

# Model rules guide for private water trusts

## Introduction

The NSW Government is simplifying the laws managing private irrigation boards, private drainage boards, and private water trusts (joint private works schemes). To implement the changes, we are collaborating with joint private works schemes to make clear and simple regulations and model rules.

You can find more information about the project, including a previous discussion paper on the model rules, on our [website](#).

When parts of the *Water Management Amendment Act 2010* (NSW) (the Act) and its regulations commence, private water trusts must have internal governance rules. To help trusts make their rules, we have developed model rules that:

- comply with the Act and proposed regulations
- identify areas of flexibility
- align with general principles of good corporate governance.

Use this guide as a companion to the model rules available on our [website](#).

## Interpreting the coloured text

The model rules must comply with the Act and regulations. To make navigating these limitations easier, the model rules include some of the requirements from the Act and regulations. These are generally the requirements that link to your rule-making powers.

These are legislative requirements and will apply whether you include them in your rules or not. For easy reference, we have included the relevant section references as footnotes. However, you should always refer to the Act and regulations to confirm your specific obligations. It is important to remember that the Act and regulations contain other requirements with which you must comply.

As a result of this approach, the model rules use 3 types of text.

- Black text with light blue shading is defined in the Act or regulations or relates to a requirement of the Act or regulations. You should not change this text.
- Blue text generally reflects features of good governance that you should include in your rules to help you carry out your affairs effectively, and to minimise financial and legal risks. It is recommended you keep this text.
- [Red text in square brackets] highlights where you need to insert a value or choose an option.

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## Using the model rules

The model rules are like a template. Your trust has 3 options as described below.

### Option 1: complete the [red text in square brackets] and adopt the rules as your trust's rules

The [red text in square brackets] includes suggested text for you to consider.

Sometimes, the Act or regulations limit your options. The suggested text reflects these limitations, and this guide explains the limitations.

Where administrative action is required to, for example, update the register of members, we suggest the secretary takes this action. You can change this.

### Option 2: complete the [red text in square brackets], change the blue text, and adopt the rules as your trust's rules

Refer to option 1 for information about completing the [red text in square brackets].

The blue text is recommended text. You can edit and adapt this text to suit your trust. For example, you may wish to add more rules or change or remove some of the model rules.

The blue text mostly relates to internal governance matters. Consider if you want to include more rules about the way your scheme operates. For example, the way you regulate your water or drainage system or the way you regulate the supply, taking, or use of water or the draining or disposal of water through your drainage system (for example, drain maintenance).

This guide highlights some of the blue text you may wish to change.

### Option 3: develop your own rules consistent with the Act and regulations

The model rules are a tool to assist trusts develop their own rules. If you want to develop your own rules, the model rules can help you identify the matters to include.

## About this guide

This guide highlights the parts of the model rules where:

- you need to [insert a value or choose an option]
- you may wish to edit and adapt the blue text.

As a result, this guide does not include all the model rules. The numbers in this guide reflect the numbering in the model rules.



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## Have your say

We seek input from stakeholders. We would like to know if:

- the draft model rules give you sufficient guidance to develop your own rules that comply with the requirements in the Act and regulations
- you can use the flexibility in the rules to meet your trust's individual business needs.

To provide feedback:

- call 1300 081 047
- email [jpws@dpie.nsw.gov.au](mailto:jpws@dpie.nsw.gov.au)

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## 1.1 Definitions

**head officer or registered office** – for smaller schemes, the head office and registered office of the corporation might be the same, for example, your secretary’s address.

**member’s water entitlement** – this definition applies only to trusts that hold access licences. If your trust does not hold an access licence, delete this definition.

**service** – under the Act, trusts provide either water services (for example, water supply, water distribution or irrigation services) or drainage services. Insert the type of service your trust provides.

**system** – under the Act, trusts may provide, maintain, or operate a water supply system, water distribution system, or drainage system. Insert the type(s) of system your trust provides, maintains, or operates.

**works plan** – consider annexing your works plan to your rules.

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## 2 Constitution and management

### 2.1 Functions

Under the Act, trusts may provide, maintain, or operate a water supply system, water distribution system, or drainage system. The type(s) of system you insert here should be the same as you inserted into the definition of ‘system’.

If your trust supplies water, consider if you want to restate section 224 of the Act in your rules – that the trust may supply water under an access licence or approval held by the trust; or for the purpose of an access licence or approval held by a member whose member’s water entitlement has been transformed.

#### 2.2.2. Accessing the rules

Consider if you want to change:

- who receives and responds to requests for copies of your rules
- the time for providing a copy of your rules
- who, in addition to trust stakeholders, may request a copy of your rules.

For transparency and accessibility, we suggest you provide electronic copies of the rules free of charge. Consider if you want to charge a fee. If you intend to charge a fee, the fee must be in your rules.

#### 2.2.3. Changing the rules

Consider if there are any changes you want the rules to authorise. You must specify here the changes that can be made without a resolution passed by at least two-thirds of members entitled to vote on the change.

### 2.3.1 Register of members

Consider if you want to make any changes to the suggested rules about the register of members.

A member's water entitlement is relevant only to trusts that hold access licences and have determined their member's individual entitlements.

Delete this point if your trust:

- does not hold an access licence
- holds an access licence but has not determined a member's water entitlements.

### 2.3.2 Members' rights

Consider if you want to make any changes or additions to your members' rights.

### 2.3.3 Members' responsibilities

Consider if you want to make any changes or additions to your members' responsibilities.

Note: a registered plan for a subdivision could be a deposited plan, strata plan, or a plan that relates to a community scheme (community, precinct, and neighbourhood plans).

### 2.4.2 Adding members by changing the works plan

Consider if you want to change:

- who considers applications for new membership that will affect the works plan, for example, by adding land
- the time for considering applications.

### 2.4.3 Applying for class 2 membership

Consider if you want to change:

- who considers applications for class 2 membership. The difference between class 1 and 2 members is class 2 members may attend but cannot vote at meetings.
- the time for considering applications.

### 2.5.2 Ending membership by changing the works plan

Consider if you want to change:

- who considers applications to end memberships that will affect the works plan
- the time for considering applications.

### 2.5.3 Ending membership by transforming a water entitlement

This rule applies only to trusts that hold access licences. If your trust does not hold an access licence, delete this rule.

Consider if you want to make additional rules about other circumstances in which a person whose member's water entitlement has been transformed ceases to be a member of the trust.

## 2.5.4 Other ways to end membership

Consider if you want to change:

- who can end memberships
- how memberships are ended
- when a notice cancelling a membership should be sent.

## 2.6.2 Calling meetings

Consider if you want to change:

- who may call a meeting
- the number of members required to request a meeting. The numbers suggested are based on:
  - if the trust has 2-10 members, 1 member
  - if the trust has 11-20 members, 3 members
  - if the trust has 21-50 members, 5 members
  - if the trust has 51 or more members, 10% of members.
- the time for giving notice of meetings.

Consider establishing a regular schedule for meetings.

## 2.6.6 Quorum for meetings

Consider if you want to change the quorum for meetings. The numbers suggested are based on:

- if the trust has 30 or fewer members, 2 members
- if the trust has 31-90 members, 5 members
- if the trust has more than 91 members, 10 members.

Consider if you want to change who determines when an adjourned meeting may be rescheduled or if you want to prescribe a time in the rules. For example, the next week at the same time and place.

## 2.6.8 Voting rights

Consider if you want to change voting rights allocations. For example:

- you may wish to retain the voting rights currently specified in Part 5 of the Water Management (General) Regulation 2018 (NSW). For example, when electing the trustees,<sup>1</sup> voting entitlements may differ according to the area of land owned
- where class 1 members jointly own or occupy land, you may wish to have one vote per landholding rather than one vote per member.

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<sup>1</sup> Note: the Water Management (General) Regulation 2018 (NSW) refers to electing members. Under the 2010 Act, these persons are called trustees.

## 2.6.9 Member's decisions

Consider:

- if you want to adopt rules for making decisions outside of meetings. For example, to facilitate voting by post or other options that may help engage members
- if you want the trustees to make any of the decisions suggested here rather than members. If you want the trustees to make decisions, you must remove the decision from this rule. This rule states the functions that only resolutions at meetings of members may exercise.

## 2.7.2 Trustees

Under the Act, trusts must have the number of trustees they had on 1 January 2001, and you must specify the trustees' term. Consider:

- whether trustees should be members of the trust
- additional eligibility criteria for trustees. Additional criteria should be fair and equitable and relate to your functions
- limiting trustees' terms. For example, trustees can be elected on a staggered basis so that half of the trustees' appointments expire at an appointed time. Your rules must include the trustees' term of office.

## 2.7.4 Electing the trustees

Consider:

- if you want to change who can elect the trustees
- setting a timeframe for seeking nominations for trustees.

## 2.7.5 Filling casual trustee vacancies

Consider:

- if you want to change who can fill a casual trustee vacancy
- setting a timeframe for notifying members of vacancies and seeking nominations to fill vacancies.

## 2.7.8 Using trust money and property

Consider whether trustees could be paid and, if so, how this decision is made. For example, by a resolution passed by a percentage of members.

## 2.8.1 Trustee meetings

Consider how frequently you would like your trustees to meet and whether you would like to be more specific in this rule. For example, by establishing a regular schedule for trustee meetings.

## 2.8.2 Calling trustee meetings

Consider how much notice trustees need to be given about a meeting of the trustees.

## 2.8.6 Quorum for trustee meetings

Consider if you want to change who determines when an adjourned meeting may be rescheduled or, alternatively, if you want to prescribe a time in the rules. For example, the next week at the same time and place.

## 2.9.1 Electing a chairperson

Consider specifying the term for the chairperson.

## 2.9.3 Appointing office bearers

Consider appointing and specifying the roles of other office bearers such as a treasurer.

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# 3 Operational functions

## 3.1.1 Works plan content

Consider:

- referencing lots and plans to identify the land to which the works plan applies
- including additional details you would like to see in the works plan
- ways to keep the works plan current.

## 3.2 Providing services

Under the Act, trusts may enter into agreements with non-members to:

- supply water for the purpose of irrigating land or other purposes
- drain water from land.

Under the Act, trusts may provide, maintain, or operate a water supply system, water distribution system, or drainage system. The type(s) of system you insert here should be the same as you inserted into the definition of 'system'.

Consider deleting the parts of this rule that do not apply to your trust.

## 3.3 Providing and maintaining distribution works

This rule applies only to trusts supplying water. If your trust does not supply water, delete this rule.

Consider including rules about who pays for these works. For example, whether your trust will reimburse members or landholders for the costs associated with providing and maintaining distribution works. Alternatively, consider including payment information in the notice given to the member or landholder.

## 3.4 Discontinuing water supplies

This rule applies only to trusts supplying water. If your trust does not supply water, delete this rule.

Consider:



- changing the notice given to members before taking action that affects their water supply
- changing the time taken to consider and respond to submissions
- specifying how your trust considers submissions.

### 3.5 Entering land

Consider changing the notice given to landholders before entering their land.

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## 4 Sale and transformation of water entitlements

### 4.1 Trust's water access licence

This rule applies only to trusts that hold access licences. If your trust does not hold an access licence, delete this rule.

If your trust holds an access licence, consider if or when you would sell, mortgage, or lease the licence. Consider including rules outlining if/how this could occur. For example, if doing so requires a percentage of members to pass a resolution.

### 4.2 Member's water entitlements

These rules apply only to trusts that hold access licences. If your trust does not hold an access licence, delete these rules.

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

If your trust holds an access licence, consider including rules for approving transfers between members. For example, an application and decision-making process.

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## 5 Rates and charges

### 5.1.2 Basis for fixing rates and charges

Rates and charges must relate to providing, maintaining, or operating a water supply system, water distribution system, or drainage system; or for providing water or drainage services in that year.

Trust rules must include the procedure for setting rates and charges. You must also specify the basis for fixing rates and charges. Rates and charges may, for example, be fixed based on:

- the volume or quality of water supplied or proposed to be supplied to a landholding
- the area of the landholding
- whether you provide or propose to provide water or drainage services to a landholding
- the purpose for which water services are supplied or proposed to be supplied to a landholding.

If you fix rates and charges based on the area of a landholding, they must be fixed per hectare with fractions rounded up to the nearest hectare.

### 5.1.4 Transformation charges

Consider including a process for setting transformation charges (delivery charges) and informing members and landholders of the charges.

### 5.1.5 Termination charges

Consider including a process for setting termination charges and informing members and landholders of the charges.

### 5.4 Waiving rates and charges

Consider specifying rules about waiving or reducing rates, charges, or interest due.

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## 6 Finance

### 6.2 Auditing financial statements

Consider changing:

- the timeframe for submitting financial statements to an auditor
- who may appoint an auditor.

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## 7 Changing the trust

### 7.1 Amalgamating with other trusts

Consider changing the percentage of members who must pass a resolution to amalgamate your trust with others.

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## 8 Dispute resolution

Consider changing the time for resolving disputes.