

Legislative Council—No 195

As received from the House of Assembly and read a first time, 15 October 2013

South Australia

**Evidence (Identification Evidence) Amendment
Bill 2013**

A BILL FOR

An Act to amend the *Evidence Act 1929*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Evidence Act 1929*

- 4 Insertion of section 34AB
34AB Identification evidence
 - 5 Substitution of Schedule 1
Schedule 1—Review of identity parade evidence
 - 1 Review and report on section 34AB
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Evidence (Identification Evidence) Amendment Act 2013*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Evidence Act 1929*

10 4—Insertion of section 34AB

After section 34A insert:

34AB—Identification evidence

- 15 (1) In a criminal trial, evidence of the identity of a person alleged to have committed an offence is not inadmissible, and is not to be excluded, merely because it was obtained other than by means of an identity parade involving a physical line-up of persons.
- (2) In a criminal trial, evidence of the identity of a person alleged to have committed an offence obtained by means of an identity parade is to be excluded unless—
 - 20 (a) an audio visual record of the identity parade is made and kept in accordance with the regulations; or

- (b) the judge is satisfied that the interests of justice require the admission of the evidence despite the failure to comply with paragraph (a).
- 5 (3) In a criminal trial where the identity of a person alleged to have committed an offence is in issue, the judge must, if evidence of the identity of the person is admitted, inform the jury—
- (a) of the need for caution before accepting identification evidence; and
- 10 (b) of the reasons for the need for caution, both generally and in the circumstances of the case.
- (4) In giving any such information, the judge is not required to use any particular form of words but may not suggest that identification evidence obtained from an identity parade by any means other than by a physical line-up of persons is inherently or intrinsically less reliable than evidence obtained from an identity parade by such means.
- 15 (5) To avoid doubt, this section does not—
- (a) make evidence admissible that would otherwise be inadmissible; or
- 20 (b) affect the court's discretion to exclude evidence.
- (6) In this section—
- identity parade* means a contemporaneous presentation (whether by a physical line-up or by means of images) of a number of persons to a witness for the purpose of identifying a person.

5—Substitution of Schedule 1

Schedule 1—delete the Schedule and substitute:

Schedule 1—Review of identity parade evidence

1—Review and report on section 34AB

- 30 (1) The Minister must, within 12 months after the commencement of this clause, cause a review to be carried out of any orders and directions issued by the Commissioner of Police to support the operation of section 34AB of this Act (as inserted by the *Evidence (Identification Evidence) Amendment Bill 2013*), including the extent to which any such orders and directions—
- 35 (a) reflect scientific best practice; and
- (b) make provision for the following:
- (i) persons with disability;
- (ii) cultural and linguistic diversity.
- 40 (2) A report on the review must be provided to the Minister within 3 months after the commencement of the review.

- (3) The Minister must, within 12 sitting days after receipt of the report under this clause, cause a copy of the report to be laid before each House of Parliament.