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# Rules of Pomona Water

A Private Water Corporation Rules under the Water Management Act 2000(NSW)

September 2024.

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# 1 Background & Summary

## 1.1 Current Situation- Private Water Trust

Pomona Irrigation area is serviced by a pumped/piped irrigation system. The area serviced is approximately 750 hectares. The land is located 15 kilometres North of Wentworth, on the Darling River, NSW.

The Pomona Irrigation Trust was officially formed and Gazetted on 12th June 1931. Private water **trusts** were formed by groups of landholders to share and manage private water infrastructure. The Pomona Irrigation Trust is currently responsible for delivering water to its Members, who are irrigators and domestic & stock water users.

The Pomona Irrigation Trust holds the Water Access Entitlements under the NSW Water Management Act 2000. Trustees are appointed to manage the trust and a part time Administration Officer is employed to deal with administration of the Trust.

In 1997-2000 Pomona Irrigation Trust installed a low pressure pumped/piped delivery system which has the capacity to deliver water on demand to all Members.

The pipeline system has meters installed on each outlet and Members are invoiced each quarter for both fixed and variable charges relating to their water allocation and water use.

## 1.2 Pomona Water Private Water Corporation

In 2010 the NSW Government as a way of simplifying the laws managing private water trusts, passed legislation known as the *Water Management Amendment Act 2010* NSW. Within this legislation are reforms that started on 1 March 2024 and implement the *Water Management Amendment Act 2010*. This includes:

- simplify the laws managing private water trusts (schemes)
- opportunity for Private trusts to convert to private water corporations.
- provide water corporations with ability to impose a charge on individuals who have damaged works, taken water knowingly. Corporations can also appoint officers who have the power to enter land to administer functions and enforce rules of the water corporation.
- give private water corporations more flexibility to make and amend their internal rules.
- reduce the NSW Government's role in private water schemes' administrative matters.

The *Water Management Act 2000*, amendments and regulations applies to Pomona Irrigation Trust

Reforms that started on 1 March 2024 provide a process for Pomona Irrigation Trust to be converted: to Pomona Water (private water corporation).

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**The change to a private Water Corporation and associated reforms does not:**

- Change Pomona Water business names.
- Change Pomona Irrigation Trust's business number (ABN).
- Change Pomona Water business structure or require your Pomona Water to become, a registered company or registered Australian body under the Commonwealth Corporations Act 2001.
- Change the membership. Existing Trust members automatically became members of the corresponding private water corporation Pomona Water if they were the landholder of land within the Pomona Irrigation Trust before the trust was converted to a private water corporation.
- Change the volume of water supplied and documented under the existing trusts certificates.
- Change the membership of Pomona Water Trustee Board. Existing Trustee's continue as the Trustee board members of the Pomona private water corporation until the first election as a corporation.
- Change the existing Pomona Irrigation Trust rates and charges. The Pomona 2024 / 2025 rates and charges will continue to apply until amended in July 2025, Pomona Water is required to fix rates and charges each financial year.
- Private Water Corporations and Private Water Trusts have mostly the same powers and functions however, corporations have additional powers that trusts do not have. Corporations can impose a charge on a person who has knowingly taken water from corporation works or damaged corporation works.
- Corporations can also appoint an authorised officer to enter land to investigate a suspected breach of the rules or an agreement. The Natural Resources Access Regulator (NRAR) will only be notified if there is a compliance issue or dispute.
- A private water trust that chooses to become a corporation and has not held elections within the two years prior to becoming a corporation, will also need to elect a new board within six months of converting to a corporation.

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# • Preliminary

## 1.3 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 Pomona Water 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 Pomona Water. <sup>1</sup>

**Allocation** means the annual volumetric allocation of stock, domestic, high and general security water volume issued to Members under their Water supply agreement.

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

**authorised officer** means an authorised officer appointed by Pomona Water in accordance with section 171 of the Act and rule 7.1.

**Board means** the Board of the Pomona Private Water Corporation. <sup>3</sup> which consists of 3 to 10 Class 1 or Class 2 Members nominated and appointed as per Clause 3.7.4.

**business day** means a day other than Saturday, a Sunday or public holiday throughout New South Wales <sup>4</sup>

**board meeting** means a meeting of the Pomona members appointed to the Board.

**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 Pomona Water works plan applies.

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

**Corporation** means **Pomona Water** a private water corporation under the Water Management Act 2000. <sup>5</sup>

**corporation work** means a water management work, or a proposed water management work, specified in Pomona Water's works plans.

**corporation stakeholder** means—

- a member of the corporation, or
- b. a landholder to whom the corporation provides services, or
- c. a person with whom the corporation enters into an agreement under the Act, section 151.<sup>6</sup>

forfeiture of security, includes the enforcement or realisation of the security.<sup>7</sup>

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<sup>1</sup> - *Water Management Act 2000* (NSW) see ss 151(1) and 171(2).

<sup>2</sup> - *Water Management Act 2000* (NSW) s 166(4).

<sup>3</sup> - *Water Management Act 2000* (NSW) s 139.

<sup>4</sup> - *Water Management (General) Regulation 2018* (NSW) cl 3(1).

<sup>5</sup> - *Water Management Act 2000* (NSW) s 139.

<sup>6</sup> - *Water Management (General) Regulation 2018* (NSW) cl 3(1).

<sup>7</sup> - *Water Management Act 2000* (NSW) Dictionary

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**head office** means the place where Pomona Water 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>8</sup>

**meeting** means a meeting of the members of Pomona this includes annual general meeting (AGM)

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

**member's water allocation** means the part of the share component of Pomona Water's access licence that is available to a member.<sup>9</sup>

**Minister** means the Minister administering the *Water Management Act 2000* (NSW).<sup>10</sup>

**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.

**Pomona Water** means private water corporation under the Water Management Act 2000.<sup>11</sup>

**Prescribed amount** means the average of the value of the rates and charges levied by the corporation per corporation stakeholder for each of the immediately preceding 5 water years.<sup>12</sup>

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

**quorum** means:

- for the board, the majority of board members
- for Pomona Water, the number of members required to be present to transact business under rule 2.6.6.

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

**rules** mean the rules of Pomona Water, as in force from time to time.<sup>13</sup>

**service** means the provision of irrigation, stock and domestic water services provided by Corporation.

**system** means the water supply and distribution system maintained and operated provided by Pomona Water.<sup>13</sup> The system consists of the corporation works<sup>14</sup>.

**works plan** means the works plan for Pomona Water, as in force from time to time.<sup>15</sup>

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<sup>8</sup> Water Management Act 2000 (NSW) s 139.

<sup>9</sup> Interpretation Act 1987 (NSW) s 15.

<sup>10</sup> Water Management Act 2000 (NSW) s 139.

<sup>11</sup> Water Management Act 2000 (NSW) see s 143(1)(a).

<sup>12</sup> Water Management Act 2000 (NSW) s 139.

<sup>13</sup> Water Management Act 2000 (NSW) s 139.

<sup>14</sup> Water Management Act 2000 (NSW) see s 143(1)(a).

<sup>15</sup> Note: corporation works are specified in the corporation's works plan.



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## **1.4 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.

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

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## 2 Constitution and Management

### 2.1 Functions

Pomona Water was constituted under section 142 of the Act.

The Corporation's functions are:

to provide, maintain, and operate a irrigation, stock and domestic water supply and distribution system. Pomona water may supply water under an access licence or approval held by Pomona water; or for the purpose of an access licence held by a member whose member's water entitlement has been transformed.<sup>16</sup> This may include:

-constructing, installing, maintaining, operating, and managing works<sup>17</sup>

- repairing, replacing, maintaining, removing, extending, connecting, disconnecting, improving, or doing any other things in relation to corporation works that are necessary to carry out Pomona Water's functions<sup>18</sup>

2. any other function conferred or imposed on the corporation by or under the Act or any other Act.<sup>19</sup>

The corporation must exercise its functions in accordance with the Act, the regulations, and the rules.<sup>20</sup>

### 2.2 The Rules

#### 2.2.1 Effect of the Rules

The rules are binding on the members of Pomona Water, board members, and landholders to whom Pomona Water provides services.<sup>21</sup> The rules must:

- not be inconsistent with the Act or the regulations<sup>22</sup>
- comply with the requirements prescribed by the regulations.<sup>23</sup>

A rule has no effect to the extent to which it is inconsistent with the Act or the regulations.<sup>24</sup>

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16-Water Management Act 2000 (NSW) s 143(1)(a).

17- Water Management Act 2000 (NSW) s 148(1)(a).

18-Water Management Act 2000 (NSW) s 148(1)(b).

19-Water Management Act 2000 (NSW) s 143(1)(b).

20-Water Management Act 2000 (NSW) s 143(3).

21-Water Management Act 2000 (NSW) s 145(5).

22-Water Management Act 2000 (NSW) s 145(3)(a).

23-Water Management Act 2000 (NSW) s 145(3)(b)

24-Water Management Act 2000 (NSW) s 145(6).

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## 2.2.2 Accessing the Rules

Corporation stakeholders may request a hard copy or electronic copy of the rules from Pomona Water.

Where a request is made, Pomona Water must provide the type of copy requested within 10 business days].<sup>25</sup>

Electronic copies will be provided free of charge.

## 2.2.3 Changing the Rules

Pomona Water 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 question or the change; or
- the change is authorised under the rules.
- The regulations may vary the proportion of members of a corporation who must approve any such change or any class of change.<sup>26</sup>

Pomona Water must notify each Member of changes to the rules, or replaced rules:

- in writing, and
- within 2 business days after the change or replacement.<sup>27</sup>

A corporation must notify changes to the rules, or replaced rules, in the manner prescribed by the regulations.

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<sup>25</sup> - *Water Management Act 2000* (NSW) s 146(2).

<sup>26</sup> - *Water Management Act 2000* (NSW) s 145 (1, (2)(m) and (7). No change to the proportion has been made under section 145(8).

<sup>27</sup> - *Water Management (General) Regulation 2018* (NSW) cl 58.

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## **2.3 Members of Pomona Water**

### **2.3.1 Register of Members**

Pomona Water must keep a register of members at its 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 listed in the Member's certificate.

Pomona Water must make the register of members available at the AGM.

Unless the board approves, 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, contractor employee or otherwise associated with Pomona Water.

### **2.3.2 Member's Rights**

A member may:

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

### **2.3.3 Member's Responsibilities**

Members must:

- inform Pomona Water 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.

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

- before the sale by giving Pomona Water written notice of intention to sell the land.<sup>28</sup>
- within 21 days after the sale—by giving Pomona Water 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 Pomona Water provides or is able to provide services.<sup>29</sup>

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

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

## 2.4 New Members

### 2.4.1 Adding members by land dealings

Subject to section 162 of the Act, the purchaser of land to which Pomona Water provides or is able to provide services automatically becomes a member when the sale of land takes effect.<sup>30</sup>

Upon becoming a member, the purchaser automatically has all 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>31</sup>

After receiving a notification under rule 2.3.3, Pomona Water 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, Pomona Water must update the register of members.

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28- *Water Management Act 2000* (NSW) s 161(2) and *Water Management (General) Regulation 2018* (NSW) cl 61(a).

29 - *Water Management Act 2000* (NSW) s 161(2) and *Water Management (General) Regulation 2018* (NSW) cl 61(b).

30 - *Water Management Act 2000* (NSW) s 161(1)(b).

31- *Water Management Act 2000* (NSW) s 161(1)(c).

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## 2.4.2 Adding members by changing the works plan

A landholder may apply to Pomona Water 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:

- 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 corporation 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 corporation works.

Pomona Water Board must consider the application within 60 days after receiving it.

Before determining the application, the members must decide:

- whether to approve the change to the works plan <sup>32</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>33</sup>

Changes to the works plan must be approved by at **least two-thirds of the members** entitled to vote on the question. <sup>34</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.

Pomona Board must notify the applicant of decision in writing. The notice must include the matters Pomona Water considered when determining the application.

If Pomona Water accepts an application, then Pomona Water must:

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

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<sup>32</sup>-Water Management Act 2000 (NSW) s 158(1).

<sup>33</sup>-Water Management Act 2000 (NSW) s 158(3).

<sup>34</sup>-Water Management Act 2000 (NSW) s 158(1).

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### 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. Including:

- the person has a beneficial interest in land to which the Pomona Water works plan applies.
- the person has day-to-day management of land to which the Pomona Water works plan applies.
- the person has skills and knowledge that are related to Pomona Water's core function of supplying water for irrigation purposes.

The Board must consider the application within 60 days. The Board must decide whether to accept or refuse an application.

Pomona Water must notify the applicant of decision in writing. If Pomona water accepts an application, they 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 and transferred to a new entity.

The subdivision of land by a member does not of itself:

- entitle any other person to be a member or be supplied with services. <sup>35</sup>
- affect any existing entitlement of any other person in relation to any service. <sup>36</sup>
- affect any functions of Pomona Water in relation to its works. <sup>37</sup>
- All new works constructed to supply water to a new deposited plan will be completed by Pomona Water at the owner's cost.

## 2.5 Ending Membership

### 2.5.1 Ending Membership by Sale of Land

A member who sells land to which Pomona Water provides or is able to provide services automatically ceases to be a member in respect of that land when the sale takes effect.<sup>38</sup>

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35-Water Management Act 2000 (NSW) s 162(a).

36-Water Management Act 2000 (NSW) s 162(b).

37-Water Management Act 2000 (NSW) s 162(c).

38-Water Management Act 2000 (NSW) s 161(1)(a).

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## 2.5.2 Ending Membership by Changing the works plan area

A class 1 member may apply to Pomona Water 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 Pomona Water works (if any)
- plans showing the location of:  
they removed land relative to Pomona Water works plan area.  
location of any proposed changes to works.

Pomona Water must consider the application within 60 days after receiving it.

Before determining the application, the members must decide:

- whether to approve the changes to the works plan. <sup>39</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>40</sup>

Changes to the works plan must be approved by at least two-thirds of the members entitled to vote on the question.<sup>41</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.

Pomona Water must notify the applicant of the decision in writing. The notice must include the matters Pomona Water considered when determining the application.

If Pomona Water accepts an application, they must:

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

## 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 corporation automatically ceases to be a member of the corporation.<sup>42</sup>

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39-Water Management Act 2000 (NSW) s 158(1).

40-Water Management Act 2000 (NSW) s 158(3).

41-Water Management Act 2000 (NSW) s 158(1).

42- Water Management Act 2000 (NSW) s 157(3).



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## 2.5.4 Other Ways to End Membership

A person stops being a member of Pomona Water if:

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

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

If giving effect to a resignation or cancelling a membership requires changes to the works plan, Pomona Water 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>43</sup>

Resolutions passed at a meeting may cancel a member's membership if doing so is in accordance with section 158 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 Pomona Water
- acts in a manner that may be prejudicial to the interests of Pomona Water
- is convicted of an indictable offence.
- liable for the payment of unpaid rates/ charges to Pomona Water for more than 2 years.

If a resolution passed at a meeting of the members cancels a person's membership, then Pomona must:

- send a copy of the resolution to their last known address or email address,
- update the register of members.

## 2.6 Members' Meeting & Decisions

### 2.6.1 Annual General Meeting (AGM)

Pomona Water must hold an annual general meeting each 12 months or within 15 months of the previous annual general meeting.

The Purpose of the Pomona Water AGM is for:

- presenting the audited Corporation's financial statements for the previous financial year
- other business members nominate.
- Presentation of the register of members

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<sup>43</sup> - *Water Management Act 2000* (NSW) s 158(1).

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## 2.6.2 Calling Meetings

The Board may call a meeting of the Members at any time and call a general meeting every 12 months or within 15 months of the previous AGM.

Members may ask the board to call a meeting at any time.

If 40% of Members ask for a meeting, the board must call a meeting within [28 days].

Pomona Water must give all 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
- the purpose and business of the meeting
- if a resolution is being proposed, a draft resolution, background and explanation.

## 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 Use of Technology at Meetings

Pomona Water 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 are deemed to have voted in person.

## 2.6.5 Chairing Meetings

The members may elect a person to chair meetings.

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
- informing members of any proxy nominations and who they are
- declaring the results of votes.

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### **2.6.6 Quorum for Meetings**

Five (5) Members make a meeting 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 board.

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 Pomona Water voting & matters.

A proxy appointment must be made in writing using the appointment of proxy form and submitted to the Pomona Water 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>44</sup>

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 3.4.2, 3.4.3, 3.5.2 or 3.5.4
- electing The Boards under rule 3.7.4
- removing The Boards under rule 3.7.9
- deciding to supply water services to a person who is not a member under rule 4.2.
- resolving disputes under rule 10
- 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. 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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<sup>44</sup>-Water Management Act 2000 (NSW) s 157(2)(a).

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## 2.7 The Pomona Board

### 2.7.1 Functions of the Board

There must be a board of the corporation. <sup>45</sup>

The board's functions are:

- to direct, control, and manage the affairs of the corporation, in accordance with the Act, the regulations, and the rules
- any other functions conferred on the board by or under the Act.<sup>46</sup>

The corporation or board may delegate any of their functions (other than the power to delegate under section 147 of the Act) to:

- a member or board member
- an employee of the corporation.<sup>47</sup>

Delegations must be made in writing. <sup>48</sup>

### 2.7.2 Board Membership

The Board must consist of between 3 and 10 Members of the Corporation.<sup>49</sup>

Board members are appointed for a term of 3 years. <sup>50</sup>

Subject to section 175 of the Water Management Act, Board members may be re-elected.

- Board members must be at least 18 years old.

### 2.7.3 Register of Board Members

Pomona Water maintains a register of Board at its registered office.

The register contains:

each board member's name, residential address, postal address, telephone number and address

copies of written consent to accept nomination to act as a Pomona Water Board member.

the date on which each person was appointed to the Pomona Water Board

the date on which a person ceased being a Pomona Water board member.

Pomona Water must make the register of Boards available at each Pomona Water AGM.

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<sup>45</sup> When the new laws start, *Water Management Act 2000* (NSW) s 144(1).

<sup>46</sup> When the new laws start, *Water Management Act 2000* (NSW) s 144(3)(a). No additional functions have been conferred under section 144(3)(b).

<sup>47</sup> When the new laws start, *Water Management Act 2000* (NSW) s 147.

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## 2.7.4 Electing the board

Members of Pomona Water must elect the Board by resolution passed at a meeting.

Before electing the board, Pomona Water must:

- Notify members of the vacancy
- seek nominations from all Members
- receive in writing the consent of a Member to becoming a board member.

A resolution passed at the next meeting must confirm the appointment of a Member to fill a casual vacancy on the board, or the Member's board role ceases.

## 2.7.5 Filling casual vacancies on the board

The Board can appoint a Class 1 or Class 2 Member to fill a casual vacancy on the board.

Before appointing a Member, the Board must:

- notify members of the vacancy
- seek nominations from all Members

A resolution passed at the next meeting must confirm the appointment of a Member to fill a casual vacancy on the board, or the Member's board role ceases.

## 2.7.6 Board Duties

The Pomona Water Board exercises the functions and power granted to it pursuant to the Water Management Act 2000. Essentially the Board has the power to construct, maintain and operate the water supply works and manage the financial affairs of the private water corporation.

The Board can under the new legislation make rules for the Private water corporation provided they are not inconsistent with the Water Management Act 2000 or the amendments and Regulations.

Pomona Waters Board duties are to:

- act within its powers under Water Management Act.
- act honestly.
- disclosure of any conflicts of interest
- provide members with accurate information when seeking their support for decisions.
- give members honest opinion and advice.
- act in the best interests of the private water corporation as a whole.
- manage the financial affairs of Pomona Water
- keep proper financial records and can pay its debts.
- act with care and diligence
- act in good faith
- not improperly use their position or information
- provide sound financial management of the Pomona Water private corporation.
- not to carry out Board duties while insolvent.

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### **2.7.7 Conflicts of Interest**

A board member who has a material personal interest in a corporation matter must inform the Board and provide information about their interest and its relation to Pomona Water.

Information about the conflict must be:

- Provided at a board meeting as soon as possible after the board member becomes aware of the conflict.
- recorded in the minutes of the board meeting.

A board member who has a material personal interest must not, without the consent of the majority of the Board:

- be present in a board meeting while it considers the matter in question.
- vote on the decision regarding the matter.

### **2.7.8 Using Pomona Water money and property**

The board may use the Pomona Water's money and property to carry out its business.

Pomona Water may pay board members' reasonable travelling and other expenses for attending board meetings or other corporation business.

Pomona Water may pay the Board Members an annual salary for their work as board members.

This does not preclude Pomona Water from:

- employing board members
- engaging a board member under a contract to provide goods or services to Pomona Water, so long as the board member has exercised their duty to disclose a conflict of interest.

The board cannot give, by loan or otherwise, Pomona Water's money and property to members of Pomona Water or any other person.

This rule does not stop Pomona Water from making reasonable payment to:

- a member or board member in their capacity as an employee
- a member or board member under a contract to provide goods or services to Pomona Water.

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## 2.7.9 Ending Board Membership

A board member ceases being a board member if they:

- die <sup>51</sup>
- resign <sup>52</sup>
- are absent, without leave, from 3 consecutive meetings <sup>53</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>54</sup>.
- become a mentally incapacitated person <sup>55</sup>.
- 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>56</sup>.
- are convicted, in any jurisdiction, of an offence involving fraud <sup>57</sup>.
- are disqualified from managing a corporation under Corporations Act 2001 (Cth)
- are subject to resolution passed at a meeting removing them from the board.

Before a resolution at a meeting may remove a board member:

- Pomona Water must, as soon as possible, give the board member concerned a copy of the notice given to members under rule 3.6.2
- the board member concerned may give a written statement to members and speak at the meeting.

If the resolution is passed, removal from the Board takes effect immediately.

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<sup>51</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(a).

<sup>52</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(b).

<sup>53</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(c).

<sup>54</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(d).

<sup>55</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(e).

<sup>56</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(f).

<sup>57</sup> Water Management Act 2000 (NSW) s 144(5) and Water Management (General) Regulation 2018 (NSW) cl 56(1)(g).

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## **2.8 Board meeting and Decisions**

### **2.8.1 Board Meetings**

The Board will meet at least every two (2) months on a date as approved by the Board in advance. Employees and Contractors of the Board may attend board meetings.

Board members are expected to:

- Devote time to attending meetings and reading Board papers prior to meetings.
- Make contributions to decision making at Board meetings and act in the interest of all the Members.
- Board decisions will be by majority vote.

### **2.8.2 Calling Board Meetings**

A schedule of dates for Board meetings will be agreed by the Pomona Water Board Members. The Board may delegate to an employee the responsibility of calling the meetings and circulating the appropriate agenda and materials.

A board member may call a meeting by giving 30 days' notice to all other board members and office bearers.

The notice must set out:

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

### **2.8.3 Business of Board Meetings.**

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

### **2.8.4 Using Technology at Board Meetings**

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

Board 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.

### **2.8.5 Chairing Board Meetings**

The board may elect a board member or office bearer to chair their meetings. Chairing board 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 and summarising frequently.



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## 2.8.6 Quorum at Board Meetings

A quorum (two Board Members) must be present during the whole board meeting. If there is no quorum after 30 minutes or the quorum is lost during the board meeting, the board meeting is adjourned until a time decided by the board.

Notice of the reconvened board meeting is to be given according to rule 2.8.2. If there is still no quorum at the reconvened meeting, the board meeting may proceed without a quorum.

## 2.8.7 Board Members Decisions

Decisions of the board, including decisions regarding, water supply, financial matters, agreements, must occur by resolution passed by a majority of votes.

Resolutions may be passed without a board meeting if all board members indicate via email or signed statement attaching a copy of the resolution that they are in favour of the attached resolution. Resolutions and statements made may be voted on electronically.

## 2.8.8 Voting on Resolutions

Each board member 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 board member, the casting vote is an additional vote.

## 2.8.9 Administration

Documents may be executed if signed by 2 board members, or a board member and an office bearer.

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

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

## 2.9 Office Bearers

The Board may appoint office bearers to assist in the day-to-day administration of Pomona Water 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.

The Board delegates to the administration officer who may be an employee or a contractor, the authority and power to manage the day-to-day business affairs of Pomona Water, subject to reservation of certain specific matters for itself, in accordance with the current delegation of authority policy.

Board members may fill casual office bearer vacancies.

The Board has the authority to conduct or direct any investigation required to fulfil its responsibilities and has the right to retain, at Pomona Water's expense, such legal, accounting, or other advisors, consultants, or experts as it considers necessary from time to time in the performance of its duties.

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### **2.9.1 Appointment**

The Pomona Water Administration Officer role should be:

- at least 18 years old
- reside in Australia.

### **2.9.2 Role of Administration Officer**

The Administrative officer of Pomona Water should:

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

### **2.9.3 Records Maintained By Administration Officer**

The Administration Officer must keep the following records:

- registers of members, board members, and the persons/landholdings to whom Pomona Water provides services.
- 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 Administration Officer must keep a record of all meetings and board meetings, including:

- minutes of the meeting
- names of the members or board members 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 board meetings may be in writing, or audio or video recording.

The Administration Officer must keep:

- the current rules of Pomona Water
- the works plan of Pomona Water.

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## 3 Operational Functions

### 3.1 Pomona Water Works Plan

#### 3.1.1 Works Plan Content

Pomona Water must have a works plan that complies with any requirements prescribed by the regulations and the rules.<sup>58</sup>

The works plan must:

- identify the water management works or proposed works that are corporation works. <sup>59</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>60</sup>.
- include a map or diagram of the works <sup>61</sup>.
- describe the works <sup>62</sup>.
- specify the land to which the works plan applies <sup>63</sup>.
- if Pomona Water holds an access licence, include the access licence number <sup>64</sup>.
- if Pomona Water holds a water management work approval or an activity approval for the works, include the approval number <sup>65</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 corporation stakeholder.<sup>66</sup>

The land to which the works plan applies includes the land to which Pomona Water provides or is able to provide services.

#### 3.1.2 Access to the Works Plan

A copy of the works plan must be kept at the address stated on the works plan. <sup>67</sup>

Members may request a hard copy or electronic copy of the works plan from Pomona Water.

Where a request is made, Pomona Water must provide the type of copy requested within 5 business days.<sup>68</sup>

Electronic copies must be provided free of charge.

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<sup>58</sup> Water Management Act 2000 (NSW) s 153(2).

<sup>59</sup> Water Management Act 2000 (NSW) s 153(1)(a)

<sup>60</sup> Water Management Act 2000 (NSW) s 153(1)(b) and (4).

<sup>61</sup> Water Management (General) Regulation 2018 cl 60(1)(a).

<sup>62</sup> Water Management Act 2000 (NSW) s 153(1)(b).

<sup>63</sup> Water Management Act 2000 (NSW) s 153(1)(c).

<sup>64</sup> Water Management (General) Regulation 2018 cl 60(1)(b)(i).

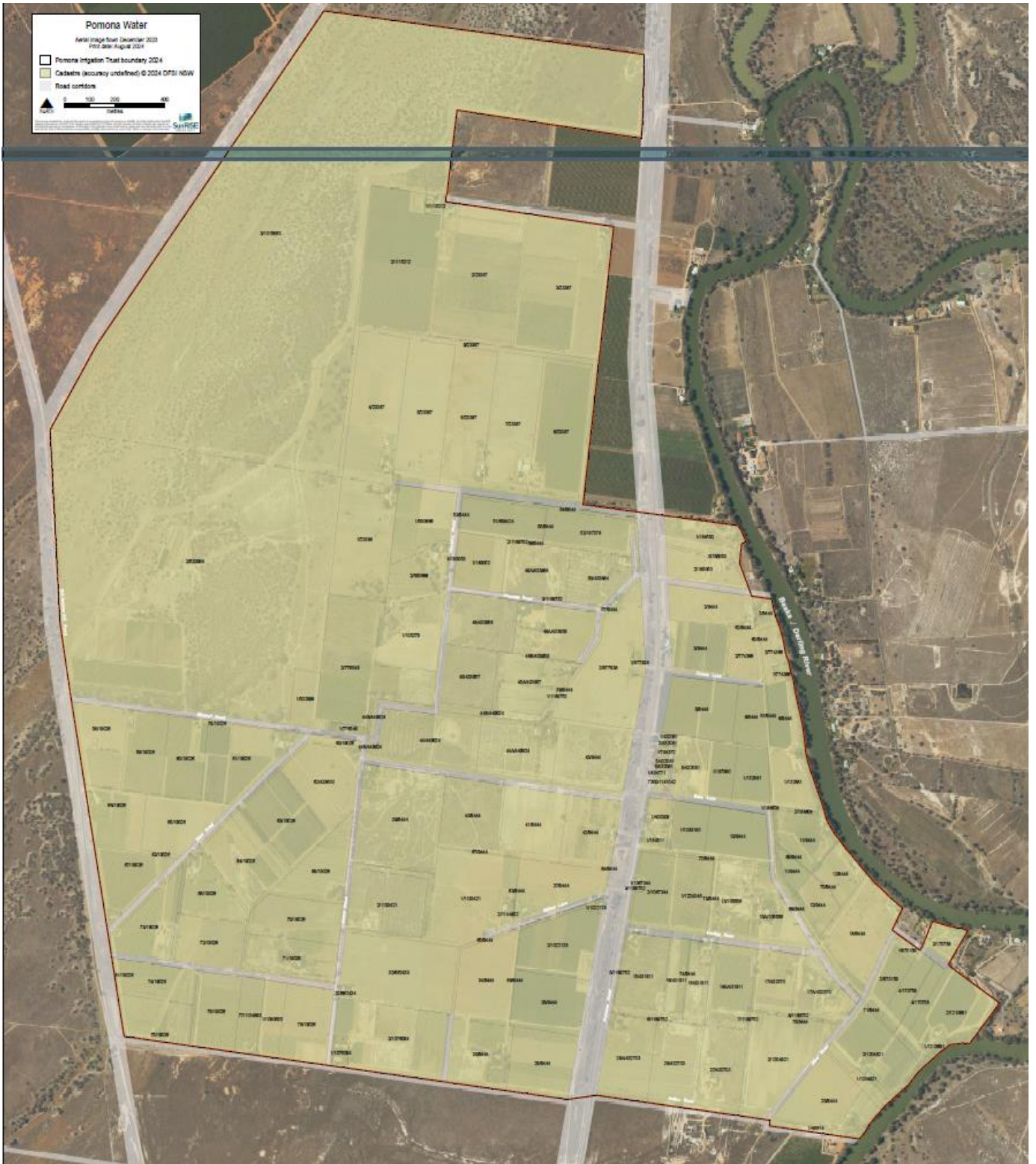
<sup>65</sup> Water Management (General) Regulation 2018 cl 60(1)(b)(ii).

<sup>66</sup> Water Management (General) Regulation 2018 cl 60(1)(c).

<sup>67</sup> Water Management (General) Regulation 2018 cl 60(2)(a).

<sup>68</sup> Water Management (General) Regulation 2018 cl 60(2)(b).

### 3.1.3 Image Pomona Water Works Plan Area



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### 3.1.4 Pomona Water Works

Members to whom Pomona Water provides services may request a detailed plan of corporation works on their landholding from Pomona Water if they:

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

Where a request is made, Pomona Water must provide the type of copy requested within 60 days.

### 3.1.5 Changing the Works Plan

The works plan may be amended or replaced if the amendment or replacement is consented to by any Member on whose land an affected work is situated or is authorised by the rules.<sup>69</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 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 works approved by the Pomona Water.

## 3.2 Providing Services

The Pomona Water Corporation may:

- supply water under an access licence and works approval held by Pomona Water <sup>70</sup>
- supply water for the purpose of an access licence or approval held by a member whose member's water entitlement was transformed <sup>71</sup>.
- enter into an agreement with a person who is not a member to supply water for the purpose of irrigation, stock or domestic purposes or other purposes by means of the supply system managed by Pomona Water. <sup>72</sup>
- enter into an arrangement with a landholder to provide services in relation to works that are not corporation works. <sup>73</sup>

Pomona Water must not supply water to a person who is not a member for domestic purposes if a supply of water is available to the person from a local water utility or major utility.<sup>74</sup>

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<sup>69</sup> Water Management (General) Regulation 2018 cl 60(2)(b).

<sup>70</sup> Water Management Act 2000 (NSW) s 153(3).

<sup>71</sup> Water Management Act 2000 (NSW) s 143(2)(a).

<sup>72</sup> Water Management Act 2000 (NSW) s 143(2)(b).

<sup>73</sup> Water Management Act 2000 (NSW) s 151(1).

<sup>74</sup> Water Management Act 2000 (NSW) s 151(2)

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### 3.3 Providing & Maintaining Distribution Works

If it is necessary for the efficient or effective operation of corporation works or the carrying out of the corporation's functions,<sup>75</sup> the corporation may, by notice in writing given by the corporation 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 on a landholding to enable the supply of water to the land at the rate specified by the corporation <sup>76</sup>.
- provide water storage works in the locations, and of a kind, specified by the corporation for water supplied for stock or domestic purposes. <sup>77</sup>.
- maintain any water delivery systems or water storage works to enable the corporation to properly exercise its functions in relation to the supply of water. <sup>78</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.

### 3.4 Discontinuing Water Supply

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

- the water allocation available to Pomona Water cannot meet the demand. <sup>79</sup>
- the water that is available to Pomona Water is not suitable for the required purpose. <sup>80</sup>
- Pomona Water is unable to provide sufficient conveyance water in connection with the operation of an supply system. <sup>81</sup>.
- Pomona Water is not lawfully able to supply the quantity of water <sup>82</sup>.
- the member has failed to pay rates or charges for water or other services provided by Pomona Water <sup>83</sup>
- the member has contravened or failed to comply with a condition on which water services are supplied by Pomona Water <sup>84</sup>

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<sup>75</sup> Water Management Act 2000 (NSW) s 149(3).

<sup>76</sup> Water Management Act 2000 (NSW) s 149(1)(a).

<sup>77</sup> Water Management Act 2000 (NSW) s 149(1)(b).

<sup>78</sup> Water Management Act 2000 (NSW) s 149(1)(c).

<sup>79</sup> Water Management Act 2000 (NSW) s 150(1)(a).

<sup>80</sup> Water Management Act 2000 (NSW) s 150(1)(b).

<sup>81</sup> Water Management Act 2000 (NSW) s 150(1)(c).

<sup>82</sup> Water Management Act 2000 (NSW) s 150(1)(d).

<sup>83</sup> Water Management Act 2000 (NSW) s 150(1)(e).

<sup>84</sup> Water Management Act 2000 (NSW) s 150(1)(f).

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the member has contravened or failed to comply with a requirement of Pomona Water relating to the provision, maintenance, or repair of distribution works or any other requirement made by Pomona Water in accordance with the Act, regulations, or rules <sup>85</sup>.

- the member has contravened or failed to comply with a requirement of the Act, the regulations, or the rules <sup>86</sup>.
- the corporation is unable to dispose of water draining into its drainage system because of the degraded quality of the water. <sup>87</sup>

Pomona Water may reduce the amount of water available by different amounts or proportions according to such factors as the corporation thinks fit. <sup>88</sup>

Before suspending or restricting the supply of water or refusing to supply water to a member, the Pomona Water must give 30 days' written notice to the member.

The notice must give the member an opportunity to make written submissions. Pomona Water must consider and respond in writing to any submissions received within 30 days. These requirements do not apply if it is not reasonably possible in the circumstances.

### 3.5 Entering Members Land

Pomona Water's employees, contractors and agents may enter onto land on which Pomona Water works are situated, or any other land, to:

- carry out any of its functions in relation to works <sup>89</sup>.
- read a meter that measures water supplied by the corporation or monitors drainage for quantity or quality or both. <sup>90</sup>
- carry out investigations or inspections, take levels, drill test boreholes, dig trenches, make surveys and marks, and fix pegs and stakes, for the purposes of designing, constructing, or determining the site of a proposed work <sup>91</sup>.  
remove samples of materials from the land for the purposes of carrying out Pomona Water's functions, but only if the Member has been consulted and the views of the Member have been considered <sup>92</sup>.
- exercise any other powers that are incidental to Pomona Water's functions or that are reasonably necessary for carrying out Pomona Water's functions.<sup>93</sup>
- Before entering onto land, Pomona Water must give 3 days' notice to the Member. This requirement does not apply if the entry is to read a meter that measures water supplied by Pomona Water for quantity or quality or both. <sup>94</sup>

Pomona Water must ensure as little damage as possible is caused when exercising these powers <sup>95</sup> and must repair any damage caused or pay compensation for damage.

- maintain works.

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<sup>85</sup> Water Management Act 2000 (NSW) s 150(1)(g).

<sup>86</sup> Water Management Act 2000 (NSW) s 150(1)(h).

<sup>87</sup> Water Management Act 2000 (NSW) s 150(1)(i).

<sup>88</sup> Water Management Act 2000 (NSW) s 150(2).

<sup>89</sup> Water Management Act 2000 (NSW) s 152(1)(a).

<sup>90</sup> Water Management Act 2000 (NSW) s 152(1)(b).

<sup>91</sup> Water Management Act 2000 (NSW) s 152(1)(c).

<sup>92</sup> Water Management Act 2000 (NSW) s 152(1)(d).

<sup>93</sup> Water Management Act 2000 (NSW) s 152(1)(e).

<sup>94</sup> Water Management Act 2000 (NSW) s 152(2).

<sup>95</sup> Water Management Act 2000 (NSW) s 152(3).

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# 4 Determination, Transformation and Sale of Water Entitlements

## 4.1 Pomona Water's Access Licences

Pomona Water holds water access licences for irrigation, stock and domestic, use. (see table 1).

Table 1. Pomona Water Corporation Water Access Licences @ September 2024

Water Source	WAL	Category	Volume (ML)
NSW Murray Zone 11	60AL580487	High Security	1923.8
NSW Murray Zone 11	60AL580488	General Security	484.6
NSW Murray Zone 11	60AL580490	Domestic & Stock	350.0
NSW Murray Zone 11	60AL580489	Supplementary	255.0
<b>TOTAL</b>			

Pomona Water 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>96</sup>

## 4.2 Member's Water entitlements

### 4.2.1 Determining a member's water entitlement(right)

A member may request Pomona Water determine their water entitlement. The request must be made in writing. <sup>97</sup>

If the request is made:

- by a member who is supplied with water for irrigation, Pomona Water must determine the member's water entitlement. <sup>98</sup>
- by a member who is not supplied with water for irrigation, Pomona Water may determine the member's water entitlement. <sup>99</sup>

Pomona Water 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>100</sup>.
- the amount of water currently supplied to the member <sup>101</sup>.
- any present or past water sharing arrangements applicable to the member <sup>102</sup>.
- previous determinations of member's water entitlements <sup>103</sup>
- any other matter it considers relevant. <sup>104</sup>.

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<sup>96</sup> Water Management Act 2000 (NSW) s 155.

<sup>97</sup> Water Management Act 2000 (NSW) s 154(1).

<sup>98</sup> Water Management Act 2000 (NSW) s 154(2).

<sup>99</sup> Water Management Act 2000 (NSW) s 154(1).

<sup>100</sup> Water Management Act 2000 (NSW) s 154(3)(a).

<sup>101</sup> Water Management Act 2000 (NSW) s 154(3)(b).

<sup>102</sup> Water Management Act 2000 (NSW) s 154(3)(c).

<sup>103</sup> Water Management Act 2000 (NSW) s 154(3)(e) and Water Management (General) Regulation 2018 cl 61(1).

<sup>104</sup> Water Management Act 2000 (NSW) s 154(3)(d).



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A determination may specify the different parts of the member's water entitlement that are available to the member for different purposes.<sup>105.</sup>

A determination must be in writing<sup>106</sup> and specify:

- the matters Pomona Water considered when making the determination. <sup>107</sup>
- the proportion of the share component of an access licence held by or on behalf of Pomona Water that is available to the member <sup>108.</sup>
- the licence category of the member's proportion of the share component.<sup>109</sup>

Notice of the determination must be given in writing by Pomona Water to the member.<sup>110</sup>

A determination may be varied or redetermined only on a further application made by the member within 3 months of the determination.<sup>111</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>112</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>113</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>114</sup> Pomona Water's decisions about member's water entitlements may be appealed to the Land and Environment Court.<sup>115</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 entitlement to another member or to Pomona Water.<sup>116</sup>

A member must not sell or transfer the whole or part of their member's General security water entitlement under **section 156** of the Act unless the sale or transfer has been approved by Pomona Water in accordance with the rules or the regulations.<sup>117</sup>

A sale or transfer by a member does not affect the member's membership of Pomona Water, except as provided by the Act or the rules.<sup>118.</sup>

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<sup>105</sup> Water Management Act 2000 (NSW) s 154(4).

<sup>106</sup> Water Management Act 2000 (NSW) s 154(5).

<sup>107</sup> Water Management Act 2000 (NSW) s 154(5) and Water Management (General) Regulation 2018 (NSW) cl 61(2)(a).

<sup>108</sup> Water Management (General) Regulation 2018 (NSW) cl 61(2)(b).

<sup>109</sup> Water Management (General) Regulation 2018 (NSW) cl 61(2)(c).

<sup>110</sup> Water Management Act 2000 (NSW) s 154(5).

<sup>111</sup> Water Management Act 2000 (NSW) s 154(6).

<sup>112</sup> Water Management Act 2000 (NSW) s 154(6) and Water Management (General) Regulation 2018 (NSW) cl 61(3).

<sup>113</sup> Water Management Act 2000 (NSW) s 154(6) and Water Management (General) Regulation 2018 (NSW) cl 61(4).

<sup>114</sup> Water Management Act 2000 (NSW) s 154(7) and Water Management (General) Regulation 2018 (NSW) cl 61(5).

<sup>115</sup> Water Management Act 2000 (NSW) s 368(1A)(b).

<sup>116</sup> Water Management Act 2000 (NSW) s 156(1).

<sup>117</sup> Water Management Act 2000 (NSW) s 156(2).

<sup>118</sup> Water Management Act 2000 (NSW) s 156(3).

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### 4.2.3 Transforming a Member's entitlement

Pomona Water 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>119</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 board member) 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>120</sup>.
- Pomona Water may continue to exercise functions in relation to any corporation works that are located on the landholding, whether or not Pomona Water is to deliver the member's water entitlement under the access licence, or the landholder is a member of Pomona Water.<sup>121</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 Pomona Water:

- the person ceases to be a member of Pomona Water (see rule 2.5.3)
- Pomona Water must not fix rates and charges in respect of the person's landholding for that water (other than termination charges).<sup>122</sup>

Pomona Water 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>123</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 Pomona Water.<sup>124</sup>

119 Water Management Act 2000 (NSW) s 157(1).

120 Water Management Act 2000 (NSW) s 157(2)(a).

121 Water Management Act 2000 (NSW) s 157(2)(b).

122 Water Management Act 2000 (NSW) s 157(3).

123 Water Management Act 2000 (NSW) s 157(5).

124 Water Management Act 2000 (NSW) s 157(6)

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### **4.3 Water Entitlement Agreement/Certificate**

A Water Allocation Certificate is provided to each Member. The Agreement/Certificate Details the Water Entitlements made available to the Member in respect of which the Customer is the registered holder in the Pomona Water Entitlements Register.

The Member holds no interest in Pomona's Access Licences or the water that the Pomona Private Water Corporation is entitled to receive under them.

### **4.4 Water Allocation**

As soon as practicable after each relevant NSW Water Availability Announcement during the relevant Water Year, Pomona Water will credit to the Member's account the same volume of Water Allocation per relevant Water Entitlement as is specified per Megalitre of share component in the Availability Announcement with respect to the corresponding category of Access Licence held by Pomona Water

### **4.5 Unused water allocation**

Unused High Security Water Allocation cannot be carried over to the next Water Year and will be cancelled at the end of the water year. No compensation will be payable to Members at the end of the Water Year for cancelled allocation.

Pomona water may, at its sole discretion, sell all or part of any water allocation held in a water allocation account (as defined in the Act) for an Access Licence of Pomona Water including any such water allocation corresponding to Water Allocation which, in the opinion of Pomona Water will be, or is reasonably likely to be, cancelled. Pomona Water may, at its discretion, retain the sale proceeds for the benefit of all members. Any decision made by Pomona Water is final and binding on the Member.

### **4.6 Temporary Allocation Trading**

Members that are issued an allocation comprising a general or high security entitlement can apply to Pomona Water to externally trade the annual allocation on their behalf.

Income from an Member's allocation trade will result in the trade financial proceeds (less commission and an administration charge) being deposited to the Member's bank account or credited to their water account.

### **4.7 Delivery of Water**

Pomona must use its reasonable endeavours to deliver water to the Member during the Water Year in accordance with the Members delivery rights.

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## 4.8 Permanent Water Entitlement Sale

A member must not permanently sell or grant a mortgage or encumbrance over any water allocation without the prior consent of the Board. The Board has no obligation to approve an application by a Member to sell or grant mortgage over a Members water allocation.

### **Stock & Domestic Allocations (Stock & Domestic)**

Pomona Water Stock and Domestic entitlements are not externally tradeable. These allocations are linked to the land and not permanently tradeable within or outside Pomona Water.

### **High Security & General Security Allocations**

Pomona Water NSW Murray High & General security zone 11 allocations are provided to Members for Irrigation purposes. Annual allocation not required for irrigation purposes can be traded on an annual basis to generate financial benefit for the Members. Members application for permanent trade of high and/or general security entitlement must be made in writing to the Pomona Water Board.

A member must not permanently sell or grant a mortgage or encumbrance over their Water allocation without the prior consent of the Board. The decision will be at the Board's absolute discretion.

Members acknowledge that if an application is made to permanently trade a high or general security allocation, the Board will charge a termination fee related to the termination of the delivery rights. This is to offset the cost and expenses of Pomona Water being shared by less members resulting in an increase of their fees and charges and or costs and expenses As such the Board shall be entitled to seek payment of a termination/ exit fee.

If the Board approves a member's application. The Board may at its absolute discretion impose conditions including but not limited to:

### **Termination fee per water delivery right.**

The termination fee must be paid prior to the Board approving the water entitlement sale application. The termination fee is to be held on Trust by Pomona Water. The funds will be returned to the member if the application is unsuccessful.

If the application to sell water entitlement is approved, the Board is entitled to retain the funds. The exit fee shall be equal to 10 times the delivery right (fixed each water year).

If no exit fee is paid by the Member the Board, it may require payment of continuing annual base charge as imposed by the Board relating to a Water allocation with the original ML right.

A termination fee is not payable when a Member permanently trade all or part of Water entitlement delivery shares to another member of Pomona Water.

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# 5 Rates & Charges

## 5.1 Fixing rates and Charges

Pomona Water 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 water and services in that year.<sup>125</sup>

### 5.1.1 Procedure for setting rates and charges.

The rules and procedures for setting rates and charges are as follows:<sup>126</sup>

The Board must fix and charge rates to Members for all water and services supplied . The rates and charges will be set by 1 July in each year, the Board will:

- fix an infrastructure access fee rate per ML on water delivery rights for all holdings with rights to access water in its works plan area.
- fix in each year a usage/pumping rate per ML of all water delivered.
- fix a connection and service fee/outlet to all holdings with no delivery rights.
- fix a domestic supply fee and no water entitlement or delivery rights.
- the charges in respect of temporary external and internal trades
- set penalty for a negative water account balance.
- Set application fee for entitlement transformation.
- Set a termination fee for high and genral security water delivery rights.

A resolution passed at a meeting of Pomona Water must approve the procedures for setting rates and charges.

Rates and charges must be paid by landholders whether water is taken and are payable one month after service of a notice to pay.

Pomona Water Board may abandon or write off rates and charges not paid..

A rate or assessment log be kept. This must record:

- name, address and occupation of each Member,
- particulars of the area of each parcel of land owned by each such Member,
- particulars of the quantity of water last allocated by the Board to each holding within the district; and
- particulars relating to the fixing, assessing and levying of rates and charges.

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<sup>125</sup> Water Management Act 2000 (NSW) s 163(1).

<sup>126</sup> Water Management Act 2000 (NSW) s 163(7).

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### 5.1.2 Basis for fixing rates and charges

Pomona fixes rates and charges delivery access, volume of water delivered, land area serviced, and services performed.

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

- Pomona Water’s likely costs in providing services for that year. <sup>127</sup>
- the liabilities of Pomona Water. <sup>128</sup>
- Pomona Water’s likely costs relating to corporation works, including (but not limited to) maintenance, improvement, and replacement of works and new works. <sup>129</sup>
- provision for a sinking fund (if necessary). <sup>130</sup>

### 5.1.3 Giving Notice to Members of rates and Charges

Pomona Water must give notice of its rates and charges for a year, including the basis on which they were calculated:

- in writing via email.
- within 21 days of fixing the rates and charges
- if interest is payable on unpaid rates and charges, by specifying:
  1. 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>131</sup>
  2. when the interest becomes payable.<sup>132</sup>

### 5.1.4 Transformation Charges

Members can transform their water entitlement into an individual water access licence under section 157 of the Act and rule 5.2.3.<sup>133</sup>

Pomona Water 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>134</sup>

### 5.1.5 Termination Charges

Pomona Water may fix termination charges payable by a member or former member in connection with Pomona Water ceasing to supply water to the member or former members (whether because of the transformation of the member’s water entitlement to an access licence or otherwise).<sup>135</sup>

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<sup>127</sup> Water Management Act 2000 (NSW) s 163(2)(a).

<sup>128</sup> Water Management Act 2000 (NSW) s 163(2)(b).

<sup>129</sup> Water Management Act 2000 (NSW) s 163(2)(c).

<sup>130</sup> Water Management Act 2000 (NSW) s 163(2)(d).

<sup>132</sup> Water Management Act 2000 (NSW) s 356.

<sup>133</sup> Water Management Act 2000 (NSW) s 163(6) and Water Management (General) Regulation 2018 (NSW) cl 63.

<sup>134</sup> Water Management Act 2000 (NSW) s 157.

<sup>135</sup> Water Management Act 2000 (NSW) s 163(5)(b).

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## 5.2 Paying Rates & Charges

The owner or occupier of a landholding for which rates or charges are levied must pay the rates and charges to Pomona Water.<sup>136</sup>

Members and landholders must pay rates and charges within 30 days of receiving the rates notice unless Pomona Water 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 Pomona Water from any one or more of those persons.<sup>137</sup>
- Pomona Water is not entitled to recover more than the total amount of the rates and charges (and any interest payable).<sup>138</sup>

If land is owned or jointly held by 2 or more persons, such persons are jointly and severally liable to Pomona Water for the rate, but as between themselves are liable only for such part of the rate as is proportionate to their interest in the land.<sup>139</sup> If any of the persons pays more than their proportionate part, they may recover the excess from the others.<sup>140</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>141</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>142</sup>
- before the person gave Pomona Water notice of disposal.<sup>143</sup>

If any member or landholder who disposes of land to another person pays any amount to Pomona Water in respect of rates or charges levied after the land was disposed of but before the prescribed notice is given to Pomona Water, the person by whom the amount was paid may recover the amount from the person to whom the land was disposed.<sup>144</sup>

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<sup>136</sup> Water Management Act 2000 (NSW) s 164(1).

<sup>137</sup> Water Management Act 2000 (NSW) s 164(2)(a).

<sup>138</sup> Water Management Act 2000 (NSW) s 164(2)(b).

<sup>139</sup> Water Management Act 2000 (NSW) s 358(1).

<sup>140</sup> Water Management Act 2000 (NSW) s 358(2).

<sup>141</sup> Water Management Act 2000 (NSW) s 164(3).

<sup>142</sup> Water Management Act 2000 (NSW) s 361(1)(a).

<sup>143</sup> Water Management Act 2000 (NSW) s 361(1)(b).

<sup>144</sup> Water Management Act 2000 (NSW) s 361(2).

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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>145</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>146</sup>

If any person who becomes an owner of land pays to the corporation 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>147</sup>

### **5.2.3 Interest on overdue rates and charges**

The corporation may charge interest on overdue rates and charges at a rate not exceeding the rate of interest payable for the time being on an unpaid judgment of the Supreme Court.<sup>148</sup>

### **5.2.4 Security for overdue rates and charges**

Pomona Water may require a corporation stakeholder to provide security for the payment of rates and charges to Pomona Water other than a charge under the Act, section 170 .<sup>149</sup> Security may be only:

- a charge over an access licence
- a guarantee by an authorised deposit-taking institution
- a deposit lodged with Pomona Water.
- a charge over a member's water entitlement
- a kind of security agreed between Pomona Water and Pomona Water stakeholder. <sup>150</sup>

The security that may be required must not be a value greater than the following, whichever is the higher:

- 5 times the value of the rates and charged levied by the corporation on the corporation stakeholder in the immediately preceding water year <sup>151</sup>.
- 5 times the prescribed amount.<sup>152</sup>

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<sup>145</sup> Water Management Act 2000 (NSW) s 361(3).

<sup>146</sup> Water Management Act 2000 (NSW) s 362(1).

<sup>147</sup> Water Management Act 2000 (NSW) s 362(2).

<sup>148</sup> Water Management Act 2000 (NSW) s 356.

<sup>149</sup> Water Management (General) Regulation 2018 (NSW) cl 57(1).

<sup>150</sup> Water Management (General) Regulation 2018 (NSW) cl 57(2).

<sup>151</sup> Water Management (General) Regulation 2018 (NSW) cl 57(3)(a).

<sup>152</sup> Water Management (General) Regulation 2018 (NSW) cl 57(3)(b).



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### 5.2.5 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>153</sup>

Any rate or charge due to Pomona Water under the Act may be recovered in any court of competent jurisdiction as if it were a debt due to Pomona Water.<sup>154</sup>

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

Security provided under rule 5.2.4 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
- Pomona Water gives Pomona Water stakeholder written notice of, and reasons for, the intention to forfeit the security, and
- Pomona Water considers submissions made by or on behalf of the stakeholder within at least 21 days of giving the written notice, and
- Pomona Water 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>155</sup>

### 5.3 Waiving rates and charges

Pomona Water may waive rates, charges, and interest due if the auditor certifies the waiver is in accordance with the rules and the board approves.<sup>156</sup>

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<sup>153</sup> Water Management Act 2000 (NSW) s 355.

<sup>154</sup> Water Management Act 2000 (NSW) s 357(1).

<sup>155</sup> Water Management (General) Regulation 2018 (NSW) cl 57(4).

<sup>156</sup> Water Management Act 2000 (NSW) s 165.

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# 6 Finance

## 6.1 Financial Records

Pomona Water must cause proper accounts and records to be kept in relation to all its operations.<sup>157</sup>

Pomona Water must keep financial accounts records at its registered office.

Pomona Water must prepare financial statements for each financial year of Pomona Water.<sup>158</sup>

Section 7.6 of the *Government Sector Finance Act 2018* applies to financial statements required to be prepared under section 166 of the Act in the same way that it applies to annual GSF financial statements required to be prepared under that Act.<sup>159</sup>

## 6.2 Financial Audit

### 6.2.1 Audit of Financial Statements

Within 60 business days of the end of a financial year, Pomona Water must submit its financial statements to an auditor for verification and certification.<sup>160</sup>

The auditor has a right of access at all reasonable times to the accounts and records of Pomona Water and a board member or employee of Pomona Water must comply with any reasonable request by the auditor of Pomona Water to provide information or documents relating to the accounts or financial statements or related records of Pomona Water. <sup>161</sup>

The audited financial statements must be laid before the AGM of the Corporation following their verification and certification by the auditor. <sup>162</sup>

### 6.2.2 Appointing an auditor

The auditor must be appointed by the board. The auditor must be one of the following:

- a registered company auditor within the meaning of *Pomona Waters 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>163</sup>
- A member or board member must not be appointed to audit the financial statements of Pomona Water.<sup>164</sup>

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<sup>157</sup> Water Management Act 2000 (NSW) s 166(1).

<sup>58</sup> Water Management Act 2000 (NSW) s 166(2).

<sup>59</sup> Water Management Act 2000 (NSW) s 166(3).

<sup>60</sup> Water Management Act 2000 (NSW) s 166(2) and (4).

<sup>61</sup> Water Management Act 2000 (NSW) s 167.

<sup>62</sup> Water Management Act 2000 (NSW) s 168(2).

<sup>63</sup> Water Management Act 2000 (NSW) s 166(5) and Water Management (General) Regulation 2018 (NSW) cl 64.

<sup>64</sup> Water Management Act 2000 (NSW) s 166(6).

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## 6.3 Financial accounts & transactions

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

Pomona Water must give receipts for all money it receives.

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

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

## 6.4 Investment & Borrowings

Pomona Water may obtain borrowings and may invest the funds of Pomona Water in any manner it thinks fit.<sup>165</sup>

For the purpose of obtaining borrowings, Pomona Water may:

- charge the whole or any part of any of its property (including any income arising from rates or charges) by debenture, mortgage, or in any other manner, and
- enter into arrangements to provide guarantees or indemnities. <sup>166</sup>

In this rule:

- *funds* include any funds under the control of Pomona Water and real property, securities or other property comprising an investment.
- *borrowing* has the same meaning as in the *Government Sector Finance Act 2018*.
- The obligations of Pomona Water are not guaranteed by the State of New South Wales. <sup>167</sup>

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<sup>165</sup> Water Management Act 2000 (NSW) s 169(1).

<sup>166</sup> Water Management Act 2000 (NSW) s 169(2).

<sup>167</sup> Water Management Act 2000 (NSW) s 169(5).

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# 7 Investigations

## 7.1 Pomona Authorised Officers

Pomona Water may appoint a person to act as an authorised officer of Pomona Water under section 171 of the Act.

An appointment must be in writing and:

- specify the powers the officer may exercise.
- state that the officer may only exercise the powers in relation to water management works shown on Pomona Water's works plan.<sup>168</sup>

Pomona Water must provide every authorised officer with evidence of their authority as an authorised officer.<sup>169</sup>

Pomona Water must keep records of all actions taken by authorised officers.

An authorised officer:

- must not be a member of Pomona Water
- cannot exercise powers in relation to works that take water from a water source

## 7.2 Entering land for investigations

An authorised officer of Pomona Water may enter land at any reasonable time if the authorised officer is reasonably of the opinion that the landholder has contravened an irrigation, water supply, water distribution, or drainage agreement with Pomona Water and that it is necessary to enter the land for the purpose of investigating that contravention. <sup>170</sup>

An authorised officer is not empowered to enter any part of premises used only for residential purposes. <sup>171</sup>

Before entering land, Pomona Water must give the landholder [5 days'] notice. This requirement does not apply in an emergency.

An authorised officer, in the course of exercising their functions, must:

- if requested to do so by any person affected by the exercise of their functions, show the person evidence of their authority <sup>172</sup>.
- do as little damage as possible.

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<sup>168</sup> Water Management Act 2000 (NSW) s 171(1) and Water Management (General) Regulation 2018 (NSW) cl 67.

<sup>169</sup> Water Management Act 2000 (NSW) s 171(4) and 340(1).

<sup>170</sup> Water Management Act 2000 (NSW) s 171(2).

<sup>171</sup> Water Management Act 2000 (NSW) s 171(6).

<sup>172</sup> Water Management Act 2000 (NSW) s 171(4) and 340(2).

<sup>173</sup> Water Management Act 2000 (NSW) s 171(4) and 339F.

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An authorised officer may:

- be accompanied by a person the authorised officer considers, in their opinion, can assist them in the exercise of their functions under the Act. A person accompanying an authorised officer may take all reasonable steps to assist the authorised officer in the exercise of their functions.<sup>174</sup>
- examine and inspect any works.<sup>175</sup>
- take and remove samples.<sup>176</sup>
- make such examinations, inquiries, and tests as they consider necessary.<sup>177</sup>
- take such photographs, films, audio, video, as they consider necessary.<sup>178</sup>
- require records to be produced for inspection<sup>179</sup>.
- examine and inspect any records.<sup>180</sup>
- copy any records.<sup>181</sup>

Pomona Water must compensate all interested parties for any damage caused by a person exercising a power of entry on to land under section 171 of the Act on behalf of Pomona Water (but not any damage caused by the exercise of any other power) unless the occupier obstructed or hindered the person in the exercise of the power of entry.<sup>182</sup>

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<sup>174</sup> Water Management Act 2000 (NSW) s 171(4) and 339D.

<sup>175</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(a).

<sup>176</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(b).

<sup>177</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(c).

<sup>178</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(d).

<sup>179</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(e).

<sup>180</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(f).

<sup>181</sup> Water Management Act 2000 (NSW) s 171(3) and 339B(2)(g).

<sup>182</sup> Water Management Act 2000 (NSW) s 171(7).

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# 8 Enforcement

## 8.1 Charges Pomona may impose.

Pomona Water may impose the following charges on a person, including a former member, <sup>183</sup> under section 170 of the Act.

- charge for water taken if Pomona Water is satisfied on the balance of probabilities that the person has knowingly taken water from a water management work that is owned by, or is under the control and management of, Pomona Water in contravention of the Act, the regulations, the rules, or an agreement with Pomona Water (water illegally taken). <sup>184</sup>
- charge for the repair or replacement of a work if Pomona Water is satisfied on the balance of probabilities that the person has destroyed, damaged, or interfered with a work that is owned by, or is under the control or management of, Pomona Water (damage to work).<sup>185</sup>

The charge imposed by Pomona Water may include a penalty component.<sup>186</sup>

For the taking water, Pomona Water:

- may charge a maximum of 5 times the value of water so taken. <sup>187</sup>
- must determine the value of water so taken in accordance with clause 20 of the *Water Management (General) Regulation 2018 (NSW)*.<sup>188</sup> 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, Pomona Water.<sup>189</sup>

For destroying, damaging, or interfering with a work, Pomona Water may charge a maximum of 5 times the reasonable cost of repairing or replacing (as required) the work.<sup>190</sup>

A decision by Pomona Water to impose a charge under section 170 of the Act may be appealed to the Land and Environment Court.<sup>191</sup>

A charge imposed by Pomona Water under section 170 of the Act is recoverable in any court of competent jurisdiction as a debt due to Pomona Water.<sup>192</sup>

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<sup>183</sup> Water Management Act 2000 (NSW) s 170(8).

<sup>184</sup> Water Management Act 2000 (NSW) s 170(1).

<sup>185</sup> Water Management Act 2000 (NSW) s 170(2).

<sup>186</sup> Water Management Act 2000 (NSW) s 170(3).

<sup>187</sup> Water Management Act 2000 (NSW) s 170(4)(a).

<sup>188</sup> Water Management Act 2000 (NSW) s 170(4)(a) and Water Management (General) Regulation (NSW) 2018 cl 66(1).

<sup>189</sup> Water Management (General) Regulation 2018 (NSW) cl 66(2).

<sup>190</sup> Water Management Act 2000 (NSW) s 170(4)(b).

<sup>191</sup> Water Management Act 2000 (NSW) s 368(1A).

<sup>192</sup> Water Management Act 2000 (NSW) s 170(6).

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## 8.2 Process for Imposing Charges

Pomona Water is not entitled to impose charges under section 170 of the Act unless the Minister has approved the application of section 170 to Pomona Water.<sup>193</sup>

Pomona Water must not impose charges on a person under section 170 of the Act unless:

- Pomona Water has tabled evidence of the suspected breach at a board meeting]<sup>194</sup>.
- Pomona Water is satisfied, on the balance of probabilities, and based on the evidence tabled at the board meeting, that a person has knowingly taken water as referred to in the Act, section 170(1)<sup>195</sup>.
- 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) 1
- Pomona Water has given the Minister at least 21 days' notice of the intention to exercise the power. <sup>196</sup>
- for the imposition of a charge for the taking of water – the Minister has notified the corporation that the Minister is not aware that a person has taken or has an intention to take any of the following actions:
  - commence criminal proceedings.
  - issue a penalty notice.
  - impose a charge or a decision to debit a water allocation under the Act, section 60G.<sup>197</sup>
  - commence proceedings under the Act, section 336 for an order to remedy or restrain a breach of the Act or the regulations under the Act.
- accept an undertaking under the Act, Chapter 7, Part 1, Division 8.2

Pomona Water must:

- apply to the Minister to impose charges under section 170 of the Act.<sup>198</sup>
- give the person written notice that Pomona Water proposes to impose charges – act under section 170 of the Act.<sup>199</sup> The notice must include evidence of the suspected breach and the proposed charge.
- give the person at least [21 days] to respond to the notice. <sup>200</sup>
- consider any submissions the person makes. <sup>201</sup>

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193 Water Management Act 2000 (NSW) s 170(7).

194 Water Management Act 2000 (NSW) ss 170(1) and (2) and Water Management (General) Regulation 2018 (NSW) cl 66(3)(a).

195 Water Management Act 2000 (NSW) ss 170(1) and (2) and Water Management (General) Regulation 2018 (NSW) cl 66(3)(a)(i).

196 Water Management Act 2000 (NSW) ss 170(1) and (2) and Water Management (General) Regulation 2018 (NSW) cl 66(3)(a)(ii).

197 Water Management Act 2000 (NSW) ss 170(1) and (2) and Water Management (General) Regulation 2018 (NSW) cl 66(3)(b).

198 Water Management (General) Regulation 2018 (NSW) cl 66(3)(c) and 66(5).

199 Water Management Act 2000 (NSW) s 170(5)(a).

200 Water Management Act 2000 (NSW) s 170(5)(b).

201 Water Management Act 2000 (NSW) s 170(5)(c).

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## 9 Changing Pomona Water

### 9.1 Amalgamating with other Private Water Corporations.

If at least 75% of members vote at a meeting for a resolution to amalgamate Pomona Water with other corporations, Pomona Water may, jointly with the other corporations, apply to the Minister to amalgamate their corporations under section 159 of the Act.<sup>203</sup>

### 9.2 Winding up Pomona Water

If at least 75% of members vote at a meeting for a resolution winding up Pomona Water, Pomona Water can request the Minister to wind up Pomona Water.<sup>202</sup>

If Pomona Water passes a resolution to wind up, Pomona Water must:

- determine a date for winding up.
- apply to the Minister to wind up Pomona Water under section 177 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>202</sup> Water Management Act 2000 (NSW) s 159.

<sup>203</sup> Water Management Act 2000 (NSW) s 177(1).



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## 10 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 [21 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 board.

The board must help the parties resolve the dispute within [15 days] after it receives the notice.

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

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# 11 Miscellaneous

## 11.1 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:

- Pomona Water
- a member of Pomona Water
- an employee of Pomona Water
- a person acting under the direction of Pomona Water, a member, or an employee.<sup>204</sup>

Pomona Water, any officer or employee of Pomona Water, or a person acting under the direction of Pomona Water, officer, or employee is not subject to any action, liability, claim, or demand arising:

- from the unavailability of water, or
- from the escape of water from a corporation work, or
- 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 Pomona Water, officer, employee, or person for the purposes of executing the Act or of carrying out the functions of Pomona Water: <sup>205</sup>.

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<sup>204</sup> Water Management Act 2000 (NSW) s 397.

<sup>205</sup> Water Management Act 2000 (NSW) s 178.

