *R v Wilkie* (Supra), [25].

¹⁹ As to which, see *R v Davis* [2008] 1 AC 1128, [5] per Lord Bingham; *BUSB v R* (2011) 80 NSWLR 170 at [33], [51], [52] per Spigelman CJ.

²⁰ In civil trials, subject to any direction of the court, evidence may only be given orally: r 390 of the *Uniform Civil Procedure Rules* 1999.

²¹ For example, ss 21A and 93A of the *Evidence Act*.

²² (2009) 181 FCR 152.

“Video link communications are, without doubt, a facility which may permit communication at greatly reduced cost and inconvenience. In the work of a court they are, in my view, certainly to be preferred to exchanges by telephone although, properly supervised, in some cases questions can be administered, and answers given, by audio-link alone. Although video link permits a visual frame of reference my own experience with it, despite all the technological advances, is that it has significant limitations. That is particularly so when cross-examination is required on matters where it may be important to form a view about the reliability of evidence and, perhaps, the credit or overall credibility of a witness.”²³

- [25] Buchanan J then turned to a consideration of authorities from the civil sphere and noted a division of judicial opinion. On the one hand, in cases such as *Tetra Pak Marketing Pty Ltd v Musashi Pty Ltd*,²⁴ the courts have expressed the view that the reception of evidence by audio visual link offers very little in the way of procedural disadvantage and should be employed (at least in the case of overseas witnesses) unless good reason is shown why that mode of taking evidence should not be used. On the other hand, in cases such as *Sunstate Airlines (Qld) Pty Ltd v First Chicago Australia Securities Ltd*²⁵ and *Australian Medical Imaging Pty Ltd v Marconi Medical Systems Australia Pty Ltd*,²⁶ a clear preference has been expressed for the taking of evidence in the traditional way given what were considered to be several limitations inherent in the reception of evidence by audio visual or audio link. In one such case, *Australian Competition and Consumer Commission v World Netsafe Pty Ltd*,²⁷ Spender J said:

“Notwithstanding observations in those cases that there is essentially no real difference between evidence by video-link and viva voce evidence, I disagree, and I think it right to recognise that there are deficiencies when evidence is taken by video-link when compared with evidence given viva voce.”²⁸

In another, *Dorajay Pty Ltd v Aristocrat Leisure Ltd*,²⁹ Stone J remarked on “the difficulties that attend the taking of evidence by video link and the cross-examination on that evidence”,³⁰ and then said:

“In my experience, however, those difficulties are considerable and markedly interfere with the giving of the evidence and, particularly, with cross-examination. They include technical problems such as difficulties with hearing, in presenting documents to the witness, in maintaining transmission over an extended period of time and those arising from time differences. More importantly, even if those difficulties can be overcome or minimised, there are the problems in maintaining a line of cross-examination

²³ At [63].

²⁴ [2001] FCA 1269. And see, *Versace v Monte* [2001] FCA 1454, at [16] per Tamberlin J; *Weststraint Resources Pty Ltd v BHP Iron Ore Pty Ltd (No 5)* [2010] WASC 62, at [13] per Le Miere J.

²⁵ Unreported, Giles CJ, NSWSC, 11 March 1997 (referred to by Buchanan J in *Campaign Master* at [69]).

²⁶ (2001) 53 NSWLR 1, at [26]-[29] per Palmer J.

²⁷ (2002) 119 FCR 303. And see, *Odhiambo v Minister for Immigration and Multicultural Affairs* (2002) 122 FCR 29 at [97]; *Moyette Pty Ltd v Foundation Healthcare Ltd* [2003] FCA 116 at [10] per Conti J.

²⁸ At [7].

²⁹ [2007] FCA 1502.

³⁰ At [6].

and the difficulty of assessing a witness where evidence is given by video link. As a matter of justice to both parties these problems are critical. It is perhaps more workable where one is dealing with an expert witness who is generally well-prepared, has written a detailed report and has an expertise and familiarity with the subject that may not be the case with a lay witness.”³¹

- [26] After reviewing these authorities, Buchanan J determined that the “trend of authority” was such as to require a “persuasive case to be made out to use a video link to take evidence, particularly to impose it on an unwilling cross-examining party”.³² His Honour then observed:

“I share the concerns expressed by Spender J in *World Netscape* and by Stone J in *Dorajay* about the limitation on the effectiveness of video link arrangements as a means of taking oral evidence. I am particularly troubled by the prospect (or possibility) that the cross-examination of an important witness might be rendered less effective by the limitations of video link technology or the absence of the witness from the courtroom. Although the days are gone when witnesses are expected to feel any sense of intimidation as an aid to telling the truth, there is no doubt in my mind that the requirement to give evidence on oath or affirmation in the (generally) solemn atmosphere of a courtroom in the presence of a judge, and to answer questions in cross-examination in the presence also of cross-examining counsel, has at least three potential benefits. It enhances the prospect that the witness will remain conscious of the nature and solemnity of the occasion and of his or her obligations. It affords the cross-examiner some reassurance that the gravity and immediacy of the moment, and of the supervising presence of the judge, are not lost on the witness and the cross-examination is not thereby rendered any less effective, to the possible prejudice of the cross-examining party. It provides the Court with a more satisfactory environment in which to assess the nature, quality and reliability of responses by a witness, both to questions and to the overall situation presented by the necessity to give evidence in court. To my mind there remains, even in the modern context, a certain ‘chemistry’ in oral interchanges in a courtroom, whether between a judge and counsel (or other representative) or between cross-examiner and witness. I would not wish too lightly to deprive a cross-examiner of that traditional forensic element in the exchange although, as the cases universally make clear, the Court must now, if asked to do so, balance the interests of a cross-examining party against claimed inconvenience both in individual cases and with respect to individual witnesses. Notwithstanding the increased availability and use of video link technology, in my view, a case must be made out for the use of video link evidence if it is opposed by an affected party. I do not share the view expressed by Katz J. My own view and, I think, the weight of authority, is to the contrary.”³³

- [27] I respectfully adopt His Honour’s observations. Indeed, I would only add that they apply with even greater force in the context of a criminal jury trial. The practice of requiring

³¹ At [7].

³² *Campaign Master*, at [77].

³³ *Ibid*, at [78].

witnesses to attend court in person ensures that they give their evidence in the midst of potent reminders as to the solemnity of the occasion. The casual air, which sometimes accompanies evidence received from outside the court environment, is avoided. The witness is fully engaged, and not just borrowed from afar, as part of the trial process. In the result, the jury's task of assessing the nature, quality and reliability of the evidence given by the witness is assisted.

- [28] It therefore should not be thought that a provision such as s 39R in some way permits the wholesale reception of evidence by audio visual link or audio link. Jury trials in particular are enhanced by the presentation of evidence by the witnesses in person. It is neither desirable nor permissible to approach the proof of one's case in other than that way unless it is persuasively demonstrated that it is in the interests of justice to receive the evidence remotely.

The application

Section 39PB

- [29] The Crown's application for a direction pursuant to s 39B concerns the evidence of the pathologist, Dr Olumbe, two scientific officers employed by the Queensland Police Service and a police photographer. As already noted, the Crown's application was not opposed.
- [30] Had the trial proceeded, the evidence of Dr Olumbe would have been critical. In the course of giving that evidence it would have been necessary to refer him to several exhibits and that would have much more readily been achieved if he were permitted to do so in person. Further, his evidence was likely to have been contentious in a number of respects. The police photographer and scientific officers would also have been required to give evidence with respect to a range of photographic and other exhibits. It was possible that a number of those exhibits would have been required to be marked or annotated by the witness. As such, their evidence would have been more efficiently given in person.
- [31] For these reasons, I was satisfied that it was in the interests of justice that these witnesses give their evidence in person.

Section 39R

- [32] So far as the Crown's application pursuant to s 39R is concerned, save for a police officer who was said to have been involved in "general investigations", each of the witnesses in question either observed the exchange between Mr Sutton and the deceased early in the evening of 23 May 2013, observed the deceased after his altercation with Mr Sutton or heard or saw things in the vicinity of the location where the deceased's body was found.
- [33] As such, none of the persons from whom evidence was proposed to be given by audio visual link or audio link witnessed the altercation between Mr Sutton and the deceased in the beer garden of the Hotel. Importantly, the Crown submitted (and the defence agreed) that none of the evidence to be led from these witnesses was controversial. Moreover, I

was assured that the credit of these witnesses would not be in issue, that “their evidence (was) in short compass”³⁴ and that, to the extent that it might be necessary to show those witnesses any exhibits, this could be satisfactorily accomplished through the use of the visualiser.

- [34] Further, each witness was resident outside of Brisbane and, in the main, from Kingaroy. There would have been a not insubstantial cost associated with bringing them to, and accommodating them in, Brisbane to give evidence in person about what were essentially peripheral matters. Arrangements had been made for each of the witnesses to give evidence from the courthouses at Kingaroy and Bundaberg under the supervision of a court bailiff, save for Mr Campbell, who would have given his evidence by audio link from a mine site in Western Australia.
- [35] In circumstances where the Crown’s application was not opposed, I determined in light of the above matters that it was in the interests of justice that each of these witnesses give their evidence by audio visual link or, in the case of Mr Campbell, by audio link. In particular, I determined in the exercise of my discretion that the good reasons which exist for requiring witnesses to attend court to give evidence in person were, in the case of these particular witnesses, outweighed by those matters.

Directions

- [36] For these reasons, on 23 April 2015 I directed that:
1. pursuant to s 39PB of the *Evidence Act 1977*, Alex Olumbe, Diane Howard, Brendan Young and Brett Schnitzerling give their evidence in person at the trial;
 2. pursuant to s 39R of the *Evidence Act 1977*, the evidence of Melissa Brose, Candace Harper, Lisa Presnell, Paul Presnell, Rickey Hazard, Wayne Bushnell, Jason English, Jake Bayliss, Waverley Wilton, Greer Wade, Hayley Borg, Toni Phillips-Petersen, Chantelle Richardson, Robert Howard, Bryce Jensen, Graeme Howell, Kerry Johnson and Duane Frank be received at the trial by audio visual link; and
 3. pursuant to s 39R of the *Evidence Act 1977*, the evidence of Alexander Campbell be received at the trial by audio link.

³⁴ Outline of Submissions (Crown); paragraph 15.