

## Same-Sex Marriage Bill 2013

---

### CONTENTS

---

#### **Part 1 — Preliminary**

1.	Short title	2
2.	Commencement	2
3.	Terms used	2

#### **Part 2 — Same-sex marriage**

##### **Division 1 — Same-sex marriage eligibility**

4.	Application of Division	4
5.	Eligibility to same-sex marry	4

##### **Division 2 — Void same-sex marriages**

6.	Grounds on which same-sex marriages are void	4
----	--	---

##### **Division 3 — Solemnisation of same-sex marriages in Western Australia**

7.	Application of Division	6
8.	Same-sex marriages to be solemnised by authorised celebrant	6
9.	Ministers of religion not bound to solemnise same-sex marriage etc.	7
10.	Notice to be given and declaration made	7
11.	Solemnisation of same-sex marriages	10
12.	When and where same-sex marriage may be solemnised	10
13.	Witnesses	11
14.	Form of ceremony	11
15.	Certain authorised celebrants to explain nature of same-sex marriage relationship	11
16.	Certain same-sex marriages not solemnised in accordance with this Division are invalid	12

Contents

---

17.	Authorised celebrant to retain notices and declarations	13
18.	Same-sex marriage certificates	13
	<b>Division 4 — Offences</b>	
19.	Bigamy	14
	<b>Division 5 — Second ceremonies</b>	
20.	Second same-sex marriage ceremonies	15
	<b>Part 3 — Authorised celebrants</b>	
	<b>Division 1 — Same-sex marriage celebrants</b>	
21.	Term used: marriage celebrant	18
22.	Registration of same-sex marriage celebrants	18
23.	Register of same-sex marriage celebrants	18
24.	Cancellation of registration	19
25.	Review of decisions	19
	<b>Division 2 — Public service officers</b>	
26.	Authorisation of public service officers	20
	<b>Part 4 — Miscellaneous</b>	
27.	False statements or documents	21
28.	Interpreters at same-sex marriage ceremonies	21
29.	Regulations	21
	<b>Part 5 — Births, Deaths and Marriages Registration Act 1998 amended</b>	
30.	Act amended	23
31.	Long title amended	23
32.	Section 3 amended	23
33.	Section 4 amended	23
34.	Section 6 amended	24
35.	Part 6A inserted	24
	<b>Part 6A — Registration of same-sex marriages</b>	
37A.	Same-sex marriages in the State to be registered	24
37B.	How to have same-sex marriage registered	24
37C.	Registration of same-sex marriage	24

**Part 6 — Family Court Act 1997  
amended**

36.	Act amended	25
37.	Section 5 amended	25
38.	Section 65B amended	25
39.	Section 65D amended	26
40.	Section 65F amended	26
41.	Section 65H amended	26
42.	Section 65I amended	26
43.	Section 65J amended	26
44.	Part 5B inserted	27
	<b>Part 5B — Same-sex marriages</b>	
	<b>Division 1 — Preliminary matters</b>	
206A.	Terms used	27
	<b>Division 2 — Proceedings for dissolution or annulment</b>	
206B.	Principles to be applied by court	27
206C.	Commencement of proceedings	28
206D.	Additional requirements for application for dissolution order	28
	<b>Division 3 — Dissolution and nullity of same-sex marriage</b>	
206E.	Dissolution of same-sex marriage	28
206F.	Meaning of separation	29
206G.	Effect of resumption of cohabitation	29
206H.	Declaration of nullity of same-sex marriage	30
206I.	Court not to make dissolution order where application for nullity declaration before it	30
206J.	When dissolution order takes effect	30
206K.	Certificate as to dissolution order taking effect	32
206L.	Rescission of dissolution order if parties reconciled	32
206M.	Rescission of dissolution order on ground of miscarriage of justice	33
206N.	Same-sex re-marriage	33
	<b>Division 4 — Application of Part 5A to same-sex marriage</b>	
206O.	Financial matters related to same-sex marriage	33
45.	Section 235A amended	34

<b>Part 7 — Interpretation Act 1984</b>		
<b>amended</b>		
46.	Act amended	35
47.	Section 5 amended	35
<b>Part 8 — Other Acts amended</b>		
<b>Division 1 — Duties Act 2008 amended</b>		
48.	Act amended	36
49.	Section 128 amended	36
50.	Section 130A inserted	36
	130A. Same-sex marriage instrument, defined	36
51.	Section 131 amended	37
52.	Section 133 amended	38
<b>Division 2 — Guardianship and Administration Act 1990 amended</b>		
53.	Act amended	38
54.	Section 45 amended	38
<b>Division 3 — Oaths, Affidavits and Statutory Declarations Act 2005 amended</b>		
55.	Act amended	39
56.	Schedule 2 amended	39
<b>Division 4 — Stamp Act 1921 amended</b>		
57.	Act amended	39
58.	Section 112UA amended	39
<b>Division 5 — State Administrative Tribunal Act 2004 amended</b>		
59.	Act amended	39
60.	Schedule 1 amended	40
<b>Division 6 — Wills Act 1970 amended</b>		
61.	Act amended	40
62.	Section 4 amended	40
63.	Section 14A amended	40
<b>Defined Terms</b>		

Western Australia

LEGISLATIVE COUNCIL

(Introduced by Hon. Lynn MacLaren, MLC)

## **Same-Sex Marriage Bill 2013**

### **A Bill for**

**An Act to provide for the following —**

- **same-sex marriages between adults;**
- **authorisation of celebrants to solemnise same-sex marriages;**
- **amendments to the *Births, Deaths and Marriages Registration Act 1998* to provide for the registration of same-sex marriages;**
- **amendments to the *Family Court Act 1997* to provide for the dissolution and annulment of same-sex marriages and for related financial matters;**
- **consequential amendments to other Acts;**
- **related purposes.**

The Parliament of Western Australia enacts as follows:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

## Part 1 — Preliminary

### 1. Short title

This is the *Same-Sex Marriage Act 2013*.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the 28<sup>th</sup> day after that day.

### 3. Terms used

In this Act —

***authorised celebrant*** means —

- (a) a same-sex marriage celebrant; or
- (b) a person authorised under Part 3 Division 2 to solemnise same-sex marriages;

***conjugal status declaration*** means the declaration required under section 10(1)(c);

***married under Commonwealth law*** includes being married under a law of another jurisdiction in a marriage that is recognised by the Commonwealth as a valid marriage;

***minister of religion*** means —

- (a) a person recognised by a religious body or a religious organisation as having authority to solemnise marriages in Australia in accordance with the rites or customs of the body or organisation; or
- (b) in relation to a religious body or a religious organisation in respect of which paragraph (a) is not applicable, a person nominated by —
  - (i) the head, or the governing authority, in a State or Territory, of that body or organisation; or

- 1 (ii) such other person or authority acting on behalf of  
2 that body or organisation as is prescribed,  
3 to be an authorised celebrant for the purposes of this  
4 Act;
- 5 ***notice of intention to same-sex marry*** means the notice  
6 required under section 10(1)(a);
- 7 ***ordinarily resident*** includes habitually resident;
- 8 ***prescribed*** means prescribed by regulation;
- 9 ***Registrar*** means the Registrar of Births, Deaths and Marriages  
10 referred to in the *Births, Deaths and Marriages Registration*  
11 *Act 1998* section 5;
- 12 ***same-sex marriage*** means the lawful union of 2 people of the  
13 same sex to the exclusion of all others, voluntarily entered into  
14 for life;
- 15 ***same-sex marriage celebrant*** means person registered under  
16 Part 3 Division 1.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Part 2 — Same-sex marriage**

**Division 1 — Same-sex marriage eligibility**

**4. Application of Division**

This Division applies, despite any common law rule of private international law, in relation to same-sex marriages.

**5. Eligibility to same-sex marry**

Two persons are eligible to be same-sex married under this Act if —

- (a) they are of the same sex; and
- (b) both have reached 18 years of age; and
- (c) neither person is same-sex married under this Act or under the law of another State or Territory; and
- (d) neither person is married under Commonwealth law; and
- (e) they are not in a prohibited relationship.

**Division 2 — Void same-sex marriages**

**6. Grounds on which same-sex marriages are void**

(1) In this section —

*adopted*, in relation to a child, means adopted under the law of any place (whether in or out of Australia) relating to the adoption of children;

*ancestor*, in relation to a person, means someone from whom the person is descended, including a parent of the person.

(2) A same-sex marriage is void if —

- (a) either of the parties was, at the time the same-sex marriage was entered into, same-sex married to some other person under this Act or the law of another State or Territory; or





**Same-Sex Marriage Bill 2013**

**Part 2** Same-sex marriage

**Division 3** Solemnisation of same-sex marriages in Western Australia

**s. 7**

---

- 1 (5) Nothing in subsection (4) makes it lawful for a person to marry  
2 someone whom the person could not lawfully have married if  
3 that subsection had not been enacted.
- 4 (6) For the purposes of this section —
- 5 (a) a person who has at any time been adopted by another  
6 person will be deemed to remain the adopted child of  
7 that other person despite the fact that any order by which  
8 the adoption was effected has been annulled, cancelled  
9 or discharged or that the adoption has for any other  
10 reason ceased to be effective; and
- 11 (b) a person who has been adopted on more than one  
12 occasion will be deemed to be the adopted child of each  
13 person by whom he or she has been adopted.

14 **Division 3 — Solemnisation of same-sex marriages in**  
15 **Western Australia**

16 **7. Application of Division**

- 17 (1) This Division applies to and in relation to all same-sex  
18 marriages solemnised, or intended to be solemnised, in Western  
19 Australia.
- 20 (2) This Division applies to any person in Western Australia,  
21 whether or not the person is ordinarily resident in Western  
22 Australia.

23 **8. Same-sex marriages to be solemnised by authorised**  
24 **celebrant**

25 A same-sex marriage must be solemnised by, or in the presence  
26 of, an authorised celebrant who is authorised to solemnise  
27 same-sex marriages at the place where the marriage takes place.

- 1 **9. Ministers of religion not bound to solemnise same-sex**  
2 **marriage etc.**
- 3 Nothing in this Part —
- 4 (a) imposes an obligation on an authorised celebrant, being  
5 a minister of religion, to solemnise any same-sex  
6 marriage; or
- 7 (b) prevents such an authorised celebrant from making it a  
8 condition of his or her solemnising a same-sex marriage  
9 that —
- 10 (i) longer notice of intention to same-sex marry than  
11 that required by this Act is given; or
- 12 (ii) requirements additional to those provided by this  
13 Act are observed.
- 14 **10. Notice to be given and declaration made**
- 15 (1) Subject to this section, a same-sex marriage must not be  
16 solemnised unless —
- 17 (a) notice in writing of the intended same-sex marriage has  
18 been given in accordance with this section and has been  
19 received by the authorised celebrant solemnising the  
20 same-sex marriage —
- 21 (i) not earlier than 18 months before the date of the  
22 same-sex marriage; and
- 23 (ii) not later than one month before the date of the  
24 same-sex marriage;
- 25 and
- 26 (b) the authorised celebrant has been given, in respect of  
27 each of the parties —
- 28 (i) an official certificate, or an official extract of an  
29 entry in an official register, showing the date and  
30 place of birth of the party; or

**Same-Sex Marriage Bill 2013**

**Part 2** Same-sex marriage

**Division 3** Solemnisation of same-sex marriages in Western Australia

**s. 10**

---

- 1 (ii) a passport issued by a government of an overseas  
2 country, showing the date and place of birth of  
3 the party; or
- 4 (iii) a statutory declaration made by the party or a  
5 parent of the party stating —
- 6 (I) that, for reasons specified in the  
7 declaration, it is impracticable to obtain  
8 a certificate or extract referred to in  
9 subparagraph (i); and
- 10 (II) to the best of the declarant's knowledge  
11 and belief and as accurately as the  
12 declarant has been able to ascertain,  
13 when and where the party was born;
- 14 and
- 15 (c) each of the parties has made and subscribed before that  
16 authorised celebrant a declaration, in accordance with  
17 the prescribed form, as to —
- 18 (i) the party's conjugal status; and
- 19 (ii) the party's belief that there is no legal  
20 impediment to the same-sex marriage; and
- 21 (iii) any other prescribed matters.
- 22 (2) A notice of intention to same-sex marry must be —
- 23 (a) in the prescribed form and include the prescribed  
24 particulars; and
- 25 (b) signed by each of the parties on the same side of the one  
26 piece of paper in the presence of —
- 27 (i) an authorised celebrant; or
- 28 (ii) a person who is an authorised witness for an  
29 affidavit under the *Oaths, Affidavits and*  
30 *Statutory Declarations Act 2005*.
- 31 (3) If a party to an intended same-sex marriage is unable to sign the  
32 notice of intention to same-sex marry under subsection (2)(b) by

- 1           the time the notice is required under this section, a notice of  
2           intention to same-sex marry signed by the other party and  
3           otherwise complying with the provisions of this section is, if it  
4           is signed by the first mentioned party in the presence of an  
5           authorised celebrant before the same-sex marriage is  
6           solemnised, taken to be a sufficient notice.
- 7           (4) A notice of intention to same-sex marry is not ineffective for the  
8           purposes of this section if —
- 9               (a) a party to the intended same-sex marriage is unable,  
10              after reasonable inquiry, to ascertain all of the  
11              particulars in relation to that party required to be  
12              included in the notice; and
- 13              (b) at any time before the same-sex marriage is solemnised,  
14              that party provides the authorised celebrant solemnising  
15              the same-sex marriage with a statutory declaration —
- 16                      (i) explaining that party’s inability to ascertain the  
17                      particulars not included in the notice; and  
18                      (ii) the reason for that inability.
- 19           (5) As soon as practicable after receiving a notice of intention to  
20           same-sex marry, an authorised celebrant must give the parties a  
21           document in the prescribed form —
- 22              (a) outlining the obligations and consequences of same-sex  
23              marriage; and
- 24              (b) indicating the availability of same-sex marriage  
25              education and counselling.
- 26           (6) An authorised celebrant may —
- 27              (a) permit an error in a notice of intention to same-sex  
28              marry to be corrected in his or her presence by either of  
29              the parties at any time before the same-sex marriage to  
30              which it relates has been solemnised; and
- 31              (b) treat the notice as corrected as having been originally  
32              given in its corrected form.

- 1 (7) If a conjugal status declaration made by a party states that that  
2 party is a divorced person or a widow or widower, an authorised  
3 celebrant must not solemnise the same-sex marriage unless  
4 there is produced to him or her evidence of that party's divorce,  
5 or of the death of that party's spouse, as the case requires.

6 **11. Solemnisation of same-sex marriages**

- 7 (1) A same-sex marriage may be solemnised by any authorised  
8 celebrant who has possession of the notice of intention to same-  
9 sex marry if, by reason of the death, absence or illness of the  
10 authorised celebrant to whom the notice of intention to same-  
11 sex marry has been given, or for any other reason, it is  
12 impracticable for that person to solemnise the same-sex  
13 marriage.

- 14 (2) An authorised celebrant must not solemnise a same-sex  
15 marriage —  
16 (a) unless the authorised celebrant has satisfied himself or  
17 herself that the parties are the parties referred to in the  
18 notice of intention to same-sex marry in relation to the  
19 same-sex marriage; or  
20 (b) if the authorised celebrant has reason to believe that any  
21 of the following documents in relation to the same-sex  
22 marriage contains a false statement or is defective —  
23 (i) a notice of intention to same-sex marry;  
24 (ii) a conjugal status declaration;  
25 (iii) a statutory declaration required under section 10.

26 **12. When and where same-sex marriage may be solemnised**

- 27 A same-sex marriage may be solemnised —  
28 (a) on any day; and  
29 (b) at any time; and  
30 (c) at any place.

1 **13. Witnesses**

2 A same-sex marriage must not be solemnised unless at least  
3 2 persons who have, or appear to the person solemnising the  
4 same-sex marriage to have, reached 18 years of age are present  
5 as witnesses.

6 **14. Form of ceremony**

7 (1) If a same-sex marriage is solemnised by or in the presence of an  
8 authorised celebrant who is a minister of religion, it may be  
9 solemnised according to any form and ceremony recognised as  
10 sufficient for the purpose by the religious body or organisation  
11 of which he or she is a minister.

12 (2) If a same-sex marriage is solemnised by or in the presence of an  
13 authorised celebrant other than a minister of religion, it is  
14 sufficient if each of the parties says to the other, in the presence  
15 of the authorised celebrant and the witnesses, the words, or  
16 words to the effect of —

17 “I call upon the persons here present to witness that I,  
18 [name of party], take thee, [name of other party], to be  
19 my lawful wedded spouse (or husband or wife according  
20 to the terms preferred by the parties).”.

21 **15. Certain authorised celebrants to explain nature of same-sex**  
22 **marriage relationship**

23 Before a same-sex marriage is solemnised by or in the presence  
24 of an authorised celebrant other than a minister of religion, the  
25 authorised celebrant must say to the parties, in the presence of  
26 the witnesses, the words or words to the effect of —

27 “I am duly authorised by law to solemnise same-sex  
28 marriages according to law.

29 Before you are joined in marriage in my presence and in  
30 the presence of these witnesses, I am to remind you of  
31 the solemn and binding nature of the relationship into  
32 which you are now about to enter.

1 Same-sex marriage, according to law in Western  
2 Australia, is the lawful union of 2 persons of the same  
3 sex to the exclusion of all others, voluntarily entered  
4 into for life.”.

5 **16. Certain same-sex marriages not solemnised in accordance**  
6 **with this Division are invalid**

7 (1) Subject to this section, a same-sex marriage solemnised  
8 otherwise than in accordance with this Division is not a valid  
9 same-sex marriage.

10 (2) A same-sex marriage is not invalid by reason of all or any of the  
11 following —

- 12 (a) failure to give a notice of intention to same-sex marry;
- 13 (b) a false statement, defect or error in a notice of intention  
14 to same-sex marry;
- 15 (c) failure of the parties, or either of them, to make or sign a  
16 conjugal status declaration;
- 17 (d) a false statement, defect or error in a conjugal status  
18 declaration;
- 19 (e) failure to produce to the authorised celebrant a  
20 certificate or extract of an entry or a statutory  
21 declaration as required by section 10;
- 22 (f) a false statement, defect or error in a statutory  
23 declaration under section 10;
- 24 (g) failure to comply with any other requirement of  
25 section 10 or 11, or any contravention of those sections;
- 26 (h) failure to comply with the requirements of section 13, 14  
27 or 15.

28 (3) A same-sex marriage is not invalid by reason that the person  
29 solemnising it was not authorised by this Act to do so, if either  
30 party to the same-sex marriage, at the time the same-sex  
31 marriage was solemnised, believed that that person was lawfully  
32 authorised to solemnise it.



1       (4) If subsection (3) applies, the form and ceremony of the  
2       same-sex marriage is taken to have been sufficient if the form  
3       and ceremony demonstrated an intention on the part of each of  
4       the parties to become thereby the lawfully wedded spouse of the  
5       other.

6       **17.       Authorised celebrant to retain notices and declarations**

7       An authorised celebrant to whom a notice of intention to same-  
8       sex marry or conjugal status declaration is given must retain it  
9       in his or her possession until he or she deals with it in  
10      accordance with section 18.

11      **18.       Same-sex marriage certificates**

- 12      (1) If an authorised celebrant solemnises a same-sex marriage, the  
13      authorised celebrant must —
- 14          (a) prepare a certificate of the same-sex marriage, in the  
15          prescribed form, for the purpose of issue to the parties to  
16          the marriage; and
- 17          (b) prepare 2 official certificates of same-sex marriage in  
18          accordance with the prescribed form.
- 19      (2) Immediately after the solemnisation of the same-sex marriage,  
20      the authorised celebrant, each of the parties to the same-sex  
21      marriage and the 2 witnesses under section 13 must sign each of  
22      the certificates.
- 23      (3) One of the official certificates must be on the reverse side of the  
24      paper bearing the conjugal status declarations.
- 25      (4) The authorised celebrant must hand the certificate referred to in  
26      subsection (1)(a) to one of the parties to the same-sex marriage  
27      on behalf of the parties and —
- 28          (a) within 14 days after the solemnisation of the same-sex  
29          marriage, forward the official certificate referred to in  
30          subsection (3), together with the notice of intention to  
31          same-sex marry and conjugal status declarations to the  
32          Registrar in accordance with the regulations; and

- 1 (b) retain the other official certificate and deal with it in  
2 accordance with the regulations (if any).
- 3 (5) If the authorised celebrant dies without having prepared and  
4 signed the certificates of same-sex marriage, or if due to other  
5 special circumstances the Minister thinks it is necessary to do  
6 so, the Minister may, if satisfied that the same-sex marriage was  
7 duly solemnised, prepare and sign the certificates with any  
8 appropriate modifications.
- 9 (6) A certificate prepared and signed by the Minister under  
10 subsection (5) has the same force and effect as if it had been  
11 prepared and signed, in accordance with this section, by the  
12 authorised celebrant.

13 **Division 4 — Offences**

14 **19. Bigamy**

- 15 (1) A person who is married must not go through a form or  
16 ceremony of same-sex marriage with any person.  
17 Penalty: imprisonment for 5 years.
- 18 (2) It is a defence to a prosecution for an offence against  
19 subsection (1) if the defendant proves that —
- 20 (a) at the time of the alleged offence, the defendant believed  
21 that his or her spouse was dead; and
- 22 (b) the defendant had reasonable grounds for that belief,  
23 having regard to the time for which the defendant's  
24 spouse had been absent from the defendant and the  
25 circumstances of that absence.
- 26 (3) For the purposes of subsection (2), it is sufficient proof of the  
27 matters referred to in subsection (2)(b) if the defendant proves  
28 that —
- 29 (a) the defendant's spouse had been continually absent from  
30 the defendant for the period of 7 years immediately  
31 preceding the date of the alleged offence; and



- 1 (2) Subject to this section, 2 persons may go through a form or  
2 ceremony of same-sex marriage with each other as if they had  
3 not previously gone through a form or ceremony of same-sex  
4 marriage with each other if —
- 5 (a) those 2 persons have gone through a form or ceremony  
6 of same-sex marriage with each other, whether before or  
7 after the commencement of this Act; and
- 8 (b) there is a doubt —
- 9 (i) whether those persons are legally married to each  
10 other; or
- 11 (ii) if the form or ceremony of same-sex marriage  
12 took place outside Western Australia — whether  
13 the same-sex marriage would be recognised as  
14 valid by a court in Western Australia; or
- 15 (iii) whether their same-sex marriage could be proved  
16 in legal proceedings.
- 17 (3) If 2 persons wish to go through a form or ceremony of same-sex  
18 marriage with each other under subsection (2), they each must  
19 give to the authorised celebrant by whom, or in whose presence,  
20 the form or ceremony is to take place or be performed —
- 21 (a) a statutory declaration by them stating that they have  
22 previously gone through a form or ceremony of  
23 same-sex marriage with each other and specifying the  
24 date on which, the place at which and the circumstances  
25 in which they went through that form or ceremony; and
- 26 (b) a certificate by an Australian legal practitioner, being a  
27 certificate endorsed on the statutory declaration, that, on  
28 the facts stated in the declaration, there is, in his or her  
29 opinion, a doubt as to one of the matters specified in  
30 subsection (2)(b).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**Part 3 — Authorised celebrants**

**Division 1 — Same-sex marriage celebrants**

**21. Term used: marriage celebrant**

In this Division —

*marriage celebrant* means a person registered as a marriage celebrant under the *Marriage Act 1961* (Commonwealth).

**22. Registration of same-sex marriage celebrants**

- (1) A marriage celebrant may apply to the Registrar to be registered as a same-sex marriage celebrant under this Act.
- (2) An application under subsection (1) must be —
  - (a) in writing in the prescribed form (if any); and
  - (b) accompanied by evidence of the person’s registration as a marriage celebrant; and
  - (c) accompanied by the prescribed fee (if any).
- (3) On an application under subsection (1), the Registrar must register the applicant as a same-sex marriage celebrant, unless in the Registrar’s opinion the person is not a suitable person to be registered as a same-sex marriage celebrant.

**23. Register of same-sex marriage celebrants**

- (1) The Registrar is to maintain a register of persons registered as same-sex marriage celebrants.
- (2) The register may be kept in any way the Registrar thinks appropriate, including by electronic means.
- (3) The register must include the following information for each same-sex marriage celebrant —
  - (a) the person’s full name;
  - (b) the person’s address and contact details;

- 1                      (c) the date the person was registered;
- 2                      (d) if the person’s registration is cancelled or the person
- 3                                      otherwise ceases to be registered — the date the
- 4                                      registration ceased.
- 5                      (4) The register may also contain such other information as the
- 6                                      Registrar considers appropriate.
- 7                      (5) Despite anything to the contrary in this section, a person’s
- 8                                      address and contact details and any other information included
- 9                                      in the register about the person under subsection (4) must not be
- 10                                      available for public inspection unless the person consents.

11                      **24. Cancellation of registration**

12                                      The Registrar may cancel a person’s registration as a same-sex

13                                      marriage celebrant if —

- 14                                      (a) the person ceases to be a marriage celebrant; or
- 15                                      (b) the Registrar considers that the person is no longer a
- 16    suitable person to be a same-sex marriage celebrant.

17                      **25. Review of decisions**

18                                      A person whose interests are affected by either of the following

19                                      decisions of the Registrar may apply to the State Administrative

20                                      Tribunal for a review of the decision —

- 21                                      (a) a decision to refuse to register a person as a same-sex
- 22    marriage celebrant under section 22;
- 23                                      (b) a decision to cancel a person’s registration as a same-sex
- 24    marriage celebrant under section 24.

1

**Division 2 — Public service officers**

2

**26. Authorisation of public service officers**

3

(1) The Registrar may solemnise same-sex marriages in Western  
4 Australia.

5

(2) The Minister may, by instrument in writing, authorise other  
6 officers of the Public Service to solemnise same-sex marriages.

7

(3) An authorisation under subsection (2) is subject to any  
8 conditions specified in the instrument.



---

**Part 4 — Miscellaneous**

1  
2 **27. False statements or documents**

3 A person who makes a false or misleading statement or  
4 representation in a declaration, application or other document  
5 under this Act, knowing it to be false or misleading in a material  
6 particular, is guilty of an offence.

7 Penalty: a fine of \$10 000.

8 **28. Interpreters at same-sex marriage ceremonies**

9 (1) Subject to this section, if an authorised celebrant solemnising a  
10 same-sex marriage under this Act considers that it is appropriate  
11 to do so, the authorised celebrant may use the services of a  
12 person who is not a party to the same-sex marriage as an  
13 interpreter in, or in connection with, the ceremony.

14 (2) An authorised celebrant must not solemnise a same-sex  
15 marriage using the services of an interpreter in, or in connection  
16 with, the ceremony unless the interpreter has given the  
17 authorised celebrant a statutory declaration stating that the  
18 interpreter understands, and is able to converse in, the languages  
19 in respect of which he or she is to act as an interpreter.

20 (3) An interpreter who has acted in, or in connection with, a  
21 ceremony of same-sex marriage must, immediately after the  
22 ceremony has taken place, give the authorised celebrant a  
23 certificate signed by the interpreter, in the prescribed form, of  
24 the faithful performance of the interpreter's services as  
25 interpreter.

26 **29. Regulations**

27 (1) The Governor may make regulations prescribing all matters that  
28 are required or permitted by this Act to be prescribed, or are  
29 necessary or convenient to be prescribed, for giving effect to  
30 this Act.

**s. 29**

---

- 1            (2) Without limiting subsection (1), the regulations may —  
2                      (a) fix fees to be paid in respect to any matter under this  
3                                      Act; and  
4                      (b) provide for the service of documents.
- 5            (3) The regulations may provide that contravention of a regulation  
6                      is an offence, and provide, for an offence against the  
7                                      regulations, a penalty not exceeding a fine of \$2 500.



**s. 34**

---

1 **34. Section 6 amended**

2 In section 6:

3 (a) in paragraph (a) delete “this Act;” and insert:

4

5 this Act or any other Act; and

6

7 (b) in paragraph (b) after “this Act” insert:

8

9 or any other Act

10

11 **35. Part 6A inserted**

12 After section 36 insert:

13

14 **Part 6A — Registration of same-sex marriages**

15 **37A. Same-sex marriages in the State to be registered**

16 If a same-sex marriage is solemnised in the State, the  
17 same-sex marriage must be registered under this Act.

18 **37B. How to have same-sex marriage registered**

19 A person may have a same-sex marriage registered by  
20 lodging with the Registrar a certificate of the same-sex  
21 marriage.

22 Note: Under the *Same-Sex Marriage Act 2013* section 18(4) the authorised  
23 celebrant is responsible for lodging the certificate of same-sex  
24 marriage with the Registrar.

25 **37C. Registration of same-sex marriage**

26 A same-sex marriage may be registered by including  
27 the same-sex marriage certificate as part of the  
28 Register.

29

1           **Part 6 — Family Court Act 1997 amended**

2   **36. Act amended**

3           This Part amends the *Family Court Act 1997*.

4   **37. Section 5 amended**

5       (1) In section 5(1) insert in alphabetical order:

6

7                   ***Registrar of Births, Deaths and Marriages*** means the  
8                   Registrar of Births, Deaths and Marriages appointed  
9                   under the *Births, Deaths and Marriages Registration*  
10                  *Act 1998* section 5;

11                  ***same-sex marriage*** has the meaning given in the *Same-*  
12                  *Sex Marriage Act 2013* section 3;

13                  ***same-sex marriage partner***, in relation to a person,  
14                  means a person who is married to the person in  
15                  accordance with the *Same-Sex Marriage Act 2013*;  
16

17       (2) In section 5(1) in the definition of ***Part 5A proceedings*** before  
18       “de facto” (each occurrence) insert:

19

20                  same-sex marriage or

21

22   **38. Section 65B amended**

23           In section 65B(a) delete “parents” and insert:

24

25                  parents, same-sex marriage partners

26

**s. 39**

---

1 **39. Section 65D amended**

2 In section 65D after “relationship” insert:

3

4 or same-sex marriage

5

6 **40. Section 65F amended**

7 In section 65F(5) before “de facto” insert:

8

9 same-sex marriage or

10

11 **41. Section 65H amended**

12 In section 65H(1) and (2)(b) before “de facto” insert:

13

14 same-sex marriage or

15

16 **42. Section 65I amended**

17 In section 65I(1)(a)(i) before “de facto” (each occurrence)  
18 insert:

19

20 same-sex marriage or

21

22 **43. Section 65J amended**

23 In section 65J(1) before “de facto” insert:

24

25 same-sex marriage or

26

1   **44.    Part 5B inserted**

2           After section 205ZZA insert:

3

4                           **Part 5B — Same-sex marriages**

5                                   **Division 1 — Preliminary matters**

6       **206A.   Terms used**

7           In this Part —

8           *dissolution order* means an order made under  
9           section 206E(3) for the dissolution of a same-sex  
10          marriage;

11          *dissolution proceeding* means a proceeding  
12          commenced under section 206C(a);

13          *nullity declaration* means a declaration of nullity of a  
14          same-sex marriage under section 206H(2).

15                           **Division 2 — Proceedings for dissolution or annulment**

16       **206B.   Principles to be applied by court**

17           In the exercise of its jurisdiction under this Part, the  
18           court must have regard to —

- 19           (a)   the need to promote, preserve and protect the  
20                institution of same-sex marriage as the union of  
21                2 people of the same sex to the exclusion of all  
22                others voluntarily entered into for life; and
- 23           (b)   the need to ensure safety from family violence;  
24                and
- 25           (c)   the means available for assisting parties to a  
26                same-sex marriage to consider reconciliation or  
27                the improvement of their relationship to each  
28                other.

1           **206C. Commencement of proceedings**

2           One or both parties to a same-sex marriage may apply  
3           to the court for —

- 4                   (a) a dissolution order; or  
5                   (b) a nullity declaration; or  
6                   (c) a declaration as to the validity of the same-sex  
7                   marriage.

8           **206D. Additional requirements for application for**  
9           **dissolution order**

10           (1) An application for a dissolution order may not, without  
11           the leave of the court granted under subsection (2), be  
12           filed within the period of 2 years after the date of the  
13           same-sex marriage unless the application is  
14           accompanied by a certificate —

- 15                   (a) stating that the parties to the same-sex marriage  
16                   have considered a reconciliation, with the  
17                   assistance of a family counsellor; and  
18                   (b) signed by the family counsellor.

19           (2) If the court is satisfied that there are special  
20           circumstances by reason of which the hearing of an  
21           application for a dissolution order should proceed in  
22           the absence of a certificate referred to in subsection (1),  
23           the court may grant leave for the application to be filed.

24                           **Division 3 — Dissolution and nullity of**  
25                           **same-sex marriage**

26           **206E. Dissolution of same-sex marriage**

27           (1) An application under this Act for a dissolution order  
28           must be based on the ground that the same-sex  
29           marriage has broken down irretrievably.



- 1           (2) Subject to subsection (4), in a dissolution proceeding,  
2           the ground under subsection (1) has been established, if  
3           the parties have separated and have lived separately  
4           and apart for a continuous period of not less than  
5           12 months immediately preceding the date of the filing  
6           of the dissolution proceeding.
- 7           (3) If satisfied that the ground under subsection (1) has  
8           been established, the court must make a dissolution  
9           order, unless subsection (4) applies.
- 10          (4) If the court is satisfied that there is a reasonable  
11          likelihood of cohabitation being resumed, it must not  
12          make a dissolution order.

13           **206F. Meaning of separation**

- 14           (1) The parties to a same-sex marriage may be taken to  
15           have separated despite the fact that the cohabitation  
16           was brought to an end by the action or conduct of only  
17           one of the parties.
- 18           (2) The parties to a same-sex marriage may be held to have  
19           separated and to have lived separately and apart despite  
20           the fact that —
- 21                   (a) they have continued to reside in the same  
22                   residence; or
- 23                   (b) either party has rendered some household  
24                   services to the other.

25           **206G. Effect of resumption of cohabitation**

- 26           (1) For the purposes of a dissolution proceeding, if, after  
27           the parties to the same-sex marriage separated, they  
28           resumed cohabitation on one occasion but, within a  
29           period of 3 months after the resumption of  
30           cohabitation, they again separated and thereafter lived  
31           separately and apart up to the date of the filing of the  
32           application, the periods of living separately and apart

s. 44

---

1 before and after the period of cohabitation may be  
2 aggregated as if they were one continuous period, but  
3 the period of cohabitation must not be taken to be part  
4 of the period of living separately and apart.

5 (2) For the purposes of subsection (1), a period of  
6 cohabitation is taken to have continued during any  
7 interruption of the cohabitation that, in the opinion of  
8 the court, was not substantial.

9 **206H. Declaration of nullity of same-sex marriage**

10 (1) An application for a nullity declaration must be based  
11 on the ground that the same-sex marriage is void.

12 (2) If the court is satisfied, on an application under  
13 section 206C(b), that a same-sex marriage is void  
14 under the *Same-Sex Marriage Act 2013*, it must make a  
15 declaration that the same-sex marriage is nullified.

16 **206I. Court not to make dissolution order where**  
17 **application for nullity declaration before it**

18 If both an application for a nullity declaration and an  
19 application for a dissolution order in respect of the  
20 same-sex marriage are before the court, the court must  
21 not make a dissolution order unless it has dismissed the  
22 application for a nullity declaration.

23 **206J. When dissolution order takes effect**

24 (1) In this section —  
25 ***appeal***, in relation to a dissolution order, means —

- 26 (a) an appeal relating to —  
27 (i) the dissolution order; or  
28 (ii) an order under this section in relation to  
29 the proceedings in which the dissolution  
30 order was made;

31 or

- 1 (b) an application under section 206L or 206M for  
2 rescission of the dissolution order or an appeal  
3 or application for leave to appeal arising out of  
4 such an application.
- 5 (2) Subject to this section, a dissolution order takes effect,  
6 by force of this section, on —
- 7 (a) the day that is one month after the making of  
8 the dissolution order; or
- 9 (b) if another day is specified in any order made  
10 under this section, on that day.
- 11 (3) On its own motion or on the application of either or  
12 both of the parties to a dissolution proceeding, the  
13 court may —
- 14 (a) having regard to the possibility of an appeal or  
15 further appeal — make an order extending the  
16 period at the expiration of which a dissolution  
17 order takes effect; or
- 18 (b) if it is satisfied that there are special  
19 circumstances that justify its so doing — make  
20 an order reducing the period at the expiration of  
21 which a dissolution order takes effect.
- 22 (4) If an appeal is commenced (whether or not it is the first  
23 appeal) before a dissolution order takes effect, then,  
24 despite any order in force under subsection (3) at the  
25 time of the commencement of the appeal but subject to  
26 any such order made after the commencement of the  
27 appeal, the dissolution order, unless reversed or  
28 rescinded, takes effect by force of this section, on the  
29 later of —
- 30 (a) the day that is one month after the day on  
31 which the appeal is determined or discontinued;  
32 or

s. 44

---

- 1 (b) the day on which the order would have taken  
2 effect under subsection (2) if no appeal had  
3 been commenced.
- 4 (5) Despite subsections (2), (3) and (4), if either of the  
5 parties to the same-sex marriage has died, a dissolution  
6 order does not take effect.
- 7 (6) For the purposes of this section, if an application for  
8 leave to appeal is granted, the application must be  
9 taken not to have been determined or discontinued so  
10 long as an appeal is pending.
- 11 **206K. Certificate as to dissolution order taking effect**
- 12 (1) If a dissolution order takes effect, the Registrar must  
13 prepare and file with the court and with the Registrar of  
14 Births, Deaths and Marriages a memorandum of the  
15 fact and of the date on which the dissolution order took  
16 effect.
- 17 (2) If a dissolution order takes effect, any person is  
18 entitled, on application to the Registrar, to receive a  
19 certificate signed by the Registrar that the dissolution  
20 order has taken effect.
- 21 (3) A certificate given under subsection (2) is, in all courts  
22 and for all purposes, evidence of the matters specified  
23 in the certificate.
- 24 **206L. Rescission of dissolution order if parties reconciled**
- 25 (1) If the parties to a same-sex marriage in respect of  
26 which a dissolution order has been made have become  
27 reconciled before the dissolution order takes effect,  
28 they may apply to the court to rescind the dissolution  
29 order.
- 30 (2) The court may make an order rescinding a dissolution  
31 order applied for under subsection (1), despite anything

1 to the contrary in this Part, on the ground that the  
2 parties have become reconciled.

3 **206M. Rescission of dissolution order on ground of**  
4 **miscarriage of justice**

- 5 (1) If a dissolution order has been made but has not taken  
6 effect, the court may, if it is satisfied that there has  
7 been a miscarriage of justice by reason of fraud,  
8 perjury, suppression of evidence or any other  
9 circumstance —
- 10 (a) rescind the dissolution order; and  
11 (b) if the court thinks fit, order that the proceedings  
12 be re-heard.
- 13 (2) A rescission order under subsection (1) may be  
14 made —
- 15 (a) on the application of a party to the proceedings;  
16 or  
17 (b) on the intervention of the Attorney General.

18 **206N. Same-sex re-marriage**

19 If a dissolution order has taken effect, a party to the  
20 same-sex marriage may marry again.

21 **Division 4 — Application of Part 5A to**  
22 **same-sex marriage**

23 **206O. Financial matters related to same-sex marriage**

24 Part 5A, apart from section 205Z, applies in relation to  
25 a same-sex marriage and the parties to a same-sex  
26 marriage as if the same-sex marriage was a de facto  
27 relationship, and the parties to the same-sex marriage  
28 were de facto partners.  
29

**Same-Sex Marriage Bill 2013**

**Part 6** Family Court Act 1997 amended

**s. 45**

---

1 **45. Section 235A amended**

2 In section 235A(1) before “de facto” (each occurrence) insert:

3

4 same-sex marriage or

5

1           **Part 7 — *Interpretation Act 1984* amended**

2   **46.     Act amended**

3           This Part amends the *Interpretation Act 1984*.

4   **47.     Section 5 amended**

5           In section 5 insert in alphabetical order:

6

7                   *husband*, of a male person who is married in  
8                   accordance with the *Same-Sex Marriage Act 2013*, is  
9                   the person to whom the male person is married;

10                   *marriage* includes a same-sex marriage as defined in  
11                   the *Same-Sex Marriage Act 2013* section 3;

12                   *wife*, of a female person who is married in accordance  
13                   with the *Same-Sex Marriage Act 2013*, is the person to  
14                   whom the female person is married;

15

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

**Part 8 — Other Acts amended**

**Division 1 — *Duties Act 2008* amended**

**48. Act amended**

This Division amends the *Duties Act 2008*.

**49. Section 128 amended**

In section 128(1) insert in alphabetical order:

- marriage* does not include same-sex marriage;
- same-sex marriage* has the meaning given in the *Same-Sex Marriage Act 2013* section 3;
- same-sex marriage instrument* has the meaning given in section 130A;
- same-sex matrimonial property*, of a same-sex marriage, means property of the parties to the same-sex marriage or of either of them and includes a superannuation interest;

**50. Section 130A inserted**

After section 129 insert:

**130A. Same-sex marriage instrument, defined**

A reference to a same-sex marriage instrument is to any of the following instruments to the extent it deals with same-sex matrimonial property —

- (a) a financial agreement or a former financial agreement, within the meaning of those terms in the Family Court Act section 205T as applied to same-sex marriages by the Family Court Act section 206O;



- 1 (b) an order of a court under —  
2 (i) the Family Court Act Part 5A as applied  
3 to same-sex marriages by the Family  
4 Court Act section 206O; or  
5 (ii) a law of the Commonwealth or another  
6 State or Territory that substantially  
7 corresponds to the Family Court Act  
8 Part 5A as applied to same-sex  
9 marriages by the Family Court Act  
10 section 206O.  
11

12 **51. Section 131 amended**

13 After section 131(1) insert:  
14

- 15 (2A) Nominal duty is chargeable on a dutiable transaction to  
16 the extent that it is —  
17 (a) effected by a same-sex marriage instrument  
18 referred to in section 130A(b); or  
19 (b) in accordance with a same-sex marriage  
20 instrument referred to in section 130A(a),  
21 if —  
22 (c) the parties to the same-sex marriage are  
23 separated or the same-sex marriage has been  
24 dissolved or has irretrievably broken down; and  
25 (d) under the transaction, the same-sex matrimonial  
26 property is, or is to be, transferred to —  
27 (i) either, or both, of the parties to the  
28 same-sex marriage; or  
29 (ii) a child, or children, of either of the  
30 parties to the same-sex marriage, or a  
31 trustee of such a child or children.  
32

1 **52. Section 133 amended**

2 After section 133(1) insert:

3

4 (2A) For the purposes of this Subdivision, the Commissioner  
5 is to have regard to any statutory declaration by a party  
6 to the same-sex marriage to the effect that —

7 (a) the party intends to apply for dissolution or  
8 annulment of the same-sex marriage; or

9 (b) the parties to the same-sex marriage have  
10 separated and there is no reasonable likelihood  
11 of cohabitation being resumed.  
12

13 **Division 2 — *Guardianship and Administration***  
14 ***Act 1990* amended**

15 **53. Act amended**

16 This Division amends the *Guardianship and Administration*  
17 *Act 1990*.

18 **54. Section 45 amended**

19 In section 45(3):

20 (a) after paragraph (da) insert:

21

22 (db) under the *Same-Sex Marriage Act 2013* sign a  
23 notice of intention to same-sex marry or take  
24 part in the solemnisation of a same-sex  
25 marriage;  
26

27 (b) after paragraph (da) delete “or”.



1 **60. Schedule 1 amended**

2 In Schedule 1 insert in alphabetical order:

3

4 *Same-Sex Marriage Act 2013*

5

6 **Division 6 — Wills Act 1970 amended**

7 **61. Act amended**

8 This Division amends the *Wills Act 1970*.

9 **62. Section 4 amended**

10 In section 4 delete the definition of *marriage* and insert:

11

12 *marriage* includes —

13 (a) a marriage as defined in the *Marriage Act 1961*  
14 (Commonwealth); and

15 (b) a same-sex marriage as defined in the *Same-Sex*  
16 *Marriage Act 2013* section 3;

17

18 **63. Section 14A amended**

19 In section 14A(3)(a) delete “Act;” and insert:

20

21 Act or the *Family Court Act 1997*; or

22

23

---

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
adopted.....	6(1)
ancesto .....	6(1)
authorised celebrant .....	3
conjugal status declaration.....	3
marriage celebrant.....	21
minister of religion.....	3
notice of intention to same-sex marry .....	3
ordinarily resident.....	3
person 1.....	19(4)
person 2.....	19(4)
prescribed.....	3
prohibited relationship .....	6(3)
Registrar.....	3
same-sex marriage .....	3
same-sex marriage celebrant.....	3