

# Tenancy Agreements

## Producing the Tenancy Agreement

The agreements were written by Baw Baw Shire in consultation with Maddocks, one of Australia's top 20 law firms, who specialise in services to Councils.

The agreements were sent to State Sporting Associations who provided feedback prior to the agreements being adopted, (including AFL, Cricket Victoria, Basketball Victoria, Hockey Victoria, Netball Vic).

The agreements were sent to a local legal firm for comment and review.

The agreements were discussed with regional sporting associations (including Gippsland Football and Cricket Leagues) and included in public forums attended by clubs and committees of management (CoM).

## Importance of a Tenancy Agreement

A tenancy agreement:

- Secures your club's right to use the Council facility, and provides clear status of tenure.
- Clarifies roles and responsibilities of Council, CoM and your Club, creating fairness and equity for all.
- Protects both club's and Council from being exposed to claims of negligence and reduces exposure to risk and subsequent litigation.
- Ensures consistency for all users.
- Provides for continuity even when office bearers change.
- Supports attraction of funding and major events and enables applications for planning permits and other licences.

## Tenancy Agreement Procedures

Some clubs, including some Football, Cricket, Soccer and Tennis Clubs, have had tenancy agreements with Council for many years it is not a new practice.

We are now making agreements consistent, for all clubs not just some.

The process of developing and rolling these out has been a 3 year process involving consultation between clubs, committees, sporting associations and sporting leagues.

We have operated for years quite well without a tenancy agreement, we don't need one.

Tenancy agreements are a requirement of Council's insurer, without these agreements, Council, the CoM and your club may not be covered by Public Liability Insurance.

This has left Council and your club exposed to litigation and insurance claims.

If another club comes along, signs a tenancy agreement your club would have no rights to the facilities. Signing this agreement secures your clubs right to play at the facility.

## **Signing Your Tenancy Agreement**

The Committee of Management (CoM) is delegated by Council for specific functions, entering into tenancy agreements is not part of their delegated powers.

Under the Local Government Act, Council cannot delegate entering into agreements to a CoM. If a CoM did enter into an agreement with a club it would never be enforceable.

## **Committee of Management and Tenancy Agreements**

Correct, the CoM already performs certain functions which they are delegated to do on behalf of Council. CoM delegation typically is the collection of fees, managing ground bookings, minor maintenance, paying utility bills, preparation of management plans, advising and reporting to Council.

These roles, previously formalised with the CoM are now also formalised with your club through the tenancy agreement.

The tenancy agreement formalises who has what responsibilities. For instance the tenancy agreement clarifies responsibilities around maintenance which has not previously been defined.

## **Importance of Procedure**

We don't intend for this to be a difficult process, Council has a responsibility to have proper policies and practices in place.

Although we acknowledge that this is a technical and legal document, this is necessary to ensure the integrity of the tenancy agreement. (these are actually a very simplified version of a standard tenancy lease).

A tenancy agreement helps your club provide good policy and protection for your members. We don't believe it will affect the clubs day to day operation.

## **Clauses in the Tenancy Agreement**

Although a legal document it is not set in stone, there are certain clauses which are non-negotiable. Certain clauses can be negotiated resulting in a special condition added to an Annexure.

Being a legally prepared document we may need to seek further opinion before any special conditions are made.

We encourage clubs to meet with Council, express any concerns, ask questions and consider changes to reflect all clubs' unique needs.

## **Not Signing the Tenancy Agreement**

In the first instance, each tenancy agreement is sent with an invitation to meet to discuss the agreement. All clubs who have met with Council have resolved questions and signed agreements.

If agreement cannot be reached with Council Officers, a meeting will be arranged with the peak sporting body, the club executive and Ward Councillors.

Without a tenancy agreement a club may not have access to a facility.

## **Requirement of Tenancy Agreements**

Every Club using Council facilities in the municipality is required to have a tenancy agreement.

Clubs on DSE land, but Council managed facilities, will be required to have a slightly different tenancy agreement which DSE have developed.

Clubs which are commercial in nature will have a standard commercial or retail lease.

## **Tenancy Agreements with Other Councils**

Most Councils have tenancy agreements or specific seasonal hire agreements with club's

In Metro Councils Seasonal Users collect and hand back keys at the beginning and end of each season and have no access out of season.

Baw Baw Shire is one of the last Councils to implement these agreements in Victoria, for an example visit the [City of Casey](#) website.