The Marriage Equality Bill 2012 is divided into 8 parts, which in turn may have two or more divisions. The part headings are: Preliminary; Same-sex marriage; Authorised celebrants; Miscellaneous; Births, Deaths and Marriages Registration Act 1998 amended; Family Court Act 1997 amended; Interpretation Act 1984 amended; Other Acts amended. The main object of the Bill is to provide for same-sex marriage between adults; the authorisation of celebrants to solemnise same-sex marriages; consequential amendments to other legislation; and related purposes.

2. Summary of substantive provisions

Part 1: Preliminary

Clause 1: Short Title
This clause provides the short title of the Marriage Equality Act 2012.

Clause 2: Commencement
This clause specifies that clauses 1 and 2 come into operation on the day on which the Act receives the Royal Assent and the rest of the Act on the day that is 28 days after that day.

Clause 3: Terms used
This clause defines certain terms that are used in the Act.

Part 2: Same-sex marriage

Division 1: Same-sex marriageable age

Clause 4: Application of Division
This clause confirms that the provisions in this Bill apply to same-sex marriages notwithstanding any common law rule of private international law applying elsewhere to marriage.

Clause 5: Same-sex marriageable age
This clause provides that a person is of same-sex marriageable age if the person is 18 years old.

Clause 4: Application of Division
Division 2: Same-sex marriage

Part 2: Same-sex marriage

This clause defines certain terms that are used in the Act.

Clause 3: Terms used
This clause provides the short title of the Marriage Equality Act 2012.

Clause 1: Short Title
Part 1—Preliminary

2. Summary of substantive provisions

To other legislation; and related purposes.

The main object of the Bill is to provide for same-sex marriage between adults; the authorisation of celebrants to solemnise same-sex marriages; consequential amendments to other legislation; and related purposes.

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3. Overview of Bill

Explanation Memorandum

Marriage Equality Bill 2012
Division 2 Void same-sex marriages

Clause 6: Grounds on which same-sex marriages are void

Subclause (1) defines 'adopted' and 'ancestor' for the purpose of this clause.

Subclause (2) provides for the circumstances in which same-sex marriages are void. These include:

- a notice in writing of the intended same-sex marriage to be given and received by the celebrant not earlier than 12 months or later than 1 month before the same-sex marriage.

Subclause (3) provides that a same-sex marriage must not be solemnised unless:

Clause 10: Notice to be given and declarations made

Those set out in this Act.

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

Clause 7: Application of Division

Division 3 applies to all same-sex marriages solemnised or intended to be solemnised in Western Australia.

Clause 8: Same-sex marriages to be solemnised by authorised celebrants

Western Australia.

Division 4 – Solemnisation of some-sex marriages in Western Australia

Subdivision (4) to (6) deal with adoptive relationships placed the adoptive child in the same...

Subdivision (1) defines, adopted, and ancestor, for the purpose of this clause.

Clause 6: Grounds on which same-sex marriages are void

Division 2 – Void same-sex marriages
clause 12: form of ceremony

subclause (1): provides for the form of words that must be spoken by the parties to a same-sex marriage to explain the nature of a same-sex marriage relationship.

minister of religion.

subclause (2): provides that if a ceremony is conducted by an authorised celebrant who is not a minister of religion, the ceremony may be conducted as required by the religion to which the ceremony is to be solemnised.

authorised celebrant.

subclause (1): provides that an authorised celebrant who has possession of the notice of intention to marry must not solemnise a same-sex marriage.

subclause (2): provides that if a ceremony is conducted by an authorised celebrant who is a minister of religion, the ceremony is conducted as required by the religion to which the ceremony is to be solemnised.

subclause (3): provides for certain formalities to be included in the form of a ceremony to be solemnised.

clause 13: witnesses

this clause requires that at least two persons who have or appear to the authorised celebrant to have reached 18 years old are present as witnesses.

clause 14: when and where a same-sex marriage may be solemnised

this clause specifies that a same-sex marriage may be solemnised on any day, at any time, and at any place.

clause 15: authorised celebrants to explain nature of same-sex marriage relationship

this clause specifies the words that must be spoken by an authorised celebrant who is not a minister of religion before a same-sex marriage is solemnised.

clause 16: solemnisation of same-sex marriages

subclause (1): set out the requirements that must be satisfied in order for a same-sex marriage to be solemnised, including the requirements in relation to a notice of intention to marry, and the obligations that must be fulfilled by the celebrant after receiving the notice of intention to marry.

minister of religion.

subclause (2): provides that if a ceremony is conducted by an authorised celebrant who is not a minister of religion, the ceremony may be conducted as required by the religion to which the ceremony is to be solemnised.

authorised celebrant.

subclause (1): provides that an authorised celebrant who has possession of the notice of intention to marry must not solemnise a same-sex marriage.

subclause (2): provides that if a ceremony is conducted by an authorised celebrant who is a minister of religion, the ceremony is conducted as required by the religion to which the ceremony is to be solemnised.
Clause 20: Second same-sex marriage ceremonies

Division 5 – Second ceremonies

Subclause (1).

Subclauses (2) – (7) set out the defences and other terms that apply in relation to subclause or ceremony of same-sex marriage, and specifies the penalty that applies.

Subclause (1) prohibits persons who are already legally married going through a second form of ceremony of same-sex marriage.

Clause 19: Bigamy

Division 4 – Offences

Clause 18: Same-sex marriage certificates

Clause 18 regulates the formalities in relation to same-sex marriage certificates, including the preparation, number, form, content, timing and signing requirements in relation to those certificates.

The authorised celebrant must keep the documents relating to the marriage until the requirements of clause 18 have been fulfilled.

Clause 17: Authorised celebrant to retain notices and declarations

Both parties to the ceremony to be married.

Subclause (3) provides that if the ceremony was lawfully solemnised other than in accordance with this Division, or if either party believed that the celebrant was lawfully solemnised other than in accordance with this Division, the ceremony is not valid.

Subclause (2) specifies that, subject to the exceptions in subclause (2), a same-sex marriage not solemnised in accordance with this Division are invalid.

Clause 16: Certain same-sex marriages not solemnised in accordance with this Division are invalid

Clause 20 sets out the circumstances in which 2 people who are already legally married to each other may go through another form or ceremony of same-sex marriage.
Part 3

Authorised celebrants

Division 1 Same-sex marriage celebrants

Clauses 21 - 25

These clauses set out the amendments to consequential amendments to be made to the Births, Deaths and Marriages Registration Act 1998, including (clause 35) the insertion of a provision regarding the registration of same-sex marriages.

Part 5 - Births, Deaths and Marriages Registration Act 1998 amended

Division 2 Public service officers

Clause 26: Authorisation of public service officers

The Registrar of Births, Deaths and Marriages or other officers so authorised by the Minister may solemnise same-sex marriages in Western Australia.

Part 4 - Miscellaneous

Clause 27: False statement or documents

Clause 27 provides that any person who knowingly makes a false or misleading statement in a document under this Act is guilty of an offence for which the penalty is a fine of $10,000.

Clause 28: Interpreters at same-sex marriage ceremonies

This clause provides for the use of interpreters in connection with same-sex marriage ceremonies and specifies the responsibilities of such interpreters.

Clause 29: Regulations

This clause provides that the Governor may make regulations prescribing all matters that are required, permitted, necessary or convenient to be prescribed for giving effect to the Act.

Part 5 - Births, Deaths and Marriages Registration Act 1998 amended

Clauses 30 - 35

These clauses set out the amendments to consequential amendments to be made to the Births, Deaths and Marriages Registration Act 1998, including (clause 35) the insertion of a provision regarding the registration of same-sex marriages.

Division 2 - Public service officers

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Clause 30 - 35

These clauses set out the amendments to consequential amendments to be made to the Births, Deaths and Marriages Registration Act 1998, including (clause 35) the insertion of a provision regarding the registration of same-sex marriages.
This part sets out the consequential amendments to be made to the Family Court Act 1997, including the insertion of a new Part 5B in clause 44.

Clause 44: Part 5B inserted

Clause 44 provides that the following provisions will be inserted into the Family Court Act 1997 as clauses 205A to 206L.

205A defines the terms dissolution order, dissolution proceeding and nullity declaration.

205B sets out the principles to be applied by the Family Court in the exercise of its jurisdiction in relation to same-sex marriages.

205C provides that one or both parties to a same-sex marriage may apply to the Family Court for a dissolution order, a nullity declaration or a declaration as to the validity of a same-sex marriage.

205D sets the additional requirements that must be satisfied in relation to an application for a dissolution order.

205E provides that a dissolution order may only be made if the same-sex marriage has broken down irretrievably, and the Family Court must not make a dissolution order unless it has dismissed an application for a nullity declaration and for a dissolution order at an earlier hearing.

205F defines "separation".

205G sets out the effect of the parties to a same-sex marriage resuming cohabitation after they have separated.

205H sets out the meaning of "separation".

205I provides that if the Family Court is satisfied that a same-sex marriage is void under the Marriage Equality Act 2012, it must make a declaration that the marriage is nullified.

205J provides that if an application for a nullity declaration and for a dissolution order are before the Family Court concurrently, the Family Court must not make a dissolution order unless it has dismissed the application for a nullity declaration.

205K provides that the Registrar must prepare and file with the Family Court and the Registrar of Births, Deaths and Marriages a memorandum of a dissolution order when it takes effect, and a certificate signed by the Registrar to this effect is evidence in all courts and for all purposes of the matters in the certificate.

205L and 205M provide that the Family Court may rescind a dissolution order (provided it has not yet taken effect) if the parties are reconciled, or if there has been a miscarriage of justice.

206A defines the terms dissolution order, dissolution proceeding and nullity declaration.

206B as clauses 206A and 206C.

206C provides that the Family Court may rescind a dissolution order if the parties are reconciled, or if there has been a miscarriage of justice.

206D provides that an application for a nullity declaration must take effect on the application for a dissolution order, and the Registrar of Births, Deaths and Marriages must prepare and file with the Family Court and the Registrar a memorandum of a dissolution order when it takes effect, and a certificate signed by the Registrar to this effect is evidence in all courts and for all purposes of the matters in the certificate.

206E provides that if an application for a nullity declaration and for a dissolution order are before it concurrently, the Family Court must not make a dissolution order unless it has dismissed the application for a nullity declaration.

206F sets out the effect of the parties to a same-sex marriage resuming cohabitation after they have separated.

206G sets out the meaning of "separation".

206H sets out the effect of the parties to a same-sex marriage resuming cohabitation after they have separated.

206I provides that if the Family Court is satisfied that a same-sex marriage is void under the Marriage Equality Act 2012, it must make a declaration that the marriage is nullified.

206J provides that if an application for a nullity declaration and for a dissolution order are before it concurrently, the Family Court must not make a dissolution order unless it has dismissed the application for a nullity declaration.

206K provides that the Registrar must prepare and file with the Family Court and the Registrar of Births, Deaths and Marriages a memorandum of a dissolution order when it takes effect, and a certificate signed by the Registrar to this effect is evidence in all courts and for all purposes of the matters in the certificate.

206L and 206M provide that the Family Court may rescind a dissolution order (provided it has not yet taken effect) if the parties are reconciled, or if there has been a miscarriage of justice.

206A defines the terms dissolution order, dissolution proceeding and nullity declaration.

206B as clauses 206A and 206C.

206C provides that the Family Court may rescind a dissolution order if the parties are reconciled, or if there has been a miscarriage of justice.

206D provides that an application for a nullity declaration must take effect on the application for a dissolution order, and the Registrar of Births, Deaths and Marriages must prepare and file with the Family Court and the Registrar a memorandum of a dissolution order when it takes effect, and a certificate signed by the Registrar to this effect is evidence in all courts and for all purposes of the matters in the certificate.

206E provides that if an application for a nullity declaration and for a dissolution order are before it concurrently, the Family Court must not make a dissolution order unless it has dismissed the application for a nullity declaration.

206F sets out the effect of the parties to a same-sex marriage resuming cohabitation after they have separated.

206G sets out the meaning of "separation".

206H sets out the effect of the parties to a same-sex marriage resuming cohabitation after they have separated.

206I provides that if the Family Court is satisfied that a same-sex marriage is void under the Marriage Equality Act 2012, it must make a declaration that the marriage is nullified.

206J provides that if an application for a nullity declaration and for a dissolution order are before it concurrently, the Family Court must not make a dissolution order unless it has dismissed the application for a nullity declaration.

206K provides that the Registrar must prepare and file with the Family Court and the Registrar of Births, Deaths and Marriages a memorandum of a dissolution order when it takes effect, and a certificate signed by the Registrar to this effect is evidence in all courts and for all purposes of the matters in the certificate.

206L and 206M provide that the Family Court may rescind a dissolution order (provided it has not yet taken effect) if the parties are reconciled, or if there has been a miscarriage of justice.
206N provides that a party to a same-sex marriage may re-marry after a dissolution order has taken effect.

206Q provides that the provisions in Part 5A of the Family Court Act (apart from clause 205Z relating to conditions that need to be satisfied before the Court makes a decision about a de facto relationship) apply to a same-sex marriage as if the same-sex marriage were a de facto relationship. This part deals with miscellaneous changes to other Acts including the Duties Act 2008, the Guardianship and Administration Act 1990, the Oaths, Affidavits and Statutory Declarations Act 2005, the Stamp Act 1921, the State Administrative Tribunal Act 2004, and the Wills Act 2005.

**Part 7 - Interpretation Act 1984 amended**

This part amends the Interpretation Act 1984 by the insertion of the following definitions:

- **husband** in relation to a male person in a same-sex marriage, to mean the person to whom the male person is married, and **wife** has a corresponding definition in relation to female persons.
- **marriage** to include same-sex marriage.

This part amends the Interpretation Act 1984 by the insertion of the following definitions:

- **partnership**.

206Q provides that the provisions in Part 5A of the Family Court Act (apart from clause 205Z relating to conditions that need to be satisfied before the Court makes a decision about a de facto relationship) apply to a same-sex marriage as if the same-sex marriage were a de facto relationship. This part amends the Interpretation Act 1984 by the insertion of the following definitions:

- **husband** in relation to a male person in a same-sex marriage, to mean the person to whom the male person is married, and **wife** has a corresponding definition in relation to female persons.
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- **marriage** to include same-sex marriage.

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