

Leasing-Out Procedure

1. Purpose

The Leasing-Out Procedure (the Procedure) is mandatory pursuant to the *Land and Property Management Policy*. The Procedure sets the process for Health Service Providers relating to the Leasing or Licensing Out of:

- its owned (Certificate of Title) / controlled (Crown Reserves) properties; and
- properties it controls and manages under the Health Service Providers *Memorandum of Understanding for Management and Control of Land and Buildings* with the Health Ministerial Body

A Health Service Provider may Lease or Licence space within its own buildings to other government agencies, non-profit organisations, or the private sector for the supply of health services, or for health related, purposes.

This Procedure does not apply to staff accommodation. Leasing out staff accommodation is to be undertaken according to the WA Country Health Service (WACHS) [Staff Residential Accommodation Policy](#).

2. Requirements

Health Service Providers are responsible for Leasing/Licensing out any health care facility under its control/management. This includes negotiation of rental/licence fee rates and the development of all formal documentation. A flowchart detailing process is appended to this procedure for quick reference.

The Health Service Provider must obtain a market rental valuation through Landgate Valuation Services (LVS) or a private licensed valuer to determine the rental/licence fee to be applied. In circumstances where the Health Service Provider charges less than market rental/licence fee, the Health Service Provider must provide justification for the differential to the Department of Health for use as part of the statutory approval process to lease out property. The Health Service Provider is not required to obtain market rental valuation to determine the rental/licence fee where the total lease/licence term (including any option term to renew), is 12 months or less.

Allowing another government agency - including other Health Service Providers to occupy part of another Health Service Provider property (e.g.: Child and Adolescent Health Service occupying a North Metropolitan Health Service property) – should be formalised by way of a Memorandum of Understanding (MOU) or an occupancy agreement and the Health Ministerial Body will need to be a party to the arrangement where it relates to the occupation of property owned by the Health Ministerial Body

It is not expected that the Health Service Providers would charge full market rental under these MOUs, the arrangement should be based on a cost recovery basis for shared utilities, consumables and administration services (as applicable). The MOU needs to specifically stipulate all the terms and conditions of such occupations.

2.1 Conditional Negotiation

Health Service Providers are responsible for conducting preliminary negotiations and establishing conditional agreement with a prospective Lessee/Licensee, including other State Government agencies. However, final approval is required by the Department of Health, for all Health Ministerial Body owned (Certificate of Title) / controlled (Crown Reserves) property (unless an Instrument of Authorisation to the contrary exists); and the

Minister for Lands if the land is a Crown Reserve. Further advice on this issue should be sought from the Department of Health's Infrastructure Unit.

Leasing/Licensing Out Process

The preparation and execution of a formal agreement is to be arranged by the Health Service Provider in conjunction with the Department of Health's Infrastructure Unit as follows:

1. Check the land tenure of the property to be leased or licenced with the Department of Health's Infrastructure Unit. If it is a Crown Reserve it must have a Management Order in favour of the Health Ministerial Body or Health Service Provider with an appropriate purpose (ie: Health - Hospital and Allied purposes) with power to lease the whole or any portion thereof for any term.

The Department of Health's Infrastructure Unit will arrange for an amendment of Crown Reserve Management Orders through the Department of Planning, Lands and Heritage if the land is unvested or incorrectly described.

If the land is held in Certificate of Title, the proposed purpose of the lease must comply with current land zonings.

2. Approvals - The following approvals are required for any Leasing/Licensing Out proposals:

- a. If the property is owned (Certificate of Title) / controlled (Crown Reserves) by the **Health Ministerial Body** (NB: all properties were deemed transferred to Health Ministerial Body at 1 July 16 when the [Health Services Act 2016](#) was enacted):

- Approval from the Health Service Provider in accordance with the Health Service Provider Authorisation and Delegation Schedule must be obtained in the first instance. A Briefing Note evidencing such approval needs to be forwarded to the [Department of Health's Infrastructure Unit](#) detailing the Leasing/Licensing Out proposal.
- The Department of Health's Infrastructure Unit will then source relevant statutory approvals in accordance with the *Health Services Act 2016*.
- The Lease / Licence / MOU documentation will require execution by the relevant Department of Health officer (on behalf of the Health Ministerial Body) in accordance with the Department of Health's Instrument of Authorisation – Property Transactions.

Note: In the case of WACHS, a separate Instrument of Authority exists for Regional Directors to execute such documentation, following approval (as detailed above) on behalf of the Health Ministerial Body for any Leases that are under \$100,000 and 5yr terms (includes options to renew).

- Approval of the Minister for Lands may be required if the property is a Crown Reserve. The Department of Health's Infrastructure Unit is responsible for seeking this approval. Submissions seeking this approval should not be sent directly to the Minister for Lands.
- b. If the property is "**Health Service Land**" (ie: acquired by the Health Service Provider directly either by purchase post 1 July 2016 or leased or licensed in):

- In accordance with Section 37 of the *Health Services Act 2016*, Leasing/Licensing Out of facilities by a Health Service Provider is deemed a disposal and requires the approval of the Minister for Health. This approval function has been delegated to the Director General of Health (with restrictions). The Department of Health's Infrastructure Unit is responsible for seeking this approval. Submissions seeking this approval should not be sent directly to the Minister for Health or the Director General.
 - Approval of the Minister for Lands may be required if the property is a Crown Reserve. The Department of Health's Infrastructure Unit is responsible for seeking this approval. Submissions seeking this approval should not be sent directly to the Minister for Lands.
3. Prepare instructions for the Lease/Licence arrangement to the [State Solicitor's Office](#), or [Department of Health's Legal and Legislative Services](#) requesting the preparation of a draft agreement. The Health Service Provider should provide clear instructions to the selected legal representative on:
- the Lessor/Licensor (ie: ownership or vesting which needs to include power to lease)
 - any special conditions that have been negotiated that need to be incorporated in the agreement
 - lease costs to be charged (in accordance with LVS advice).

The Department of Health's Infrastructure Unit can assist the Health Service Providers with negotiations with the potential Lessee/Licensee until the terms are satisfactorily agreed by both parties.

4. Receive a draft Lease/Licence agreement from the selected legal representative (as described in Step 3 above) and:
- check that the terms negotiated are reflected in the document
 - send a draft copy to the Lessee/Licensee for acceptance
 - advise the selected legal representative when the document is satisfactory or otherwise provide further comments relating to any necessary changes.
5. Receive final documentation from the selected legal representative and:
- provide the documents to the Lessee/Licensee for execution first
 - arrange execution by the relevant Authorised Officer of either the Health Ministerial Body or Health Service Provider (whichever is the Lessor/Licensor) following receipt of the agreement signed by the Lessee/Licensee. (More detail is provided at 3.2 below).
6. Provide the signed documents to the State Solicitor's Office to arrange Stamp Duty assessment on behalf of the Health Service Provider or Health Ministerial Body, if necessary.
7. Distribute the signed and stamped documents as follows:
- forward one copy to the Lessee/Licensee for retention
 - the Health Service Provider retains one copy of the agreement for management of terms (ie: invoicing and receipt of rent, terms, rent reviews etc.).

Please note that Health Service Providers are responsible for managing arrangements that provide short term or temporary occupation (where the total tenure, including any option

term to renew, is 12 months or less) of their facilities to private consultants or not-for profit organisations delivering health services under the Department of Health, [Commercial Activities Policy \(MP 0018/16\)](#).

Examples of this situation include the Health Service Provider providing non-exclusive space within a country hospital or health centre to a visiting private specialist on a fortnightly basis. If the arrangement is permanent and the use of the rooms is required exclusively, then a formal Lease or Licence should be considered and these processes applied.

2.2 Conveyancing and Reporting

The Health Service Provider or appointed leasing consultant would arrange conveyancing as follows:

- When the Lease/Licence documents are deemed to be in order for execution, forward the documents to the Lessee/Licensee for execution first.
- If the property is owned (Certificate of Title) or controlled (Crown Reserve) by the **Health Ministerial Body**:
 - Forward the Lease/Licence (signed by the Lessee/Licensee) to the Department of Health's Infrastructure Unit to arrange execution by the relevant authorised officer of the Department of Health as Lessor/Licensors (on behalf of the Health Ministerial Body). The Department of Health's Infrastructure Unit will return a copy of the fully executed document for retention by the Health Service Provider so that the terms can then be managed.
 - Note: An exception to this requirement applies to the WA Country Health Service (WACHS). In the case of WACHS, a separate Authority exists for the Regional Director to execute lease out documentation on behalf of the Health Ministerial Body for any Leases that are under \$100,000 and 5yr terms (includes options to renew). This was necessary for staff accommodation purposes.

OR

- If the property is "**Health Service Land**" (ie: acquired by Health Service Provider directly either by sale post 1 July 2016 or leased in):
 - arrange for the relevant Health Service Provider authorised officer in accordance with the Health Service Provider Authorisations and Delegations Schedule to execute the Lease/Licence.

The Health Service Provider must update the WA health system's online [Land and Property Information System \(LAPIS\)](#) directly with the Lease details. The updating of LAPIS is mandatory to ensure the integrity, accuracy and currency of all WA health system land and property statewide as the central source of information.

2.3 Option Renewal on Existing Leases/Licenses

The process of renewal of a Lease/Licence by the Lessee/Licensee utilising the option period (if included in formal documentation) is as follows:

- Lessee/Licensee to notify Health Service Provider of intention to take up the Lease/Licence option period provided in the agreement (if applicable).
- It is the Lessee/Licensee's right to exercise this option subject to the Lessee/Licensee not being in default of the agreement covenants.
- A Health Service Provider may formalise the option period simply by an exchange of letters with the Lessee/Licensee as opposed to executing a formal "Deed of Extension" unless the Lease/Licence document states otherwise.

2.4 Rent Reviews

Health Service Providers are responsible for managing rent reviews for all leasing/licensing out arrangements.

Lease/Licence agreements must detail the procedures for the management of rent/fee reviews. Such reviews are usually conducted annually or biannually and an additional review may also be required at the time a Lessee/Licensee takes up an option. Each agreement may differ, dependant on negotiations.

Health Service Providers must arrange a valuation review through LVS or a private licenced valuer and notify the Lessee/Licensee of rental increases applicable within the timeframe specified in the Lease/Licence document.

3. Definitions

Health Care Facility	Describes any facility owned (Certificate of Title) / controlled (Crown Reserves) by the Health Ministerial Body (as defined in s.12 <i>HSA 2016</i>) or a Health Service Provider.
Leasing-Out	Leasing WA Health-owned (Certificate of Title) / controlled (Crown Reserves) premises to a third-party.
Landgate Valuation Services (LVS)	WA Government Valuer
Health Service Land	Land and property that is acquired by Health Service Provider directly either by purchase post 1 July 2016 or leased in

Leasing Out Process

LESSOR/LICENSOR MUST BE STATED AS THE HEALTH MINISTERIAL BODY or relevant HEALTH SERVICE PROVIDER (refer 3.2)

LEASES MUST BE EXECUTED BY relevant authority in accordance with the Department of Health and Health Service Provider Authorities Schedules depending on property ownership – refer to Section 3.2)

Health Service Providers determine the area of Health facility to be Leased/Licensed Out to private sector and contacts Department of Health's Infrastructure Unit for advice.

Health Service Provider provide the Department of Health's Infrastructure Unit with relevant Approval (Briefing Note) to Lease/Licence Out

Department of Health's Infrastructure Unit seek any statutory approvals in accordance with Section 37 of the *Health Services Act 2016*

If the property/land being Leased/Licensed Out is a Crown Reserve, Minister for Lands Approval to, and endorsement of, the Lease may ALSO be required under *Section 18 of the Land Administration Act 1997*. State Solicitor's Office will arrange such approval upon request (via the Departments Infrastructure Unit).

Health Service Provider instructs the **State Solicitor's Office or DoH Legal & Legislative Services** to prepare a Lease

INTER-GOVERNMENT ARRANGEMENTS / OCCUPATION

MOU to be executed by relevant authority in accordance with DoH and Health Service Provider Authorities Schedules

INCLUDES OCCUPATION OF Health Service Provider PROPERTY BY ANOTHER Health Service Provider

MOU to be executed by CEOs of both Health Service Providers [where property is HMB property, this should be executed by HMB rather than HSP]

Department of Health's Infrastructure Unit assists Health Service Provider with negotiations until terms are satisfactorily agreed by both parties.

HEALTH MINISTERIAL BODY PROPERTIES - Department of Health's Infrastructure Unit arrange for the relevant authority to execute Lease/Licence in accordance with the DoH Authorities Schedules. NB: WACHS can directly execute leases under separate Instrument of Authorisation with restrictions.
HEALTH SERVICE LAND - Health Service Providers execute documents in accordance with the DoH Authorities Schedules.

Health Service Providers update the WA health system's online [Land & Property Information System \(LAPIS\)](#) directly with Lease/Licence details.

Lease/Licence/MOU is retained by Health Service Provider for management. (ie: rent collection / management of terms)