

Department of Planning and Environment

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# Model rules for private water trusts

*Water Management Act 2000*

August 2023





# Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Published by NSW Department of Planning and Environment

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Model rules for private water trusts

First published: August 2023

Department reference number: DOC23/87586

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TMP-MC-R-LC-V1.2

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# Rules of [insert trust name]

A private water trust under the *Water Management Act 2000* (NSW)



# 1 Preliminary

## 1.1 Definitions

**Act** means the *Water Management Act 2000* (NSW).

**AGM** means annual general meeting.

**agreement** means an irrigation, water supply, water distribution, or drainage agreement under which the trust agrees to supply water for the purpose of irrigating land or other purposes, or to drain water from land, by means of a water supply, water distribution, or drainage system provided and managed by the trust.<sup>1</sup>

**auditor** means the auditor appointed by the trust in the manner prescribed by the rules.<sup>2</sup>

**business day** means a day other than a Saturday, a Sunday or a public holiday throughout New South Wales.<sup>3</sup>

**casting vote** means a deciding vote of the person chairing the meeting when votes are equally divided.

**class 1 member** means a landholder of land to which the works plan applies.

**class 2 member** means a member who is not a landholder of land to which the works plan applies.

**head office** means the place where the trust keeps its official records.

**landholder**, in relation to land, means —

- a. the owner of the land or (if the owner is not in occupation of the land) the lawful occupier of the land, or
- b. the local council, in the case of land that comprises —
  - i. a public road vested in, or under the control or management of, the local council, or
  - ii. the site of a work that is, or is proposed to be, constructed for the local council.<sup>4</sup>

**meeting** means a meeting of the members of the trust and includes an annual general meeting.

**member** means a class 1 member or class 2 member.

**member's water entitlement** means the part of the share component of the trust's access licence that is available to a member.<sup>5</sup>

**Minister** means the Minister administering the *Water Management Act 2000* (NSW).<sup>6</sup>

<sup>1</sup> When the new laws start, *Water Management Act 2000* (NSW) s 231(1).

<sup>2</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H.

<sup>3</sup> When the new laws start, *Water Management (General) Regulation 2018* (NSW) cl 3(1).

<sup>4</sup> *Water Management Act 2000* (NSW) Dictionary.

<sup>5</sup> When the new laws start, *Water Management Act 2000* (NSW) s 221.

<sup>6</sup> *Interpretation Act 1987* (NSW) s 15.

**notice** means written notice given personally or sent by post or electronic means such as email. A notice is taken to be given to a person if sent:

- by post, 5 business days after it was posted
- by electronic means such as email, on the business day after it was sent.

**notify** means to give notice.

**proxy** means an authorisation empowering a person to vote or act for another.

**quorum** means:

- for the trustees, the majority of trustees
- for the trust, the number of members required to be present to transact business under rule 2.6.6.

**registered office** means the trust's official address used for the service of documents.

**rules** means the rules of the trust, as in force from time to time.<sup>7</sup>

**service** means the [water services AND/OR drainage services] provided by the trust.

**system** means the [water supply system AND/OR water distribution system AND/OR drainage system] provided by the trust.<sup>8</sup>

**trust** means [insert trust name], a private water trust under the *Water Management Act 2000*.

**trust stakeholder** means —

- a member of the trust, or
- a landholder to whom the trust provides services, or
- a person with whom the trust enters into an agreement under the Act, section 231.<sup>9</sup>

**trust work** means a water management work, or a proposed water management work, specified in the trust's works plan.<sup>10</sup>

**trustee** means a trustee elected under section 223 of the Act.<sup>11</sup>

**works plan** means the works plan for the trust, as in force from time to time.<sup>12</sup>

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## 1.2 Legislative requirements

For easy reference, the rules include some of the requirements of the Act and regulations. Relevant sections have been footnoted.

These are legislative requirements and will apply irrespective of whether they appear in the rules.

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<sup>7</sup> When the new laws start, *Water Management Act 2000* (NSW) s 221.

<sup>8</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(1)(a).

<sup>9</sup> When the new laws start, *Water Management (General) Regulation 2018* (NSW) cl 3(1).

<sup>10</sup> When the new laws start, *Water Management Act 2000* (NSW) s 221.

<sup>11</sup> When the new laws start, *Water Management Act 2000* (NSW) s 221.

<sup>12</sup> When the new laws start, *Water Management Act 2000* (NSW) s 221.

These are not the only requirements of the Act and regulations with which the trust must comply.



# 2 Constitution and management

## 2.1 Functions

The trust was constituted under Schedule 9 of the Act.

The trust's functions are:

1. to provide, maintain, or operate a [water supply system AND/OR water distribution system AND/OR drainage system].<sup>13</sup> This may include:
  - constructing, installing, maintaining, operating, and managing trust works<sup>14</sup>
  - repairing, replacing, maintaining, removing, extending, connecting, disconnecting, improving, or doing any other things in relation to trust works that are necessary to carry out the trust's functions<sup>15</sup>
2. any other function conferred or imposed on the trust by or under the Act or any other Act.<sup>16</sup>

The trust must exercise its functions in accordance with the Act, the regulations, and the rules.<sup>17</sup>

## 2.2 The rules

### 2.2.1 Effect of the rules

The rules are binding on the members of the trust, trustees, and landholders to whom the trust provides services.<sup>18</sup> The rules must:

- not be inconsistent with the Act or the regulations<sup>19</sup>
- comply with the requirements prescribed by the regulations.<sup>20</sup>

A rule has no effect to the extent to which it is inconsistent with the Act or the regulations.<sup>21</sup>

### 2.2.2 Accessing the rules

Trust stakeholders may request a hard copy or electronic copy of the rules from [the secretary]:

<sup>13</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(1)(a). No additional functions have been conferred under section 224(1)(b).

<sup>14</sup> When the new laws start, *Water Management Act 2000* (NSW) s 228(1)(a).

<sup>15</sup> When the new laws start, *Water Management Act 2000* (NSW) s 228(1)(b).

<sup>16</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(1)(b).

<sup>17</sup> When the new laws start, *Water Management Act 2000* (NSW) s 225(3).

<sup>18</sup> When the new laws start, *Water Management Act 2000* (NSW) s 225(5).

<sup>19</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(3)(a).

<sup>20</sup> When the new laws start, *Water Management Act 2000* (NSW) s 225(3)(b).

<sup>21</sup> When the new laws start, *Water Management Act 2000* (NSW) s 225(6).

Where a request is made, [the secretary] must provide the type of copy requested within [5 business days].<sup>22</sup>

Electronic copies must be provided free of charge.

### 2.2.3 Changing the rules

The trust may amend or replace its rules if:

- the proposed change has been approved by at least two-thirds of members entitled to vote on the change; or
- the change is authorised by the rules.<sup>23</sup>

The trust must notify each trust stakeholder of changes to the rules, or replaced rules:

- in writing, and
- within 2 business days after the change or replacement.<sup>24</sup>

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<sup>22</sup> When the new laws start, *Water Management Act 2000* (NSW) s 226(2).

<sup>23</sup> When the new laws start, *Water Management Act 2000* (NSW) s 225 (1), (2)(n) and (7). No change to the proportion has been made under section 225(8).

<sup>24</sup> When the new laws start, *Water Management (General) Regulation 2018* (NSW) cl 58.

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## 2.3 Members of the trust

### 2.3.1 Register of members

The trust must keep a register of members at its [head office or registered office].

The register must contain:

- a member's name, residential address, and contact details such as postal address, telephone number, or email address
- the date on which the person became a member
- if the person is a class 1 or class 2 member
- if the person is a class 1 member, the particulars of the land title, for example, the lot and deposited plan numbers
- the date on which the person ceased being a member
- [the member's water entitlement].

The secretary must make the register of members available at the AGM.

Unless the trustees approve, a person must not:

- use information from the register to contact or send material to a member advertising for political, religious, charitable, or commercial purposes
- disclose information from the register to someone who is not a member or otherwise employed by or associated with the trust.

### 2.3.2 Members' rights

A member may:

- attend and speak at meetings
- put forward resolutions
- ask trustees to call meetings
- look at the records of the trust if the trustees have authorised them to do so, or if the members have passed a resolution letting them do so.

### 2.3.3 Members' responsibilities

Members must:

- inform the trust in writing if they change their name, residential address, or contact details such as postal address, telephone number, or email address
- treat other members with respect.

Members who sell land to which the trust provides or is able to provide services must notify the trust of the sale of land as follows:

- before the sale — by giving the trust written notice of their intention to sell the land<sup>25</sup>
- within 21 days after the sale — by giving the trust written notice of the following:
  - the date of the sale
  - the identity of the purchaser
  - whether the member informed the purchaser the land was land to which the trust provides or is able to provide services.<sup>26</sup>

Members who subdivide land to which the works plan applies must:

- before the subdivision — by giving the trust written notice of their intention to subdivide
- within 21 days after the subdivision — by giving the trust written notice that their land has been subdivided. This notice must include:
  - when the subdivision took effect
  - a copy of the registered plan.

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## 2.4 New members

### 2.4.1 Adding members by land dealings

Subject to section 239C of the Act, the purchaser of land to which the trust provides or is able to provide services automatically becomes a member when the sale of land takes effect.<sup>27</sup>

Upon becoming a member, the purchaser automatically has the entitlements and liabilities of the vendor as a member, in respect of the land, that the vendor had immediately before the sale took effect.<sup>28</sup>

After receiving a notification under rule 2.3.3, the [secretary] must update the register of members.

A person automatically becomes a member if they otherwise become the owner of land to which the works plan applies. For example, as a beneficiary of a will. After confirming ownership, the [secretary] must update the register of members.

### 2.4.2 Adding members by changing the works plan

A landholder may apply to the trust to become a class 1 member by adding their land to the works plan.

The application must be in writing and may be made using the application for new membership form.

The application must include:

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<sup>25</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239B(2) and *Water Management (General) Regulation 2018* (NSW) cl 61(a).

<sup>26</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239B(2) and *Water Management (General) Regulation 2018* (NSW) cl 61(b).

<sup>27</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239B(1)(b).

<sup>28</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239B (1)(c).

- the particulars of the land title and area of land proposed to be added to the works plan (the additional land)
- the particulars of any proposed changes to trust works (if any)
- plans showing the location of:
  - the additional land relative to the works plan
  - the location of any water management work or proposed water management work
  - location of any proposed changes to trust works.

The [members] must consider the application [as soon as practicable OR within insert specified timeframe] after receiving it.

Before determining the application, the members must decide:

- whether to approve the change to the works plan<sup>29</sup>
- if the change to the works plan is approved, whether the change takes effect from the date the approval is given, or another date specified in the approval.<sup>30</sup>

Changes to the works plan must be approved by at least two-thirds of the members entitled to vote on the question.<sup>31</sup>

If the changes to the works plan are approved, the application must be accepted.

If the changes to the works plan are refused, the application must be refused.

The [secretary] must notify the applicant of the trust's decision in writing. The notice must include the matters the trust considered when determining the application.

If the trust accepts an application, the [secretary] must:

- update the register of members
- update the works plan to include the approved changes.

### 2.4.3 Applying for class 2 membership

A person at least 18 years of age may apply, in writing, to become a class 2 member. The person may apply using the application for new membership form.

The application must include the person's reasons for membership. For example:

- the person has a beneficial interest in land to which the works plan applies
- the person has day-to-day management of the land to which the works plan applies
- the trust's operations impact the person's land, access to water, or safety
- the person is a government agency with responsibilities related to the trust's functions.

The [members] must consider the application [as soon as practicable OR within insert specified timeframe] after receiving it.

<sup>29</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(1).

<sup>30</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(3).

<sup>31</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(1).

The [members] must decide whether to accept or refuse an application.

The [secretary] must notify the applicant of [the members] decision in writing.

If the trust accepts an application, the [secretary] must update the register of members.

## 2.4.4 Membership and subdividing land

Where a member subdivides land to which the works plan applies:

- a new class 1 membership is created for each parcel of land created by registration of a deposited plan
- a new class 1 membership is created for each strata scheme created by registration of a strata plan
- a new class 1 membership is created for each community scheme created by registration of a community, precinct, or neighbourhood plan.

The subdivision of land does not of itself:

- entitle any other person to be a member or be supplied with services<sup>32</sup>
- affect any existing entitlement of any other person in relation to any such service<sup>33</sup>
- affect any functions of the trustees or trust in relation to trust works.<sup>34</sup>

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## 2.5 Ending membership

### 2.5.1 Ending membership by the sale of land

A member who sells land to which the trust provides or is able to provide services automatically ceases to be a member in respect of that land when the sale takes effect.<sup>35</sup>

After receiving a notification under rule 2.3.3, the [secretary] must update the register of members.

### 2.5.2 Ending membership by changing the works plan

A class 1 member may apply to the trust to end their membership by removing their land from the works plan.

The application must be in writing and include:

- the particulars of the land title and area of land proposed to be removed from the works plan (the removed land)
- the particulars of any proposed changes to trust works (if any)
- plans showing the location of:

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<sup>32</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239C(a).

<sup>33</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239C(b).

<sup>34</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239C(c).

<sup>35</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239B(1)(a).



- the removed land relative to trust works
- location of any proposed changes to trust works.

The [members] must consider the application [as soon as practicable OR within insert specified timeframe] after receiving it.

Before determining the application, the members must decide:

- whether to approve the changes to the works plan<sup>36</sup>
- if the changes to the works plan are approved, whether the change takes effect from the date the approval is given, or another date specified in the approval.<sup>37</sup>

Changes to the works plan must be approved by at least two-thirds of the members entitled to vote on the question.<sup>38</sup>

If the changes to the works plan are approved, the application must be accepted.

If the changes to the works plan are refused, the application must be refused.

The [secretary] must notify the applicant of the trust's decision in writing. The notice must include the matters the trust considered when determining the application.

If the trust accepts an application, the [secretary] must:

- update the register of members
- update the works plan to reflect the approved changes.

### 2.5.3 Ending membership by transforming a water entitlement

A member who transforms the whole of their member's water entitlement into an access licence and does not have a right to the delivery of that water by the trust automatically ceases to be a member of the trust.<sup>39</sup>

### 2.5.4 Other ways to end membership

A person stops being a member of the trust if:

- they die
- they resign in writing and the [members] accept the resignation by [resolution passed at a meeting]
- a [resolution passed at a meeting] cancels their membership.

Before [passing a resolution under this rule], the [members] must consider if giving effect to the cancellation requires changes to the works plan.

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<sup>36</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(1).

<sup>37</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(3).

<sup>38</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(1).

<sup>39</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(3).

If giving effect to a resignation or cancelling a membership requires changes to the works plan, the trust must not make a change in membership unless the proposed change to the works plan has been approved by at least two-thirds of the members who are entitled to vote on the question.<sup>40</sup>

[Resolutions passed at a meeting] may cancel a member's membership if doing so is in accordance with section 238 of the Act and the member:

- has resigned, and the resignation has been accepted
- cannot be contacted for 2 years
- does not comply with the rules of the trust
- acts in a manner that may be prejudicial to the interests of the trust
- is convicted of an indictable offence
- has been liable for the payment of unpaid rates and charges to the trust for more than 2 years

If a [resolution passed at a meeting] cancels a person's membership the [secretary] must:

- send [a copy of the resolution] to their last known address or email address, [as soon as practicable after passing the resolution]
- update the register of members.

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## 2.6 Members' meetings and decisions

### 2.6.1 Annual general meeting

The trust must hold an AGM every financial year.

The AGM is for:

- viewing the register of members
- presenting the audited financial statement for the previous financial year
- any other business members nominate.

### 2.6.2 Calling meetings

The [trustees] may call a meeting [at any time OR must call a general meeting every insert a specific amount of time].

[Class 1 members OR Members] may ask the trustees to call a meeting [at any time].

If [one OR 3 OR 5 OR 10% OR insert specific number] [class 1 members OR members] ask for a meeting, the trustees must call a meeting within [28 days].

The [secretary] must give members at least [21 days] notice of a meeting

The notice for a meeting must set out:

- the place, date, and time of the meeting

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<sup>40</sup> When the new laws start, *Water Management Act 2000* (NSW) s 238(1).

- the business of the meeting
- if a resolution is being proposed, a draft resolution and an explanation of the nature of the resolution.

### 2.6.3 Business of meetings

Meetings are for:

- confirming the minutes of the previous meeting
- completing the business specified in the notice of the meeting, which may include any other business members nominate.

### 2.6.4 Using technology at meetings

The trust may hold meetings at more than one place using any technology that gives members a way of taking part.

Members taking part using technology are deemed to be present at the meeting and, if they vote at the meeting, are deemed to have voted in person.

### 2.6.5 Chairing meetings

The chairperson must chair meetings.

If the chairperson does not attend a meeting, the trustees may elect a person to chair the meeting. If they do not, the members must elect a person to chair the meeting.

Chairing meetings includes:

- directing overall business and behaviour
- controlling the timing of meetings
- controlling the order of speakers
- keeping discussions on track
- deciding when discussions should finish
- summarising frequently
- telling members of any proxy nominations and who they are
- declaring the results of votes.

### 2.6.6 Quorum for meetings

[2 OR 5 OR 10] class 1 members make a quorum.

A quorum must be present during the whole meeting.

If there is no quorum after 30 minutes or the quorum is lost during the meeting, the meeting is adjourned until [a time decided by the trustees].

Notice of the reconvened meeting is to be given according to rule 2.6.2, except the number of days' notice required may be reduced.

If there is still no quorum at the reconvened meeting, the meeting may proceed without a quorum.

## 2.6.7 Proxies

Members may appoint a person as proxy to attend meetings and otherwise act as their agent for trust matters.

A proxy appointment must be made in writing using the appointment of proxy form and submitted to the [secretary] before the meeting attended by the proxy.

A proxy has the same rights and responsibilities as the member they represent.

## 2.6.8 Voting rights

On transformation of the whole or part of a class 1 member's water entitlement to an access licence, the member is not entitled to vote on any matter relating to the transformation of other members' water entitlements or the supply of water to members who have not transformed their water entitlements.<sup>41</sup>

Otherwise, class 1 members are entitled to vote, and each class 1 member has one vote.

Class 2 members are not entitled to vote.

A member may only challenge a person's entitlement to vote at a meeting.

The person chairing the meeting will determine the challenge, and their decision is final.

A decision made by the person chairing the meeting must be consistent with the rules.

## 2.6.9 Members' decisions

Members may make decisions about:

- membership changes under rules 2.4.2, 2.4.3, 2.5.2 or 2.5.4
- electing trustees under rule 2.7.4
- removing trustees under rule 2.7.9
- deciding to supply water or drainage services to a person who is not a member under rule 3.2
- fixing rates and charges payable for each year under rule 5.1
- resolving disputes under rule 8
- any other business members nominate.

Decisions of the members must occur by resolutions passed by a majority of votes.

If the votes are tied, the person chairing the meeting has a casting vote.

If the person chairing the meeting is a member, the casting vote is an additional vote.

A simple majority on a show of hands can decide resolutions put to a vote at a meeting unless a member demands a count.

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<sup>41</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(a).

Any member entitled to vote on the resolution or the person chairing the meeting can demand a count. A count can occur before or after a show of hands.

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## 2.7 The trustees

### 2.7.1 Functions of the trustees

The trustees' functions are:

- to direct, control, and manage the affairs of the trust, in accordance with the Act, the regulations, and the rules<sup>42</sup>
- any other functions conferred on the trustees by or under the Act.<sup>43</sup>

The trust or trustees may delegate any of their functions (other than the power to delegate under section 227 of the Act) to:

- a member or trustee
- an employee of the trust.<sup>44</sup>

Delegations must be made in writing.<sup>45</sup>

### 2.7.2 Trustees

The number of trustees must be [specify the number of trustees on 1 January 2001].<sup>46</sup>

Trustees are appointed for a term of [3 years].<sup>47</sup>

Subject to section 239N of the Act, trustees may be re-elected.

Trustees must be at least 18 years old.

### 2.7.3 Register of trustees

The trust must keep a register of trustees at its head office or registered office.

The register must contain:

- a board member's name, residential address, and contact details such as postal address, telephone number, or email address
- copies of written consents to act as trustees
- the date on which a person became a trustee
- the date on which a person ceased being a trustee.

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<sup>42</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(4)(a).

<sup>43</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(4)(b).

<sup>44</sup> When the new laws start, *Water Management Act 2000* (NSW) s 227.

<sup>45</sup> When the new laws start, *Water Management Act 2000* (NSW) s 227.

<sup>46</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(1).

<sup>47</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(6).

The [secretary] must make the register of trustees available at the AGM.

## 2.7.4 Electing the trustees

[Members OR class 1 members] of the trust must elect the trustees by resolution passed at a meeting.

Before electing the trustees, the [secretary] must:

- seek nominations
- hold a ballot or series of votes to elect the trustees if the number of nominations exceeds the number of trustees.

Trustees must consent to becoming a trustee in writing.

## 2.7.5 Filling casual trustee vacancies

Trustees can appoint a [member OR class 1 member] to fill a casual trustee vacancy.

Before appointing a [member OR class 1 member], the trustees must:

- notify members of the vacancy
- seek nominations from [members OR class 1 members].

A resolution passed at the next meeting must confirm the appointment of a [member OR class 1 member] to fill a casual trustee vacancy, or the [member's OR class 1 member's] trustees role ceases.

## 2.7.6 Trustee duties

Trustees have duties:

- of care and diligence
- of good faith
- to disclose conflicts of interest
- not to improperly use their position or information
- to provide sound financial management of the trust
- not to carry out duties while insolvent.

## 2.7.7 Conflicts of interest

A trustee who has a material personal interest in a trust matter must tell the other trustees and provide information about their interest and its relation to the trust.

Information about the conflict must be:

- given at a trustee meeting as soon as possible after the trustee becomes aware of the conflict
- recorded in the minutes of the trustees meeting.



A trustee who has a material personal interest must not, without the consent of the majority of the other trustees:

- be present at a trustee meeting while it considers the matter in question
- vote on the matter.

## 2.7.8 Using trust money and property

The trustees may use the trust's money and property to carry out its business.

The trust may pay trustees reasonable travelling and other expenses for attending trustee meetings or other trust business.

The trust's money cannot be used to pay trustees a salary or sitting fee for their work as trustees.

This does not preclude the trust from:

- employing trustees
- engaging a trustee under a contract to provide goods or services to the trust, so long as the trustee has exercised their duty to disclose a conflict of interest.

The trustees cannot give, by loan or otherwise, the trust's money and property to members of the trust or any other person.

This rule does not stop the trust from making reasonable payment to:

- a member or trustee in their capacity as an employee
- a member or trustee under a contract to provide goods or services to the trust.

## 2.7.9 Ending trusteeship

A trustee ceases being a trustee if they:

- die<sup>48</sup>
- resign<sup>49</sup>
- are absent, without leave, from 3 consecutive meetings<sup>50</sup>
- become bankrupt, apply to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the person's creditors or makes an assignment of the person's remuneration for their benefit<sup>51</sup>
- become a mentally incapacitated person<sup>52</sup>

<sup>48</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(a).

<sup>49</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(b).

<sup>50</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(c).

<sup>51</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(d).

<sup>52</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(e).

- are convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or are convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable<sup>53</sup>
- are convicted, in any jurisdiction, of an offence involving fraud<sup>54</sup>
- are disqualified from managing a corporation under the *Corporations Act 2001* (Cth)
- are subject to a resolution passed at a meeting removing them as a trustee.

Before a resolution at a meeting may remove a trustee:

- the [secretary] must, as soon as possible, give the trustee concerned a copy of the notice given to members under rule 2.6.2
- the trustee concerned may give a written statement to members and speak at the meeting.

If the resolution is passed, removal takes effect immediately.

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## 2.8 Trustee meetings and decisions

### 2.8.1 Trustee meetings

The trustees must meet at least [every six months].

Office bearers may attend trustee meetings.

### 2.8.2 Calling trustee meetings

A trustee may call a meeting by giving [reasonable OR insert an amount of time] notice to all other trustees and office bearers.

The notice must set out:

- the place, date, and time for the trustees meeting
- the business of the meeting.

### 2.8.3 Business of trustee meetings

The business of trustee meetings includes deciding the time and place of the next trustee meeting.

### 2.8.4 Using technology at trustee meetings

Trustee meetings may be held at more than one place using any technology that gives trustees a way of taking part.

Trustees taking part using technology are deemed to be present at the meeting, and if they vote at the meeting, are deemed to have voted in person.

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<sup>53</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(f).

<sup>54</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(7) and *Water Management (General) Regulation 2018* (NSW) cl 56(1)(g).

## 2.8.5 Chairing trustee meetings

The chairperson must chair trustee meetings.

If the chairperson does not attend a trustee meeting, the trustees may elect a trustee or office bearer to chair the meeting.

Chairing trustee meetings includes:

- directing overall business and behaviour
- controlling the timing of meetings
- controlling the order of speakers
- keeping discussions on track
- deciding when discussions should finish
- summarising frequently.

## 2.8.6 Quorum for trustee meetings

A quorum must be present during the whole trustee meeting.

If there is no quorum after 30 minutes or the quorum is lost during the trustee meeting, the trustee meeting is adjourned until [a time decided by the trustees].

Notice of the reconvened trustee meeting is to be given according to rule 2.8.2.

If there is still no quorum at the reconvened meeting, the trustee meeting may proceed without a quorum.

## 2.8.7 Trustees' decisions

Decisions of the trustees, including decisions to enter into irrigation, water supply, water distribution, or drainage agreements, must occur by resolution passed by a majority of votes.

Resolutions may be passed without a trustee meeting if all trustees sign a statement attaching a copy of the resolution and saying they are in favour of it. Resolutions and statements made under this rule may be signed electronically.

## 2.8.8 Voting

Each trustee has one vote.

If the votes are tied, the person chairing the meeting has a casting vote.

If the person chairing the meeting is a trustee, the casting vote is an additional vote.

## 2.8.9 Administration

Documents may be executed if signed by [2 trustees OR the chairperson or their delegate and a trustee].

An act performed by the trustees or a person acting as a trustee is valid, even if the act was performed when:

- there was a defect in the appointment of the trustee, or person acting as a trustee
- the trustee or person acting as a trustee was disqualified from being a trustee.

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## 2.9 Office bearers

The trustees may appoint office bearers to assist in the day-to-day administration of the trust and decide their pay and terms and conditions of employment, if any.

An appointment does not take effect until the person has consented to holding the role in writing.

Trustees may fill casual office bearer vacancies.

### 2.9.1 Electing a chairperson

The trustees must elect a trustee as chairperson of the trust.<sup>55</sup>

The chairperson must consent to holding the position in writing.

The trustees must appoint the chairperson for [1] year.

### 2.9.2 Role of the chairperson

The chairperson must:

- represent the trust
- be a supportive leader for members
- facilitate trust activities
- plan and budget for the future as per the wishes of members
- chair meetings and trustee meetings.

### 2.9.3 Appointing other office bearers

The trustees must appoint a secretary.

The secretary:

- must be at least 18 years old
- must ordinarily reside in Australia
- may be a member of the trust or a trustee.

### 2.9.4 Role of the secretary

The secretary is the main administrative officer of the trust.

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<sup>55</sup> When the new laws start, *Water Management Act 2000* (NSW) s 223(3).

The secretary must:

- maintain the trust's administrative records
- receive the trust's correspondence, including applications for membership, and pass it on to at least one trustee within 7 days of receiving it
- send out notices required under the rules, including notices of meetings and rates notices
- make documents of the trust available for inspection in accordance with the rules.

### **2.9.5 Records kept by the secretary**

The secretary must keep the registers of members, trustees, and the persons/landholdings (non-members) to whom the trust provides services.

The secretary must keep a record of the office bearers of the trust that includes:

- the names, residential addresses, and contact details such as postal addresses, telephone numbers or email addresses of office bearers
- copies of written consents to act as office bearers
- the date on which a person became an office bearer
- the date on which a person stopped being an office bearer
- copies of any pay and terms and conditions of employment.

The secretary must keep a record of all meetings and trustee meetings, including:

- minutes of the meeting
- names of the members or trustees in attendance, including proxies
- business considered at the meeting
- any resolution on which a vote was taken and the result of the vote
- any disclosure of material personal interests.

Records of meetings and trustee meetings may be in writing, or audio or video recording.

The secretary must keep:

- the rules of the trust
- the works plan of the trust.

# 3 Operational functions

## 3.1 Works plan

### 3.1.1 Works plan content

The trust must have a works plan that complies with any requirements prescribed by the regulations and the rules.<sup>56</sup>

The works plan must:

- identify the water management works or proposed works that are trust works<sup>57</sup>
- specify the location of the works, this may include works on land of former members who have transformed their member's water entitlements<sup>58</sup>
- include a map or diagram of the works<sup>59</sup>
- describe the works<sup>60</sup>
- specify the land to which the works plan applies<sup>61</sup>
- if the trust holds an access licence, include the access licence number<sup>62</sup>
- if the trust holds a water management work approval or activity approval for the works, include the approval number<sup>63</sup>
- include a statement of an address at which a copy of the works plan is kept, and from which a copy may be obtained by a trust stakeholder.<sup>64</sup>

The land to which the works plan applies includes the land to which the trust provides or can provide services.

### 3.1.2 Accessing the works plan

A copy of the works plan must be kept at the address stated on the works plan.<sup>65</sup>

Trust stakeholders may request a hard copy or electronic copy of the works plan from [the secretary].

<sup>56</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(2).

<sup>57</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(1)(a).

<sup>58</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(1)(b) and (4).

<sup>59</sup> When the new laws start, *Water Management (General) Regulation 2018* cl 59(1)(a).

<sup>60</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(1)(b).

<sup>61</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(1)(c).

<sup>62</sup> When the new laws start, *Water Management (General) Regulation 2018* cl 59(1)(b)(i).

<sup>63</sup> When the new laws start, *Water Management (General) Regulation 2018* cl 59(1)(b)(ii).

<sup>64</sup> When the new laws start, *Water Management (General) Regulation 2018* cl 59(1)(c).

<sup>65</sup> When the new laws start, *Water Management (General) Regulation 2018* cl 59(2)(a).



Where a request is made, [the secretary] must provide the type of copy requested within 5 business days.<sup>66</sup>

Electronic copies must be provided free of charge.

### 3.1.3 Requesting additional details about trust works

Members and landholders to whom the trust provides services may request a detailed plan of trust works on their landholding from [the secretary] if they:

- consider the scale of the works plan is inadequate for their needs
- require trust works on their property to be surveyed
- require more information about trusts works on their landholding.

Where a request is made, [the secretary] must provide the type of copy requested within 2 months.

If the detailed plan is inconsistent with the works plan, [the secretary] must, within 2 months of the inconsistency being identified, update the works plan to be consistent with the detailed plan.

### 3.1.4 Changing the works plan

The works plan may be amended or replaced if the amendment or replacement is consented to by any landholder on whose land an affected work is situated or is authorised by the rules.<sup>67</sup>

Amendments authorised by the rules include updating the works plan to:

- reflect a decision made under rule 2.4.2 or 2.5.2
- be consistent with a detailed plan of trust works under rule 3.1.3
- reflect the subdivision of land to which the works plan applies, for example, to update land boundaries and registered plan references
- reflect any changes to trust works approved by the trust.

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## 3.2 Providing services

The trust may:

- supply water under an access licence or approval held by the trust<sup>68</sup>
- supply water for the purpose of an access licence or approval held by a member whose member's water entitlement was transformed<sup>69</sup>
- enter into an agreement with a person who is not a member to [supply water for the purpose of irrigating land or other purposes AND/OR drain water from land] by means of the [water

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<sup>66</sup> When the new laws start, Water Management (General) Regulation 2018 cl 59(2)(b).

<sup>67</sup> When the new laws start, *Water Management Act 2000* (NSW) s 233(3).

<sup>68</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(2)(a).

<sup>69</sup> When the new laws start, *Water Management Act 2000* (NSW) s 224(2)(b).

supply system AND/OR water distribution system AND/OR drainage system] managed by the trust<sup>70</sup>

- enter into an arrangement with a landholder to provide services in relation to works that are not trust works<sup>71</sup>

The trust must not supply water for domestic purposes if a supply of water is available to the person from a local water utility or major utility.<sup>72</sup>

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### 3.3 Providing and maintaining distribution works

If it is necessary for the efficient or effective operation of trust works or the carrying out of the trust's functions,<sup>73</sup> the trust may, by notice in writing given by the trust to the member or landholder, require members or landholders to whom it supplies water to do the following on their land:

- provide water delivery systems to enable the supply of water at the rate specified by the trust
- provide water storage works in the locations, and of a kind, specified by the trust for water supplied for stock or domestic purposes
- maintain any water delivery systems or water storage works to enable the trust to properly exercise its functions in relation to the supply of water.<sup>74</sup>

The notice given to the member or landholder must:

- describe the works required
- explain why the works are required
- propose a reasonable timeframe for completing the works.

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### 3.4 Discontinuing water supplies

The trust may at any time suspend or restrict the supply of, or refuse to supply, water to a member or landholder if the trust is reasonably satisfied that any of the following circumstances exist:

- the water that is available to the trust cannot meet the demand<sup>75</sup>
- the water that is available to the trust is not suitable for the required purpose<sup>76</sup>
- the trust is unable to provide sufficient conveyance water in connection with the operation of an irrigation system<sup>77</sup>
- the trust is not lawfully able to supply the quantity of water<sup>78</sup>

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<sup>70</sup> When the new laws start, *Water Management Act 2000* (NSW) s 231(1).

<sup>71</sup> When the new laws start, *Water Management Act 2000* (NSW) s 228(2).

<sup>72</sup> When the new laws start, *Water Management Act 2000* (NSW) s 231(2).

<sup>73</sup> When the new laws start, *Water Management Act 2000* (NSW) s 229(3).

<sup>74</sup> When the new laws start, *Water Management Act 2000* (NSW) s 229(1).

<sup>75</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(a).

<sup>76</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(b).

<sup>77</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(c).

<sup>78</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(d).

- the member or landholder has failed to pay rates or charges for water or other services provided by the trust<sup>79</sup>
- the member or landholder has contravened or failed to comply with a condition on which water services are supplied by the trust<sup>80</sup>
- the member or landholder has contravened or failed to comply with a requirement of the trust relating to the provision, maintenance, or repair of distribution works or any other requirement made by the trust in accordance with the Act, the regulations, or the rules<sup>81</sup>
- the member or landholder has contravened or failed to comply with a requirement of the Act, the regulations, or the rules<sup>82</sup>
- the trust is unable to dispose of water draining into its drainage system because of the degraded quality of the water.<sup>83</sup>

The trust may reduce the amount of water available by different amounts or proportions according to such factors as the trust thinks fit.<sup>84</sup>

Before suspending or restricting the supply of water or refusing to supply water to a member or landholder, the trust must give [28 days'] written notice to the member or landholder.

The notice must give the member or landholder an opportunity to make written submissions.

The trust must consider and respond in writing to any submissions received within [28 days].

These requirements do not apply if it is not reasonably possible in the circumstances.

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## 3.5 Entering land

Trust employees and agents may enter onto land on which trust works are situated, or any other land, to:

- carry out any of its functions in relation to trust works<sup>85</sup>
- read a meter that measures water supplied by the trust or monitors drainage for quantity or quality or both<sup>86</sup>
- carry out investigations or inspections, take levels, drill test bore-holes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing, or determining the site of a proposed trust work<sup>87</sup>

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<sup>79</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(e).

<sup>80</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(f).

<sup>81</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(g).

<sup>82</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(h).

<sup>83</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(1)(i).

<sup>84</sup> When the new laws start, *Water Management Act 2000* (NSW) s 230(2).

<sup>85</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(1)(a).

<sup>86</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(1)(b).

<sup>87</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(1)(c).

- remove samples of materials from the land for the purposes of carrying out the trust's functions, but only if the landholder has been consulted and the views of the landholder have been considered<sup>88</sup>
- exercise any other powers that are incidental to the trust's functions or that are reasonably necessary for carrying out the trust's functions.<sup>89</sup>

Before entering onto land, the trust must give [3 days'] notice to the landholder. This requirement does not apply if the entry is to read a meter that measures water supplied by the trust or monitors drainage for quantity of quality or both.<sup>90</sup>

The trust must ensure as little damage as possible is caused when exercising these powers and must repair any damage caused or pay compensation for the damage.<sup>91</sup>

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<sup>88</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(1)(d).

<sup>89</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(1)(e).

<sup>90</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(2).

<sup>91</sup> When the new laws start, *Water Management Act 2000* (NSW) s 232(3).

# 4 Sale and transformation of water entitlements

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## 4.1 Trust's water access licence

The trust must not enter into a dealing to sell or mortgage the whole or part of its water entitlement under its access licence unless the dealing is permitted under, and is in accordance with, the rules.<sup>92</sup>

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## 4.2 Member's water entitlements

### 4.2.1 Determining a member's water entitlement

A member may request the trust determine their water entitlement. The request must be made in writing.<sup>93</sup>

If the request is made:

- by a member who is supplied with water for irrigation, the trust must determine the member's water entitlement<sup>94</sup>
- by a member who is not supplied with water for irrigation, the trust may determine the member's water entitlement.<sup>95</sup>

The trust must have regard to the following matters when determining the member's water entitlement:

- the nature of agricultural activities on the land to which water is supplied<sup>96</sup>
- the amount of water currently supplied to the member<sup>97</sup>
- any present or past water sharing arrangements applicable to the member<sup>98</sup>
- previous determinations of member's water entitlements<sup>99</sup>
- any other matter it considers relevant<sup>100</sup>

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<sup>92</sup> When the new laws start, *Water Management Act 2000* (NSW) s 235.

<sup>93</sup> When the new laws start, *Water Management Act 2000* (NSW) ss 234(1) and (2).

<sup>94</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(1).

<sup>95</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(2).

<sup>96</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(3)(a).

<sup>97</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(3)(b).

<sup>98</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(3)(c).

<sup>99</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(3)(e) and *Water Management (General) Regulation 2018* cl 60(1).

<sup>100</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(3)(d).

A determination may specify the different parts of the member's water entitlement that are available to the member for different purposes.<sup>101</sup>

A determination must be in writing<sup>102</sup> and specify:

- the matters the trust considered when making the determination<sup>103</sup>
- the proportion of the share component of an access licence held by or on behalf of the trust that is available to the member<sup>104</sup>
- the licence category of the member's proportion of the share component.<sup>105</sup>

Notice of the determination must be given by the trust to the member.<sup>106</sup>

A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination.<sup>107</sup>

A determination may be varied or redetermined to correct an error, but only on a further application made by a member within 2 years of the determination.<sup>108</sup> The member must be a person who, at the time of the further application, is a current member and not merely a former member.<sup>109</sup>

A person must not participate in a determination of a member's water entitlement if the person or a member of the person's immediate family has an interest in the entitlement.<sup>110</sup>

The trust's decisions about member's water entitlements may be appealed to the Land and Environment Court.<sup>111</sup>

## 4.2.2 Selling or transferring a member's water entitlement

A member may sell or transfer the whole or any part of their member's water entitlement to another member or to the trust.<sup>112</sup>

A member must not sell or transfer the whole or part of their member's water entitlement under section 236 of the Act unless the sale or transfer has been approved by the trust in accordance with the rules or the regulations.<sup>113</sup>

A sale or transfer by a member does not affect the member's membership of the trust, except as provided by the Act or the rules.<sup>114</sup>

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<sup>101</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(4).

<sup>102</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(5).

<sup>103</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(5) and *Water Management (General) Regulation 2018* (NSW) cl 60(2)(a).

<sup>104</sup> When the new laws start, *Water Management (General) Regulation 2018* (NSW) cl 60(2)(b).

<sup>105</sup> When the new laws start, *Water Management (General) Regulation 2018* (NSW) cl 60(2)(c).

<sup>106</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(5).

<sup>107</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(6).

<sup>108</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(6) and *Water Management (General) Regulation 2018* (NSW) cl 60(3).

<sup>109</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(6) and *Water Management (General) Regulation 2018* (NSW) cl 60(4).

<sup>110</sup> When the new laws start, *Water Management Act 2000* (NSW) s 234(7).

<sup>111</sup> When the new laws start, *Water Management Act 2000* (NSW) s 368(1A).

<sup>112</sup> When the new laws start, *Water Management Act 2000* (NSW) s 236(1).

<sup>113</sup> When the new laws start, *Water Management Act 2000* (NSW) s 236(2).

<sup>114</sup> When the new laws start, *Water Management Act 2000* (NSW) s 236(3).



### 4.2.3 Transforming a member's water entitlement

The trust may apply under Division 4 of Part 2 of Chapter 3 of the Act for the purpose of wholly or partly transforming a member's water entitlement into an access licence.<sup>115</sup>

On transformation of the whole or part of a member's water entitlement to an access licence:

- the member is not entitled to vote (as a trustee) or as a member on any matter relating to the transformation of other members' water entitlements or the supply of water to members who have not transformed their water entitlements (see rule 2.6.8)<sup>116</sup>
- the trust may continue to exercise functions in relation to any trust works that are located on the landholding, whether or not the trust is to deliver the member's water entitlement under the access licence, or the landholder is a member of the trust.<sup>117</sup>

If the whole of a person's water entitlement is transformed and the person does not have a right to the delivery of that water by the trust:

- the person ceases to be a member of the trust (see rule 2.5.3)
- the trust must not fix rates and charges in respect of the person's landholding for that water (other than termination charges).<sup>118</sup>

The trust may require a member to provide security as a condition of consent to transformation of the whole or part of the member's water entitlement, subject to the regulations.<sup>119</sup> For example:

- a charge over a part of an irrigation right that is not transformed
- a charge over an access licence or other entitlement to water acquired by the person and resulting from the transformation
- a guarantee by an authorised deposit-taking institution
- a deposit lodged with the trust.<sup>120</sup>

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<sup>115</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(1).

<sup>116</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(a).

<sup>117</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(b).

<sup>118</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(3).

<sup>119</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(5).

<sup>120</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(6).

# 5 Rates and charges

## 5.1 Fixing rates and charges

A trust must, for each year commencing on 1 July, fix the rates and charges payable in respect of each landholding that is owned or occupied by its members and for which it exercises functions, or for which it provides services in that year.<sup>121</sup>

### 5.1.1 Procedure for setting rates and charges

The rules must have procedures for setting rates and charges.<sup>122</sup>

A resolution passed at the first meeting must approve the procedures for setting rates and charges.

Once approved, the [secretary] must amend this rule to specify the procedures for setting rates and charges.

### 5.1.2 Basis for fixing rates and charges

The trust must fix rates and charges based on [insert basis for fixing rates and charges].

In determining the amount of rates and charges payable, the trust must fix an amount that it considers is sufficient to meet the estimated costs of the following:

- the trust's likely costs in providing services for that year<sup>123</sup>
- the liabilities of the trust<sup>124</sup>
- the likely costs relating to trust works, including (but not limited to) such as maintenance, improvement, and replacement of works and new works<sup>125</sup>
- provision for a sinking fund (if necessary).<sup>126</sup>

### 5.1.3 Giving notice of rates and charges

The trust must give members and landholders notice of its rates and charges for a year, including the basis on which they were calculated:

- in writing
- within 21 days of fixing the rates and charges
- if interest is payable on unpaid rates and charges, by specifying:

<sup>121</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(1).

<sup>122</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(7).

<sup>123</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(a).

<sup>124</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(b).

<sup>125</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237(2)(c).

<sup>126</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(2)(d).

- the basis on which interest is calculated. The interest calculated must not exceed the rate of interest payable on an unpaid judgment of the Supreme Court<sup>127</sup>
- when the interest becomes payable.<sup>128</sup>

## 5.1.4 Transformation charges

Members can transform their water entitlement into an individual water access licence under section 237 of the Act and rule 4.2.3.<sup>129</sup>

The trust may fix charges payable for the delivery of water to a member or former member after transformation of the whole or part of the member's water entitlement.<sup>130</sup>

## 5.1.5 Termination charges

The trust may fix termination charges payable by a member or former member in connection with the trust ceasing to supply water to the member or former member (whether because of the transformation of the member's water entitlement to an access licence or otherwise).<sup>131</sup>

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## 5.2 Paying rates and charges

The owner or occupier of a landholding for which rates or charges are levied must pay the rates and charges to the trust.<sup>132</sup>

[Members and landholders must pay rates and charges within 28 days of receiving the rates notice unless the trust and the member or landholder have agreed to a payment plan.](#)

### 5.2.1 Liability where there are joint owners

If a landholding for which rates or charges are levied is owned or occupied by more than one person:

- the rates or charges may be levied on one or more of those persons and may be recovered by the trust from any one or more of those persons<sup>133</sup>
- the trust is not entitled to recover more than the total amount of the rates and charges (and any interest payable).<sup>134</sup>

If land is owned or jointly held by 2 or more persons, such persons are jointly and severally liable to the trust for the rate, but as between themselves are liable only for such part of the rate as is

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<sup>127</sup> *Water Management Act 2000* (NSW) s 356.

<sup>128</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(6) and *Water Management (General) Regulation 2018* (NSW) cl 62.

<sup>129</sup> When the new laws start, *Water Management Act 2000* (NSW) s 237.

<sup>130</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(5)(b).

<sup>131</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239E(5)(a).

<sup>132</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239F(1).

<sup>133</sup> When the new laws start, *Water Management Act 2000* (NSW) s 358.

<sup>134</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239F(2).

proportionate to their interest in the land.<sup>135</sup> If any of the persons pays more than their proportionate part, they may recover the excess from the others.<sup>136</sup>

## 5.2.2 Liability when land is transferred

If any land in a holding reverts to the Crown during any year for which rates or charges are or are to be assessed, the person who immediately before the reversion was the landholder of the land is liable for payment of only that part of the rates or charges proportionate to the part of the year for which the land was held by the person, and any excess payment by the person must be refunded to the person.<sup>137</sup>

A member or landholder who disposes of their estate or interest in any land in respect of which rates or charges have been or may be levied remains liable for the rates or charges to the same extent as if the person had not disposed of their estate or interest in the land if the rates or charges are levied either:

- before the person disposed of his or her estate or interest in the land<sup>138</sup>
- before the person gave the trust notice of disposal.<sup>139</sup>

If any member or landholder who disposes of land to another person pays any amount to the trust in respect of rates or charges levied after the land was disposed of but before prescribed notice is given to the trust, the person by whom the amount was paid may recover the amount from the person to whom the land was disposed.<sup>140</sup>

As between an owner of land and any other person from or to whom the owner derives or disposes of their estate or interest in the land, rates or charges under the Act are to be considered as accruing from day to day and are apportionable accordingly.<sup>141</sup>

An owner of land is liable for all arrears of rates and charges owing by any previous owner of the land, despite acquiring the land after the rates or charges were levied.<sup>142</sup>

If any person who becomes an owner of land pays any rates or charges in respect of that land that were levied before the person became the owner, the person may recover from the previous owner the part of the rates or charges levied for the period when the previous owner was the owner of the land.<sup>143</sup>

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<sup>135</sup> *Water Management Act 2000* (NSW) s 358(1).

<sup>136</sup> *Water Management Act 2000* (NSW) s 358(2).

<sup>137</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239F(3).

<sup>138</sup> *Water Management Act 2000* (NSW) s 361(1)(a).

<sup>139</sup> *Water Management Act 2000* (NSW) s 361(1)(b).

<sup>140</sup> When the new laws start, *Water Management Act 2000* (NSW) s 361(2).

<sup>141</sup> *Water Management Act 2000* (NSW) s 361(3).

<sup>142</sup> *Water Management Act 2000* (NSW) s 362(1).

<sup>143</sup> *Water Management Act 2000* (NSW) s 362(2).

### 5.2.3 Security for overdue rates and charges

The trust may require a trust stakeholder to provide security for the payment of rates and charges to the trust.<sup>144</sup> Security may be only:

- a charge over an access licence
- a guarantee by an authorised deposit-taking institution
- a deposit lodged with the trust or trust.<sup>145</sup>

The security that may be required may be a value not more than 5 times the value of the rates and charged payable by the stakeholder in the immediately preceding water year.<sup>146</sup>

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## 5.3 Recovering unpaid rates and charges

A rate or charge imposed on an owner of land or for a service or thing supplied or provided in connection with a specific parcel of land is a charge on the land.<sup>147</sup>

Any rate or charge due to the trust may be recovered in any court of competent jurisdiction as if it were a debt due to the trust.<sup>148</sup>

The trust may sell land for unpaid rates and charges in accordance with section 359 of the Act.

Security provided under rule 5.2.3 may be forfeited only if:

- the amount for which the security is provided is unpaid for at least 6 months from the date it becomes payable, and
- the trust gives the trust stakeholder written notice of, and reasons for, the intention to forfeit the security, and
- the trust considers submissions made by or on behalf of the stakeholder within at least 21 days of giving the written notice, and
- the trust gives the stakeholder the option of entering into a payment plan as an alternative to forfeiture, and
- the stakeholder declines the option of entering into, or does not comply with, the payment plan.<sup>149</sup>

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## 5.4 Waiving rates and charges

The trust may waive rates, charges, and interest due if the auditor certifies the waiver is in accordance with the rules and the trustees approve.<sup>150</sup>

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<sup>144</sup> When the new laws start, Water Management (General) Regulation 2018 (NSW) cl 57(1).

<sup>145</sup> When the new laws start, Water Management (General) Regulation 2018 (NSW) cl 57(2).

<sup>146</sup> When the new laws start, Water Management (General) Regulation 2018 (NSW) cl 57(3).

<sup>147</sup> *Water Management Act 2000* (NSW) s 355.

<sup>148</sup> *Water Management Act 2000* (NSW) s 357(1).

<sup>149</sup> When the new laws start, Water Management (General) Regulation 2018 (NSW) cl 57(4).

<sup>150</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239G.

# 6 Finance

## 6.1 Keeping financial records

The trust cause proper accounts and records to be kept in relation to all the operations of the trust.<sup>151</sup>

The trust must keep financial accounts records at its head office or registered office.

The trust must prepare financial statements for each financial year of the trust.<sup>152</sup>

Section 7.6 of the *Government Sector Finance Act 2018* applies to financial statements required to be prepared under section 239H of the Act in the same way that it applies to annual GSF financial statements required to be prepared under that Act.<sup>153</sup>

## 6.2 Auditing financial statements

Within [10 business days] of the end of a financial year, the trust must submit its financial statements to an auditor for verification and certification.<sup>154</sup>

The auditor must be one of the following:

- a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth
- a Certified Practising Accountant member of CPA Australia, New South Wales Division
- a member of Chartered Accountants Australia and New Zealand who holds a Certificate of Public Practice issued by it
- a member of the Institute of Public Accountants who holds a Professional Practice Certificate issued by it.<sup>155</sup>

A member or board member must not be appointed to audit the financial statements of the corporation.<sup>156</sup>

The auditor may be appointed by [the trustees].

The auditor has a right of access at all reasonable times to the accounts and records of the trust and a trustee or employee of the trust must comply with any reasonable request by the auditor to

<sup>151</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H(1).

<sup>152</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H(2).

<sup>153</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H(3).

<sup>154</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H (2) and (4), 239J(2).

<sup>155</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H(5) and *Water Management (General) Regulation 2018* (NSW) cl 63.

<sup>156</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239H(6).

provide information or documents relating to the accounts or financial statements or related records of the trust.<sup>157</sup>

The audited financial statements must be laid before the AGM following their verification and certification by the auditor.<sup>158</sup>

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## 6.3 Financial transactions and accounts

The trust must deposit all money it receives into its bank account at a financial institution as soon as practicable after receipt.

The trust must give receipts for all money it receives.

Adequate documents explaining the nature and purpose must support all payments made from trust money.

At least 2 trustees, or a trustee and an office bearer, must approve all cheques, withdrawal forms, electronic funds transfer (EFT) transactions, and other banking documents.

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## 6.4 Borrowing and investment

The trust may borrow money by obtaining a loan by way of limited overdraft to:

- meet necessary legitimate expenditure prior to the collection of rates; or
- carry out urgent works of renewal, or replacement, or other emergency, for which sufficient funds are not immediately available.<sup>159</sup>

The trust must apply to the Minister for a loan by way of limited overdraft and, on application by the trust, the Minister may issue a certificate of limit of overdraft. The certificate must state the purpose for the loan and the limit of the amount to be borrowed.<sup>160</sup>

The limit of the overdraft is in the discretion of the Minister but must not exceed the estimated amount required for the purpose therein plus 10% of such amount.<sup>161</sup>

The money borrowed is taken to be secured on the income of the trust and must be repaid within the time fixed in the certificate.<sup>162</sup>

The interest and charges payable by the trust may be paid to the Treasury, at such times as may be fixed by the Minister.<sup>163</sup>

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<sup>157</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239I.

<sup>158</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239J(2).

<sup>159</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239K(1) and (2).

<sup>160</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239K(3).

<sup>161</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239K(4).

<sup>162</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239K(5).

<sup>163</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239K(1)(a).

# 7 Changing the trust

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## 7.1 Amalgamating with other trusts

If at least [75% of members] vote at a meeting for a resolution to amalgamate the trust with other trusts, the trust may, jointly with the other trusts, apply to the Minister to amalgamate their trusts under section 239 of the Act.<sup>164</sup>

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## 7.2 Winding up

### 7.2.1 Winding up

If at least 75% of members vote at a meeting for a resolution winding up the trust, the trust can request the Minister to wind up the trust.<sup>165</sup>

If the trust passes a resolution to wind up, the trust must:

- determine a date for winding up
- apply to the Minister to wind up the trust under section 239 of the Act
- pay all debts, liabilities, and costs before distributing any assets
- pass a resolution on how the remaining assets are distributed.

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<sup>164</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239.

<sup>165</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239P(1).



# 8 Dispute resolution

If a dispute arises under these rules, the parties affected must first try to resolve it themselves.

If the parties do not resolve the dispute within [10 days], any party may give a dispute notice to the other parties.

The dispute notice must:

- be in writing
- say what the dispute is about
- be given to the trustees.

The trustees must help the parties resolve the dispute within [21 days] after it receives the notice.

If the trustees cannot resolve the dispute, it must put it to the members to resolve at a general meeting.

# 9 Miscellaneous

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## 9.1 Liability

An act or omission of the following persons so acting personally does not subject them to any action, liability, claim, or demand if the act or omission was done, or omitted to be done, in good faith for the purpose of executing the Act:

- the trust
- a member
- a trustee
- an officer or employee of the trust
- a person acting under the direction of the trust, a trustee, officer or an employee.<sup>166</sup>

The trust, members, trustees, any officer or employee of the trust or a person acting under the direction of the trust, trustees, officer, or employee is not subject to any action, liability, claim or demand arising:

- from the unavailability of water
- from the escape of water from a trust work
- from a failure to supply, distribute, or drain water that is authorised by the rules, the Act or the regulations

as a consequence of anything done or omitted to be done in good faith by the trust, member, trustee, officer, employee, or person for the purposes of executing this Act or of carrying out the functions of the trust.<sup>167</sup>

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<sup>166</sup> When the new laws start, *Water Management Act 2000* (NSW) s 397.

<sup>167</sup> When the new laws start, *Water Management Act 2000* (NSW) s 239Q.