

Leasing and Licensing Church Trust Property

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Questions about, “Leasing and Licensing Church Trust Property” should be directed to the ACPT Manager for your diocesan region -

- **Acting Manager, Scott Lincoln (Georges River, South Sydney and Wollongong regions)**
sxl@sydney.anglican.asn.au (02 9265 1633)
- **Scott Lincoln (Northern, and, Western regions)**
sxl@sydney.anglican.asn.au (02 9265 1633)

1. Introduction

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

Typically, the main property assets of a parish (apart from parish land) are parish buildings. Some of these buildings may have been acquired specifically as investments, with the intention of earning a fair and commercial income. Some parish buildings may be used regularly, and some buildings may be used infrequently. A 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 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 would be a significant drain on parish resources and also be of significant reputational risk to the parish).

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How can the ACPT assist?

In relation to lease and licence agreements, the trustee role of the ACPT is to help maximise property income for parish ministry.

The ACPT works with parishes in such a way that parishes can maintain the relationships that they have with new and existing users of parish buildings.

The information provided 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 Anglican Diocese of Sydney.

For leasing and licensing matters the ACPT will:

- Help explain the process for setting up a lease or licence agreement (including applicable legislation and Anglican protocols);
- Provide standard licence and commercial lease agreements,
- As the legal owner and trustee of parish property, sign commercial leases or licence agreements if required (see "Table 2" following),
- Depending on the nature of the lease or licence agreement, the ACPT may manage monthly invoicing and payments, including following up arrears, managing GST returns and providing the parish with monthly payments and statements. (A management fee is applicable for this service); and
- Provide advice about the ongoing management of the agreement

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

- Select a managing agent for appointment by the ACPT, noting in the case of residential leases that the managing agent will enter into and sign the residential tenancy agreement on behalf of the Parish/ACPT;
- Select a suitable tenant or licensee and negotiate the terms (contribution to expenses, operating hours, and most importantly, the rent or fee that will be applicable);
- If necessary (see section 6) engage a solicitor (who will conduct negotiations, review the agreement and advise the parish / ACPT);
- Provide the ACPT with the necessary approvals from the parish council and regional archdeacon or bishop before the agreement is signed.

What is the difference between a "lease" and a "licence"?

The terms, "lease" (or "leasing") and "licence" or ("licensing") are used deliberately throughout this document because of the different legal meaning of 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

2. Requirements Applicable to Church Trust Property

Whilst, generally speaking, the ACPT is the legal owner of church trust property in the Diocese of Sydney, 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, the staff of the ACPT should be contacted to advise if there are any existing trusts - that is, for what purpose(s) can the property be used - or ordinances (church laws) applicable to the property. ACPT staff can also provide information about whether an ordinance of the Standing Committee of Synod is required for the lease or licence that may be proposed.

An ordinance not only provides the ACPT with the necessary authority to sign a lease or licence (as trustee) on behalf of a parish, but it also may specify how the income can be applied. Some commercial leases, some licence agreements and some residential leases are managed by the ACPT. After the rent or licence fee has been received by the ACPT, a management fee is deducted and a distribution is made to the parish pursuant to the terms of the ordinance. For example, an ordinance may provide for all of the net income to be used by the parish as the parish may determine; 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.

The ACPT encourages parishes to consider “promoting” (to Standing Committee) a “master trust ordinance” that would consolidate all of the property held in trust for the parish under one “master trust”. The usual form of master trust ordinance includes a clause authorising the ACPT – at the request of the parish - to lease or licence parish property listed in the ordinance schedule. Please contact the ACPT for more information about the benefits of having a parish master trust ordinance.

For information about the process for “promoting” a “master trust ordinance” or other ordinances, please refer to the, [“Dealing with Church Trust Property and Funds”](#) part of the SDS website.

Licence agreements for child care services etc

Please note that the Standing Committee of the Diocese of Sydney has amended the [Parish Administration Ordinance 2008](#) (change effective 2/6/2010) so that wardens can no longer enter into licence agreements with pre-schools, kindergartens, childcare centres, long day care centres and the like to operate on church trust property. All such “children’s services” licence agreements will now need to be signed by the ACPT – after first being agreed to by a resolution passed by the Board of the ACPT. *It is recommended that proposals for proposed child care services licence agreements be sent to the ACPT about 3 months before the licence agreement is due to commence.*

For other purposes, wardens can enter into licence agreements of up to \$50,000 per annum (with licence agreements for higher amounts needing to be signed by the ACPT).

3. Sending paperwork to the ACPT

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

TABLE 1: Checklist of documents required before ACPT can enter into a licence or lease agreement.	Licence \$50,000 (ex GST) or more per annum or term longer than five years	Residential Lease (Entered into and signed by managing agents)	Commercial Lease
Management Agency Agreement <i>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).</i>	Not required (but recommended)	✓	Not required
Parish Council Consent <i>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.</i>	✓	✓	✓
Legal Practitioner's Certificate <i>A pro-forma is available from the ACPT upon request.</i>	Not required	Not required	✓
Consent of Archdeacon or Bishop <i>At the request of the Parish, the Regional archdeacon or bishop can provide his consent directly to the ACPT via email or letter.</i>	(Not required if a licence agreement is for occasional use)	✓	✓
Evidence of market value of rent or licence fee.	✓	✓	✓
Certificate of Currency for insurance \$10m public liability; and \$2m professional indemnity required for a childcare centre, preschool etc or professional counselling	✓	Not required	✓
Two originals of the completed agreement (lease or licence) signed by the tenant / licensee	✓	✓	✓
Tenant / licensee contact sheet <i>The ACPT provides this form to be completed by the tenant or licensee</i>	✓	✓	✓

TABLE 2: Who signs and who manages?	Who signs the agreement?	Who manages the agreement? (Receives the income, follows up rental arrears)
Lease - commercial	ACPT	ACPT and Wardens
Licence under \$50,000 (ex GST) per annum and under five years in duration (including any options to renew)	Wardens	Wardens
Licence \$50,000 plus (ex GST) per annum <i>or</i> over five years in duration (including any options to renew) <i>or</i> any licence agreement for child care services.	ACPT	ACPT and Wardens
Residential Lease	Managing Agent (selected by Parish Wardens and to be appointed by ACPT)	Managing Agent

4. Licence Agreements

4.1 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 can be used for one-off use for example a social event not organised by the parish such as a party), 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) provides Wardens with the delegated authority to enter into a licence agreements under a number of conditions. These conditions are -

- The proposed use of the property is not prohibited by law or by the trusts upon which the property is held;
- The proposed terms upon which the licensee is to be permitted to use the property are documented in the most recent form of licence agreement last approved by the ACPT;
- The licence agreement period does not exceed five years;
- The licence agreement is NOT for any type of child care services (such licence agreements can only be approved and signed by the ACPT), irrespective of licence fee amount;
- The amount payable by or on behalf of the licensee for the licence is not more than \$50,000 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 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. NB: approval of the regional bishop/archdeacon is not required if it is a licence agreement for occasional use.

4.2 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.

Comment - 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.

Comment - 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.

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.

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

5. 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 fair charge is for the use of the property.

The potential tenant or licensee, (or the real estate agent selecting a tenant on the parish's behalf) should not be used to provide an assessment of market rent as they will be affected by the amount chosen (a real estate agent may find it easier to locate a tenant with a lower rental rate - which will not substantially alter the fee they receive).

For lease or licence agreements that are to be signed by the ACPT, a market rent / licence fee valuation report needs to be obtained by the Parish from a registered independent valuer, and provide to the ACPT.

It should be carefully noted that the market rent / licence fee valuation report forms the basis of negotiations between the Wardens and the proposed tenant / licensee, as the rent / licence fee negotiated is required to be at or above the market rent / licence fee valuation figure.

6. 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 agreement need to be approved in writing by the ACPT.](#)

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 the ACPT upon request) to accompany the lease or licence that the ACPT 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 arrangement if

- The lease is for a residence and a standard form residential tenancy agreement is used; or if
- The approved ACPT licence is used with no alterations.

7. 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 into (regardless of the rent or fee amount), except for casual/one-off licence agreements. However, the regional bishop or archdeacon will need to approve a casual or one-off licence agreement if the proposed licensee is another denomination.

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, but *only* with the written approval of the regional archdeacon or bishop, and the approval of a majority of parish council.

Licence agreements over \$50,000 per annum (and all child care services licence agreements) are required to be signed by the ACPT on the parish's behalf.

The *Parish Administration Ordinance 2008* requires that the regional archdeacon or bishop provide his consent to the agreement that is proposed to be entered into with a tenant or licensee. 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 ACPT manager with responsibility for your region, so please ask for the consent to be sent directly to the ACPT. Alternately a letter of approval can be provided to the Wardens and ACPT.

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 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 lease option to renew if applicable (noting that a licence agreement cannot include an option to renew); 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.***

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.

9. Working with Real Estate Agents

The Parish Wardens are responsible for selecting a managing agent to be appointed by the ACPT. After speaking to a number of real estate agents, the Wardens should choose an agent and negotiate terms. 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.**

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

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

- ABN: *(please contact the ACPT to ascertain the appropriate ABN to be used, as the parish's ABN cannot be used)*
- 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.

Please note that prior to the agreement being signed by the ACPT any clause which authorises the agent to enter into a lease agreement on the owner's behalf is to be deleted.

The deletion of this clause ensures that the parish is made aware by the managing agent of the expiry of the current lease and the parish, therefore, can make decisions about 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.

10. Leasing residential property – other matters

Please note that renting out a ministry residence may lead to the property becoming subject to local council rates (ie. the exemption to rates may be lost). The ACPT should be contacted to discuss whether the renting of a ministry residence may make it 'rateable'.

Detailed information about residential leases can be found on the Office of Fair Trading website - <http://www.fairtrading.nsw.gov.au>.

Bond / Security

Tenants for any residential lease will pay a bond which is usually the equivalent of four weeks' rent. Bond forms can be downloaded from the NSW Fair Trading website, however, it is noted that the managing agent will also manage the bond for the residence being leased.

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.

11. Negotiating lease or licence agreements

The extent to which Wardens have delegated authority to negotiate the terms of a lease or licence are 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.

11.1 *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). Sometimes this period can be extended to a total of ten years; however, such an extension would need to be first approved by a resolution of 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, 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 Family and 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.

11.2 *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:

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

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.

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 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 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. Please contact the ACPT to discuss "public entertainment" matters

(c) Is the 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.

11.3 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 services of a qualified valuer are required by the ACPT. 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 rent 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 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, the rent can not fall below its previous rate (that is, even if CPI falls, the licence fee cannot fall).

11.4 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, the ACPT requires that the security 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 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 usual amount shown on a bank guarantee is 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). The Parish's managing agent will ensure this is done on the Parish's behalf.

12. Special considerations for different tenants / licensees

12.1 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 the approval is first obtained 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.

12.2 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 Family and 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.

12.3 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.

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 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 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).

13. The role and responsibilities of the ACPT

13.1 *After the lease or licence agreement is signed*

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 it should 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.

If the lease or licence is to be managed by the ACPT the details will be entered into the ACPT's 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 will be made to the parish in the middle of the month. If the tenant or licensee does not pay on time, the ACPT will follow up arrears, however a late payment may mean that the parish does not receive the rent or fee distribution in that month.

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

14. 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.

15. 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 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.

16. 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.

Questions about, “Leasing and Licensing Church Trust Property” should be directed to the ACPT Manager for your diocesan region -

- **James Cartwright (Georges River, South Sydney and Wollongong regions)**
jac@sydney.anglican.asn.au (02 9265 1561)
- **Scott Lincoln (Northern, and, Western regions)**
sxl@sydney.anglican.asn.au (02 9265 1633)