

Leasing and Licensing Guide

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Anglican Church Property Trust
Diocese of Sydney



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1.0 Introduction

The way in which a parish deals with other people who use parish property will have an impact on how the local church is viewed by those users and the wider community. With this in mind, the **Anglican Church Property Trust Diocese of Sydney** (ACPT) has prepared these leasing and licensing guidelines.

Typically, the main assets of a parish are land and parish buildings. Some of these buildings may have been acquired specifically as investments, with the intention of earning a commercial income. Some parish buildings may be used by the parish regularly, and some buildings may be used infrequently. You may be able to earn income by finding businesses or community groups to use a building, or part of it, when it would otherwise be empty.

Good stewardship and administration principles are the basis for making sure that properly documented agreements are put in place for non-parish activities. This will contribute to improving communication and relationships between the parish and tenants or licensees, and will also reduce the risk of problems arising (which could be a significant drain on parish resources and also cause significant damage to the parish's reputation in the community).

How can your ACPT regional manager assist?

In relation to lease and licence agreements, the trustee role of the Trust ACPT is to help maximise property income for parish ministry help manage risk and ensure that property agreements are fair to the parish and other users.

Regional managers work with parishes to help them understand ACPT policies and comply with procedures. Our hope is that parishes will establish and maintain respectful and fair relationships with new and existing users of parish buildings.

The information provided here has been designed to help parish representatives understand the rules, regulations and processes which govern the leasing and licensing of church trust property. Some of these are imposed by the government and some have been put in place by the ACPT to assist parishes.

2.0 Requirements for Anglican Church Trust Property

While legal ownership of church trust property rests in the ACPT, the day-to-day management of church trust property is the responsibility of the Wardens. The Parish Administration Ordinance 2008 outlines the authorities and responsibilities of Wardens in relation to parish property.

When a parish is considering the leasing or licensing of parish property, your ACPT manager should be contacted to advise if there are any existing trusts (which determine what purpose(s) the property can be used for), or ordinances (church laws) applicable to the property. Your ACPT manager can also advise whether an ordinance is required for the lease or licence that may be proposed.

An ordinance not only provides the ACPT necessary authority to sign a lease or licence but it also may specify how the income can be applied. For example, an ordinance may provide for all of the net income to be used by the parish for whatever the parish council decides; it may also provide for a certain percentage

of the income to be saved for future maintenance or repairs; or it may reflect a parish decision that some of the income is to be donated to another organisation within the Diocese. Standing Committee (the body that represents Synod throughout the year, and therefore the overall Diocese), has a specific policy that income from leases and licences should be shared throughout the Diocese.

Standing Committee has agreed, as a matter of policy, to require parishes and organisations to put in place a suitable master trust ordinance before the Standing Committee will consider an ordinance to authorise a dealing with or variation of trusts in respect of any of its property held by the Property Trust or before the Standing Committee or the Finance Committee will consider passing a resolution under such an ordinance.

The usual form of master trust ordinance includes a clause authorising ACPT – at the request of the parish – to lease or licence parish property listed in the ordinance schedule.

What is the difference between a “lease” and a “licence”?

The terms, “lease” (or “leasing”) and “licence” or (“licensing”) are used deliberately through this document because of the different legal meaning applicable to those terms.

A lease provides a tenant with the exclusive use of a property with the landlord’s rights to enter the property being significantly curtailed.

A licence provides a licensee with limited (ie. non-exclusive) use of a property within specified times, with the owner of the property retaining the right to use the property at all other times.

To reduce the risk of a misunderstanding arising between a parish and a building occupant it is important to always use the correct terminology

For leasing and licensing matters your ACPT regional manager will:

- Help explain the process for setting up a lease or licence agreement (including applicable legislation and Anglican protocols);

- Provide ACPT standard licence and commercial lease agreements,
- Confirm that an ordinance provides appropriate authority for the proposed lease or licence.
- As the legal owner and trustee of parish property, sign the lease or licence agreement if required (see “Table 1” following),
- Provide advice about the ongoing management of the agreement if required

For leasing and licensing matters it is the responsibility of the Parish to:

- Research and decide on the best use of parish property
- Appoint a valuer to provide a market rent/licence fee rate if required
- Select a suitable tenant or licensee and negotiate terms in line with ACPT policy (contribution to expenses, operating hours, and most importantly, the rent, lease or licence term, or fee that will be applicable);
- If necessary engage a solicitor (who may conduct negotiations, review the agreement and advise the parish / ACPT); and,
- Provide the ACPT with the necessary approvals from the parish council and regional bishop or his executive assistant before the agreement is signed.

TABLE 1: Checklist of documents required before ACPT can enter into a licence or lease agreement.

	Commercial Lease	Managing Agency Agreement (for Residential Tenancy Agreement)	Licence \$50,000 (ex GST) or more per annum or term longer than five years
<p>Parish Council Consent The ACPT provides a consent pro-forma which is to be completed with the details of the lease or licence and signed by the majority of parish council.</p>	✔	Not required	✔
<p>Wardens' request A request from two wardens is sufficient for management to sign a Managing Agency Agreement</p>	Not required	✔	Not required
<p>Legal Practitioner's Certificate A pro-forma is available from the ACPT upon request.</p>	✔	Not required	Not required If standard ACPT licence is used without alteration
<p>Consent of Bishop At the request of the Parish, the Regional or his executive assistant can provide his consent directly to the ACPT via email or letter.</p>	✔	✔	✔
<p>Evidence of market value of rent or licence fee See notes below on establishing market value.</p>	✔	Not required	✔
<p>Management Agency Agreement Standard agreement used by real estate agents. It will be prepared by the agent that the parish selects (please refer to the guidelines in section 9).</p>	Not required	✔	Not required
<p>Two originals of the completed agreement (lease or licence) signed by the tenant / licensee</p>	✔	Not required	✔
<p>Certificate of Currency for insurance \$10m public liability; and \$2m professional indemnity required for a childcare centre, preschool etc or professional counselling</p>	✔	Not required	✔
<p>Ordinance authority</p>	✔	✔	✔





3. Licence Agreements and Leases

3.1 What is a licence agreement and who can sign one?

When a parish wants to share use of a property with one or more other users - for example a child care centre using the church hall during the week, and the parish using it on Sundays - the document which defines this arrangement is a licence agreement. The ACPT has established standard licence agreements which are to be used in all situations like this. The licences take into account one-off use (for example a social event not organised by the parish such as a party or concert), or ongoing use, (for example a club meeting or the use of the church building or hall on a part time basis by another denomination). The Parish Administration Ordinance 2008 (clause 3.12) provides Wardens with the delegated authority to licence ACPT property under a number of conditions. These conditions are -

- The proposed use of the property is not prohibited by law or by the trusts on which the property is held;
- The licence agreement is NOT for the purposes of a pre-school, kindergarten, childcare centre, long day care centre or like service (such licence agreements can only be approved and signed by ACPT)
- The proposed terms upon which the licensee is to be permitted to use the property are documented in the most recent form last approved by the ACPT;
- The licence agreement period does not exceed five years;
- The amount payable by or on behalf of the licensee for the licence is not more than \$50,000 (inc. GST) per annum, or such other amount as may be determined by Standing Committee by resolution from time to time (licence agreements with per annum amounts in excess of \$50,000 (inc. GST) are required to be signed by the ACPT); and
- The granting of the licence has been approved in writing by the archdeacon or bishop of the region in which the church is situated, and the majority of parish council of the parish.

3.2 One-off / short-term licence agreements – some examples

EXAMPLE 1 – LICENCE AGREEMENT REQUIRED

Caleb, a member of the youth group and eldest son of one of the parish councillors, celebrated his 18th birthday in the church hall. His parents did most of the

organisation, preparing and serving a barbecue dinner. The rector, his wife and their seventeen year old daughter were invited, but had no part in the planning or running of the event.

CONCLUSION - even though an event may involve parishioners, unless it is under the control of the Rector it is not a parish event. A licence agreement between the organising party and the Wardens provides the appropriate mechanism for both parties to talk through and document important issues such as starting / finishing times; who will be responsible for locking up / returning keys; how cleaning and waste removal will be managed; and exactly what facilities will be made available.

The requirement for a licensee to provide insurance is not only a condition of the diocesan insurance policy - to which all parishes contribute - but also provides greater peace of mind to parishes wanting to provide facilities for community use. One of the diocesan insurers may be willing to consider providing cover to a licensee for one-off events - please contact the ACPT's Manager, Insurance Services for more information.

EXAMPLE 2 – LICENCE AGREEMENT REQUIRED

The local Parkinson's support group - of which a parishioner is a member - found themselves without their usual venue at short notice. The secretary of the group enquired about the availability of the church hall for two meetings, explaining that they did not pay fees for their usual venue, and really had no money. The wardens decided to provide the group the use of the hall for the two meetings without charge.

CONCLUSION - under some circumstances, it may be appropriate to charge a reduced or nominal fee, however, for a licence agreement to be valid a fee must still be charged (the minimum fee being \$1.00).

A licence agreement will still be required to document the details of the use of premises. Any group using the premises will still be required to provide evidence of public liability insurance (a Certificate of Currency). The licensee's insurer would provide this. This reflects standard commercial practice and is a requirement of all landlords.

EXAMPLE 3 – LICENCE AGREEMENT NOT REQUIRED

A 60th wedding anniversary celebratory morning tea following a special service in the church. The event was overseen by one of the wardens, who kept the Rector updated on the preparations, and who also had responsibility for 'running' the event.

CONCLUSION - the Rector (or delegate) must have complete control of the event for it to be considered a parish activity. Such activities don't require a licence agreement.

3.3 What is a lease and who can sign one?

A lease is a document which gives the tenant the right to exclusive use of a property. For parishes a lease is most likely to be used where an arrangement is made to let commercial or residential buildings. It is important that the wardens understand the rights and responsibilities of landlords and tenants under leases, particularly as a lease will preclude the parish from using any part of the property that is leased for the duration of the lease, unless a separate agreement is made. There are also particular obligations on landlords of retail tenancies which must be fully understood before the parish lets out a retail space (see Section 11 for further information).

Because of the implications of leases, the ACPT signs lease agreements, excluding residential tenancy agreements, regardless of the rental value.

3.4 Leases – some examples

DEMENTIA DAYCARE CENTRE

The parish has a second hall which is rarely used. They have been approached by Anglicare, who would like to use the space to run a dementia daycare centre. The centre will run five days a week, and Anglicare plan to build in some office space. The parish will not be using the hall at all, and Anglicare would prefer that the premises be kept secure when they are not there. As Anglicare will be the only user of the property, and they and the parish want to ensure that no-one has access not authorised by Anglicare, a lease would be the appropriate form of agreement.

RESIDENCE

The rectory will not be required for at six months, and the parish has decided it would be sensible to let it out while they are looking for a new rector. They appoint a managing agent to find a tenant and sign a Residential Tenancy Agreement. A tenant moves in. The Residential Tenancy Agreement is a lease, and it restricts the rights of the landlord to access the property unless appropriate notice is given and the landlord has a good reason to visit.

TABLE 2: Who signs the agreement?	Who signs the agreement?
Lease - commercial	ACPT
Licence under \$50,000 (inc GST) per annum and under five years in duration (including any options to renew) and not any licence agreement for child care services or counselling services.	Wardens ACPT
Licence over \$50,000 (inc. GST) per annum	ACPT
Licence for children's services or counselling services	ACPT
Managing Agency Agreement	ACPT
Residential Tenancy Agreement	Managing Agent Or Wardens

4. Determining the correct rental amount or licence fee

Before entering into negotiations with a potential tenant or licensee it is important to have a good understanding of what a commercial and fair charge is for the use of the property.

For all leases and all licence agreements to be signed by the ACPT the parish is required to appoint an independent registered valuer to provide an assessment (valuation) of the market rent as a benchmark for negotiations. The parish will need to provide to their Regional Archdeacon or Bishop, and the ACPT, evidence of the research which has been undertaken before negotiating and determining the rent or fee which has been agreed upon with the proposed user. For licence agreements signed by the wardens, the wardens may choose to do their own research (for example the internet is a good source of information regarding residential property rental rates).

If there are circumstances where the parish would like to request the ACPT sign a lease or licence below market rate, this will need to be approved by both the Bishop and the ACPT Board. In this case the parish should prepare a written case for the reduced rate and present it to the Bishop and ACPT Board before negotiating with the tenant/licensee. Situations where reduced rent might be appropriate could include agreements with not-for-profit organisations (regardless of their legal structure); the involvement of the parish in the management committee of the lessee/licensee (this would need to be reflected in the licensee or lessee's constitution or other instruments); joint activities between the licensee or lessor or opportunities for evangelism which are being taken by the parish with people attending the lessee or licensees' activities.

If these circumstances are approved, the parish can charge a fee or rent less than market value, but the lease or licence should show the market value, the rebate given and the amount being charged. It should also include an opportunity to review the fee or rent if the circumstances change.

5. Working with a Solicitor

As a licence or lease is a legal document a solicitor will need to be appointed by the parish in most cases to provide an appropriate level of professional expertise for documenting terms and assisting with negotiations (if required). The Parish's solicitor will assess additional clauses or amendments which may be proposed by the solicitor for the other party. The Parish solicitor will consult with parish representatives to make sure that the parish fully understands the implications of proposed changes, and also to ensure that the parish's and ACPT's interests are protected. Please note, however, that any proposed amendments to standard form ACPT lease and licence agreements need to be approved in writing by the ACPT regional manager.

The ACPT's standard lease and licence agreements have been drafted to simplify the work to be undertaken by the Parish solicitor. Typically, a Parish solicitor will make sure that the lease or licence is ready to be signed and includes all details agreed between the parties. The solicitor also explains to parish Wardens what risks to the parish are involved in the agreement and makes sure that the Wardens understand those risks.

The ACPT requires that the parish solicitor complete an Australian Lawyer's Certificate (copy available from SDS management upon request) to accompany the lease or licence that SDS management is asked to execute. The Australian Lawyer's Certificate indicates that the parish has briefed the solicitor about the terms of the agreement, and that the lease or licence document reflects those terms.

Please note that a solicitor is not required to be appointed to assist with a lease or licence agreement if:

- The lease is for a residence and a standard residential tenancy agreement is used (available on the Office of Fair Trading website); or if
- The approved ACPT licence is used with no alterations.

6. Obtaining approval from the Regional Archdeacon or Bishop

Amongst other things, a regional archdeacon or bishop assists parishes with advice about the administrative requirements of running a parish. He can provide a sounding board for parish management, and because of his familiarity with a large number of parishes within the region, he can provide a unique insight into leasing and licensing issues that may arise. The archdeacon or bishop also has a role in approving various business proposals of the parish. This includes any lease or licence that the parish wishes to enter in to (regardless of the rent or fee amount).

The Parish Administration Ordinance 2008 provides wardens with the delegated authority to licence property for a maximum of five years and for an annual maximum fee of \$50,000 (inc. GST) but only with the written approval of the regional archdeacon or bishop, and the approval of a majority of parish council. The archdeacon or bishop will consider his approval based on the type of property being let or licensed, the length of the lease or licence and the rent or fee payable. Once granted, the archdeacon's or bishop's approval can be emailed directly from the Archdeacon / Bishop to the SDS manager with responsibility for your region, so please ask for the consent to be sent directly to your ACPT regional manager. Alternately a letter of approval can be provided to the Wardens and SDS.

Note: In some cases a bishop's executive assistant may be fulfilling the role outlined above in place of an archdeacon.

7. Parish Council Consent

One of the documents required by the ACPT before a lease or licence can be signed, is the Parish Council Consent form. This form indicates to the ACPT that the members of your parish council are aware of and agree with the terms and conditions of the agreement which is being proposed. The consent outlines the agreement which has been made with the tenant and includes:

1. The name of the tenant or licensee
2. The details of the property (ie street address)
3. The length of the agreement, including any options to renew (if applicable); and
4. The rent or fee payable by the tenant or licensee

The Parish Council Consent form is then signed by a majority of the members of parish council, and the original sent to the ACPT with the lease or licence - *which must first be signed in duplicate by the lessee or licensee.*

8. Working with Real Estate Agents

When letting out a residence a parish may decide that a real estate agent should be appointed to select tenants and to manage a tenancy. After speaking to a number of real estate agents, the Wardens should choose an agent and negotiate terms. The maximum period the agreement should be two years only. The agent's standard management agency agreement will be prepared and signed by the agent. **The Management Agency Agreement must then be sent to the ACPT to be signed under cover of a letter of request signed by at least two of the Wardens.**

Use of a Church Building

The Parish Administration Ordinance 2008 states that a church building can be used for divine services, religious education and vestry or prayer meetings. It can also be used for other purposes with the written approval of the Archbishop. Should a parish have an enquiry about the use of a church building this will need to be approved by both the minister and the Regional Bishop (who acts on behalf of the Archbishop in this case). As an initial step, this approval needs to be obtained before a licence agreement can be signed in relation to a church building.

Please advise the agent that when preparing the agreement the following details should appear:

Owner's name: Anglican Church Property Trust Diocese of Sydney

- ABN
- Contact details: c/- The parish's mailing address
- Agent's Legal and Trading Name
- Address of the Property to be let
- Management Fee
- Details of the parish bank account for rent payment.

There are two important amendments that need to be made to a standard management agency agreement prior to the agreement being signed by the ACPT. They are:

1. The deletion of any clause which allows the agent to extend a lease on the owner's behalf; and
2. The deletion of any clause which authorises the agent to enter into a lease agreement on the owner's behalf.

The deletion of these clauses ensures that the parish is made aware of the expiry of the current lease and can make decisions on the future use of the property at appropriate times, as the agent will have to refer to the Parish for instructions before the lease term ends.

9. Self-managing the leasing of a residential property

Parishes with a vacant ministry residence may choose to rent out that residence when it is not occupied by a minister or assistant minister. In this situation the parish can enter into a residential lease for a term up to an initial twelve months, and then an additional two blocks of six months each, while the ministry residence is vacant. If a parish wants to rent out a ministry residence for a longer term, the parish will need to promote an ordinance to Standing Committee to provide authority for longer term leasing (unless the parish already has a "master trust ordinance" that contains an authority for the ACPT to lease the property).

Please note that renting out a ministry residence will lead to the property becoming subject to local council rates (ie. the exemption to rates may be lost). Local council

should be contacted to discuss whether the renting of a ministry residence would make it 'rateable', and again at the end of a tenancy if the property is going to be used as a ministry residence again.

If a parish chooses to self-manage the letting of their property, it is important to be aware of the legislation about renting properties that applies. Detailed information can be found on the Office of Fair Trading website - <http://www.fairtrading.nsw.gov.au>. The paperwork needed can be purchased in packs from many stationery stores and Australia Post Shops. These packs include a standard form Residential Tenancy Agreement and a Renting Guide, which you must be provided to the tenant at the beginning of their tenancy.

Bond / Security

Tenants for any residential lease will pay a bond which is usually the equivalent of four weeks' rent. By law this must be paid to the NSW Government Rental Bond Board. Hardcopies of the Rental Bond Lodgement Form can be ordered online from the [NSW Government Online Shop](#). It is free but has a unique bar code so cannot be downloaded. Recent legislation means that the landlord must provide the capacity for the tenant to lodge the bond online. Please make sure that appropriate parish representatives who will remain in the parish until the lease is finished hold the access to the online portal.

Alternatively the parish's real estate agent can provide the Rental Bond Lodgement Form. The Wardens can sign the bond lodgement form. When the tenant leaves the premises at the end of the tenancy, the wardens can ensure that the bond is returned to the tenant as quickly as possible (or retained by the parish if that is necessary – see following).

At the end of the tenancy the tenant and wardens should discuss the returning of the bond to the tenant. If the tenant has damaged the property or the rent is not up to date, the landlord can claim an appropriate amount from the bond. It is the landlord's responsibility to provide proof of any claim to the Office of Fair Trading. If the wardens want to withhold some or all of the bond and the tenant does not agree with the amount claimed, the wardens can make a claim using the Claim for Refund of Bond Money without the tenant's signature. (The [claim form](#) is available

on the Office of Fair Trading website.) In that case a notice of the claim will be sent to the tenant, with fourteen days provided for the tenant to apply for a Consumer, Trader and Tenancy Tribunal hearing, and notify the Office of Fair Trading that they have done so. If no action is taken the Office of Fair Trading will refund the bond according to the first claim form they have received. The tenant is able to take the same action in the case of a dispute, so Wardens should be aware of any claim notification issued should there be a disagreement about the bond.

10. Negotiating lease or licence agreements

The extent to which authority exists to negotiate the terms of a lease or licence is defined by policies set by the Standing Committee of Synod and the ACPT, as well as the ordinances for a specific property and the decisions of the parish council. Following are the conditions under which a lease or licence can be negotiated. If a parish wishes to negotiate outside these terms, please contact your regional ACPT manager to explore whether this may be possible.



Checklist for Licence Agreements or Lease Agreements to be submitted to the Anglican Church Property Trust Diocese of Sydney

1. At least two counterpart originals of the licence agreement or lease agreement have been prepared (please note: due to copyright law, photocopied contracts cannot be accepted).

2. All counterpart originals of the licence agreement or lease agreement have been signed by the proposed licensee / tenant.

3. An Australian Lawyer's Certificate (formerly known as a Legal Practitioner's Certificate) signed by an independent solicitor engaged by the parish (please ask the solicitor engaged by the Parish to contact the ACPT for a pro forma Australian Lawyer's Certificate).

Please note: a Legal Practitioner's Certificate is not required for ACPT standard form licence agreements and Residential Tenancy Agreements.

4. A letter of approval signed by the Regional Bishop or Archdeacon.

5. Insurance certificates of currency on issuing insurer's letterhead for:

- \$10,000,000 public liability; and
- \$2,000,000 professional indemnity (required for childcare centres, preschools etc. or professional counselling)

6. A Security: Bank Guarantee supplied by Licensee / Lessee (in a form acceptable to the ACPT – see the "User Guide" for details).

Please note: the security for a residential tenancy agreement will be a bond lodged with the NSW Government Rental Bond Board.

7. Evidence of market value of licence fee or rent (i.e. copy of report from the independent registered valuer engaged by the Wardens)

8. Parish Council Consent signed by a majority of the parish council parish, consenting to the ACPT entering into the licence agreement or lease agreement.

[Click here](#) for ACPT contact details (including street and mailing addresses).

Please note that licence agreements and lease agreements can be hand delivered by Parish representatives to St. Andrew's House. However, due to ACPT work scheduling arrangements, licence agreements and lease agreements cannot be signed "on the spot". An appointment should be made in advance if there is a need to discuss the proposed licence agreement or lease agreement with the Manager, ACPT assigned to your parish's region.

10.1 Length of lease or licence agreement term

The ACPT is able to execute leases or licences which have a maximum five years term (including options to renew). Commercial tenants may ask the parish for a longer agreement if they are planning on building a business over the long term. If this is the case, promises should not be made regarding the length of lease or licence available, but first contact the ACPT to discuss the proposal.

Please note - if negotiating with a childcare centre or pre-school, the NSW Department of Community Services (DoCS) may require that the lease or licence agreement run until the end of the certificate of accreditation period; which is usually granted for a period of three years.

10.2 Purposes

The Standing Committee of Synod has a policy regarding how church trust property can be used. This is referred to as the 'Social Covenants Policy' and it lists a number of uses which are not permitted for church trust property. This policy is regularly reviewed, so please consult your regional bishop for advice regarding church property use policy.

These restrictions are included in standard form ACPT lease and licence documents. All other leases must also have these Social Covenant restrictions added as a special clause.

Social Covenants

- For any illegal or immoral purpose;
- For the sale by wholesale of tobacco or the promotion of the use of tobacco in any form;
- In any way connected with gambling or betting;
- For the manufacture, sale, distribution, consumption or promotion of the consumption of liquor other than the sale and consumption of liquor on premises where the liquor is intended to be consumed with food sold on those premises for consumption on those premises;
- The liquor is consumed without the consumption of food by no more than 30% of patrons on those premises being premises at which liquor can be consumed with food sold on the premises; or
- The premises is a hotel bedroom and the liquor is made available from a minibar situated in the bedroom; or

- Liquor manufactured, sold or distributed for medicinal purposes or for purposes other than for human consumption;
- In connection with narcotic drugs (including any prohibited drug, prohibited plant or drug of addiction) except as part of the normal trading practices of a registered medical practitioner, pharmacist, chemist, dental or veterinary surgeon;
- Manufacture or sale of abortifacient or abortifacient-type contraceptives;
- For trade on Sunday except for the sale of food, newspapers, petrol, pharmaceutical services and supplies or other services urgently required on Sundays and for purposes approved by the Standing Committee in the context of specific local circumstances; and
- For the sale, distribution or viewing (for payment and non-payment) of publications, films or computer games that are marked “RC”, “Category 1 or 2 Restricted”, “X 18+” or “R 18+” by the Classification Board.



Wardens must also consider the following questions regarding the use of the building or premises that are to be leased or licensed -

(a) Is the proposed use of the land by the lessor or licensee permitted by the zoning of the land on which the building is constructed? The ACPT and the Parish's local council can provide information about this.

(b) Does the proposed use of the land by the lessor or licensee fall within the conditions of the development consent for the building, if any exists.

(c) Is the lessor or licensee required to hold any authority or permit from a government authority to use the building in the manner proposed? Please contact the ACPT to discuss the type of authorities that may be required.

The lessor or licensee must provide evidence of compliance to the wardens.

10.3 Rental amount or licence fee

The agreed rent or licence fee must reflect a fair market value. This will take into account the features of the property and whether they add to or detract from its value to a potential tenant or licensee. As mentioned previously it is often difficult to find comparable properties in the parish's area, so determining the value by comparison to other available property may be difficult. The ACPT requires that the services of an independent, qualified valuer be appointed, particularly when the agreement under discussion signed by the ACPT, is for a large amount and/or a period of time longer than 1 year. Establishing a realistic starting rent or licence fee is crucial, as the longer an agreement is, "on foot" the more difficult it is to bring the rent or fee up to market, if the starting position was significantly behind market. It is the policy of the ACPT that all lease and licence agreements should be on commercial terms, unless there are extenuating local circumstances.

The standard ACPT licence agreement includes provision for an automatic fee review to occur 1 January every year during the licence term. The review is calculated using the Consumer Price Index (CPI) "All Groups" rates for Sydney (available on the Australian Bureau of Statistics website www.abs.gov.au) and by comparing the most recent quarter ending in September and the same quarter in the previous year. This automatic review ensures that the value of the agreement is in line with rising costs.

A licence agreement can also include a market review. A market review is similar to that conducted at the beginning of the agreement, when 'fair market value' is decided. This is a useful tool when rents in a particular area have increased more than CPI.

Leases will have the option of either CPI rent increases or market rent reviews. While both are useful it is wise to include market reviews as part of a rent review package which exceeds five years, as, over time, rental in some areas may increase in value much more rapidly than reflected in CPI rates. A market review involves appointing a registered valuer to assess the current market rent and adjusting the rent to reflect the results of the valuer's research. The standard lease also includes a 'ratchet clause' which ensures that whatever the review result, the rent cannot fall below its previous rate (that is, even if CPI falls, the rent cannot fall).

10.4 Security for property damage / payment of arrears

The ACPT requires that all tenants and licensees provide security which may be used at the end of the occupancy if the property needs repairs for damage which has been caused by the tenant or licensee, or if the tenant or licensee defaults on their payment. For all new commercial leases and licences executed by, the ACPT, it is a requirement that the bond be in the form of a bank guarantee from a financial institution and in a format acceptable to the ACPT (detailed below). The bank guarantee is kept by the ACPT until the Wardens request that it be released to the occupant following the successful conclusion of a tenancy or licence period. Should the security be required, the bank guarantee allows the ACPT to claim up to the maximum value of the guarantee in cash on the parish's behalf. The following must be communicated to the tenant or licensee, regarding the preparation of the bank guarantee:

It needs to:

- show the name of the 'favouree' as the **"Anglican Church Property Trust Diocese of Sydney"**;
- Be unconditional; and
- Have no expiry date.

The amount of the a bank guarantee to be at least the equivalent of at least three month's rent or licence fee.

Residential tenants must pay a cash bond which is usually equal to four weeks rent (which by law is paid to the NSW Government Rental Bond Board by the landlord). If you have a managing agent they will ensure this is done on your behalf. If Wardens receive a bond for a Residential Tenancy Agreement it should be forwarded to the Rental Bond Board with the appropriate form (see Section 9, "Working with Real Estate Agents").

11. Special considerations for different tenants / licensees

11.1 Other congregations (Anglican or other denominations)

Before a licence agreement is made with a congregation from another denomination or another Anglican church please make sure that first you obtain approval from your regional Archdeacon and Bishop. This type of agreement can be for no longer than two years. If this type of agreement is made, please inform the ACPT in writing - preferably by sending a copy of the licence agreement to the ACPT.

If another congregation, either Anglican or from another denomination, is using your church building for worship, the ACPT Board policy states that there should only be a nominal charge on that use. However you will still need to enter into a licence agreement as it will outline other conditions of use - the times and spaces that are available, and any specific responsibilities of either party. In legal terms, a contract (in this case a licence agreement) requires an offer and acceptance, as well as “consideration” – ie a payment. A payment of as little as \$1.00 per annum meets the requirement of consideration and gives the agreement legal standing, so include a cash amount of some kind in the licence agreement.

The Wardens of the parish may, however, calculate and charge a fair percentage of costs associated with running the building during the time it is used by the other congregation. For convenience the wardens may decide to set a regular fee to cover these expenses (eg electricity and water) and invoice the licensees on a regular basis. This will be done directly between the wardens and the licensees. The details of agreed expenses should be included as part of the licence agreement.

This arrangement only applies to church buildings. If the other congregation is using a hall as their meeting place, normal licence conditions, including a licence fee at commercial terms still applies.

11.2 Childcare Services

In order to operate, businesses which are providing childcare services (kindergartens, pre-schools, childcare centres, out of school hours (sometimes referred to as, “OOSH”) care and school based childcare) must be accredited by the NSW Department of Community Services (DoCS). The [DoCS website](#) contains

information about the DoCS children's services licensing and accreditation process. For a parish which is considering leasing or licensing premises to a children's service operator, the essential requirements are that the operator becomes appropriately accredited (and provides evidence of their licence when it is issued) and that the operator has professional indemnity insurance of \$2,000,000 (minimum) as well as public liability insurance of \$10,000,000 (minimum). Lease or licence agreements for the conduct of childcare services - regardless of their annual licence fee amount - must be approved by resolution of the Board of the ACPT before the agreement can be signed by the ACPT.

DoCS accreditation will include a requirement that the operator has a licence or lease agreement for the premises for the length of the accreditation period. This means that new childcare centre operators may not have evidence of accreditation prior to signing the lease or licence. In this case, the parish must ensure that before the business commences trading that a copy of the DoCS accreditation has been obtained and forwarded to the ACPT for its records.

11.3 Counselling Services

The Standing Committee of Synod has a specific policy regarding counselling services which are offered on parish property. [The full policy](#) covers a number of different circumstances under which counselling (from pastoral care to psychotherapy) might be available at a parish's premises. Please read the complete policy for further information on this matter. The key point regarding licence agreements with professionals offering counselling services, is that any such licence agreement - regardless of the annual value of the licence - is to be signed by the ACPT. Along with the usual requirements for the execution of a licence agreement the counsellor must also provide a copy of their insurance for Professional Indemnity for at least \$2,000,000.

11.4 Retail Leases

The laws about retail leases in New South Wales are written with the interests of small business owners in mind. This means that landlords of shops (less than 1,000m² in lettable area) are required to act in a way that ensures that tenants get a fair deal. The following are points of which to be especially aware:

- The landlord (in this case the Wardens or an agent negotiating on behalf of the parish) must give the potential tenant a copy of The Retail Tenant's Guide 2017 within seven days of starting negotiations. The Retail Tenant's Guide is available on-line.



- The landlord must give the potential tenant a disclosure statement at least seven days before a lease is signed. The disclosure statement contains information designed to help the potential tenant make a good business decision about the lease. This includes length of lease, options (if any), lettable area, any requirements regarding the standard of fit-out required, rent reviews etc. A complete list of the required information is available in Schedule 2 of the Retail Leases Act 1994 austlii.edu.au/au/legis/nsw/consol_act/rla1994135/
- Retail bonds must be lodged with the Director General. They can only be lodged using an approved form which can be ordered by emailing **rtu@business.nsw.gov.au**.
- In the landlord's interests, once a tenant has taken possession of a shop or begun to pay rent, the lease is considered to be valid, even if both parties have not seen or signed a lease. A copy of the lease must be provided to the tenant once it has been signed. If a copy is not provided within 28 days, the tenant can end the lease. For these reasons, retail tenants are not to be permitted to occupy premises until a lease is in place that has been signed by the tenant and the ACPT.

For further information about retail leases please refer to the Retail Leases Act 1994 or the Retail Tenancy Unit website (www.retailtenancy.nsw.gov.au). The ACPT standard lease has been amended to include all the necessary conditions relating to retail leases, however you will need to appoint a lawyer to review the lease to ensure it meets your particular requirements. The parish lawyer should also explain your obligations as a retail landlord very clearly – please make sure that you record and follow through with the necessary communication with your tenant regarding rent reviews and options (if appropriate) as they fall due.

11.5 Australian Electoral Commission (AEC)/Electoral Commission NSW

Parishes are often approached by the AEC when an election is anticipated as they want to use parish property as a polling place. The ACPT has prepared a licence agreement for this specific purpose which incorporates both items that are of concern to AEC and protection for the parish. The licence fee can be negotiated direct with the local returning officer however if you need advice on what the amount should be please contact your regional manager. You might also consider enquiring with neighbouring parishes as to what they have received. We recommend the amount should not be below \$2,200 in Sydney metropolitan areas, and \$1,100 for country areas.

12. The role and responsibilities of the ACPT

When the ACPT signs a lease or licence one original of the agreement will be returned to either the parish or the parish's solicitor so that original can be handed to the tenant. It is recommended that the parish also keep a copy of the agreement documentation and all related correspondence related to the agreement. The ACPT will set up a file for all of the lease or licence records held by the ACPT.

If the lease is a commercial lease the tenant may ask that it be registered on the Certificate of Title for the property. In order to register a lease, the parish solicitor will forward the lease and the Certificate of Title to the Land and Property Information (LPI) office. In most cases the ACPT holds the Certificate of Title for the parish and will release it to the parish solicitor temporarily for the purpose of registering the lease.

13. Insurance

Diocesan insurance covers parish activities. Broadly these are limited to any activity over which the minister or his delegate has control.

For non-parish activities, users of parish property enter into a rental or licence agreement which includes a requirement to provide evidence of insurance. The licensee's insurance Certificate of Currency must note the interest of the Anglican Church Property Trust Diocese of Sydney. The minimum requirements are \$10,000,000 public liability insurance. If the property is going to be used for a pre-school, child care centre or kindergarten, or for counselling or giving advice, the user must also hold \$2,000,000 (minimum) professional indemnity insurance.

14. When the parish is the tenant or licensee

The parish may find itself in the position of needing to rent or licence property – for instance to house additional ministry staff, to hold special events or to accommodate parish growth. Here are some matters to consider:

Renting residential property - even if the parish is paying the full rent as part of a ministry staff member's package, the parish may prefer to ask the staff member

to enter into the rental agreement. This will mean the staff member is the leasing agent's direct contact and they are able to request repairs and deal with other property issues without having to refer them through the wardens. The parish can still cover the rent payments. If the parish is paying the bond, a Warden's name may appear on the agreement as an additional 'tenant' to signify the parish's interest in the payments.

Special events - when the parish is using other people's property, including public spaces, the parish may be asked to provide evidence of public liability insurance. To obtain a Certificate of Currency, contact the Diocesan Manager Insurance Services, with the details of the event, the name of the property owner and if they want their interest noted on the certificate (only if requested by the owner)

Commercial leases or licences - The ACPT advises that parishes take care in understanding any agreement before they enter into it as tenants or licensees. The appointment of a solicitor is recommended to negotiate the terms of the lease or licence and to ensure that the terms proposed by the landlord or licensor are reasonable. Should an indemnity be requested, please note that the diocese insurance policies specifically prevent a parish from entering into an agreement with a third party which indemnifies the third party from public liability obligations. Please contact the Diocesan Manager Insurance Services (02 9265 1555) for more information.

15. ACPT Approved Lease and Licence Agreements

The "Leasing and Licensing of Church Property" page of the SDS website contains links to approved versions of the ACPT Lease and Licence agreements, as well as the related schedules where the details for each individual lease and licence agreement can be entered.

The lease and licence schedules are Word documents so you can enter the details of your lease or licence. To do this open a 'read only' version and save it with your own name. It should be noted that amendments cannot be made to the approved form of the lease and licence agreements without the written consent of the ACPT.

Please note that the memorandum and schedule together form one agreement so - for a licence agreement, the Licence Memorandum and Schedule will be required; and for a lease agreement, the Lease Memorandum and Schedule will be required.

CONTACT US

The following SDS staff can help with parish property and insurance related inquiries:

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