

5.7 PARISH PROPERTY AND FACILITIES HIRE (Use of Church Premises by Third Parties)

Introduction

Whenever Church premises are used or hired by a third party, a formal agreement setting out the terms and conditions of the hire or use of the property or facilities must be completed and signed by the third party and the parish.

The Hire / Casual Use Agreement provides information and protections for both parties with an accompanying set of guidelines and procedures which are to be complied with in relation to each and every user of church property whether the use is by a one-off user or a long term user under agreed terms.

The entering into an agreement allows the parties to agree and document the terms and conditions of use including the fees, insurance obligations, liability issues, the extent of use and term (if more than a one-off arrangement), the facilities to be made available, securing the premises after use, cleaning, etc.

The Parish should ensure that the proposed use of a property to be offered for use to a third party is not prohibited by law or by any trust conditions on which the property is held.

Hire Fees

Parishes can determine their hire rates, but are referred to the following section on GST in determining fees. Under some circumstances it may be appropriate to charge a reduced or nominal fee (whether in lieu of a donation or otherwise), however, the licence agreement must always show there to be some consideration, whether it be expressed in terms of \$100.00 per week use or \$1.00 if a nominal fee is agreed.

Bond

The parish can chose to charge a bond for a casual hire agreement which will be fully refunded at the completion of hire, conditional upon the premises being left in “as found” condition and there are no breakages, repairs, or cleaning required. Should the premises require extra cleaning and/or reparations following the hire, the cost will be deducted from the bond. The Parish must return the Bond at the end of the period of the hire.

The bond will be forfeited if:

1. the hirer breaches any of the terms and conditions of this Licence;
2. the function is terminated by the Parish, with or without police assistance;
3. complaints are received from adjacent residents,
4. the booking for the facility is cancelled with less than 2 weeks prior written notice, or

5. an excess is required to be paid by the Parish under the Diocesan Public Liability Insurance coverage (currently \$250).

GST - Extract from Diocesan Handbook

GST – A Guide for Parish Council Treasurers (Section 10)

Generally speaking, the lease, licence or hire of a parish hall for consideration to persons external to the parish is a taxable supply. This means that the parish is obliged to pay GST to the ATO in respect of the supply, report the GST on the next BAS and comply with the other GST Act requirements such as issuing tax invoices for the supply. Parishes should also consider increasing the cost of the hire to recover the cost of the GST liability on the supply.

The parish is entitled to claim input tax credits for any expenses which relate to the lease, licence or hire of the hall. Such expenses may commonly include repairs, cleaning, electricity, construction of an extension, conversion or other substantial building work required to make the hall suitable for the purposes for which it is going to be hired.

There are 2 scenarios where the lease, licence or hire of the parish hall will not be subject to the GST –

- a. where the hall is made available to another member of the Anglican GST Religious Group (for example the Samaritans Foundation) then this becomes an internal transaction within the Group and GST is not applicable, and
- b. Where the Parish Council resolves to provide the hall for “nominal consideration”. Nominal consideration is either –
 - i. less than 50% of the market value of the supply (less than 75% if the hall is used for accommodation) ; or
 - ii. less than 75% of the cost of making the supply.

Note: It is likely that the market value will be the figure that will be easiest to ascertain. The ATO requires that any analysis of this nature must be properly documented. Therefore, the parish council should make sure to minute any resolution on this matter and be able to produce that minute and substantiate the market value in case of ATO audit. If the nominal consideration test can be met then the supply is GST-free as provided by subsections 38-250(1)(b)(ii), 38-250(2)(b)(ii) of the GST Act. (Refer section 6 above).

Parishes should note that licenses (which grant limited times and conditions of use) may be granted by Churchwardens. In some cases, these will be supplied at a nominal value, and may be GST-free, if the above criteria are met.

However, leases must be signed and approved by the TCP and should comply with the policies of the TCP, one of which is that the lease must be supplied on a commercial basis at a market rent. Accordingly, where a lease has been supplied at a market value, it will not be GST-free. The supply will be a taxable supply and the nominal consideration provisions will not be applicable. In

limited circumstances where leases are granted for less than market value the nominal consideration test may be applicable.

Parish Facilities Hire Register

A parish is required to carefully maintain a register (which can be called upon for inspection) which shall record the date of the event, the purpose of the event the name and address of the individual responsible, the hours during which the parish property was hired (e.g. 7pm to 10pm) on the date, the amount of the hire fee paid, the signature of the *hirer*, the signature of the *incumbent and* responsible Churchwarden (*or their delegate*) and the address of the parish property.

The register must be maintained accurately and be preserved permanently in the parish records. Liability claims can arise sometime after the event alleged to cause injury or damage to property, hence the need for permanent preservation.

Formal Agreement

Whenever a parish facility is hired by a third party, a formal agreement setting out the terms and conditions of its use should be agreed to and signed by the parish Churchwarden (or delegate), the Incumbent and the hirer.

Accreditation & Professional Indemnity Insurance

There are special considerations that apply to certain users, for example, dance groups and counselling services. For these users there are additional requirements that should be considered such as accreditation and professional indemnity insurance (in addition to public liability insurance). Enquiries should be made to ascertain if the hirer is required to hold any authority or permit from a government authority to use the building in the manner proposed. Hirers operating in such fields should hold Professional Indemnity Insurance of \$2 million.

Public Liability Insurance

Ansvar Insurance Limited provides the Diocese with Public and Products Liabilities for Personal Hirers of Facilities owned by the Diocese. Public Liability insurance for any non-parish activities by a third party user is a condition of use. For a one-off use, the Diocesan insurers are willing to consider providing cover to a personal hirer at a cost of \$25.00 per day. Application by a hirer for such cover is in Part B of the Hire/Casual Use Agreement.

Each application for the Diocesan Insurance cover requires a copy of the Hire Agreement, and a payment of \$25.00 to be forwarded to the Diocesan Office for processing.

Non Personal Hirers (or groups) must have their own Public Liability Insurance to the value of \$5 million. They must attach to the signed agreement a copy of a Certificate of Currency for this insurance.

Permissible Uses

Deleted reference to Local Government

It should be noted on the Hire Agreement *that* the hirer is asked to agree that the proposed use of facilities *is not in conflict* with Christian teaching and that any activity which is not consistent with such teaching will not be permitted.

Work Health and Safety Management

Site Induction

In accordance with the Work Health and Safety Act 2011, the Parish Council Safety Delegate or a Churchwarden must undertake a site induction for all hirers of parish property, comprising a general introduction, emergency management plans, first aid details and hazard management. Such induction must be undertaken before the first use.

Legal Requirements

Some activities or groups/organisations may be subject to legal requirements. For example a children's dance school may be required to have a Working With Children Policy. The hirer should know their obligations and certify that they are adhered too. If they are unsure of their requirements, they must make independent enquiries sufficient to allow them to make the certification.

Disabled Access

Where the parish facility to be hired does not conform to the requirements of the Local Government Act, hirers are accepting this by signing the proposed hire agreement.

Definitions

Hire Agreement – For use of Parish facilities by a person or outside group. The nature of the arrangements may be the payment of a fair and commercial hire fee where a third party has limited and non-exclusive use of Parish facilities for specified times, it may be a one-off user, or a long term user under agreed terms.

Casual Use Agreement – Use of property for which a nominal fee, or donation for use, may be arranged. Parishes should note that licenses (which grant limited times and conditions of use) may be granted by Churchwardens. In some cases, these will be arranged at a nominal fee only, and may be GST exempt.

Personal – The hirer is a person or an unincorporated group meeting for a non-commercial, non-political, non "cause/crusade" purpose where the meeting is not open to the general public and the hirer does not have a public liability policy. Examples of such activities are:

- A private birthday party, celebration, wedding reception
- Dance practice not associated with a dance school or lessons and no fees are charged
- Friends who want a venue to read plays/poetry etc (but **not** rehearsals for a show);

- Knitting groups who like to meet to compare work/ideas
- Musicians using premises for non-commercial purposes [but **not** musicians who perform elsewhere]
- Informal support/self-help groups.

Non-Personal – non-church group or club, company, government body, or other group.

Bond – The Parish will determine the amount of any bond to be paid, which will be refunded at the conclusion of the activity dependent upon the condition of the property or facility, its cleanliness, any damage, or any personal injury and compliance with the obligation of users.

Conditions of Use of Facilities

Organisations hiring or using buildings and other property of the Anglican Church accept responsibility for the safe custody of the property and for personal injury and damages to third party property during the term of the use.

All users are required to indemnify the Diocese of Newcastle and the Parish offor any liability arising from the use of the buildings and/or other property. Copies of the Certificate of Currency for Public Liability Insurance are required to be attached to this agreement.

It should be noted that:

- *All users comply with legal requirements for the proposed activity.*
- Use of facilities of the Parish of is subject to the activities undertaken in the buildings *not being in conflict* with Christian teaching. Any activity which is not consistent with such teaching will not be permitted.
- *The Parish provides / does not provide the following disabled facilities in the hired building:*
 - *Wheelchair access*
 - *Disabled access ramps*
 - *Disabled toilets*
 - *Disabled parking*
 - *Audio loops*
 - *Other*
- The condition of the facility is as set out in the attached safety check list completed by the Parish Safety Delegate or Churchwarden, or other person authorised by the Incumbent, a copy of which should be appended to the Agreement.
- The primary purpose of the facilities of the Parish of is to further Anglican Christian ministry. Should there be occasions where such ministry, (for example, funerals or particular Christian occasions), require access to the facilities for a Parish event this will take precedence over the agreed activity. In this case, you will make other arrangements for that occasion. The Parish will endeavour to give as much notice as possible of such events and assist to arrange an alternative time.

Obligations of User

- To pay the relevant charges in the manner and time agreed.
- To leave the facility in a satisfactory and clean condition.
- To remove all rubbish.
- To leave all items owned by the Parish as found.
- To move anything within the facility by lifting (not by dragging) and to return it to its original position
- To use any exhibits or decorations in the facility only with the prior agreement of the Parish representative.
- Not to damage the facility, its furniture and furnishings, accessories or environs.
- To report to the Parish any personal injury, or loss or damage to property and to pay for its repair or replacement.
- Smoking is not permitted in the facility.
- To switch off all lights, fans, heaters, air conditioners and other electrical equipment before vacating the facility.
- To secure windows and doors on vacating the facility.
- To return any keys to the Parish in the manner and at the time agreed.
- To conclude all evening functions by 11:00pm and to vacate the premises by 11:30pm
- The amplification of music is not permitted unless the Parish representative grants permission in writing. If such permission is granted, the volume must be kept to levels in accord with the Environmental Protection Act.
- To conclude all music and noise prior to 11.00pm.
- To create no nuisance during the period of use so as to inconvenience adjoining owners or occupiers.
- To ensure that the hall stage (if appropriate) is not included in the use unless specifically included in writing. Any stage curtains may be used only by prior agreement with the parish representative.
- *The sale of liquor on the premises is not permitted. The user is reminded that it is an offense to serve liquor to minors.*
- Should the Parish representative, or any officer of the Parish deem it necessary to shut down a function, with or without the aid of Police, the bond shall be forfeited.
- No illegal activity is to be carried on in, or about the facility.
- The rights of residents in the area of the facility are to be respected, and all guests are instructed to disperse quickly and quietly. Any complaints from residents may result in the bond being forfeited.
- The user of facilities is subject to the activities undertaken being suitable to Christian teaching. Any activity which is not consistent with such teaching will not be permitted.
- The parking of vehicles in the Parish driveways at any time is not permitted.
- Entry to any area other than the facility which is the subject of this agreement, is not

permitted by any person.

- Any piano must not be moved without prior agreement of the Parish representative.
- *Food handling must comply with requirements of the Food Safety Information Council of Australia*
- *Any advertising must be approved by the Incumbent / Churchwarden prior to its use, and must clearly state that the activity is not a Parish activity.*