



New South Wales

# Water Management (General) Amendment (Joint Private Works) Regulation 2024

under the

Water Management Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Water Management Act 2000*.

ROSE JACKSON, MLC  
Minister for Water

## Explanatory note

The object of this regulation is, consequent on the commencement of certain provisions of the *Water Management Amendment Act 2010*, to—

- (a) provide for matters relating to private water corporations and private water trusts, including requirements for their governance, and
- (b) make savings and transitional provisions in connection with—
  - (i) the automatic conversion of private irrigation boards and private drainage boards to private water corporations on 1 March 2024, and
  - (ii) the optional conversion of private water trusts to private water corporations between 1 March 2024 and 1 March 2026.

## **Water Management (General) Amendment (Joint Private Works) Regulation 2024**

under the

Water Management Act 2000

### **1 Name of regulation**

This regulation is the *Water Management (General) Amendment (Joint Private Works) Regulation 2024*.

### **2 Commencement**

This regulation commences on 1 March 2024.

## Schedule 1 Amendment of Water Management (General) Regulation 2018

### [1] Clause 3 Definitions

Insert in alphabetical order in clause 3(1)—

*business day* means a day other than a Saturday, a Sunday or a public holiday throughout New South Wales.

*entity stakeholder* means—

- (a) a member of a private water entity, or
- (b) a landholder to whom the entity provides services, or
- (c) a person with whom the entity enters into an agreement under the Act, section 151 or 231.

*private water entity* means—

- (a) a private water corporation, or
- (b) a private water trust.

### [2] Clause 3(3)

Omit the subclause.

### [3] Part 5

Omit Parts 5–7. Insert instead—

## Part 5 Private water corporations and private water trusts

### Division 1 General

#### 55 Fees

For the following provisions, a fee of \$150 is prescribed—

- (a) the Act, section 141(2)(d),
- (b) the Act, section 159(2)(d),
- (c) the Act, section 239(2)(d),
- (d) the Act, section 239D(2)(d).

#### 56 Directors

- (1) For the Act, sections 144(5) and 223(7), a person ceases to be a director of a private water entity if the person—
  - (a) dies, or
  - (b) resigns, or
  - (c) is absent, without leave, from 3 consecutive meetings of the entity, or
  - (d) becomes personally insolvent, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (g) is convicted, in any jurisdiction, of an offence involving fraud.

- (2) In this clause—  
**director**, of a private water entity, means—  
(a) a board member of a private water corporation, or  
(b) a trustee of a private water trust.

#### 57 Rules may require security

- (1) For the Act, sections 145(2)(n) and 225(2)(o), the rules of a private water entity may require an entity stakeholder to provide security for the payment of rates and charges to the entity, other than a charge under the Act, section 170.
- (2) The rules may require only the following kinds of security—  
(a) a charge over an access licence,  
(b) a guarantee by an authorised deposit-taking institution,  
(c) a deposit lodged with the entity,  
(d) a charge over a member's water entitlement,  
(e) another kind of security agreed between the entity and the entity stakeholder.
- (3) The rules must not require the entity stakeholder to provide security of a value greater than the higher of the following—  
(a) 5 times the value of the rates and charges levied by the private water entity on the entity stakeholder in the immediately preceding water year,  
(b) 5 times the prescribed amount.
- (4) The rules may permit the forfeiture of security only if—  
(a) the amount for which the security is provided is unpaid for at least 6 months from the date it becomes payable, and  
(b) the entity gives the entity stakeholder written notice (a **forfeiture notice**) of, and reasons for, the intention to forfeit the security, and  
(c) the entity considers submissions made within the submission period for the forfeiture notice by or on behalf of the entity stakeholder, and  
(d) the entity gives the entity stakeholder the option of entering into a payment plan as an alternative to forfeiture, and  
(e) the entity stakeholder declines the option of entering into, or does not comply with, the payment plan.
- (5) In this clause—  
**forfeiture**, of security, includes the enforcement or realisation of the security.  
**prescribed amount** means the average of the value of the rates and charges levied by the private water entity per entity stakeholder for each of the immediately preceding 5 water years.  
**Example**— For security required to be provided in a water year, the prescribed amount is the average of 5 amounts, being the amounts, one for each of the immediately preceding 5 water years, determined by dividing the value of the rates and charges levied by the entity in the water year by the number of entity stakeholders of the entity in the water year.  
**submission period**, for a forfeiture notice, means the following period after the giving of the notice—  
(a) the period of 21 days, or  
(b) if a longer period is specified in the notice—the longer period.

**58 Rules about dealings**

For the Act, sections 145(2)(n) and 225(2)(o), the rules of a private water entity may make provision about dealings under the Act, Chapter 3, Part 2, Division 4.

**59 Notification of rules**

For the Act, sections 145(4) and 225(4), a private water entity must notify each entity stakeholder of changes to its rules, or replaced rules—

- (a) in writing, and
- (b) within 2 business days after the change or replacement.

**60 Works plans**

- (1) For the Act, sections 153(2) and 233(2), a works plan must include the following—
  - (a) a map or diagram of the private water entity's entity works,
  - (b) if the entity is the holder of—
    - (i) an access licence—the access licence number, or
    - (ii) a water management work approval or an activity approval—the approval number,
  - (c) a statement of an address—
    - (i) at which a copy of the works plan is kept, and
    - (ii) from which a copy of the works plan may be obtained by an entity stakeholder.
- (2) For the Act, sections 153(5) and 233(5), a copy of a works plan must be—
  - (a) kept at the address referred to in subclause (1)(c), and
  - (b) provided to an entity stakeholder within 5 business days of the stakeholder requesting a copy of the works plan.
- (3) In this clause—

**entity works** means—

  - (a) corporation works, or
  - (b) trust works.

**61 Water entitlements**

- (1) For the Act, sections 154(3)(e) and 234(3)(e), previous determinations of water entitlements for all members of the private water entity are prescribed.
- (2) For the Act, sections 154(5) and 234(5), a determination of a member's water entitlement must specify the following—
  - (a) the matters considered by the private water entity in making the determination,
  - (b) the proportion of the share component of an access licence held by or on behalf of the entity that is available to the member,
  - (c) the licence category of the member's proportion of the share component.
- (3) For the Act, sections 154(6) and 234(6), a determination may be varied or redetermined to correct an error, but only on a further application made by a member of the private water entity within 2 years of the determination.

- (4) To avoid doubt, a **member** of a private water entity, in subclause (3), means a person who, at the time of the further application, is—
- (a) a current member, and
  - (b) not merely a former member.
- (5) For the Act, sections 154(7) and 234(7), a **member of a person's immediate family** means—
- (a) a spouse or de facto partner, or a former spouse or de facto partner, of the person, or
  - (b) a child or step-child of the person, or
  - (c) a grandchild or step-grandchild of the person, or
  - (d) a parent or step-parent of the person, or
  - (e) a grandparent or step-grandparent of the person, or
  - (f) a brother, sister, step-brother or step-sister of the person.

## **62 Notification of sale of land**

For the Act, sections 161(2) and 239B(2), a member of a private water entity must notify the entity of the sale of land as follows—

- (a) before the sale—by giving the entity written notice of the member's intention to sell the land,
- (b) within 21 days after the sale—by giving the entity written notice of the following—
  - (i) the date of the sale,
  - (ii) the identity of the purchaser,
  - (iii) whether the member informed the purchaser the land was land to which the entity provides, or is able to provide, water supply or drainage services.

## **63 Rates and charges**

For the Act, sections 163(6) and 239E(6), a private water entity must give notice of its rates and charges for a year—

- (a) in writing, and
- (b) within 21 days of fixing the rates and charges, and
- (c) if interest is payable on unpaid rates and charges—by specifying—
  - (i) the basis on which interest is calculated, and
  - (ii) when the interest becomes payable.

## **64 Qualifications for appointment as auditor**

For the Act, sections 166(5) and 239H(5), each of the following persons is qualified for appointment as an auditor—

- (a) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (b) a Certified Practising Accountant member of CPA Australia, New South Wales Division,
- (c) a member of Chartered Accountants Australia and New Zealand who holds a Certificate of Public Practice issued by the organisation,
- (d) a member of the Institute of Public Accountants who holds a Professional Practice Certificate issued by the organisation.

## 65 Liquidators

For the Act, sections 177(3) and 239P(3), the liquidator of a private water entity must not be a member of, or have a direct or indirect pecuniary interest in, the entity.

## Division 2 Private water corporations—additional provisions

### 66 Charges for water illegally taken and damage to works

- (1) For the Act, section 170(4)(a), the value of the water must be, subject to this clause, determined in accordance with clause 20.
- (2) For subclause (1), a reference in clause 20 to a water source is deemed to be a reference to a water source from which water is taken by a water management work owned by, or under the control and management of, the corporation.
- (3) For the Act, section 170(9), a private water corporation must not exercise powers under the Act, section 170 unless—
  - (a) the corporation's satisfaction of the following, as the case requires, is based on evidence tabled at a meeting of the corporation or its board—
    - (i) that a person has knowingly taken water as referred to in the Act, section 170(1),
    - (ii) that a person has destroyed, damaged or interfered with a work that is owned by, or is under the control or management of, the corporation as referred to in the Act, section 170(2), and  
**Note—** Under the Act, section 170(1) and (2), the private water corporation must be satisfied of these things on the balance of probabilities.
  - (b) the corporation has given at least 21 days notice of the intention to exercise the power, and reasonable particulars of the proposed exercise of the power, to the Minister, and
  - (c) for the imposition of a charge for the taking of water—the Minister has notified the private water corporation that the Minister is not aware that a person has taken or has an intention to take a relevant action, and
  - (d) the corporation's rules specify how the powers may be exercised, and
  - (e) the exercise of the powers is in accordance with the rules.
- (4) For the Act, section 145(2)(n), the rules of a private water corporation may provide for the matter mentioned in subclause (3)(d).
- (5) In this clause—

**relevant action** means action of the following kind in relation to the taking of the water—

  - (a) the commencement of criminal proceedings,
  - (b) the issue of a penalty notice,
  - (c) the imposition of a charge or a decision to debit a water allocation under the Act, section 60G,
  - (d) the commencement of proceedings under the Act, section 336 for an order to remedy or restrain a breach of the Act or the regulations,
  - (e) the acceptance of an undertaking under the Act, Chapter 7, Part 1, Division 8.

## 67 Appointment of authorised officers

For the Act, section 171(1), an appointment of an authorised officer of a private water corporation must—

- (a) specify the powers the officer may exercise, and
- (b) state that the officer may exercise the powers only in relation to water management works shown on the corporation's works plan.

## [4] Clause 257 Transformation of water entitlements

Omit the clause.

## [5] Schedule 5 Forms

Omit the schedule.

## [6] Schedule 7 Penalty notice offences

Insert in appropriate order—

Section 146(1)	\$750	\$1,500
Section 167(2)	\$750	\$1,500
Section 172(3)	\$750	\$1,500
Section 226(1)	\$750	\$1,500
Section 239I(2)	\$750	\$1,500
Section 239R(3)	\$750	\$1,500

## [7] Schedule 10

Insert after Schedule 9—

# Schedule 10 Savings and transitional provisions consequent on Water Management Amendment Act 2010

## Part 1 New corporations

**Note—** Conversion of a private irrigation board, or a private drainage board, to a new corporation occurred automatically on the commencement of the Act, Schedule 9, clause 77 on 1 March 2024.

Conversion of a private water trust to a new corporation may occur by application under the Act, Schedule 9, clause 78 only until 1 March 2026—see the Act, Schedule 9, clause 78(5).

From 1 March 2026, conversion of a private water trust to a private water corporation may occur by application under the Act, section 239D, but—

- (a) the savings and transitional provisions in this part will not apply to it, and
- (b) as a result, the application must be accompanied by the fee prescribed by this regulation, clause 55(d) and documents including—
  - (i) a works plan for the corporation, and
  - (ii) proposed rules for the corporation.

### 1 Definitions

In this part—

**authorised site** has the same meaning as in the Act, section 154 immediately before 1 March 2024.



**conversion** means conversion to a new corporation, under the Act, Schedule 9, clause 77 or 78, of—

- (a) a private irrigation board, or
- (b) a private drainage board, or
- (c) a private water trust.

**existing director** means the following—

- (a) for a private irrigation board—a person who was a member of the board immediately before 1 March 2024,
- (b) for a private drainage board—a person who was a director of the board immediately before 1 March 2024,
- (c) for a private water trust—a person who was a trustee of the trust immediately before conversion.

**new corporation** has the same meaning as in the Act, Schedule 9, Part 7.

**private irrigation board** and **private drainage board** have the same meaning as in the Act immediately before 1 March 2024.

## 2 Rules of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(a) and 78(4)(a), on conversion, existing rules are taken to be the rules of the new corporation.

- (2) In this clause—

**existing rules** means the following, as in force immediately before conversion—

- (a) for a private irrigation board—
  - (i) by-laws under the Act, section 196, and
  - (ii) this regulation, Part 5, other than clauses 58, 59, 61, 62, 65 and 92,
- (b) for a private drainage board—the following provisions of this regulation—
  - (i) Part 5, other than Division 2 and clauses 57, 59, 60, 62 and 66,
  - (ii) Part 6, other than Division 2,
- (c) for a private water trust—the rules of the trust.

**Note—** See this schedule, clause 12 for rules of private water trusts from 1 March 2024 until—

- (a) their conversion, and
- (b) if their conversion occurs before 1 March 2026—the application of this clause to their conversion.

## 3 New corporation works

- (1) For the Act, Schedule 9, clauses 77(4)(b) and 78(4)(b), on conversion, existing works are taken to be the corporation works of the new corporation.

- (2) In this clause—

**existing works** means the following immediately before conversion—

- (a) for a private irrigation board—water supply works on an authorised site,
- (b) for a private drainage board—the board’s drainage works, including drainage works—
  - (i) under the board’s charge, or
  - (ii) used or operated by the board, or

- (iii) in relation to which the board exercised its functions,
- (c) for a private water trust—trust works of the trust.

**Note—** See this schedule, clause 13(1) for transitional arrangements for the continuation of private water trusts from 1 March 2024 until—

- (a) their conversion, and
- (b) if their conversion occurs before 1 March 2026—the application of this clause to their conversion.

#### 4 Works plans of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(c) and 78(4)(c), on conversion, an existing plan is taken to comprise the works plan of the new corporation.

- (2) In this clause—

**existing plan** means the following, as in force immediately before conversion—

- (a) for a private irrigation board—a plan of the private irrigation district, including a plan of an authorised site,

**Note—** See the Act, sections 142(2)(b), 144(2)(b), 147(4)(b), 154 and 156(2)(b) as in force immediately before 1 March 2024, for plans relevant to the plan of a private irrigation district as in force immediately before 1 March 2024.

- (b) for a private drainage board—a plan of the drainage district,
- (c) for a private water trust—the works plan of the trust.

**Note—** See this schedule, clause 13(2) for transitional arrangements for the continuation of private water trusts from 1 March 2024 until—

- (a) their conversion, and
- (b) if their conversion occurs before 1 March 2026—the application of this clause to their conversion.

#### 5 Landholdings of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(d) and 78(4)(d), on conversion, a new corporation may exercise functions for landholdings in its existing district.

- (2) This clause applies until the earlier of the following—

- (a) the works plan of the new corporation is amended or replaced,
- (b) 1 March 2025.

- (3) In this clause—

**existing district** means the following immediately before conversion—

- (a) for a private irrigation board—the private irrigation district,
- (b) for a private drainage board—the drainage district,
- (c) for a private water trust—the land to which the works plan of the trust applies.

**Note—** See this schedule, clause 13(3) and (4) for transitional arrangements for the continuation of private water trusts from 1 March 2024 until—

- (a) their conversion, and
- (b) if their conversion occurs before 1 March 2026—the application of this clause to their conversion.

#### 6 Rates and charges of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(e) and 78(4)(e), on conversion, existing rates and charges are taken to be rates and charges of the new corporation.

- (2) In this clause—

**existing rates and charges** means the following immediately before conversion—

- (a) for a private irrigation board—rates and charges fixed under the Act, section 167,
- (b) for a private drainage board—rates fixed under the Act, section 206,
- (c) for a private water trust—rates fixed under the Act.

**Note—** See the Act, Schedule 9, clause 83(1) for transitional arrangements for the continuation of private water trusts from 1 March 2024 until—

- (a) their conversion, and
- (b) if their conversion occurs before 1 March 2026—the application of this clause to their conversion.

## 7 Board members of new corporations

For the Act, Schedule 9, clauses 77(4)(f) and 78(4)(f), on conversion, an existing director is taken to be a board member of the new corporation.

**Note—** See also this regulation, clause 56 for when a person ceases to be a director of a private water corporation.

## 8 First election of new corporation board members—date

- (1) For the Act, Schedule 9, clauses 77(4)(g) and 78(4)(g), the first election of the board members of a new corporation whose existing directors were appointed or elected before the 2-year cut-off date must be held before the first election deadline.

- (2) In this clause—

**2-year cut-off date** means the following—

- (a) for a private irrigation board—1 March 2022,
- (b) for a private drainage board—1 March 2022,
- (c) for a private water trust—the date that is 2 years before conversion.

**first election deadline** means the following—

- (a) for a private irrigation board—1 September 2024,
- (b) for a private drainage board—1 September 2024,
- (c) for a private water trust—the date that is 6 months after conversion.

## 9 Members of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(h) and 78(4)(h), on conversion, an existing member is taken to be a member of the new corporation.

- (2) In this clause—

**existing member** means the following immediately before conversion—

- (a) for a private irrigation board—a person who was a landholder of land within the private irrigation district,
- (b) for a private drainage board—a person who was a landholder of land within the drainage district,
- (c) for a private water trust—a person who was a member of the trust.

## 10 Preparation and adoption of works plans and rules of new corporations

- (1) For the Act, Schedule 9, clauses 77(4)(i) and (j) and 78(4)(i) and (j), a new corporation must hold a general meeting to vote on a resolution to adopt a works plan and rules before the adoption deadline.

- (2) The new corporation must—
  - (a) give its members 21 days notice of the meeting, and
  - (b) keep a written record of objections to the resolution made at the meeting.
- (3) If a new corporation has not adopted rules before the adoption deadline, the model rules are, with necessary modifications, taken to be the rules of the new corporation.
- (4) If a new corporation has not adopted a works plan before the adoption deadline—
  - (a) the Secretary may appoint a person to prepare a works plan for the corporation, and
  - (b) the works plan prepared by the person is taken to be the corporation's works plan.
- (5) The costs of preparing the works plan may be recovered from the new corporation by the Secretary in a court of competent jurisdiction as a debt due to the Crown.
- (6) In this clause—

**adoption deadline** means the following—

  - (a) for a private irrigation board—1 March 2025,
  - (b) for a private drainage board—1 March 2025,
  - (c) for a private water trust—the date that is 1 year after conversion.

**model rules** means the model rules approved by the Minister and published in the Gazette on 1 March 2024.

#### **11 New corporations are private water corporations**

For the Act, Schedule 9, clauses 77(4)(j) and 78(4)(j), and to avoid doubt, a new corporation is constituted under the Act, Chapter 4, Part 2.

## **Part 2 Private water trusts**

#### **12 Rules of private water trusts**

For the Act, Schedule 9, clause 81(2), the Act, Schedule 9, clause 81(1) is taken to be substituted by the following—

- (1) The following provisions of the *Water Management (General) Regulation 2018*, as in force immediately before 1 March 2024, are taken to be the rules of a private water trust—
  - (a) Part 5, other than Division 2 and clauses 57, 58, 60, 61 and 66,
  - (b) Part 7, other than Division 2.

#### **13 Continuation of private water trusts**

- (1) For the Act, Schedule 9, clause 82(a), the water management works of a private water trust immediately before 1 March 2024 are taken to be trust works of the trust.
- (2) For the Act, Schedule 9, clause 82(b), a plan of the private water trust's water supply district, as in force immediately before 1 March 2024, is taken to comprise the works plan of the trust.

**Note—** See the Act, sections 224 and 225, as in force immediately before 1 March 2024, for land that constitutes a private water trust's water supply district.

- (3) For the Act, Schedule 9, clause 82(c), a private water trust may exercise functions for landholdings in its water supply district as in force immediately before 1 March 2024.
- (4) Subclause (3) applies until the earlier of the following—
  - (a) the works plan of the private water trust is amended or replaced,
  - (b) 1 March 2025.

**Note—** See this schedule, clauses 3–5 for transitional arrangements applicable to the conversion of a private water trust to a new corporation before 1 March 2026.

#### **14 Preparation and adoption of works plans and rules of private water trusts**

- (1) For the Act, Schedule 9, clause 1(1), a private water trust must hold a general meeting to vote on a resolution to adopt a works plan and rules before 1 March 2025.

**Note—** If conversion of a private water trust to a new corporation occurs between 1 March 2024 and 1 March 2025, the deadline for the meeting is 12 months from the date of conversion. See this schedule, clause 10.
- (2) The trust must—
  - (a) give its members 21 days notice of the meeting, and
  - (b) keep a written record of objections to the resolution made at the meeting.
- (3) If a private water trust has not adopted rules before 1 March 2025, the model rules are, with necessary modifications, taken to be the rules of the trust.
- (4) If a private water trust has not adopted a works plan before 1 March 2025—
  - (a) the Secretary may appoint a person to prepare a works plan for the trust, and
  - (b) the works plan prepared by the person is taken to be the trust’s works plan.
- (5) The costs of preparing the works plan may be recovered by the Secretary from the private water trust in a court of competent jurisdiction as a debt due to the Crown.
- (6) In this clause—

**model rules** means the model rules approved by the Minister and published in the Gazette on 1 March 2024.