

AUDITOR-GENERAL'S REPORT PERFORMANCE AUDIT

Administering Domestic Waterfront Tenancies

Land and Property Management Authority
Maritime Authority of NSW



The Legislative Assembly
Parliament House
SYDNEY NSW 2000

The Legislative Council
Parliament House
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Administering Domestic Waterfront Tenancies: Land and Property Management Authority, and Maritime Authority of NSW**.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat
Auditor-General

Sydney
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Foreword

Government agencies often have to work together to implement Government policy in a consistent and equitable way. In doing so, they need to interact constructively with those people most affected by new or changed policy.

In this audit I examine how well two agencies, the Department of Lands and NSW Maritime, have implemented the Government's policy to align domestic waterfront leases with market value.

Over several years I have received complaints about large increases in rents in the Sydney area. These raised concerns about how rents were being calculated and some claimed differences in rents for similar properties. As Auditor-General, I cannot comment on the merits of Government policy. What I can comment on is how the policy is implemented.

The audit found some inconsistencies in how agencies are implementing government policy. Agencies also need to communicate effectively with their customers. This includes responding constructively to customer complaints.

Challenges such as these face all agencies implementing common policies. Agencies must work together effectively to ensure customers receive consistent and improving services.

Peter Achterstraat
Auditor-General

September 2009

Executive summary

The focus of our audit

There were 8287 domestic waterfront tenancies in NSW managed by the Land and Property Management Authority and Maritime Authority of NSW in June 2009. The tenants pay rent for jetties, boatsheds, boat slipways etc constructed on public land comprising seabeds, riverbeds and, in some instances, reclaimed land.

The current approach to administering domestic waterfront tenancies is based on an Independent Pricing and Regulatory Tribunal (IPART) report of 2004.

The IPART report recommended a formula for determining the rent. The components of the formula are:

- values of adjoining land
- rental rate of return
- 50 per cent discount factor
- occupancy area.

The formula applies these market proxies because of the unique nature of the public land tenanted, which is largely submerged and reclaimed land for recreational use.

In the past rents were significantly lower and had not changed for 15 years. From 2004 the rents increased as they aligned to market values.

Implementation of the IPART recommendations and higher rents is resulting in continuing numbers of disgruntled tenants and complaints to the Land and Property Management Authority and Maritime Authority of NSW.

The revenue from tenancies was \$13 million in 2008-09. It increased by 171 per cent or \$8.2 million over the last five years. During the same period, the number of tenancies increased by 10 per cent or 763.

During the past two years the Auditor-General received a number of letters from a cross-section of tenants dissatisfied with the agencies' administration of domestic waterfront tenancies.

The Auditor-General requested a preliminary study into the implementation of the IPART report. During this stage discussions were held with the agencies and Members of Parliament, and nearly 170 submissions were received from tenants.

Based on the broad ranging and detailed concerns of tenants, continuing revisions to administrative practices and some variations in practices from IPART recommendations the Auditor-General decided to proceed with the audit.

The audit assessed if the Land and Property Management Authority and Maritime Authority of NSW are:

- administering tenancies in line with the IPART report recommendations
- reviewing rental practices to ensure improvements consistent with the IPART report.

A reference to Lands is a reference to the Land and Property Management Authority, formerly the Department of Lands. A reference to Maritime is a reference to the Maritime Authority of NSW, trading as NSW Maritime.

Audit conclusions

The audit's overall conclusion is that Lands and Maritime are broadly achieving outcomes consistent with the IPART report on administering domestic waterfront tenancies. But a lack of collaboration between the agencies is contributing to poor customer service.

Inconsistencies with the IPART report recommendations and operational differences between the two agencies result in different rents and conditions for tenants in the two agencies. The differences are having a significant impact on customer service.

Incremental, fragmented and delayed reviews of practices has triggered criticism by tenants.

In 2005, the agencies had created precincts that were small and this led to some properties having comparatively high rates. This was reviewed in 2007-08 in response to complaints. Following this review, the number of precincts was reduced from 549 to 61. The new precincts largely satisfied complaints about rent variations. The changes were implemented by Maritime three years after, and Lands four years after, the introduction of the current approach for determining the rent.

The net rate of return component of the rent formula is a subject of continuing complaints. It was not included in the review of precincts. More recently, tenant's complaints are including refusals to pay the full rent until the net rate of return is reviewed.

These two components of the formula could have been reviewed at the same time because the land value and the rate of return are closely related. We concluded that the slow and separate review processes have had a significant impact on service delivery and the effective implementation of the IPART report recommendations.

Key audit findings

Chapter 2 Are the agencies administering rentals in line with the IPART report recommendations

We found that the agencies have implemented the majority of the IPART recommendations.

We found the following practices are consistent with the recommendations:

- both agencies apply the rental formula to all but a small number of leases
- Lands uses licences
- both agencies apply rent phase-in
- Lands applies rebates to water access properties (Maritime does not have properties of this type)
- both agencies provide jetty sharing options
- both agencies increased the period of agreements to 20 years
- both agencies allow transfer of a tenancy agreement to a new owner
- both agencies apply hardship provisions on a case by case basis.

We also found the following inconsistencies with the recommendations:

- initially the agencies established a large number of precincts that did not support the smoothing out of differences in rents which has since been addressed
- Maritime use leases not licences (this was approved by Cabinet in December 2007)
- the rate of return applied in the rental formula has yet to be reviewed on a regular basis
- a small number of rents in Maritime are not calculated in line with the IPART formula because the agency has not formally replaced old agreements
- Lands adjusts the minimum rent by the CPI quarterly instead of annually
- annual rent increases for some of Lands' tenants exceeded the cap of \$2,500 + CPI, although the average rent increase over the phase-in period is below \$2,500.

There are also differences in how the two agencies administer the domestic waterfront tenancies:

- agencies use different methods for calculating phase-in rent increases
- agencies have different policies for providing rebates for homeowners when one is a pensioner and the other is not
- Lands re-commenced phase-in in 2009
- Lands does not consistently include occupancy areas in precinct statutory land calculations.

Differences in rent

A result of the inconsistencies and differences is comparatively lower rents in Lands. The variations causing this are: the method to calculate phase in rent increases, the re-introduction of phase-in of rents with the new precincts, and the rebates to households with a pensioner and non-pensioner.

A contributing factor to the variations is the different legislation the agencies operate under.

For a listing of the agencies' practices that are consistent and inconsistent with the IPART recommendations see Appendix 3

Lacking a joint strategy

We found that there is no memorandum of understanding between the agencies or overall strategy and plan to collaborate implementing the IPART recommendations. The agencies worked together as necessary to align key policies and separately adjusted their administrative practices to implement the IPART recommendations.

The lack of collaboration has resulted in inconsistencies and different practices outlined above, variations in service delivery, and have limited effectiveness of the IPART recommendations.

The proposed joint review of the rate of return is a positive step in strengthening their collaboration and provides the basis for reviewing and limiting variations.

We found that, when the new scheme was introduced, both agencies provided limited information on rental calculations to tenants. Over the past two years, both agencies significantly improved communication with their domestic waterfront tenants about rentals via the internet and mail outs. However, Maritime better explains its policies and precinct rates on their website than Lands.

**Chapter 3
Are agencies reviewing rental practices to ensure improvements consistent with the IPART report**

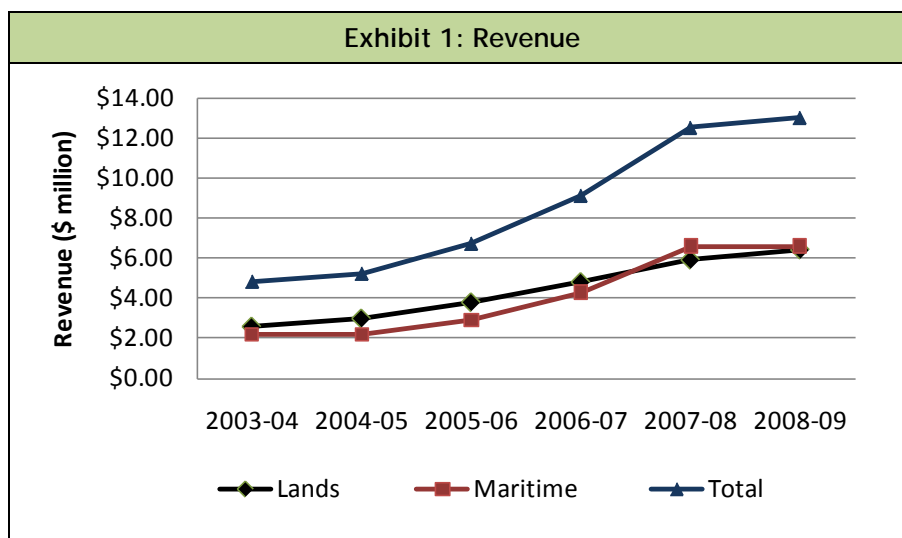
We found that both agencies made adjustments to their policies and procedures as a result of customer complaints. Complaints from tenants in Sydney have been constant and helped drive changes.

We found that the agencies are aware of complaints and their nature. However, they do not have a system to record all complaints and inquiries on domestic waterfront tenancies.

The most common unresolved complaints relate to the rent increases and the rate of return.

Increase in rents

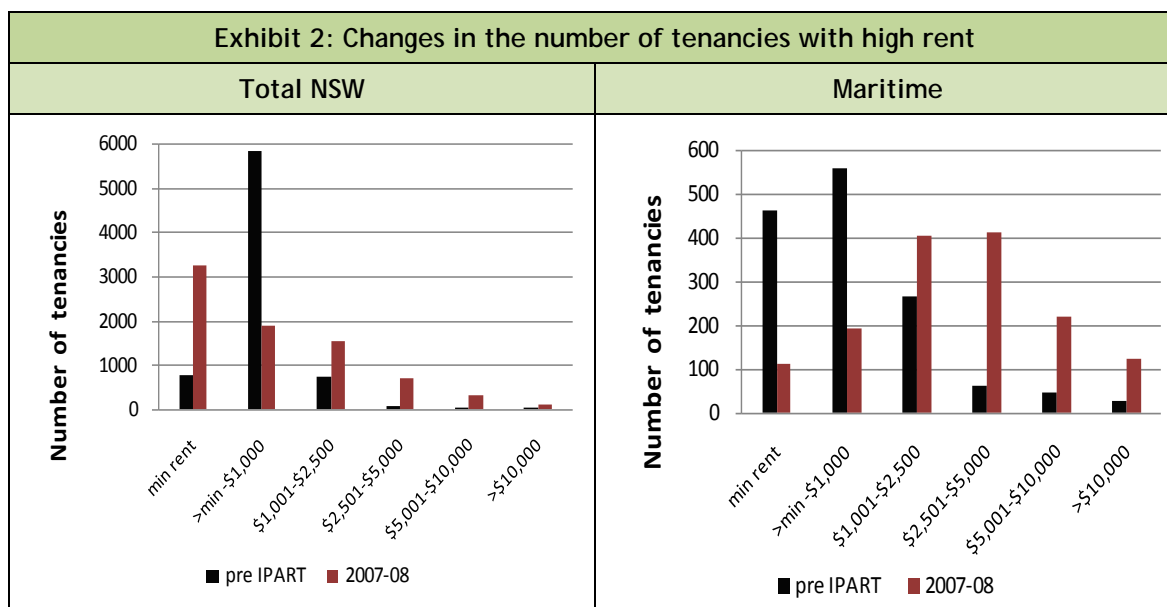
We found that the pegging of rents to market proxies resulted in significant increases in rent and revenue to government. As indicated below, revenue has increased over five years from nearly \$5 million to \$13 million.



Source: Lands and Maritime

The percentage of tenants paying rent above \$1,000 has increased by 23 per cent since the introduction of the IPART recommendations. In 2004, 12 per cent of waterfront rentals were above \$1,000 per year. By 2008, 35 per cent of rentals were above \$1,000 per year.

Higher rent increases have occurred in precincts with higher property values - within Sydney Harbour and Pittwater. In these areas a greater number of tenants moved into higher rent brackets. The increases can be readily demonstrated in Maritime where the number of tenants who pay rent up to \$1,000 decreased by 714 from 1022 (72 per cent) in 2003-04 to 308 (21 per cent) in 2007-08.



Source: Lands and Maritime

Note: The minimum rent in 2003-04 was \$77 in Lands and between \$110 and \$660 in Maritime. The minimum rent in 2007-08 was \$440 in Lands and \$434 in Maritime.

The average annual rent increase across both agencies over the last four years was below \$420 which is in line with the IPART projections. This was achieved because of the high number of low bracket rents in Lands. However, as indicated above rents have increased significantly for many tenants. As discussed in Chapter 2, the rent increase for some tenants was \$2,500 during the phase in of increases.

We found that overdue payments are high relative to industry standards. Currently, some tenants in the Sydney area are threatening to pay less than their annual rent until the net rate of return is adjusted. This has the potential to increase overdue payments.

We found that the process of reviewing practices has been slow and fragmented.

Revised precincts

We found that Lands and Maritime reviewed and increased the size of precincts to further smooth out the value of the waterfront land. But Maritime introduced the new precinct rates 13 months earlier than Lands.

We found that Lands did not conduct comprehensive consultations and communication with external stakeholders over the past four years to the same extent as Maritime.

Awaiting review of net rate of return

We also found that both agencies have yet to review the net rate of return. They are planning to do this jointly in 2009. This will be over five years since the implementation of the IPART recommendation. The IPART report stated that: '*The net rate of return will need to be regularly reviewed*'. In response to the request from Maritime, the IPART advised in November 2007 that the review of the rate of return should commence around the middle of 2008.

A broadly based and static rate of return does not appear to represent market value. Advice from property valuation experts is that the rate of return is area and time specific. This is also the case for the statutory land values. However, we found that the net rate of return and precinct statutory land values used to calculate rentals are averaged over different periods and the current rate of return is for the whole of NSW. This is consistent with the IPART recommendations.

We found that the ability for tenants to object to the rent calculation is limited because it is determined by the prescribed formula. As the transparency of rent calculations and the disclosure of policies and procedures improved, complaints about rentals dipped.

Recommendations

The following recommendations are proposed to ensure more effective implementation of the IPART recommendations.

Lands and Maritime should improve customer service by:

1. Strengthening collaboration by agreeing on a joint approach to limit, control and reduce differences in their practices. A memorandum of understanding will ensure that:
 - reviews of practices are conducted jointly and on an agreed cycle (page 48)
 - differences in the introduction of revised practices are minimised (page 42)
 - phasing-in practices are standardised and differences in rents are minimised (pages 23 and 25).

These arrangements should be in place by December 2009 (page 30).

2. Further improving communication with tenants by:
 - addressing tenants' issues in a more open and timely manner, including implementing processes to prioritise them and advise tenants of progress (pages 39 and 46)
 - making policies and decisions transparent, especially with rental invoices, to compensate for the limited rights of appeal (page 31).
3. Extend and promote the option of paying rent in instalments to all tenants by June 2010 (page 38).
4. Introducing a systematic approach to recording and managing inquiries and complaints on domestic waterfront tenancies to ensure responses are appropriate and timely by December 2010 (page 45).
5. Jointly reviewing the net rate of return in an open and consultative manner by December 2009. The review should include assessment of the net rate of return from a location and time specific perspective, similar to the approach taken for assessing the statutory land value of precincts (pages 23 and 48).

In addition:

6. Maritime should replace the old leases with the new leases by December 2010 to apply the rental formula to all domestic waterfront tenancies. (An exception is those long term leases that cannot be replaced until lease term has expired.) (page 22)
7. Lands should:
 - ensure that the occupancy areas are included in the precinct statutory land valuation calculations, similar to Maritime by December 2009 (page 22)
 - include on their website all policies on domestic waterfront tenancies and specifically information on the calculation of rent rate per precinct, similar to Maritime, by December 2009 (page 31).

Policy on Domestic Waterfront Tenancies

The Government's acceptance of the IPART recommendations as policy resulted in significant increases in rents for many domestic waterfront tenancies.

The Auditor-General received a number of complaints from a cross section of tenants about the rent increases and the rental formula. Some of the increases in tenant's rents from 2004 to 2009 were from less than \$2,000 to over \$15,000 (an increase of over 600 per cent) in Maritime, and from \$120 to more than \$3,000 in Lands.

The Public *Finance and Audit Act 2006* does not permit the Auditor-General to question the merits of policy objectives of the Government. Therefore, the focus of the audit is on the implementation of the policy.

This audit does not comment on the merits of the policy issues, for example:

- setting rents on a market basis
- the use in the rental formula of:
 - the net rate of return (currently 3.05 per cent)
 - statutory land values
 - a discount factor (currently 50 per cent)
- the minimum rent (currently from \$434 to \$440)
- rebates for pensioners and water access only properties
- phase-in parameters for rent increases (to a maximum of \$2,500+CPI).

It is a matter for the Government of the day to determine the policy for these issues, including the use of the formula and the components of the formula.

This audit assesses the efficiency and effectiveness of the administration of domestic waterfront tenancies by the two agencies. This report to Parliament is the result of the assessment of how well the two agencies implemented and reviewed the IPART recommendations.

Response from MSW Maritime

I refer to your correspondence of 18 August 2009 enclosing a copy of the final report of the Performance Audit - Administering Domestic Waterfront Tenancies.

I note the report finds NSW Maritime is generally performing well in its domestic waterfront lease administration, particularly as a result of the 2007 Review of Domestic Waterfront Lease Administration.

NSW Maritime accepts the recommendations made in the report and has already implemented some of the recommendations. I provide the following information in response to each of the recommendations in the report which are relevant to NSW Maritime.

In relation to recommendation 1, NSW Maritime will continue to work collaboratively with the Land and Property Management Authority to improve consistency in the implementation of domestic waterfront tenancies where feasible. However, the differences between the organisations, particularly in relation to legislation and tenure arrangements will result in some minor variations continuing.

In response to recommendations 2 and 4, NSW Maritime considers customer service to be an important aspect of its role as lessor and is committed to improving communication with its lessees. I note the performance audit found NSW Maritime has made significant improvements in managing feedback, with a significant reduction in tenant complaints and arrears since 2007.

NSW Maritime currently offers instalment payment arrangements to lessees and is therefore already implementing recommendation 3.

In relation to recommendation 5, NSW Maritime is committed to reviewing the rate of return for domestic waterfront tenancies during 2009 and is working with the Land and Property Management Authority to develop the terms of reference.

The final recommendation relevant to NSW Maritime, recommendation 6, suggests NSW Maritime replaces its old leases, which do not permit application of the IPART-based rental formula. NSW Maritime has an existing program to convert all leases to the new domestic leasing arrangements within the proposed timeframe.

Thank you for the opportunity to provide a formal response.

(signed)

*Steve Dunn
Chief Executive*

Dated: 9 September 2009

Response from Land-and Property Management Authority

Thank you for your letter providing the Performance Audit Report of Administering Domestic Waterfront Tenures.

I am pleased to see the Performance Audit finds that the Land and Property Management Authority (LPMA) is broadly achieving outcomes consistent with the 2004 IPART report.

The Performance Audit also acknowledges that the recent macro precinct and three year rolling average reforms implemented by both LPMA and NSW Maritime have contributed to improving the application of the IPART formula and to addressing tenants concerns.

LPMA agrees with most of the recommendations and many of these are already being implemented.

The report highlights opportunities to fine tune processes and practices as well as communication with tenants. LPMA welcomes the opportunity provided through the performance audit process to reflect on these and has been working towards improving policies and practices. LPMA is already reviewing, revising and updating the communications information provided to tenants via the internet, exploring options for all tenants to pay in instalments, providing opportunities for tenants to sublicense berthing areas, considering the inclusion of occupancy areas within PSLV calculations and implementing a new plain English licence.

Whilst the audit report points out that a review of the rate of return could have been undertaken at the same time as the precinct values, I do not agree with this and believe that a staged review of the IPART formula components has placed LPMA in a better position to properly review the rate of return and phase in any changes in a controlled manner. This review is currently being undertaken and involves the engagement of an external expert, with stakeholder consultation as part of the process.

The Auditor General has identified three areas of inconsistency with the IPART recommendations, being the regular review of the rate of return, the CPI indexing of the minimum rent and the application of the phase in provisions. I believe that the current timing of the review is appropriate, that the CPI indexation is consistent with the legislative requirements under the Crown Lands Act 1989, and the application of the phase in provisions, as acknowledged by the Auditor General in the report, is only broadly outlined and not prescribed, with the phase in provisions being applied by LPMA in a considered and equitable way for all tenants.

I would like to emphasise that there will always be some inconsistencies between LPMA and NSW Maritime in applying the IPART recommendations, and this is due to the differing roles, resources and functions of each agency, different tenures and legislative requirements. Despite these differences, LPMA will collaborate more closely with NSW Maritime to better align practices where appropriate and to work towards improving customer services.

Thank you for the opportunity to respond to the Performance Audit Report.

(signed)

*Warwick Watkins
Chief Executive Officer*

Dated: 11 September 2009

1 Introduction

1.1 What are domestic waterfront tenancies?

Domestic waterfront tenancies are occupancies of an area of public land for private structures including jetties, swimming pools, seawalls, boatsheds and slipways. The land is the submerged or reclaimed land.

In June 2009, there were over 8,300 domestic waterfront tenancies in New South Wales.

1.2 Who manages them?

There are three agencies responsible for administering domestic waterfront tenancies in New South Wales:

- Maritime administers over 1,400 tenancies in Sydney Harbour and Botany Bay
 - the Department of Environment, Climate Change and Water administers over 40 tenancies in Cottage Point, the Ku-ring-gai Chase National Park *
 - Lands administers over 6,800 domestic waterfront tenancies elsewhere in NSW.
- (* these tenancies were not included in the audit)

1.3 The impact of the waterfront structures?

Structures built on seabeds, riverbeds and reclaimed land provide both gains and losses to the public. These are illustrated below.

Exhibit 3: Impact of domestic waterfront structures	
Advantages	Disadvantages
<ul style="list-style-type: none"> ▪ increase options for recreational and sporting activities such as fishing and boating ▪ provide access for emergency services ▪ protect adjacent land against water erosion ▪ increase the opportunity for others to use swing moorings and commercial berthing. 	<ul style="list-style-type: none"> ▪ take up public space ▪ limit or obstruct public access to public areas on the waterfront ▪ increase boating congestion ▪ change the visual character of waterfronts ▪ create safety concerns if in poor repair.

Source: Audit Office research

1.4 The regulation of public waterfront land

Domestic waterfront tenancies administered by Lands and the Department of Environment, Climate Change and Water are on the Crown land. The *Crown Lands Act 1989* outlines how to manage the land to maximise the benefits of the people of New South Wales. It sets out six principles of land management:

1. public use and enjoyment of appropriate Crown land must be encouraged
2. where possible, multiple use of Crown land must be encouraged
3. where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
4. environmental protection principles must be observed in relation to the management and administration of Crown land
5. the natural resources of Crown land must be conserved wherever possible
6. Crown land must be occupied, sold, leased, licensed or otherwise dealt with in the best interest of the State consistent with the above principles.

The domestic waterfront tenancies administered by Maritime are on freehold land held by the agency. The *Port and Maritime Administration Act 1995* allows Maritime to lease the land.

1.5 Development of the rental formula

Prior to the IPART review

Prior to the implementation of the IPART formula for domestic waterfront tenancies the determination of rentals across the state was based on regional practices. In the absence of a state wide methodology, tenants were paying different amounts for similar occupancies and entitlements. The administration of these occupancies was inefficient and the return to the state was below market value.

The ad-hoc pricing structure was further compounded by a disparate range of tenure types including permissive occupancies, leases and licences.

In October 2003, the Premier provided the Independent Pricing and Regulatory Tribunal (IPART) with terms of reference to:

- align rental returns to reflect and maintain market value
- ensure that the minimum rent covers administration costs
- consider tenants' ability to pay
- consider appropriate equity arrangements (such as those with water access only).

The review was to develop a set of rules which could be applied consistently to all domestic waterfront tenancies and streamline the administration of tenancies. It was to recognise that land affected by waterfront occupancies is a valuable public asset and the Government, on behalf of the public, is entitled to a reasonable return on this asset.

In its April 2004 report, the IPART recommended a formula based on Lands' formula previously used to calculate rent for waterfront tenancies on the North Coast.

The rental formula and its components are discussed in Chapter 2.

The formula uses proxies to determine a market return for the tenants' recreational use of public land.

A list of the key IPART recommendations is provided in Appendix 3.

The IPART report observed that owners of the adjoining land are free to abandon their use of the public waterfront if they believe its costs outweigh its value to them. However, this option is problematic for many tenants as the structures add considerable value to properties and, in some cases, can be the only means of access.

Government policy

The Government accepted all IPART recommendations in April 2004. The recommendations were to be implemented by the end of April 2006 on the basis that rent was part of a larger 'package'. The package includes use of leases/licences, extending occupancy terms and rights to transfer occupancies. In December 2007, the Government allowed Maritime to use leases as a tenancy agreement.

1.6 Domestic waterfront tenancies in other jurisdictions

Our research shows that there is general acceptance, beyond NSW, of the need to charge for the private occupation of public land. There is also a common theme that the charges should be market based.

With little market evidence on which to base a rent for a domestic waterfront tenancy, government agencies in three jurisdictions in Australia are calculating rent using adjoining land values and making an adjustment for the rented land being seabed or riverbed. Licences are more frequently used than leases as a tenancy instrument. A comparison of the waterfront tenancies in NSW and other jurisdictions is provided below.

Exhibit 4: Domestic waterfront tenancies in Australian States						
	NSW	Queensland	Victoria	South Australia	Western Australia	Tasmania
Tenancy instrument	licence and lease	permits/licences	licence	licence and lease	licence	lease
The length of tenure	3 or 20 years	Annually renewed	10 years	Annually renewed	Annually renewed	5 years
Annual rent based on adjoining land value	Yes	Yes	Yes	No	No	No
Minimum rent	\$440	N/A	\$104	\$151*	\$105**	\$200
Automatic rebates available	Yes	No	No	No	No	No
Information about tenancy rent available online	Yes	No	No	No	Yes	No

Source: Audit Office research

Note: * for tenancies on the Murray River

** WA has an annual flat rent

In New Zealand regional councils decide whether to charge rent for occupying coastal marine areas. In setting the charges, the councils have to consider the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the area. Several regional councils have not introduced the charges because of the difficulties in working out a fair regime of charging. The regional council of Southland charges rent for domestic waterfront occupancies based on the area of occupancy with the maximum rent of NZD425 per annum. A parliamentary inquiry was recently conducted into the management of New Zealand's foreshore and seabed. Legislation is expected to clarify rent determination.

In the US State of Washington the rent for domestic waterfront occupancies is based on the value of the adjoining land and the rate of return. For example, they use a lower discount factor and higher rate of return than NSW. The result is a similar level of rent.

In British Columbia there is a rent of between CAD200 and CAD400 per annum depending on the occupancy size and the lease period is for 20 years.

1.7 What is the focus of the audit?

In recent years, the Auditor-General has received complaints about high and inconsistent rents for the private use of waterfront public land since the alignment to market based valuation in 2004.

As a result, the Auditor-General requested a preliminary study in support of a possible performance audit into the implementation of the IPART report of 2004. During this stage, discussions were held with the agencies and Members of Parliament, information was provided by the agencies on their practices and nearly 170 submissions were received from interested tenants.

Based on the broad level of concerns advised by tenants, continuing changes being made to administrative practices and some variation in practices from IPART recommendations the Auditor-General decided to proceed with the audit.

The audit assessed if Lands and Maritime are achieving the outcomes consistent with the IPART report on administering domestic waterfront tenancies.

Specifically we examined whether Lands and Maritime are:

- administering rentals in line with the IPART report recommendations
- reviewing rental practices to ensure improvements consistent with the IPART report.

Please see Appendix 1 for further details of the audit approach.

2 Are the agencies administering rentals in line with the IPART report recommendations?

At a glance

The key question we wanted to answer was:
Are the agencies administering rentals in line with the IPART report recommendations?

Our assessment
We found that the agencies have implemented the majority of the IPART recommendations. Both agencies made adjustments and interpretations to the recommendations. This led to inconsistencies with the IPART recommendations and to different practices between the agencies. Collectively, the inconsistencies with the IPART recommendations and differences between the agencies' practices are significant.

Collaboration between Lands and Maritime is not formalised to ensure reduction of differences in administering domestic waterfront tenancies. The agencies work together to the extent necessary on implementing key policies and otherwise work separately to administer the implementation within their operations.

Initial communication with tenants about new policies and procedures was not sufficient but has improved since 2008.

2.1 Are agencies' practices consistent with the recommendations?

Our assessment

The agencies took early actions to implement the IPART recommendations. Adjustments and interpretations were made to recommendations by the agencies to suit their legislative and operational circumstances. Some of these have led to inconsistencies with the IPART recommendations and to different practices between the agencies.

Lands started implementing IPART recommendations in January 2005 and Maritime in December 2004.

We found the following practices are consistent with the recommendations:

- both agencies apply the rental formula to all but a small number of leases
- Lands uses licences
- both agencies apply rent phase-in
- Lands applies rebates to water access properties (Maritime does not have properties of this type)
- both agencies provide jetty sharing options
- both agencies increased the period of agreements to 20 years
- both agencies allow transfer of a tenancy agreement to a new owner
- both agencies apply hardship provisions on a case by case basis.

We also found the following inconsistencies with the recommendations:

- initially the agencies established a large number of precincts that did not support the smoothing out of differences in rents which has since been addressed
- Maritime use leases not licences (this was sanctioned by Cabinet in December 2007)
- the rate of return applied in the rental formula has yet to be reviewed

- a small number of rents in Maritime are not calculated in line with the IPART formula because the agency has not formally replaced old agreements
- Lands adjusts the minimum rent by the CPI quarterly
- annual rent increases for some of Lands' tenants exceeded the cap of \$2,500 + CPI, although the average rent increase over the phase-in period is below \$2,500.

There are also differences in how the two agencies administer the domestic waterfront tenancies:

- agencies use different methods for calculating phase-in rent increases
- agencies have different policies for providing rebates for homeowners when one is a pensioner and the other is not
- Lands re-commenced phase-in in 2009
- Lands does not include all occupancy areas in precinct statutory land calculations.

A number of these inconsistencies and differences have resulted in comparatively lower rent in Lands. These include: the method to calculate phase in rent increases, the re-introduction of phase-in of rents with the new precincts, and providing rebates to households with both a pensioner and non-pensioner.

A contributing factor to the variations is the different legislation the agencies operate under.

The following analysis covers the key IPART Report recommendations.

Rental formula

IPART recommendation	<p><i>A general formula should be used to set occupancy rentals that reflect the market value of the occupancy. This formula incorporates a 3.05 per cent rate of return and a 50 per cent discount factor.</i></p> <p><i>General rent = Precinct Statutory Land Value (\$/m²) x Occupancy Area (m²) x Rate of Return (3.05%) x Discount Factor (50%)</i></p>
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We found that Lands applies the formula calculating rent for all domestic waterfront tenancies and Maritime applies it calculating rent for the majority of tenancies.

Maritime does not apply the IPART formula to over 45 'old' leases. Tenants who have these leases are still being charged in accordance with their specific lease conditions. The agency advised that it is going to terminate all old leases by the end of 2010 and replace them with the new lease agreements. An exception is the long term leases that cannot be replaced until the lease term has expired. The majority of other Maritime leases were based on a 'wetland' rate and did not require variation for the rent based on the IPART formula.

A typical example of the formula's application for Pittwater 3 precinct in Sydney for a 150 square metre area of occupancy is:

$$\$2,546.61 \text{ per m}^2 \times 150\text{m}^2 \times 3.05\% \times 50\% = \$5,825.40$$

Recommendation Maritime should replace old occupancy agreements with the new ones by December of 2010 to apply the rental formula to all tenancies. (An exception is the long term leases that cannot be replaced until lease term has expired.)

Precinct Statutory Land Value (PSLV)

IPART recommendation	<p><i>The Statutory Land Value (SLV) of the adjoining freehold land, provided by the Valuer General should be used as the basis for determining the value of the occupancy.</i></p> <p><i>To maintain currency, rentals should be calculated annually using latest SLV available and precincts should be defined as homogeneous waterfront areas.</i></p>
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The IPART formula for calculating PSLV is:

$$\text{Precinct SLV (\$/m}^2\text{)} = \frac{\text{Total SLV of all freehold properties in precinct}}{\text{Total area of freehold properties in the precinct} + \text{Total area of occupancy in the precinct}}$$

A major part of implementing the IPART report was the establishment of PSLVs.

We found that both agencies obtain the SLVs of waterfront properties from the Valuer General annually and include them in rental calculations.

A three year rolling average statutory land value is used to calculate SLV within a precinct. This helps smooth out the impact of fluctuations. The use of rolling average is not specifically in the IPART recommendation, but conforms to the spirit of them.

We found both agencies define a PSLV as the sum of statutory land values of all properties with licences/leases within the precinct, rather than all properties in the area as prescribed by the IPART. Maritime advised that a land value of some precincts in Sydney would be significantly higher if all freehold properties were included.

We believe that this variation to the precinct formula is reasonable. However, the agencies use different periods to calculate the three year average PSLV. For example, in 2009 Lands used PSLVs for 2006 to 2008 and Maritime used 2005 to 2007.

We also found that not all domestic waterfront occupancy areas under Lands licences are included in PSLV calculations. All occupancy areas under Maritime leases are included in the PSLV calculations, because leased areas are recorded in the description of the SLV notifications. This leads to variation in PSLV calculations between the two agencies.

Recommendation Lands should ensure that all occupancy areas in the precinct are included in the precinct statutory land valuation calculations, similar to Maritime by December 2009.

Net rate of return

IPART recommendation	<i>Rentals for domestic waterfront tenancies are to be calculated as an appropriate rate of return on the value of the tenure. A net rate of return of 3.05 per cent is included in the rental formula. The net rate of return is to be reviewed regularly.</i>
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We found that Lands and Maritime apply the recommended net rate of return of 3.05% in the rental calculations. We also found that the net rate of return is yet to be reviewed. However, it is acknowledged that while the IPART report recommended that the net rate of return be reviewed regularly it did not specify a required frequency for such review. In response to a request by Maritime for such advice, the IPART advised in November 2007 that the review of the rate of return should commence around the middle of 2008. The two agencies propose a joint review in 2009.

The IPART report based the 3.05 net rate of return on analysis of rates of return for rental properties across the State for the ten years period to 2003.

Recommendation Lands and Maritime should jointly review the net rate of return in an open and consultative manner by December 2009.

Further analysis of the rate of return is made in Chapter 3.

Discount factor of 50%

IPART recommendation	<i>A discount factor of 50% is to be applied to the value of the adjoining freehold land.</i>
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We found that Lands and Maritime apply the discount factor of 50 per cent when calculating rent for domestic waterfront tenancies consistent with the IPART recommendation.

Minimum rent

IPART recommendation	<i>The minimum rental is set at \$350 per year, and indexed each year using the CPI as an escalation factor. The minimum rent is to payable where the rent calculated from the formula is less than \$350.</i>
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Rate of minimum rent We found that Maritime applies the minimum statutory rent adjusted annually by the Sydney CPI consistently with the IPART recommendation. However, Lands adjusts the minimum rent quarterly using the Sydney CPI as required by the *Crown Land Act 1989*.

This results in differences in minimum rent charged by Lands and Maritime. Currently, Lands' minimum annual rent with GST is \$440, which is \$6 more than Maritime's minimum rent.

Recommendation Lands and Maritime should strengthen collaboration by agreeing on a joint approach to limit, control and reduce differences in their practices. This should include using the same method to adjust the minimum rent by the CPI or recognise differences and any impacts.

Tenants who pay minimum rent

We found a significant increase in the number of tenants paying minimum rent in Lands and a significant decrease in Maritime. Since 2003-04, the total number of tenants paying minimum rent has increased by 2,469. This is because many tenants paid below the new minimum rent of \$350 before 2004. The number of tenants paying the minimum rent in the past three years is declining.

In 2008-09, 47 per cent of Lands tenants and five per cent of Maritime tenants paid the statutory minimum rent. Since the introduction of the IPART recommendations, the number of Lands tenants that pay minimum rent has doubled. However, the number of Maritime tenants that pay minimum rent has decreased to nearly a quarter in the same period. This is because of the higher land values in Sydney.

Exhibit 5: Number of tenancies with minimum rent						
	2003-04	2004-05*	2005-06	2006-07	2007-08	2008-09
Lands	319	1,476	2,635	3,383	3,234	3,181
Maritime	464	425	222	130	114	71
Total	783	1,901	2,857	3,513	3,348	3,252

Source: Lands and Maritime (Maritime data is based on calendar years)

Note: * transition year between the old and new rents

Phasing-in rent increases

To soften the impact of the rent increases on existing tenants the IPART report recommended the increases be phased-in over varying years and that annual increases are limited to \$2,500 +CPI.

IPART recommendation	<p><i>For existing tenants, annual rentals to be calculated using the recommended formula with the following provision:</i></p> <ul style="list-style-type: none"> ▪ <i>where the rental increase is less than \$1,000, the full rental should be phased-in over two years</i> ▪ <i>where the rental increase is between \$1,000 and \$10,000, the full rental should be phased-in over 4 years, with a maximum increase of \$2,500 per year</i> ▪ <i>where the rental increase is greater than \$10,000, the full rental should be phased-in over 6 years, with a maximum increase of \$2,500 per year</i> ▪ <i>all amounts in the above points have been expressed in 2004 dollars and are to be indexed annually by the CPI from 30 June 2004.</i>
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We found that Lands and Maritime introduced phasing-in in January 2005 and December 2004 respectively. However, the agencies use different approaches and these results in different rents. The IPART report did not prescribe how to calculate the phase-in rent increases, only the broad outline in their recommendation above.

The IPART recommendation required an initial calculation of the difference between the new and the old rent. Then, depending on which band the increase falls into, the rent will increase to the full amount over a prescribed period of between two and six years. After the phase-in period the rent will equal the total amount calculated in line with the IPART formula.

The different approaches arise from how the annual rent increases are calculated. Lands uses the 2004 baseline rent to do this and Maritime uses the rent base from the previous year. This results in higher annual rent increases in Maritime than in Lands for similar tenancies and it is illustrated below.

Exhibit 6: Example of rent calculation with phase-in rent increase for 150 m ² occupancy area					
Rent period starts	Rent rate	Phase-in	Rent cap	Net annual rent Maritime	Net annual rent Lands
	(\$/m ²)	(year)	(\$)	(\$)	(\$)
01/02/2004				1,932	1,932
01/02/2005	71.50	1	2,560	4,492	4,130
01/02/2006	111.88	2	2,658	7,150	6,882
01/02/2007	107.19	3	2,704	9,854	9,005
01/02/2008	88.52	4	2,820	12,674	9,496

Source: Audit Office research

Maritime tenants are further disadvantaged in comparison to Lands' tenants. In February 2009, following changes to precinct boundaries, Lands re-applied phase-in provisions to all accounts for rent increases over \$100. In effect, the 2004 provisions recommence and apply to a greater number of tenants, and the rent increases will be smaller than in Maritime.

Maintaining cap on rent increases

We also found that Lands and Maritime have different methods to manage annual rent increases to keep them below the cap for existing tenants. This only applies to tenants in high land value precincts or with large occupancies.

Maritime calculates the cap in accordance with the IPART recommendation. This includes adjusting the cap of \$2,500 by the CPI annually. However, Lands uses an average cap for rent increases over the phase-in period and does not adjust the cap with the CPI. It can result in one off annual rent increases above the recommended cap for some tenants in Lands.

Recommendation

Lands and Maritime should strengthen collaboration by agreeing on a joint approach to limit, control and reduce differences in their practices. This should include standardising phasing-in practices and minimising differences in rents.

Phasing-in of rent increases for existing pensioners

IPART recommendation	<p><i>For existing tenants, where the rights holder is a pensioner the annual rent should be calculated using the recommended formula, with the following provision:</i></p> <ul style="list-style-type: none">▪ <i>the rent calculating formula should be phased-in over a period of up to seven years</i>▪ <i>in the first three years, the rent should increase to the minimum rent of \$350 per year</i>▪ <i>in the following four years, the rent increase should be limited to a maximum of \$162.50 per year</i>▪ <i>from the 7th year on, the annual rent should be limited to 50 per cent of the full rent calculated using the formula or a maximum of \$1,000 per year in 2004 dollars (to be CPI adjusted each year), whichever is lower.</i>
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We found that both agencies are phasing-in rent increases for pensioners consistent with the IPART recommendation.

Pensioners are persons who receive a pension, benefits or allowances from the Commonwealth Government under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*. Reference is made to this definition in the *Crown Land Regulation 2006*, Clause 43. Self-funded retirees are not regarded as pensioners for domestic waterfront tenancies.

The change in Government policy saw significant increases in rents for some pensioners. Prior to the IPART recommendations minimum rents for waterfront tenancies were as low as \$77 for a pensioner in a Lands precinct and \$110 in a Maritime precinct. The equivalent rent is now \$440 and \$434 respectively.

For existing pensioners with rent below the statutory minimum rent, both agencies increased rent incrementally to the statutory minimum over the first three years of implementation. From then the rent increases were limited to \$162.50 per annum. For pensioners that had rent above the statutory minimum, the 50 per cent discount with a cap of \$1,000 + CPI has been applied.

In May 2009, there were 507 tenants in this category, comprising 466 tenants in Lands and 41 tenants in Maritime.

Phasing-in of rent increases for tenants who become pensioners

IPART recommendation	<p><i>For new rights holders who are pensioners or existing rights holders who become pensioners, the annual rent should be 50 per cent of that calculated using the formula or the minimum rent, whichever is higher.</i></p>
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We found that both agencies are phasing in rent increases for tenants who become pensioners consistent with the IPART recommendation.

Since the introduction of the IPART formula, 146 existing clients have contacted Lands and ten have contacted Maritime and provided their eligibility for the 50 per cent rent discount on the calculated rent. In May 2009, there were 123 tenants in this group, comprising 115 tenants in Lands and eight tenants in Maritime.

Water access only (WAO) properties

IPART recommendation	<i>For occupancies adjoining water access only properties, a rebate of \$250 should be applied after calculating the rent, subject to the maintenance of the minimum rent.</i>
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We found that only Lands has tenants with water access only and applies the rebate as required by the IPART recommendations to approximately 130 tenants. Our comparison with practices in other states revealed that NSW is the only jurisdiction consistently applying rebates. (Chapter 1)

Lands provides WAO rebates of \$250. However, only 18 per cent (130) tenants with WAO receive this rebate as the rest (589) pay the statutory minimum rent. Lands adjusts the rebate quarterly by the CPI, which is additional to the requirements of the IPART recommendation.

Complaints about the administration of the rebate are discussed in Chapter 3.

Exhibit 7: Pittwater WAO precinct - Scotland Island



Source: Google

Sharing the occupancy area

IPART recommendation	<i>Licences should require that the occupancy area is available for shared use with right holders wherever it is practicable.</i>
	<i>Where the structure on an occupancy is shared by a number of users, the occupancy rent should be equally apportioned between these users.</i>
	<i>Where the occupancy provides shared facilities, including multi-berth facilities that are used by a number of individual right holders, the rent increase should be calculated per right holder for the purpose of determining the phase-in provision.</i>

We found that both agencies provide for the sharing of occupancies and that Lands allows sub-letting which is not possible under Maritime leases.

Maritime has 58 leases where the leased area is shared between neighbours and 129 leases where the lease is held by a "home unit" entity with multiple dwellings where the structure leased may be a marina.

There are 51 shared licences for domestic waterfront tenancies administered by Lands. This does not include licences that are held by body corporate or strata management.

IPART believed structure sharing would reduce the number of intrusions into waterways such as Sydney Harbour.

Exhibit 8: Example of a shared structure with individual berthing areas for each licence holder



Source: Lands

We also found that where the structure on an occupancy is shared by a number of users, both agencies equally apportion the occupancy rent between these users and calculate rent increase per right holder for the purpose of determining the phase-in provision.

Hardship provision

IPART recommendation

Agencies were to give consideration to any case of a demonstrated hardship arising from increased rent on a case by case basis.

We found that Lands and Maritime grant hardship provisions on a case by case basis. This is discussed in Chapter 3.

Use of licence and lease agreements

**IPART
recommendation**

Licences should generally be used as the occupancy instrument for domestic waterfront occupancies. However, leases may be more suitable in particular circumstances.

We found that Lands uses licences consistent with the IPART recommendation and that Maritime uses leases. Maritime's continuing use of leases was approved by Cabinet in December 2007.

Leases provide greater benefits to the occupier as they offer exclusive occupation rights and can appear on the property title. For those reasons they are more likely to increase the value of the property. A disadvantage is that they can be more expensive to establish.

Maritime has a small number of leases that stipulate that the lessee must provide public access over and under a small part of the structure so that access to the inter-tidal foreshore zone is not impeded. Maritime provides a 50 per cent discount if the lease requires the lessee to share their facility with the public, regardless of whether the facility abuts a public reserve or freehold land.

Domestic waterfront licence holders in Lands do not have exclusive rights and cannot bar access to their jetties or reclaimed land. In addition, the public must have access across adjacent Crown foreshore land. Access can be provided by steps, ramps or walkways around the structure or by constructing structures such as slipways at ground level and not on piers.

Exhibit 9: A pathway allowing public access to the foreshore along this stretch of domestic waterfront structures



Source: Lands

Both domestic waterfront lease and licence holders are required as part of their tenure agreement to hold public liability insurance of minimum \$10 million.

Increase length of agreements

IPART recommendation	<i>The term of agreements should be established or extended to link to the economic and structural life of existing and any proposed structures.</i>
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We found that Lands and Maritime have provided the option for 20 year agreements. The minimum period for an agreement is three years.

A 20-year registered lease by Maritime requires a survey of the occupancy area by a registered surveyor costing approximately \$4,500. The estimated total cost of a 20-year registered lease is around \$10,000. Such survey is not required for three-year leases or 20-year unregistered leases and their cost is much lower. However, the registered lease has a more beneficial impact on the value of the property than the unregistered lease.

Lands does not require a survey by a registered surveyor for a 20-year licence. However, the applicant must provide survey information to a particular standard as specified by the determining authority such as local councils.

Transfer to new owners

IPART recommendation	<i>Terms should allow for licences to be transferred to a new owner if the adjoining freehold land is sold, for the remaining term of the licence.</i>
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We found that Lands has provided for the transfer of licences from 2005 and that this required amendment of the *Crown Land Act 1989*. The transfer arrangements can provide savings to the new tenants, as the transfer fee is less than the new licence fee.

Maritime lease titles, by their nature, were always transferable.

2.2 Are agencies collaborating in implementing the recommendations?

Our assessment The agencies are working together to align their policies on domestic waterfront tenancies. However, there is no memorandum of understanding between the agencies or overall strategy and plan to co-ordinate the implementation of the recommendations. Without this there is no formal approach to limiting, controlling and decreasing differences.

We found that the agencies are working together to align their policies on domestic waterfront tenancies. Examples of co-operation include agreement on:

- reducing the number of precincts, after separate reviews
- using 3 year rolling average PSLV
- conducting a joint net rate of return review during 2009.

However, there is no formal agreement between Lands and Maritime on administering domestic waterfront tenancies. As a result the implementation of changes to administration of rents is not always well co-ordinated leading to inconsistencies in practices such as described in Section 2.1.

Recommendation Lands and Maritime should strengthen collaboration by agreeing on a joint approach to limit, control and reduce differences in their practices. A memorandum of understanding should be in place by December 2009.

2.3 Can waterfront tenants access clear and concise information about rentals?

Our assessment In the past, the rental calculations have not been easily understood by tenants and information was not readily available. However, since 2008 the quantity and quality of information provided to tenants has improved.

We found that, in the past, both agencies provided limited information on rental calculations to tenants.

We also found that over the past two years, both agencies significantly improved communication with their domestic waterfront tenants via the internet and mail outs about rentals. This increased transparency and resulted in the decreasing number of inquiries and complaints from tenants.

Publicly available information is written in a clear and concise way. However, the level of information provided to tenants varies between the agencies. Unlike Maritime, Lands does not have policies related to domestic waterfront tenancies on their website and does not provide any detailed information on PSLV calculation.

Exhibit 10: Information provided to tenants on agencies' websites	
Lands	Maritime
<ul style="list-style-type: none"> ▪ Precinct maps with Precinct Statutory Land Values ▪ Fact sheet on waterfront tenancies including general information on rent calculation ▪ Domestic waterfront tenancies - Changes in rents - Questions and answers 	<ul style="list-style-type: none"> ▪ Precinct maps with wetland rates ▪ Rent calculation information for each precinct including the number of properties in the precinct, their total SLV, areas and occupancy area ▪ Domestic leasing policies and procedures

Source: Audit Office research

Information about rentals sent to tenants is similar to that provided on the agencies' websites.

Lands is currently working on an overall package of improvements on managing domestic waterfront tenancies including the introduction of a simplified plain English licence agreement. Lands is planning to complete this project by the end of 2009.

Recommendations Lands and Maritime should improve customer service by further improving communication with tenants, making policies and decisions as transparent as possible. This includes providing information on rental payments that is more simple, expansive and consistent.

Lands should include on their website all policies on domestic waterfront tenancies and specifically information on the calculation of rent rate per precinct, similar to Maritime, by December 2009.

3 Are agencies reviewing rental practices to ensure improvements consistent with the IPART report?

At a glance

The key question we wanted to answer was:

Are agencies reviewing rental practices to ensure improvements consistent with the IPART report?

Our assessment

The process of reviewing practices has been held in stages and has been slow overall. The major change to practices resulted from the review of precincts applied in the rental formula. This was in response to complaints from tenants, especially in Sydney where property values are higher. The increased size of precincts smoothed out the value of the waterfront land. The introduction of the new precinct rents by Maritime was within three years. Lands however, introduced the revised rents four years following initial implementation.

The other major component of the formula, the net rate of return has not yet been reviewed. Both precinct land values and rental rates of return are time and place specific and can be reviewed together. The foreshadowed review of the rate of return is to be a joint review and we commend this approach.

We found that overdue payments are high relative to industry standards. Currently, some tenants in the Sydney area are threatening to pay less than their annual rent until the net rate of return is adjusted. This has the potential to increase overdue payments.

The ability to object to the detail of the rent calculation is limited because the components of the formula are either predetermined (the net rate of return & discount factor) or calculated as a proxy (precinct SLV). These limitations impose a responsibility for maximum transparency on the part of the agencies, both in relation to information provided and approaches to dealing with complaints.

3.1 Do agencies review complaints and as a result make adjustments to their practices?

Our assessment

Both agencies have made adjustments to their policies and procedures as a result of reviewing complaints. Complaints from tenants, especially in Sydney where rents are higher, have been constant and helped drive changes. These changes include reducing of the number of precincts.

However, there are still a large number of unresolved issues arising from complaints. This is partially because the agencies do not have an effective system to capture and respond to systemic issues.

We found that the most significant review and adjustment involving tenants' complaints was reducing of the number of precincts to smooth out the difference in rent rates. Other changes resulting from complaints were the introduction of the three year rolling average precinct statutory land value and improved communication with tenants.

In addition, Lands introduced rebates to tenancies in Crystal Bay and Horseshoe Cove as the reclaimed foreshore land provides benefits to public, and Maritime amended procedures for applying for a lease and removing structures.

- Unresolved issues arising from complaints** However, there are still some unresolved issues arising from complaints which tenants brought to our attention in over 160 submissions including:
- explaining the increases in rent
 - revising and lowering the rate of return
 - providing higher rebates for WAO tenancies
 - providing rebates for long jetties
 - providing rebates for self-funded retirees
 - providing discounts for structures adjoining public reserves
 - explaining tenancy rates in comparison to other similar charges
 - explaining why the rent is not a tax
 - increasing transparency of revisions and the basis of individual rent calculations.

We examined these issues. Our findings are presented below, except for the issue of the rate of return which is discussed in Section 3.2.

Significant rent increases

We found that the pegging of rents to market proxies resulted in significant increases in rent and revenue to government. The higher rent increases occurred in higher value precincts in Sydney.

- Increase in revenue** The revenue from tenancies in 2008-09 was \$13 million. As indicated in the table below, over the last five years the revenue increased by \$8.2 million (171 per cent), while the number of tenancies increased by 763 (10 per cent). The revenue increased in Maritime by 200 per cent and in Lands by 146 per cent, although Lands has significantly more tenants.

Exhibit 11: Revenue from domestic waterfront tenancies in NSW						
	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
	million	million	million	million	million	million
Lands	\$2.6	\$3.0	\$3.8	\$4.8	\$5.9	\$6.4
Maritime	\$2.2	\$2.2	\$2.9	\$4.3	\$6.6	\$6.6
Total	\$4.8	\$5.2	\$6.7	\$9.1	\$12.5	\$13.0

Source: Maritime and Lands

Exhibit 12: The number of domestic waterfront tenancies in NSW						
	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Lands	6,095	6,172	6,227	6,259	6,383	6,844
Maritime	1,429	1,522	1,509	1,484	1,471	1,443
Total	7,524	7,694	7,736	7,743	7,854	8,287

Source: Maritime and Lands

It is also important to note that the unprecedented rise in property values between 1987 and 2002 escalated the calculation of rent based on market value. Minimum rents rose from \$77 to \$350+CPI, a significant increase in itself. The revenue collected reflects market value, and more than covers administrative costs. The minimum rent was determined on the basis that it equates to the costs of administration. For Lands, with 47 per cent of tenants paying minimum rent, 42 per cent of revenue for 2008-09 was required to cover administrative costs.

Movement of rents

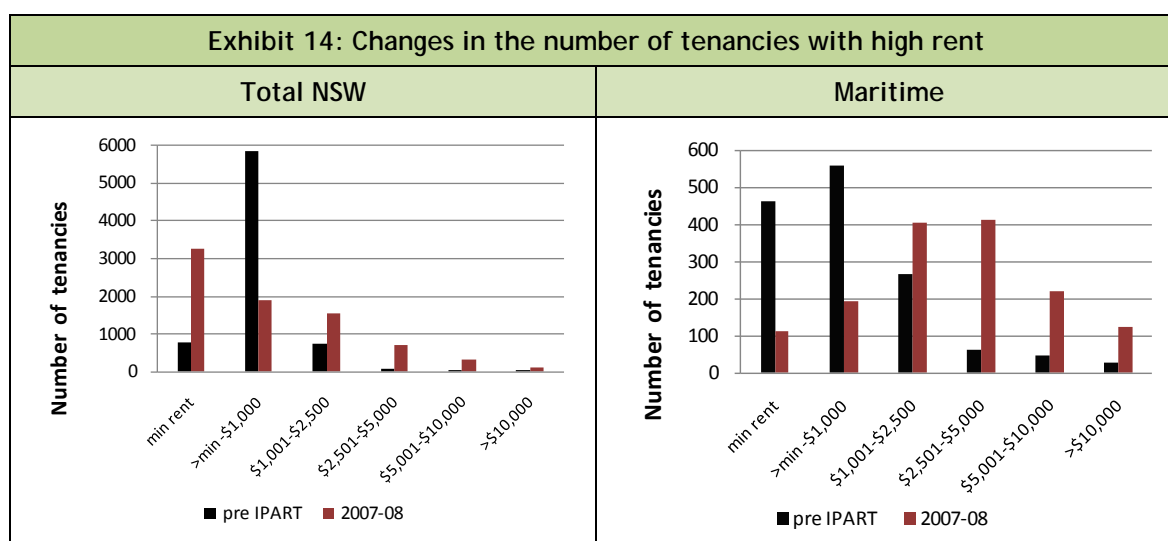
As shown in the table below the percentage of tenants paying rent above \$1,000 has increased by 23 per cent since the introduction of the IPART recommendations. In 2004, 12 per cent of waterfront rentals were above \$1,000 per year. By 2008, nearly 35 per cent of rentals were above \$1,000 per year. This clearly illustrates the movement of rents into higher bracket. Maritime has a higher proportion of tenants in rent bracket over \$1,000 than Lands.

New rents proposed by the IPART report were to range from a minimum of \$350 to more than \$10,000 per year in areas where land values are high.

Exhibit 13: Tenancies in rent brackets since 2004						
Rent bracket	Percentage of tenancies pre IPART			Percentage of tenancies 2007-08		
	Lands	Maritime	Total	Lands	Maritime	Total
Minimum rent	5.2%	32.5%	10.5%	50.7%	7.7%	41.4%
>Min rent to \$1,000	86.6%	39.0%	77.4%	25.1%	13.2%	24.1%
\$1,001 to \$2,500	7.7%	18.6%	9.8%	17.7%	27.6%	19.6%
\$2,501 to \$5,000	0.4%	4.4%	1.2%	4.7%	28.0%	9.1%
\$5,001 to \$10,000	0.0%	3.4%	0.7%	1.6%	15.0%	4.2%
>\$10,000	0.0%	2.1%	0.4%	0.2%	8.4%	1.7%

Source: Maritime and Lands

The higher rent increases have occurred in the precincts with higher property values - within Sydney Harbour and Pittwater. In these areas a greater number of tenants moved into higher rent brackets. The increases can be readily demonstrated in Maritime where the number of tenants who pay rent up to \$1,000 decreased from 1022 in 2003-04 to 308 in 2007-08 and where only 114 tenants pay minimum rent. In 2008-09, the number of tenants paying minimum rent further declined to 71.



Source: Lands and Maritime

Note: The minimum rent in 2003-04 was \$77 in Lands and between \$110 and \$660 in Maritime.
The minimum rent in 2007-08 was \$440 in Lands and \$434 in Maritime.

The IPART report calculated that nearly 90 per cent of the single waterfront tenants would have average rental increases of less than \$420 per year.

The average annual rent increase across both agencies over the last four years was below \$420 which is in line with the IPART projections. This was achieved because of the high number of low bracket rents in Lands.

In 2007-08, out of the 61 precincts in NSW there were:

- 44 precincts with average rent between the minimum rent and \$1,000, including 17 precincts with average rent equal to the minimum rent
- 9 precincts with average rent between \$1,001 and \$2,500
- 4 precincts with average rent between \$2,501 and \$5,000
- 3 precincts with average rent between \$5,001 and \$10,000
- 1 precinct with average rent over \$10,001.

In the same period, out of the 21 precincts in Sydney there were:

- 7 precincts with average rent between the minimum rent and \$1,000, including 1 precinct with average rent equal to the minimum rent
- 6 precincts with average rent between \$1,001 and \$2,500
- 4 precincts with average rent between \$2,501 and \$5,000
- 3 precincts with average rent between \$5,001 and \$10,000
- 1 precinct with average rent over \$10,001.

Prior to the implementation of the IPART report recommendations, the rent for domestic waterfront tenancies had not changed for 15 years, and was relatively inexpensive. For example, the rate for domestic waterfront tenancies in Sydney's eastern suburbs was \$15.00 per meter square and was the highest of all precincts, and the rate for domestic tenancies along the Parramatta River was \$3.50 per metre square.

We found that despite high rent increases Lands does not routinely provide options of collecting rent by instalments. While Maritime provides the option, it is only highlighted in the Concession and Hardship policy document.

Recommendation Lands and Maritime should improve customer service by extending and promoting the option of paying rent in instalments to all tenants by June 2010.

Overdue payments

Since 2004-05, annual debtor figures for tenancies administered by the Lands have increased by 2.5 times and the number of debtor invoices outstanding beyond 30 days has remained stable at around 12 per cent of the total number of tenancies on average.

Maritime was unable to provide debtor figures prior to 2007-08. The number of invoices with overdue payments beyond 30 days was high. In 2007-08, Maritime sent 1557 invoices for outstanding payment, which on average is more than one invoice per tenant.

Substantial improvement in collections has reduced the number of invoices with overdue payments and the amount of outstanding payments. However, the level of outstanding payments is 12.6 per cent of the total rent, the figure for Lands is 14.6 per cent. This is above the industry best practice of 3-5 per cent.

Exhibit 15: Increase in overdue payments for domestic waterfront tenancies						
		2004-05	2005-06	2006-07	2007-08	2008-09
Number of invoices with overdue payments	Lands	768	673	744	770	732
	Maritime	1365	1661	1548	1557	192
Amounts not received after one month from the due date	Lands	\$367,111	\$462,816	\$642,768	\$865,938	\$931,826
	Maritime	Not available	Not available	Not available	\$2.5* million	\$833,000

Source: Lands and Maritime

Note: * an estimate

Currently, some tenants in the Sydney area are threatening to pay less than their annual rent until the net rate of return is adjusted. This has the potential to increase overdue payments.

Low numbers of hardship cases in Lands and Maritime (67 in total - see below) indicate an ability of tenants to pay. On the other hand, increases in overdue payments indicate growing difficulties for tenants to pay rent as most have had their new increased rents fully phased-in.

Rebates and hardship provision

We found that both agencies provide rebates and hardship provisions consistent with the IPART recommendations.

Lands routinely provides rebates to tenants:

- who are pensioners
- with water access only.

It also provides a 50 per cent rebate on reclaimed land in Crystal Bay and Horseshoe Cove.

All the rebates are subject to the payment of at least the minimum statutory rent

The *Crown Land Act 1989* provides the Minister for Lands with the power to direct waivers or payments to be varied in a number of ways. This allows hardship cases to be considered by Lands and provides a range of options including:

- postponement of rent payments for a specific period
- payment plans allowing rent to be paid in instalments
- extended payment terms
- extinguishing debts.

In 2007-08, Lands had 567 accounts with rebates and 294 accounts where rents have been waived. The average annual rebate/waiver was \$321. Lands estimated that rebates and waivers will amount to \$276,491 in 2008-09.

Lands has advised that currently 65 (approximately one per cent) of domestic waterfront tenancy accounts are recorded as being on a payment plan. The plans are available if suitable evidence of hardship is provided to Lands to allow the client to pay in instalments as opposed to the upfront annual rental payment.

Maritime, as Lands, routinely provides rebates to pensioners. Other rebates are granted on a case by case basis. Waivers may be provided to any lessee following a successful hardship application determined in accordance with Maritime's "Concessions and Hardship Relief" policy.

Other rental variations exist in unique circumstances, where specifically authorised by current or pre-existing lease terms. For example, two waterfront leases where the bulk of the facility is public space receive a 50% discount on the IPART rent, one tenant leases an area of waterway for three months a year to place a swimming net, and therefore only pays rent during the period of his temporary occupancy.

In 2007-08, Maritime had 49 accounts with rebates. Maritime advised that they received two formal hardship applications in 2008.

Both agencies have significant discretion when assessing hardship applications. Submissions received by the Audit Office indicate that the decisions are not always transparent.

Recommendation Lands and Maritime should further improve communication with tenants by addressing tenants' issues in a more open and timely manner, including processes to prioritise issues and advise tenants of progress.

Rebates for long jetties

We found that Lands does not apply a long jetty discount while the IPART report commented that when a long jetty is the only means of access to the property or is used for emergencies a discount should apply. Lands is of a view that a long jetty discount may have an adverse effect of encouraging longer structures in waterways and that the WAO rebate provides the appropriate concession where the structure is the only means of access to the property.

Maritime does not have tenants in this category.

Rebates for structures abutting public reserves

We found that neither agency provides rebates for structures abutting public reserves and the tenant shares the structures with the public. The IPART report stated that a rebate of 50 per cent should apply.

Rebates not applied

Lands does not provide rebates for domestic structures abutting public reserves and that it no longer approves any new structures abutting public reserves. Their policy is that a public reserve is set aside for the general public to use and not for the benefit of specific individuals. Private jetties in publicly accessible locations are not considered to be a good land management practice as the original intent of the reserve is eroded. Private structures on public reserves also increase the public liability risks for the public using the reserve.

Lands will permit local authorities and State agencies to build upon or abutting a reserve where it is in the public interest to do so and the use is consistent with the purpose of the reserve. Public jetties in these areas provide access to the water for the public and community.

Maritime does not allow for a rebate for structures adjoining public reserves. It regards a structure adjoining a public reserve as a private structure exclusively accessible by the lessee.

Exhibit 16: A boatshed abutting public reserve



Source: Maritime

WAO precincts for rebates	<p data-bbox="475 253 628 291">WAO rebate</p> <p data-bbox="475 322 1375 421">We found that WAO rebates are provided in specifically identified precincts by Lands. We also observed that no other jurisdictions have rebates for WAO properties, as indicated in Chapter 1, Exhibit 3.</p> <p data-bbox="475 443 1375 573">Most submissions we received from WAO tenants commented on inequitable treatment because other property owners who have access via public roads on Crown land do not pay rent for the road access. In support of this they claim:</p> <ul data-bbox="475 584 1375 837" style="list-style-type: none">▪ jetties are the only practical access to their properties and are akin to driveways▪ the value of a WAO property is dependent on the jetty▪ there is no security of access as a jetty licence can be revoked or refused at the direction of the Minister▪ WAO jetties reduce the impact on public wharf system▪ WAO jetties are used as the only way of access by emergency services. <p data-bbox="475 860 932 898">However, the counter-arguments are:</p> <ul data-bbox="475 902 1375 1339" style="list-style-type: none">▪ WAO properties can be accessible by boat without a jetty▪ all WAO precincts have public jetties▪ WAO properties generally are of a lower value than similar properties with road access which results in lower rent▪ the value of a WAO property increases significantly with a jetty▪ a domestic waterfront tenancy licence is only revoked when a tenant does not meet the conditions of the tenure agreement▪ owners of properties with road access pay for the road access in the purchase price of the properties▪ Lands does not require domestic waterfront tenure holders to provide public access to their domestic waterfront structures▪ rent for WAO can be lower if structures are shared. <p data-bbox="475 1361 1375 1525">Initially, Lands granted WAO rebates on a case by case basis where the structures provided the only practical access to the property. In 2005, this was changed when five precincts were determined as WAO precincts. This created homogeneous precincts with a low PSLV and meant most tenants paid minimum rent.</p> <p data-bbox="475 1547 1375 1749">Tenants with road access in WAO precincts do not receive the WAO rebate. For example, there are 185 tenants in Hawkesbury WAO 4 Precinct. In this precinct all tenants have the WAO rebate applied to their account, subject to statutory minimum rent threshold, except one tenured property that has road access in the Patonga area. This was done to avoid creating a separate small precinct for one tenured property in this area.</p> <p data-bbox="475 1771 916 1809">No rebates for self-funded retirees</p> <p data-bbox="475 1832 1375 1892">We found a difference in how the two agencies provide rebates where one of the landowners is a self-funded retiree and the other is a pensioner.</p> <p data-bbox="475 1915 1375 2078">We received submissions claiming that rent increases have placed financial pressure on self-funded retirees. For example, an elderly Pittwater resident claims they are forced to work to pay for rent increases of more than \$1,000 per year for each of the last 3 years. Unlike pensioners, self-funded retirees do not receive any rebates.</p>
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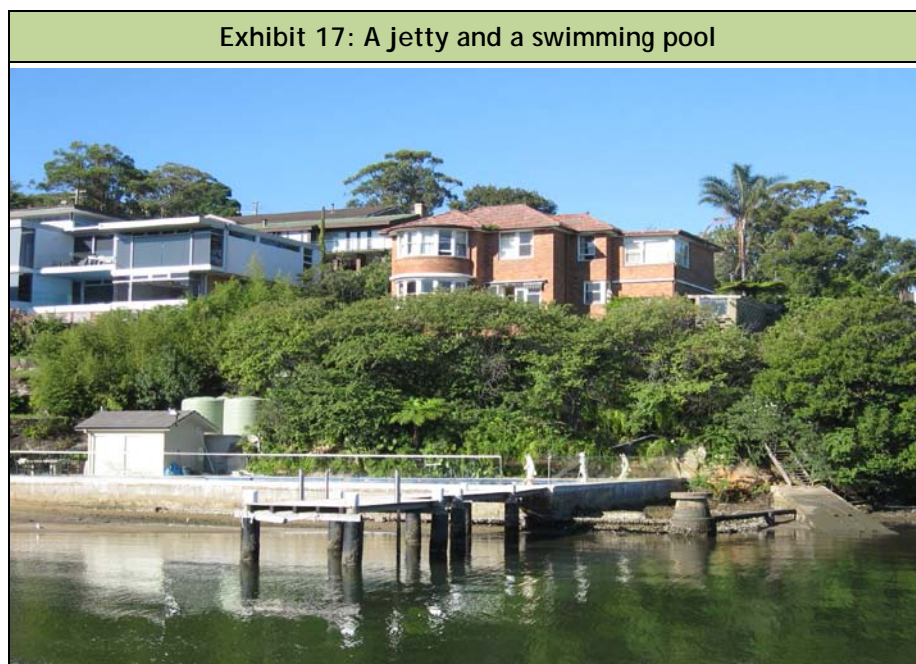
This can place self-funded retirees with a dilemma. Jetties and related structures add value to their properties and are expensive to remove.

Lands advised that they had considered providing rebates for self-funded retirees. They decided that a rebate would not be appropriate as Lands is not able to adequately assess the income of these tenants. Lands advised that this assessment can only be effectively undertaken by the Commonwealth Government who has access to information on the financial position of self-funded retirees.

If the domestic waterfront tenancy is in two or more names and one holder is a pensioner, the share of the rent for eligible pensioner is reduced by 50 per cent. In similar situations, Maritime does not provide a rebate.

Maritime advised that it has not considered providing rebates to self-funded retirees. Self-funded retirees suffering financial hardship are entitled to make an application for a concession under the agency's hardship policy.

Recommendation Lands and Maritime should strengthen collaboration by agreeing on a joint approach to limit, control and reduce differences in their practices.



Source: Maritime

Comparison of domestic waterfront rents to other charges

We considered a number of comparisons to test the level of domestic waterfront rents. We were unable to make a valid comparison. We did observe that swing moorings provide an option, if not directly comparable.

A number of submissions received made the claim that local government rates, mooring and oyster lease rates are significantly lower per square metre than the domestic waterfront rents. These other rates are also influenced by land values and market movements. However, only swing mooring rates are similar to domestic waterfront tenancies.

The Government policy for determining rent for domestic waterfront tenancies is to use the formula published in the 2004 IPART report. Therefore, both agencies have not considered alternative means for determining rentals for waterfront tenancies, and apply the formula recommended by IPART as this is government policy.

Similarly to NSW, the rent for domestic waterfront tenancies is based on statutory land value in Victoria, Queensland and Tasmania.

We considered other possible comparators.

The Valuer General advised that while the value of seabed and riverbeds is assessed annually, this valuation is not appropriate for setting rents for domestic waterfront tenancies. Comparison to swing moorings, both government and commercial, and commercial marina is illustrated in the following table. However, it is difficult to compare the costs and benefits of these options due to the different amenity offered and the lack of availability of swing moorings and commercial marinas in some areas. The comparison reinforces the unique nature of domestic waterfront tenancies and the difficulty of their valuation.

Exhibit 18: Examples of annual rents in Sydney		
	Pittwater Precinct 2 Lands	Precinct 1 Maritime
Average rent for waterfront tenancy	\$2,816	\$10,528
Maritime swing mooring rent*	\$444	\$689
Commercial swing mooring rent*	\$3,175 Newport	\$4,800 Double Bay
Marina berth rent*	\$6,322 Newport	\$14,400 Double Bay \$5,778 Rushcutters Bay

Source: Audit Office research

Note: * calculation based on 9m boat

Is the rent a tax?

We found claims that the rent is a tax to be unsubstantiated. Advice from the Crown Solicitor is that the rent is a fee. The position is also supported by the IPART report and advice from Lands and Maritime.

Submissions express concerns

Many submissions expressed concerns about whether the rent is a fee for service or a tax. It is claimed that it meets many of the characteristics of a tax because it is:

- compulsory for public purposes, not for specific purposes, and goes to 'consolidated revenue'
- not a fee for services
- not an access charge for WAO properties
- based on land value.

The IPART report deals with these payments as rent and requires the amount of rent to be re-assessed in a way that is akin to the setting of rents in the private context for market value. The domestic waterfront rent is a rent based on the occupation of an area of public land. The IPART formula provides the valuation method for the application of rent to the occupation. It assumes that the liability for rent is voluntarily assumed and there is an individual benefit directly obtained by entering into a domestic waterfront tenancy licence and paying rent. In addition, payment of a tax does not provide such an immediate benefit.

Lands advised that domestic waterfront tenancy rents are not a tax as the *Crown Lands Act 1989* characterises payment for Crown land occupation under licence as rent and refers to the determination of the rent.

Maritime advised that leases are standard occupancy instruments. Lessees pay rental in return for a benefit, being exclusive use of an area of land for the construction and quiet enjoyment of particular facilities. In addition, payment of a fee for a specific benefit does not meet the definition of taxation.

The Crown Solicitor provided advice to the Audit Office that the rent for domestic waterfront tenancies is a fee for the use of the rights given by the licence over the relevant land.

Complaints system

We found that the agencies are aware of complaints and their nature. However, they do not have a system to record all complaints and inquiries.

Significant number of complaints

Since the introduction of the IPART recommendations, Lands has received over 1,100 complaints and over 1,700 inquiries regarding waterfront tenancies. The database does not identify complaints related to the IPART recommendations.

Since March 2007, Lands has a complaints database which deals with the complaints from the public about Lands' staff, processes and service delivery. However, it does not identify all complaints related to the IPART recommendations as this database does not capture enquiries about licence accounts, debt management, objections to rent redeterminations and licence applications which are dealt with in local offices and the finance unit.

Lands advised that since 2008 it has increased information provided to domestic waterfront tenants to ensure that they are aware of the changes that Lands has introduced and their impact. Since December 2008, it has conducted mail outs to 6,928 tenants on the changes to the IPART formula, Lands has received and responded to 21 letters and nine phone calls specifically on the domestic waterfront. Lands believes that the lower number is due to the improved communication with the tenants.

Maritime's database does not identify complaints related to the IPART recommendations. Maritime is developing a complaint handling and recording procedure to ensure all complaints are appropriately addressed and the responses measured against published performance criteria.

Recommendation Lands and Maritime should seek to improve customer service by introducing a systematic approach to recording and managing inquiries and complaints on domestic waterfront tenancies to ensure responses are appropriate and timely by December 2010.

3.2 Are agencies conducting periodic reviews of waterfront rentals in a timely manner and consult with tenants and experts?

Our assessment The process of reviewing practices has been held in stages and has been slow. The major change to practices resulted from the review of precincts applied in the rental formula. The reduction in the precinct sizes helped satisfy criticism, especially from tenants in Sydney. There have also been differences in when changes were introduced. Lands introduced the revised rents 13 months later than Maritime.

The other major component of the formula, the net rate of return has not yet been reviewed. Both precinct land values and rental rates of return are time and place specific and could have been reviewed together. The foreshadowed review of the rate of return during 2009 is to be a joint review and this approach is commended.

In view of the importance and relationship between the two components of the rental formula we believe they should have been reviewed at the same time. The incremental and fragmented approach to reviews is contributing to poor customer service.

The review processes are uncertain after 2009. Maritime is proposing a routine review of domestic waterfront policies and procedures in 2012 and every five years thereafter.

Lands and Maritime consulted experts and tenants when reviewing PSLVs.

Review of Precinct Statutory Land Value (PSLV)

We found that Lands and Maritime reviewed and increased the size of precincts to further smooth out the value of the waterfront land. This helped resolve complaints from tenants about the initial large number of precincts. However, we found the review was conducted in stages: first a review of precincts then a review of the net rate of return. This has limited the effectiveness of the implementation of the IPART recommendations.

Differences in introducing new boundaries Rents based on the larger precincts were introduced by Maritime in January 2008, three years after introducing the IPART recommendations. Lands applied the new PSLV rates 13 months later, four years following implementation and in response to criticism from tenants. The IPART report did not contain a recommendation about the timing of precinct reviews.

The review saw the number of precincts reduced from 549 to 61. Lands decreased the number of precincts from 429 to 54 and Maritime has reduced the number of precincts used to determine PSLV from 120 to seven. By reverting to a smaller number of precincts Maritime returned to a similar number of precincts before the IPART report. The significant reduction in the size of precincts has largely helped overcome complaints.

A major issue raised by tenants during the review of precinct boundaries was the impact on tenants with smaller properties who were paying comparatively higher rents. The SLV of small properties is disproportionately higher than the SLV of large properties.

This issue was largely resolved with the reduction in the number of precincts.

To reduce the impact of rent increases due to changes in the size of precincts, Lands also introduced a new phase-in available to all tenants in February 2009. The impact of this is described in Chapter 2.

A Maritime proposal to dispense with precincts and use individual SLV's was opposed by stakeholder groups and lessees. The Boat Owner's Association and individual tenants made submissions based on independent advice, advocating instead a return to the larger precincts that had existed pre-IPART. This suggestion was recommended to Government by Maritime and adopted by Cabinet in December 2007.

Consultations with experts and stakeholders

During the review process Maritime commissioned independent experts to review precinct boundaries and consider alternatives including "mega-precincts". Lands sought internal experts' advice from the Valuer General's Office on precinct changes.

We found that Lands did not consult and communicate with external stakeholders to the same extent as Maritime over the past four years.

In the course of the Review of Domestic Leasing Arrangements, Maritime consulted with:

- government agencies (Office of the Valuer General, NSW Treasury, NSW Lands)
- maritime organisations (Boat Owner's Association, Waterfront Action Group)
- all domestic lessees, via direct mail letters and requests for comments in local media.

Recommendation Lands should ensure consultations with tenants during reviews of practices are more comprehensive.

Review of the net rate of return

We found that the agencies have not yet reviewed the net rate of return but are planning to do this jointly in 2009. The implementation of any revisions is likely during 2010. This will be five years after the implementation of the IPART recommendations. The delay has heightened complaints about rents not reflecting market value.

While the IPART report does not specify how frequently the net rate of return is to be reviewed, the agencies should consider obtaining advice from property valuation experts to interpret the IPART recommendation. In response to the request from Maritime, the IPART advised in November 2007 that the review of the rate of return should commence around the middle of 2008.

Relationship between rate of return and property values

Advice from property valuation experts provided to the Audit Office was that both the net rate of return and the SLV are area and time specific. The relationship between SLVs and the net rates of return is indicated by their movement in opposite directions – generally as property values go up and the rate of return goes down. Therefore, it is preferable that both be reviewed at the same time and for the same area.

The proposed net rate of return review should also examine the different periods over which the net rate of return and PSLVs are averaged. We observed that the current rate of return is based on a 10 year rolling average ending in 2003 for the whole of NSW and that PSLVs are determined on a 3 year rolling average. A broadly based and static rate of return does not appear to represent market value for individual waterfront properties. For example, there are many differences between properties in Vaucluse and the Clarence River. These differences receive greater consideration in the calculation of the PSLV compared to the method determining the net rate of return.

Tenants were advised by Maritime that a review of the net rate of return was to be conducted in 2008. The agencies advised the Audit Office that their strategy was to implement the macro precincts before commencing the review of the rate of return. The agencies are currently defining the terms of reference for the review of the net rate of return.

Lands advised that it is aware that if the rate of return is calculated by precinct/region it might lower rents in the highest value areas and could increase rents in areas with high growth such as the Far North Coast of NSW.

Campaign by stakeholder groups

The Waterfront Action Group (WAG) is a subcommittee of the Boat Owners Association. The Association represents stakeholders who use the waterways of NSW. The WAG has initiated a campaign to object the payment of the rent for domestic waterfront tenancies. They claim that because the net rate of return has not been reviewed, the rent calculations do not reflect the market value as recommended by the IPART.

Between May and September 2009, the Audit Office received 80 copies of submissions to Lands and Maritime from tenants who support the WAG campaign. The tenants require that:

- the rate of return be reviewed immediately
- the terms of reference for the rate of return review be provided to tenants
- Lands and Maritime seek stakeholders input during the review process
- both agencies provide details of all data sources used in the rate of return review.

The submissions indicate that the tenants are either:

- refusing to pay rent for their domestic waterfront tenancies until the net rate of return is reviewed
- paying only minimum rent as an instalment with the remaining difference being paid after the review
- insisting the net rate of return is reviewed immediately, even though they have paid the full rent.

In response, the agencies are advising tenants that they are committed to paying the invoiced amount of rent, and that a review of the net rate of return is proposed. Lands also advises that interest will be charged on outstanding amounts.

Recommendation Lands and Maritime should jointly review the net rate of return in an open and consultative manner by December 2009. The review should include assessment of the net rate of return from a location and time specific perspective, similar to the approach taken for assessing the statutory land value of precincts.

3.3 Can the impact of the changes in rentals and related procedures be objected to?

Our assessment The ability to object to the detail of the rent calculation is limited. Tenants can appeal to the Land and Environment Court on planning issues or the Administrative Decisions Tribunal on certain agency decisions. However, we are not aware of any appeals to these bodies.

Objections to rentals declined as the transparency of rent calculations and the disclosure of policies and procedures improved.

Rights of appeal

We observed that the ability to object to the detail of the rent calculation is limited because the components of the formula are either predetermined (net rate of return & discount factor) or calculated as a proxy (precinct SLV). The only ability to object, apart from with the formula's approach, is questioning their property area and valuation used in the calculation of the PSLV. These limitations require greater transparency on the part of the agencies in managing domestic waterfront tenancies.

Few appeals Lands advised that there have been no appeals about domestic waterfront tenancies to the Land and Environment Court or Administrative Decision Tribunal. However, there have been three appeals of rent redetermination notices to Local Land Boards.

Maritime advised that it is:

- not aware of any appeals to the Land & Environment Court or Administrative Decisions Tribunal regarding domestic waterfront tenancy disputes
- aware of one complaint to the NSW Ombudsman regarding domestic waterfront tenancies, in 2008. The agency is advised the Ombudsman declined to investigate the matter.

Appendices

Appendix 1 About the audit

Audit Objective This audit examined if Lands and Maritime are achieving the outcomes consistent with the IPART report on administering domestic waterfront tenancies.

Lines of Inquiry In reaching our opinion against the audit objective, we sought to answer the following questions:

1. Are the agencies administering rentals in line with the IPART report recommendations?
2. Are agencies reviewing rental practices to ensure improvements consistent with the IPART report?

Audit Criteria In answering the lines of inquiry, we used the following audit criteria (the 'what should be') to judge performance. We based these standards on our research of current thinking and guidance on better practice. They have been discussed, and wherever possible, agreed with those we are auditing.

For line of inquiry 1, we assessed whether:

- agencies' practices are consistent with the recommendations
- agencies are collaborating in implementing the recommendations
- waterfront tenants can access clear and concise information about rentals.

For line of inquiry 2, we assessed whether:

- agencies review complaints and as a result make adjustments to their practice
- agencies conduct periodic reviews of waterfront rentals in a timely manner and consult with tenants and experts
- the impact of the changes in rentals and related procedures can be objected to.

Audit focus The audit focused on the implementation of the April 2004 IPART recommendations by the agencies.

This audit did not examine:

- the fairness/appropriateness of the IPART recommendations
- commercial tenancies
- non-commercial tenancies such as community organisations, schools and sailing clubs.

Audit approach We acquired subject matter expertise by:

- interviewing relevant staff
- reviewing relevant documents, including strategies, plans, policies, procedures, management reports relating to injury management
- interviewing representatives of the key stakeholders
- examining government policies relevant to the above
- comparing where appropriate performance and approach with other jurisdictions
- analysing performance data.

Audit selection	We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.
Audit methodology	<p>Our performance audit methodology is designed to satisfy Australian Audit Standards AUS 806 and 808 on performance auditing, and to reflect current thinking on performance auditing practices. Performance audits commencing after 1 January 2009 comply with the Standard on Assurance Engagements ASAE 3500 <i>Performance Engagements</i>.</p> <p>We produce our audits under a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the auditing requirements specified in the <i>Public Finance and Audit Act 1983</i>.</p>
Acknowledgement	We gratefully acknowledge the co-operation and assistance provided by Lands and Maritime. In particular we wish to thank our liaison officers Donal O'Shea and Patrick Low, as well as staff who participated in interviews or provided other material relevant to the audit.
Audit team	Our team leader for the performance audit was Chris Bowdler, who was assisted by Bettina Ocias. Sean Crumlin provided direction and quality control.
Audit cost	Including staff costs, printing costs and overheads, the estimated cost of the audit is \$168,000.

Appendix 2 Glossary

Boat Owner's Association	The peak representative body for recreational boaters in NSW.
Crown land	Land owned by a State or the Commonwealth Government.
Discretionary use	Non-essential use.
Hardship	A period of financial difficulty during which an agency allows the tenant to delay repayment or decrease monthly payments.
Freehold	Ownership of a property with the right to pass it on through inheritance.
IPART	Independent Pricing and Regulatory Tribunal.
Lease	A contractual agreement that enables exclusive use over a particular piece of land for a specified term and purpose.
Licence	A contractual agreement that grants the licensee a personal right to occupy and use Crown land for a particular purpose.
Marina berth	A facility other than a mooring pen or swing mooring, consisting of one or more fixed or floating structures adjoining the land and used for the storage of multiple vessels in or on the waterway.
Occupancy area	This is the total area included in the rental calculation for a domestic waterfront tenancy. It includes structures (jetties, boatsheds, etc), reclaimed land and berthing areas.
Permissive occupancy	A form of tenure held over Crown land authorising an occupation or use. Permissive occupancies were granted under previous legislation and are no longer issued, having been replaced by licences.
Precinct	A defined area in which the occupancy and the adjoining freehold land are situated, and where the individual blocks of land have certain characteristics.
Domestic waterfront tenancy	An occupancy of an area of public land for private structures including jetties, swimming pools, seawalls, boatsheds and slipways. The land is the seabed, riverbed or reclaimed land.
Reclaimed land	An area within an occupancy that was originally part of a seabed.
Rate of return	The increase in value of an investment, usually expressed as a percentage over time.
Rebate	A regular deduction from an amount to be paid.
Statutory land value (SLV)	The unimproved capital value of freehold land.

Swing mooring	An apparatus or structure other than a marina or mooring pen, located on or in a waterway and unconnected to the shore, generally consisting of a mooring block, chain and buoy and designed, constructed or used for restraining one or two vessels.
Tenancy	The occupancy of land on a rental basis. One tenancy can have several tenants.
Tenure	A right to occupy land for a period of time.
Waiver	A hardship provision granted on a case by case basis.
Water access only (WAO) property	A property without road access.
Waterfront public land	Land below the high water mark and adjoining private waterfront properties.

Appendix 3 Implementation of key IPART recommendations

Recommendation	Lands	Maritime
The general formula should be used to set occupancy rentals reflecting the market value.	Consistent	Not consistent
The Statutory Land Value (SLV) of the adjoining freehold land, provided by the Valuer General should be used as the basis for determining the value of the occupancy.	Consistent	Consistent
Rentals for domestic waterfront tenancies are to be calculated as an appropriate rate of return on the value of the tenure. A net rate of return of 3.05 per cent is included in the rental formula.	Consistent	Consistent
The net rate of return is to be reviewed regularly.	Not consistent	Not consistent
A discount factor of 50% is to be applied to the value of the adjoining freehold land.	Consistent	Consistent
The minimum rental is set at \$350 per year, and indexed each year using the CPI as an escalation factor.	Not consistent	Consistent
The minimum rent is to payable where the rent calculated from the formula is less than \$350.	Consistent	Consistent
For existing tenants, annual rentals to be calculated using the recommended formula with the prescribed phase-in provision.	Not consistent	Consistent
For existing tenants, where the rights holder is a pensioner the annual rent should be calculated using the recommended formula, with the prescribed phase-in provision.	Consistent	Consistent
For new rights holders who are pensioners or existing rights holders who become pensioners, the annual rent should be 50 per cent of that calculated using the formula or the minimum rent, whichever is higher.	Consistent	Consistent
For occupancies adjoining water access only properties, a rebate of \$250 should be applied after calculating the rent, subject to the maintenance of the minimum rent	Consistent	N/A
Licences should require that the occupancy area is available for shared use with right holders wherever this is practicable.	Consistent	Consistent
Where the structure on an occupancy is shared by a number of users, the occupancy rent should be equally apportioned between these users.	Consistent	Consistent
Where the occupancy provides shared facilities, including multi-berth facilities that are used by a number of individual right holders, the rent increase should be calculated per right holder for the purpose of determining the phase-in provision.	Consistent	Consistent
Agencies were to give consideration to any case of a demonstrated hardship arising from increased rent on a case by case basis.	Consistent	Consistent
Licences should generally be used as the occupancy instrument for domestic waterfront occupancies. However, leases may be more suitable in particular circumstances.	Consistent	Not consistent
The term of agreements should be established or extended to link to the economic and structural life of existing and any proposed structures.	Consistent	Consistent
Terms should allow for licences to be transferred to a new owner if the adjoining freehold land is sold, for the remaining term of the licence.	Consistent	Consistent

Performance Audits by the Audit Office of New South Wales

Performance Auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

Performance audits may review a government program, all or part of a government agency or consider particular issues which affect the whole public sector.

Where appropriate, performance audits make recommendations for improvements.

If you wish to find out what performance audits are currently in progress, visit our website at www.audit.nsw.gov.au.

Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently and effectively, and in accordance with the law.

Performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also assist the accountability process by holding managers to account for agency performance.

What are the phases in performance auditing?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team will develop audit criteria and define the audit field work.

At the completion of field work we will meet with agency management to discuss all significant matters arising out of the audit. Following this, we will prepare a draft performance audit report.

We meet with agency management to check that facts presented in the report are accurate and that recommendations are practical and appropriate. Following this, a formal draft report is provided to the CEO for comment. The relevant Minister is also provided with a copy of the final

report. The final report, which is tabled in Parliament, includes any comment made by the CEO on the conclusion and the recommendations of the audit.

Depending on the scope, performance audits can take several months to complete.

Copies of our performance audit reports can be obtained from our website or by contacting our Office.

How do we measure an agency's performance?

During the planning phase, the team develops the audit criteria. These are standards of performance against which the agency or program is assessed. Criteria may be based on best practice, government targets, benchmarks, or published guidelines.

Do we check to see if recommendations have been implemented?

Agencies are requested to report actions taken against each recommendation in their annual report so that we can monitor progress.

The Public Accounts Committee (PAC) may conduct reviews or hold inquiries into matters raised in performance audit reports. These inquiries are usually held 12 months after the report is tabled.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards. This includes ongoing independent certification of our ISO 9001 quality management system.

The PAC is also responsible for overseeing the activities of the Audit Office and conducts a review of our operations every three years.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament and from internal sources.

Further information

Further information can be obtained from our website www.audit.nsw.gov.au or by contacting us on 9275 7277.

Performance Audit Reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
191	Land and Property Management Authority Maritime Authority of NSW	<i>Administering Domestic Waterfront Tenancies</i>	September 2009
190	Department of Environment, Climate Change and Water NSW Environmental Trust	<i>Environmental Grants Administration</i>	26 August 2009
189	NSW Attorney General's Department NSW Department of Health NSW Police Force	<i>Helping Aboriginal Defendants through MERIT</i>	5 August 2009
188	NSW Department of Health	<i>Tackling Cancer with Radiotherapy</i>	23 June 2009
187	Roads and Traffic Authority of NSW	<i>Improving Road Safety - Heavy Vehicles</i>	13 May 2009
186	Grants	<i>Grants Administration</i>	6 May 2009
185	Forests NSW	<i>Sustaining Native Forest Operations</i>	29 April 2009
184	NSW Police Force	<i>Managing Injured Police</i>	10 December 2008
183	Department of Education and Training	<i>Improving Literacy and Numeracy in NSW Public Schools</i>	22 October 2008
182	Department of Health	<i>Delivering Health Care out of Hospitals</i>	24 September 2008
181	Department of Environment and Climate Change	<i>Recycling and Reuse of Waste in the NSW Public Sector</i>	11 June 2008
180	Follow-up of 2003 Performance Audit	<i>Protecting Our Rivers</i>	21 May 2008
179	NSW Office of Liquor, Gaming and Racing; NSW Police Force	<i>Working with Hotels and Clubs to reduce alcohol-related crime</i>	23 April 2008
178	Greyhound and Harness Racing Regulatory Authority	<i>Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority</i>	3 April 2008
177	Office of the Director of Public Prosecutions	<i>Efficiency of the Office of the Director of Public Prosecutions</i>	26 March 2008
176*	Better Practice Guide	<i>Implementing Successful Amalgamations</i>	5 March 2008
175	Department of Commerce Department of Primary Industries	<i>Managing Departmental Amalgamations</i>	5 March 2008
174	Department of Education and Training	<i>Ageing workforce - Teachers</i>	13 February 2008
173	NSW Police Force	<i>Police Rostering</i>	5 December 2007
172	Department of Primary Industries	<i>Improving Efficiency of Irrigation Water Use on Farms</i>	21 November 2007
171	Department of Premier and Cabinet Department of Commerce	<i>Government Advertising</i>	29 August 2007

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
170	RailCorp	<i>Signal Failures on the Metropolitan Rail Network</i>	15 August 2007
169	NSW Police Force	<i>Dealing with Household Burglaries</i>	27 June 2007
168	Ministry of Transport	<i>Connecting with Public Transport</i>	6 June 2007
167	Follow-up of 2001 Performance Audit: Ambulance Service of New South Wales	<i>Readiness to Respond</i>	6 June 2007
166	Follow-up of Performance Audit Department of Education and Training	<i>Using Computers in Schools for Teaching and Learning</i>	9 May 2007
165	Homelessness	<i>Responding to Homelessness</i>	2 May 2007
164	Department of Juvenile Justice NSW Police Force	<i>Addressing the Needs of Young Offenders</i>	28 March 2007
163	Legal Aid Commission of NSW	<i>Distributing Legal Aid in New South Wales</i>	13 December 2006
162	NSW Health	<i>Attracting, Retaining and Managing Nurses in Hospitals</i>	12 December 2006
161	Follow-up of 2003 Performance Audit	<i>The Police Assistance Line</i>	6 December 2006
160	NSW Health	<i>Helping Older People Access a Residential Aged Care Facility</i>	5 December 2006
159	NSW Health	<i>Major Infectious Disease Outbreaks: Readiness to Respond</i>	22 November 2006
158	Department of Education and Training	<i>Educating Primary School Students with Disabilities</i>	6 September 2006
157	Roads and Traffic Authority	<i>Condition of State Roads</i>	16 August 2006
156*	Fraud Control	<i>Fraud Control Improvement Kit: Meeting Your Fraud Control Obligations</i>	20 July 2006
155	Follow-up of 2002 Performance Audit	<i>Regulating the Clearing of Native Vegetation</i>	19 July 2006
154	Follow-up of 2002 Performance Audit	<i>Managing Sick Leave in NSW Police and the Department of Corrective Services</i>	June 2006
153	Performance Information	<i>Agency Use of Performance Information to Manage Services</i>	21 June 2006
152	Roads and Traffic Authority	<i>The Cross City Tunnel Project</i>	31 May 2006

* Better Practice Guides

Performance audits on our website

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website www.audit.nsw.gov.au.

If you have any problems accessing these reports, or are seeking older reports, please contact our Office Services Manager on (02) 9275 7116.