

LEASING AND LICENSING PARISH PROPERTY

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1. Introduction

Sharing the use of your parish property with others is a great way to connect with the local community. People who come to your property for children's dance classes, for club activities or who know your church as their landlord will have a connection with the parish which otherwise may never occur. The way in which you deal with these visitors and others who are using your space can have an impact on their view of the church, and demonstrate Jesus' presence in the life of your church. It is with this in mind that the Anglican Church Property Trust Diocese of Sydney (ACPT) has prepared this guide - to help you in your relationship with these people and to free your time and energy up for making sure that the experience that people have with your church is more than just being on the property.

For most parishes their main assets are buildings. Some of these buildings may have been acquired specifically as investments, and the parish wants to make sure that they are getting fair income from the property. Some of these buildings are used by the parish all of the time, and some are used part time, but are often empty. In this last case the parish 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 unused. Good stewardship is an important Biblical principle and it is worth taking the time and effort to make sure that things are done properly. Not only will this contribute to clear communication and good relationships between the parish and tenants or licensees, but it can also avert problems which may require even more time and resources to resolve later on.

About the words - 'leasing' and 'licensing'

In this guide we have deliberately used the different terms which apply legally to leases and licences.

A lease gives the tenant exclusive use to the property and the landlord's rights to enter the property are significantly curtailed.

In a licence the licensee and the owner of the property share its use according to the agreement. It is important to use the correct terms even in conversation, because if any dispute were to arise between the parish and the occupant, it is possible that the use of the terms appropriate to a lease may give the occupant an argument that what has been intended as a licence is in fact a lease, and they may demand to be considered a tenant.

How can we help you?

At the ACPT we want to help you to maximise the return you earn from the property so the parish can have the benefit of extra funds for ministry. We also want to work with you so that you can develop good relationships with the occupants of your buildings and be a good landlord or licensor, respecting your tenants and licencees and honouring God through your business dealings.

This section is designed to help you to understand the rules, regulations and processes which govern the leasing and licensing of church property. Some of these are imposed by the government and some come from our Diocese.

Here is what the ACPT will do:

- Help you to understand what you need to do to set up a new tenant or licensee - this includes complying with State and Local legislation and the many Diocesan rules and regulations around the use of property,
- Provide standard licence and commercial lease agreements for the parish to use,
- Sign the agreement as the owner of the property if required (see Table 2 below),

- Depending on the nature of the tenancy or licence agreement, the ACPT will manage monthly invoicing and payments, this includes following up arrears, managing GST returns and providing the parish with monthly payments and statements and,
- Provide advice if things go wrong.

You will need to:

- Find a tenant or licensee and negotiate the terms of the agreement with them, (keeping the regulations outlined below in mind),
- If necessary retain a lawyer to conduct negotiations (see section 6), review the agreement and advise the ACPT and,
- Provide the ACPT with the necessary approvals from the parish council and archdeacon before the agreement is signed.

2. The Rules applying to Church 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 what authorities and responsibilities the wardens have. In the same way, ordinances (either generally or specifically), determine how each piece of property belonging to the parish can be used. These ordinances become church law when the Archbishop gives his assent to them. Prior to this, a proposal for the specific wording of the ordinance goes to Standing Committee of Synod, which, usually acting on the advice of an individual ordinance reviewer or a review panel, passes or rejects it. The draft ordinance is often written by a parish's lawyer in partnership with Diocesan staff. It is at this stage, and in the creation of a Statement of Evidence which presents the argument for the ordinance, that the parish has its opportunity to recommend how parish property should be able to be used.

When a parish is considering the leasing or licensing of its property, the first thing to do is to find out from the ACPT if there are any existing trusts over the property, or ordinances applicable to the property. In most cases, the ordinance must allow for a lease or licence to be granted for that property.

An ordinance not only allows the ACPT to enter into a lease or licence for a property, it also specifies how the income can be used. All commercial leases, some licences and some residential leases are managed by the ACPT. After the rent or licence fee has been received a distribution is made to the parish depending on the conditions of the ordinance. The ordinance may allow for all of the income to be used by the parish for its everyday running; it may require that a percentage of the income is saved for future repairs; or it may reflect a decision that some of the income is to be donated to another organisation within the Diocese.

If you are considering a new ordinance or an amendment ordinance, why not look at creating a master trust ordinance? This would consolidate all of the property held in trust for a parish under one ordinance. In their usual form master trust ordinances include a clause allowing for the ACPT to lease or licence any of the property listed in the ordinance.

The process of raising an ordinance allows the parish to review and consider the relevance of existing ordinances to their current and future plans for their property. Of course this is also a process which requires broad consultation and a good understanding of the effects of existing ordinances.

Who in the parish has to approve a proposal to lease or licence property?

	The Minister	The Wardens	The Parish Council
The Church Building	✓		
The Church Hall and other property when the wardens are the licensors	✓	✓	
Church Property where the agreement is to be signed by the ACPT	✓	✓	✓

TABLE 3: Parish approvals required

3. Before you send the paperwork to us

The ACPT will enter into the following agreements at the parish's request, once the listed paperwork has been supplied.

	Commercial Lease	Residential Lease	Licence \$20,000 (ex GST) or more per annum or longer than five years
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.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal Practitioner's Certificate A pro-forma is available from the ACPT (copy below).	<input type="checkbox"/>	Not required	<input type="checkbox"/>
Archdeacon's Consent The archdeacon can email his consent directly to the ACPT on the parish's request, or may provide a letter.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evidence of market value of rent or license fee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Managing Agent Agreement Standard agreement used by real estate agents. It will be prepared by the agent the parish selects, please see the guidelines in section 9.	Not required	<input type="checkbox"/>	Not required
Certificate of Currency for insurance \$5m public liability \$2m professional indemnity if child care centre or professional counselling	<input type="checkbox"/>	Not required	<input type="checkbox"/>
Two original copies of the completed agreement (lease or licence) signed by tenants/licensees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tenant / licensee contact sheet The ACPT provides this form to be completed by the tenant or licensee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

	Who signs?	Who manages? (Receives the income, follows up arrears)
Lease - commercial	ACPT	ACPT
Licence under \$20,000 (ex GST) per annum and under five years in duration.	Wardens	Wardens
Licence \$20,000 (ex GST) or more per annum or over five years in duration.	ACPT	ACPT
Licence for pre-school, long day care centre, kindergarten, school	ACPT	ACPT
Residential Lease	ACPT	Wardens
TABLE 2: Who signs and who manages?		

4. Licences

4.1 What is a licence 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 uses a hall during the week, and the parish uses it on Sunday - the document which defines this agreement is a licence. The ACPT has established a single standard licence agreement which is to be used in all situations like this. The licence takes into account one-off use, (for example a social event not organised by the parish - a party or a 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 3.11) gives the wardens the power to licence ACPT property under a number of conditions. They are that

- the use of the property by the licensee is not prohibited by law or by the trusts on which the property is held, and
- the terms upon which the licensee is to be permitted to use the property are documented in a form last approved by the Property Trust, and
- the period during which the licensee is permitted to use the property does not exceed five years, and
- the amount payable by or on behalf of the licensee for the licence is not more than \$20,000 per annum, or such other amount as may be determined by Standing Committee by resolution from time to time, and
- the granting of the licence has been approved in writing by the archdeacon of the region in which the church is situated, and the majority of parish council of the parish.

4.2 One off and short term licences

Sometimes it can be difficult to know whether to use a licence agreement - here are some scenarios which might help you to decide.

The parish held a morning tea for parishioners' 60th wedding anniversary - this followed a celebration service in the parish church. The event was run by the parish in response to a request from the couple's children, and the whole event was overseen by one of the wardens, who kept the Rector updated on the preparation, and who had the responsibility to make sure that everything was going okay during the whole event.

What to do

The Rector (or someone he has delegated the responsibility to) must have complete control of the event for it to be considered a parish activity. Parish activities do not require a licence agreement.

No licence 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 bbq dinner and bringing in a DJ to provide dance music. The rector, his wife and their seventeen year old daughter were invited, but had nothing to do with planning or running the evening.

What to do

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 with the organising party gives the churchwardens the opportunity to talk through and document important issues such as what time the premises will be used, who is responsible for locking up, how is cleaning and waste removal going to be managed and what facilities will be made available. The requirement for insurance cover gives the parish peace of mind that should anything go wrong the parish will not be left with a liability, unless the parish is clearly at fault in providing unsafe premises. One of the Diocese insurers is willing to consider providing cover for one-off events - please contact us if you would like more information

Licence 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 give the group the use of the hall for the two meetings and not charge them anything.

What to do

Even if no fee is charged, use the licence agreement to discuss the details of the use of premises. Any group using the premises will have to provide evidence of public liability insurance. A group like this should be able to give the parish a copy of a Certificate of Currency. The group's insurer will be able to provide this for them.

Licence required

5. Deciding on the right rent or fee

Before you enter into negotiations with a potential tenant or licensee it is important that the parish has a good understanding of what a fair charge is for the use of the property. Depending on the property, the wardens may choose to do their own research (the internet is a good source of information regarding residential property rental rates for example).

Alternately the parish may choose to appoint a registered valuer to provide an assessment of the market rent. As there are not many properties which are easily compared to church property, this is a preferable method for establishing a valuation. The parish will need to provide to the archdeacon and the ACPT evidence of the research which has been undertaken to determine the rent or fee which has been decided.

The potential tenant or licensee, or the real estate agent looking for a tenant, are not the people to provide this assessment as they are affected by the amount chosen (a real estate agent may find it easier to locate a tenant with a lower rental rate, and their commission is not large enough to make it beneficial to them to hold out for a higher rent).

6. Working with a Lawyer

As a licence or lease is a legal document in most cases the parish will need to appoint a lawyer to take part in the documentation of the agreement, and to possibly assist in the negotiations. Your lawyer checks any additional lease clauses which your tenant's lawyer has requested be included. He or she will consult with parish representatives to make sure that the parish fully understands what the implications of those clauses are, and that the parish's and ACPT's interests are protected.

The ACPT has both a standard lease and licence agreement which provides the basis on which your lawyer will work. The lawyer will make sure that the final lease or licence is ready to be signed and includes all of the details of the agreement which has been reached. He or she will also be responsible for explaining to parish representatives (usually the wardens) what risks to the parish are involved in the agreement and for ensuring that the wardens understand these risks.

The ACPT requires that the parish lawyer complete a Legal Practitioner's Certificate to accompany the lease or licence that we are asked to execute. The Legal Practitioner's Certificate indicates that the parish has briefed its lawyer on the terms of the agreement, and that the lease or licence document reflects those terms.

You do not need to appoint a lawyer to assist with a lease or licence arrangement if

1. the lease is for a home or unit and a standard residential lease is used. (A residential lease pack, including copies of a standard lease, is available for purchase from many newsagents and Post Shops.)
2. the approved ACPT licence is used with no alterations.

The Archdeacon's role defined in the ordinance:

The Parish Administration Ordinance 2008 gives the churchwardens the authority to licence property for a maximum of five years and for an annual fee of \$20,000 but only with the written approval of the regional archdeacon and the majority of parish council.

7. Asking the Archdeacon

Amongst other things your regional archdeacon is responsible for assisting parishes with all of 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 in your region, can provide a unique insight into issues which may come up with leasing and licensing. The archdeacon 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.

The ACPT requires your archdeacon's consent to the final agreement you are proposing with your tenant or licensee. The archdeacon gives this approval based on the property being let or licensed, the length of the lease or licence and the rent or fee payable. The archdeacon's approval can be emailed directly from the Archdeacon to the ACPT manager looking after your region, so please ask your archdeacon to send his consent to the ACPT when you have finalised the details. Alternately he can provide a letter of approval.

8. Parish Council Consent

One of the documents required by the ACPT before a lease or licence can be signed, is the Parish Council Consent. This indicates to us 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

- The name of the tenant or licensee
- The details of the property (ie street address)
- The length of the agreement, including any options to extend
- The rent or fee payable by the tenant or licensee

It is then signed by a majority of the members of parish council, and the original sent to the ACPT with the request to execute the lease or licence.

9. Working with Real Estate Agents

You may decide that a real estate agent should be appointed to find tenants for you and to manage the tenancy. If you choose a real estate agent to let out a property, the ACPT will enter into a standard management agency agreement with the agent on your behalf. The agent will prepare and sign the agreement. This must then be sent to the ACPT to be signed.

Please advise the agent that when he or she prepares the agreement the following details should appear:

- Owner's name: Anglican Church Property Trust Diocese of Sydney
- ABN: ACPT ABN* for the parish
- *please ask us for this number, it is not the ABN which the parish uses for its everyday business
- Contact details: 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 also two adjustments to a standard management agency agreement which must be made 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.
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. Should the parish have made a firm decision that a property is to be leased for a number of years, and an ordinance permitting this use is in force, an ongoing parish council consent covering the period determined could be completed and forwarded to the ACPT to be kept on file. A similar approval could be obtained from the archdeacon and these two documents used every time the ACPT is asked to execute a new lease. Please ask the real estate agent to forward duplicate copies of the complete lease agreement to the ACPT for execution every time a new lease is to be signed.

Renting or Licensing a Church Building

The Parish Administration Ordinance 2008 says 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 the 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). This approval needs to be part of the process of licensing or renting out a church building.

Renting the rectory out when you don't have a minister

Parishes without a minister may want to rent the rectory out rather than leaving it empty. The ACPT has a policy which authorises the renting of a rectory in this situation. The ACPT can enter into a residential lease of up to an initial twelve months, and then an additional two blocks of six months each, while the parish is waiting for a new minister. If, following the appointment of the minister and with his approval, the parish still wants to rent out the rectory, the parish will need to promote an ordinance to Standing Committee to provide authority for that to happen.

In this case the rates exemption for church property may no longer apply - advice should be sought from your local council.

10. Self managing a residential property

If the parish chooses to manage the letting of their property it is important to be aware of the legislation about renting properties. Detailed information can be found on the Office of Fair Trading website - <http://www.fairtrading.nsw.gov.au>. The paperwork you will need can be purchased in packs from many stationery stores and Post Shops. These packs include not only the lease but also the Renting Guide, which you must give to your tenants at the beginning of the tenancy.

Bond

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 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! Alternately your real estate agent should be able to provide a form. While the ACPT must sign the lease, the wardens can sign the bond lodgement form. This means that when the tenant leaves the premises, 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.

At the end of the tenancy the tenant and wardens should discuss the return 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 allowed 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 be aware and watch out for a claim notification should there be a disagreement about the bond.

11. Talking to your tenants or licensees - negotiating the lease or licence

The extent to which the wardens can negotiate the terms of a lease or licence are defined by policies set by Standing Committee and the ACPT, as well as the ordinances for a specific property and the decisions of the parish council. The following are the conditions under which a lease or licence can be negotiated according to standard policy. If the parish wishes to negotiate outside of these terms, please contact your regional ACPT manager to explore if this will be possible.

11.1 Length

The ACPT is able to execute leases or licences which go for a maximum of five years. This period can be extended to ten years if options are included in the agreement but an extension needs to be approved by the ACPT Board before the lease or licence can be signed. 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 do not make promises regarding the length of lease or licence available, but contact the ACPT. Please note that if you are 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 three years at a time.

11.2 Purposes

Standing Committee has a policy regarding how church property is to be used. This is the Social Covenants Policy and it lists a number of uses which are not permitted for church trust property:

- 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;
- 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 as marked "RC", "Category 1 or 2 Restricted", "X 18+" or "R 18+" by the Classification Board.

These restrictions are included in the ACPT lease and licence documents. If any other lease or licence is being used these restrictions must be added as a special clause.

The wardens must also consider the following questions regarding the use of the building

(a) Is the proposed use of the land by the licensee permitted by the zoning of the land on which the building is constructed? If there are doubts, the local municipal council should be consulted.

(b) Does the licensee intend to use the building for the purposes of "public entertainment" as defined in the Local Government Act 1993? If so, the relevant building must have been licensed for use for public entertainment or specific permission for the use obtained. If there are doubts as to whether a building can be used for "public entertainment" the local municipal council should be consulted.

(c) Is the licensee required to hold any authority or permit from a government authority to use the building in the manner proposed?

11.3 Rent 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 earlier it is often difficult to find similar properties in the parish's area, so determining the value by comparison to other available property may be difficult. In this case the services of a qualified valuer are essential, particularly when the agreement under discussion is for a large amount or a long period of time. Establishing a realistic starting rent or licence fee is crucial to avert future regrets or resentment about a lease or licence.

The standard licence agreement includes an automatic rent review on the 1st January every year. The review is calculated using the Consumer Price Index (CPI) all groups rates for Sydney for the most recent quarter ending in September and the same quarter the year before. This 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 prices 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 CPI rates reflect. 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 is, the rent can not fall below its previous rate.

11.4 Security for Damage to Property/Payment 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, the ACPT requires that the bond be in the form of a bank guarantee from a financial institution and in a format acceptable to the ACPT. 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 bond 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 guarantee:

- It must be made out to show the name of the 'favouree' correctly ie Anglican Church Property Trust Diocese of Sydney, and
- have no expiry date.

The usual amount of the guarantee is equivalent to at least three month's rental or license fee. Residential tenants must pay a cash bond which is usually equal to four weeks rent. By law, this must be paid to the Rental Bond Board by the landlord. If you have a managing agent they will ensure this is done on your behalf. If the wardens receive the bond please forward it to the Rental Bond Board with the appropriate form (see Working with Real Estate Agents section)

12. Who are your tenants? Some special considerations

12.1 Other congregations (from either Anglican or other denominations)

Before you make an agreement with a congregation from another denomination or another Anglican church please make sure that you have approval from your regional Archdeacon and Bishop. This kind of agreement can be for no longer than two years. If this kind of agreement is made the ACPT must be informed in writing - preferably by having a copy of the licence agreement sent to us for our records.

If another congregation, either Anglican or from another denomination, is using your church building for worship, the ACPT has a policy that there will be a nominal charge on that use. In legal terms, a contract (licence) requires an offer and acceptance and a consideration - a payment of some kind - to be a legal agreement. A payment of as little as \$1.00 per annum meets the requirement of a consideration and gives the agreement legal standing. Even if the fee involved is as little as one dollar, the Licence Agreement should be used as it will outline other conditions of use - the times and spaces that are available, and any specific responsibilities of either party. 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.

This arrangement only applies to church buildings, if the other congregation is using a hall as their meeting place, normal licence conditions, including licence fee, apply.

12.2 Childcare Services

In order to operate, businesses which are providing childcare services (kindergartens, pre-schools, childcare centres, out of school hours care and school based childcare) must be accredited by the Department of Community Services (DoCS). The DoCS website has a lot of information about the process which these businesses have to go through in order to become licensed. For a parish which is considering leasing or licensing space 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 as well as their public liability insurance of \$5,000,000. Licences for the conduct of childcare services must be signed by the ACPT regardless of their annual value.

The DoCS accreditation will be contingent on the operator having a licence or lease to rent the premises for the length of the accreditation. This means that often the operator will not have evidence of accreditation prior to entering the lease or licence. In this case the parish can enter the licence (or send it to the ACPT for signing if appropriate). The parish must ensure that before the business opens, a copy of the DoCS accreditation has been obtained and forwarded to the ACPT for its records.

12.3 Counselling Services

Standing Committee 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.

12.4 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 do things which ensure that the tenants get a fair deal. The following are points to be especially aware of:

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 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 (http://www.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 signed it. 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 further information on retail leases take a look at the Retail Leases Act 1994 or the Retail Tenancy Unit website. (<http://www.retailtenancy.nsw.gov.au/>)

13. The ACPT's role and responsibility

13.1 After the lease or licence agreement is signed

When the ACPT signs a lease or licence it returns one original copy to either the parish or the parish's lawyer to be handed on to the tenant. It is advisable that the parish also keep a copy of the documentation on its records. A file will be set up to keep all of the ACPT records for the lease or licence.

If the lease is a commercial lease it should be registered on the Certificate of Title for the property. In order to register a lease the parish lawyer 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 provide it to the lawyer for this purpose.

If the lease or licence is being managed by the ACPT the details will be entered into our property management system. The tenant or licensee will be invoiced in advance on a monthly basis, with the rent or fee falling due on the first day of the month. If the tenant or licensee pays on time a distribution is able to be made to the parish in the middle of the month. If the tenant or licensee does not pay, the ACPT will follow up with the tenant or licensee, however a late payment may mean that the parish does not receive the rent or fee in that month's distribution.

When the distribution is made to the parish's bank account, a statement is also sent to the parish outlining the details of the distribution and ACPT management fees which have been charged on the transaction.

14. Insurance

The Diocese insurance only covers parish activities. Broadly these are limited to any activity which the minister or his delegate has control over. This means that any use of parish property which is not under the control of the minister is not covered by Diocesan insurance.

This is one of the reasons why it is essential that any users of parish property enter into a rental or licence agreement which includes providing evidence of insurance which they hold. The Certificate of Currency must note the interest of the Anglican Church Property Trust, Diocese of Sydney. The minimum requirements are \$5,000,000 public liability. 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 professional indemnity insurance.

15. When the parish is the tenant or licensee

The parish may find itself in a position of needing to rent or licence property - to house additional ministry staff, to hold special events or to accommodate parish growth. Here are some things 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 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 parish representative 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, you will usually be asked to provide evidence of public liability insurance. To get a copy of a current Certificate of Currency, contact the Diocesan Insurance Officer, with the details of the event and the name of the property owner if they want their interest noted on the certificate.

Commercial leases or licences - The ACPT advises that the parish take care in understanding any agreement before they enter into it as tenants or licensees. This may involve appointing a lawyer 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.

16. ACPT Approved Lease and Licence

The following documents are the approved versions of the ACPT Lease and Licence, along with the schedules that show the details of each individual lease and licence.

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. To remove the password from your copy, in the menu at the top of the document select Tools/Options/Security and delete the 'password to modify'. You will then be able to save your changes and reopen your document.

Every lease and licence needs both the memorandum and the schedule so please make sure that a copy is available for your tenant or licensee.

Approved ACPT Lease Memorandum

Approved ACPT Lease Schedule READ ONLY

Approved ACPT Licence Memorandum

Approved ACPT Licence Schedule READ ONLY