Carl Joy

December 4th 2003

Attention: Mr. Bob Burford
Review of Rental for Domestic Waterfront Tenancies in NSW
IPART
PO Box Q290
QVB Post Office NSW 1230

Dear Mr Burford

I submit this somewhat lengthy response to the IPART Review of Domestic Waterfront Tenancies. I will respond from the stand point of a water access only property owner (WAOP) . I will make reference to the following documents:

1 Crown Lands Foreshore Tenures Policy (non-commercial operations) issued November 1991
2 Hansard: Questions without answer page 4140. The Honourable Minister Tony Kelly announcing IPART Review.
3 Information Bulletin No 27 Land and Property Information February 1991- Conversion of Oyster Leases to Torrens Title.
4

These documents need to be read in relation to the following submission and therefore are attached as an appendix.

I have chosen to respond to the Review, paragraph by paragraph in an attempt to achieve clarity and precision. I have taken this opportunity to make best advantage of this independent and public forum as it is unlikely to occur again.

1. Introduction

On 17 October 2003, the Premier approved a request under Section 9 of the IPART Act for the Independent Pricing and Regulatory Tribunal to conduct a review into rentals paid to the Waterways Authority or the Department of Lands for domestic waterfront tenancies in New South Wales and the administration of these tenancies. This request was made by the Minister for Transport Services, the Hon Michael Costa MLC and the Minister Assisting the Minister for Natural Resources (Lands), the Hon Tony Kelly MLC.

Response:

We see from the outset that domestic waterfront is managed by two distinctly different government entities and we will see further how this is a major factor contributing to inequitable outcomes for Crown land tenants.

The Terms of Reference require the Tribunal to examine only the terms of domestic waterfront tenancies on NSW waterways. The Terms of Reference do not extend to the examination of non domestic leases (such as marinas, restaurants or clubs), unlawful occupation of NSW waterways or matters associated with unlawful structures on NSW waterways.

Response:

This paragraph restricts the terms of reference to domestic waterfront tenancies. This is unfortunate, as equity relates to the whole of the story. To preclude comparison is to preclude equity. We understand the terms of Crown pastoral leases and oyster leases (.004 cents per square metre for oysters, .51 cents per square metre for swing moorings, domestic wet berth fee $50 per square metre) may well be highly favourable in their outcomes; unfortunately, we cannot go there.(refer appendix 3 Conversion of Oyster Leases to Torrens Title)

The waterfront tenancies that are subject to this review are predominantly areas of the sea - bed, below the mean high water mark. In the majority of cases, tenants have erected structures on these seabed areas, such as piers, boatsheds, and jetties. In other cases, these areas may have been enclosed, to form pools, or reclaimed, to extend adjoining freehold waterfront land.

Response:

A discussion of the nature of structures on Crown land which unfortunately excludes homes built over mean high water mark (MHWM). These homes often exist historically, from times predating prescription and regulation. The homes exist with demolition orders hanging over them. Common sense suggests an easement for encroachment to legitimise them rather than perpetuating fear and uncertainty. Homes of this type are part of the history and character of the river.

2. Review timeline

The attached Terms of Reference specify that the project should be completed by April, 2004. On this basis, the Tribunal has established the following timeline:

October 2003 Release of issues paper calling for public submissions
December 2003 Stakeholder consultation and receipt of public submissions
April 2004 Submission of final report to Ministers

3. Background

Overview of Crown land in NSW

About 48 per cent of NSW is administered by the Department of Lands, 12 per cent is administered by the National Parks and Wildlife Service, local councils and other government entities. The remaining 40 per cent is held in freehold title, including freehold land held by the Waterways Authority.

Response:

The luck of who your landlord is depends on your geography, and upon this depends the outcome for the Crown land tenant of lease or license. This by nature creates inequity.

In most cases, land below the mean high water mark (the sea -bed in harbours and estuaries) is Crown land. The Waterways Authority administers non-cargo related land which is held as freehold title within the commercial port waters of NSW (Sydney Harbour, Botany Bay, Newcastle and Port Kembla) while the Department of Lands administers Crown land in other estuaries and coastal waterways, including Pittwater and Port Hacking.

Response:

A further statement of the variables that continue the inequity for the Crown land tenant.

Over time, governments have provided individuals with the right to use certain sea-bed areas. Historically, the Waterways Authority has termed the tenancy instruments governing this use as "leases". The Department of Lands refers to these instruments as "licences".

Response:

In this paragraph we see the varying use of leases and licenses. No differentiation is drawn, but they are in effect very different tenures. I will quote the definitions from the Crown Land Foreshore Tenures Policy, Non-Commercial Occupations, p.9:

> Lease:
>
> Form of tenure generally for exclusive occupation and use of Crown land for specific conditions as outlined under the provisions of the CLA 1989. Leases may be granted in respect of development of a Crown title and adjoining foreshore lands **involving significant investment in capital improvements**. Leases are designed with **terms to suit the purpose of the lease** and are granted for a defined term, the rent **generally** being subject to periodic re-determination. A lease may be forfeited for non-compliance of conditions or may expire because the term has lapsed. A lease is **transferable** subject to the consent of the Minister. **Generally**, leases will require land assessments. *(emphases added)*
>
> License:
>
> Right to occupy or use Crown land under the provisions of the CLA 1989. A license may not necessarily confer exclusive use by a licensee, a license is **not transferable** and **may be revoked at the will of the Minister without compensation.**

As a matter of fact, when the license finishes for whatever reason, your valuable asset to which you have no title may be required to be "handed up to the Minister" or removed by yourself (at your cost) as the Minister directs—without appeal. It is clear to water-access-only property owners (WAOPS) that their preferred form of tenure is a lease and not a license.

Section 3.2 of CLFTP (p.3) states:

> "A **lease** or license covering an occupation and/or the erection of a structure on Crown title and adjoining foreshore land will be considered only where such occupation/structure is water-dependent or water-related…"

Section 8.3 (p.6) states:

> "Consideration may be given to the **granting of a lease** depending on the **level of investment** in structures or other **special circumstances** which prevail…"

Clearly, WAOP's comply in both sections and are therefore entitled to consideration of tenure by lease. This is not an option that in the words of Land NSW "is considered to be appropriate". The question arises: appropriate to whom? In the words of the Ombudsman, Mr John Davies, "If not, why not?" WAOPS are still waiting for an answer.

The Waterways Authority administers about 2,050 such leases in Sydney Harbour to individuals, of which approximately 1,400 are held by residential owners of waterfront properties including detached residences and multi-unit complexes, some of which have multiple berths1. These leases are used by waterfront property owners for private recreation purposes associated with structures such as boatsheds, jetties, ramps, pontoons and reclamations.

The Department of Lands administers around 4,250 licences in other areas of NSW waterways.

Response:

These paragraphs relate lease/license management figures of the governing authorities. Further in the paper we find mention of tenants who have WAOPs. There are no figures represented here for this type of tenant. We believe there are somewhere between 800-1000 properties affected in this way. We would like to know exactly how many there are and what the income from WAOP's represents as a total percentage of the amount of money paid for Crown land use in NSW—miniscule, I am sure.

Rentals payable under licences administered by the Department of Lands were last reviewed in 1990 in the Sydney Metropolitan area . It is understood that they are reviewed every five years in the rest of the State. For the Waterways Authority the wetland rates for leases were last amended in 1988. As stewards of these lands for the people of New South Wales, both agencies have proposed more regular rental reviews to ensure rents more accurately reflect current market values of adjoining dry land.

Response:

This paragraph states rentals for Crown land licenses have not been reviewed since 1990. This is not to say fees have not increased. The fact is all fees are reviewed whenever a property is sold and a new contract is issued. In the meantime, all license charges are CPI increased as part of the terms of the license. Review plus CPI, it is true to say, costs more than just CPI. In the last sentence reference is made to "ensure rents more accurately reflect market value". This concept is central to the formula that follows. As charge for access is iniquitous, and "market value" for WAOPs is a flawed concept, I do not propose to argue the issue. However, I will say again, the concept of a rental for access for WAOPs is a total contradiction of the concept of equity and I am sure that no NSW government would support inequity. WAOPs were originally created by the NSW government. Implicit in the provision of residential land is the right of access. Successive governments and councils have failed to provide access infrastructure. It is not the fault of the people who live in these properties and have already contributed towards the provision of access (in their taxes) that has not been made. Stated squarely, it is the fault, of successive governments who have successively failed them. It could well be argued that in the absence of provision of infrastructure for access, WAOPs could reasonably expect financial subsidy for the unavoidable necessity of the provision and maintenance of the facilities that the government has not provided. As it now stands, we cross the waterways in our boats to be held to ransom for the right to land, to buy a right to spend $20 000-100 000 to build an access structure that we do not own. There is no guaranteed tenure; in fact**, it can be removed at the will of the Minister**. Oh, and incidentally, when you buy a house that involves a significant price inclusion for these access structures without tenure, you will be expected to pay stamp duty on them also. If the Minister rescinds your license for these structures on which you have just paid stamp duty, for whatever reason, there is no formal right of appeal or compensation.

The formula proposed by the Department of Lands and the Waterways Authority

The Department of Lands and the Waterways Authority wish to utilise a formula for rental returns to reflect market value. These agencies have developed a rental formula for domestic waterfront tenancies based on the valuation of adjoining land. The formula, derived from advice provided by the State Valuation Office and a private valuation company (Preston Rowe Paterson) is:

Rent (per m2) = 50% x Valuer General's Statutory Land Value (per m2) x 6%

GST applies to the amount calculated using this formula. It is currently used by the Department of Lands for far North Coast licences, and since March 2002, it has been adopted by the Waterways Authority for reclamations larger than 50 square metres but not for other forms of leases.

Response:

The paragraph once again demonstrates graphically the unequal outcomes of Crown land management by two different departments.

The formula produces an effective return of three per cent (for private recreational uses) on the Valuer General's Statutory Land Value (SLV) per square metre, averaged over the SLV of dry land in the adjoining precinct in which the leased or licensed property is situated.

Response:

This paragraph addresses effective returns for "private recreational purposes". I clearly state that WAOP facilities are essentially an ACCESS OF NECESSITY. Our use is as recreational as the space a mainland vehicle driver occupies on the roadway outside his home when he, like us, returns home from work this evening.

The term SLV is mentioned, which is not UCV, because SLV is used for land tax and council rates, and is changing annually, so it is actually an annually-updated UCV. As WAOPs do not agree with a charge for use, I will not argue the point strongly, but I will draw out some of the anomalies. Precinct SLV is an averaged SLV, where higher values are brought down by bringing lower valuations up. Certainly an exercise in averaging, but not one of creating equity. Currently land valuations allow an appeal against the precinct value. To suggest this appeal automatically creates equity in waterways valuation is simply incorrect. An excellent block of land with a high valuation and a right of appeal may have poor waterway in front of it (shallow and sandy) with no right of appeal—hardly equity. A precinct land value applied to the metreage of a large block will establish a very low cost than the precinct value formula applied to a small block—hardly equity.

To get home at night at Scotland Island in Pittwater will be vastly more expensive than Bar Point on the Hawkesbury. There is no equity here either. Question: is it a wealth tax? Whoever would have thought more expensive properties should pay more to get home at night? Maybe it could be taken further, requiring them to pay for everything they consume at an enhanced price, subject to where they live. Maybe there should be a means test as to the price we are charged to get home. A sliding scale is already applied in relation to income tax, let's not apply it as an extended consumption tax based on where you live.

The Department and the Authority indicate a six per cent rate of return is consistent with analysis of investment returns from residential properties rented throughout NSW and court decisions. The discount of 50 per cent on this rate of return (to yield an overall return of three per cent) reflects analyses of sales of remnant land parcels (such as laneways, road reservations and wetland strata berths associated with multi-unit complexes). In the case of

the Waterways Authority it also recognises that the Authority generally prohibits the use of its land for residences.

The Department of Lands and the Waterways Authority support the use of the Statutory Land Value over other valuations because it is determined each year for all properties throughout NSW, that is, it provides a common base, and is used for other statutory purposes (land tax and local council rating).

The precinct SLV averages the SLV's for properties on each homogeneous stretch of foreshore.

Response:

Precinct value is a kite that flies at the cost of equity. Homogenous foreshore wins the golden goose award of the month. Homogeneity of milk is easily defined; in foreshore, it is impossible. The only consistent fact of foreshore is the water level at any given time. The use of foreshore involves the riverbed below the water, and it is never seen, it is as variable as the imagination in its topography and relative cost and viability of use—if its too deep, you can't drive a pile in it, if its too shallow on low tide, you need a very long jetty. The equation presents: small block of land in desirable area creates high per metre rate X shallow water = long jetty = high metreage = mega charges.

4. Scope of the review

The Terms of Reference (reproduced as an Attachment) specifically request that the Tribunal review and report on:

1. A suitable approach for <u>setting domestic waterfront rentals</u> for land owned by the Department of Lands and Waterways Authority. In determining this approach, the Tribunal is to consider:

Response:

It is apparent that there is always a presumption of a rental return.

· *Aligning rental returns to reflect and maintain their market value.*

Response:

Market value is irrelevant to the necessary use of waterway access created by lack of government planning and provision of access infrastructure for WAOP properties. In place of market-value based fees, equity demands subsidies from government to support construction and maintenance of access structures that are a direct outcome of the governments' inability and neglect.

WAOP land, in the case of Wobby Beach have paper road reserves which were promises by implication that have never and will never be able to be kept. We don't feel the absence of provision of infrastructure should translate to the right of government to charge the small communities that suffer this neglect.

· *Ensuring that rents cover, at a minimum, administration costs.*

Response:

Minimum administration costs are not imposed on car owners who park their cars in front of their suburban homes. Land NSW is charging some people $400 to tie their commuter boat to their wharf. There is no known mainland equivalent. If a 99-year lease is employed on a nominal rent of $1/year, fully paid up at the beginning of the lease, then administration costs would be decimated.

· *Equity and owners' ability to pay including the situation of pensioners.*

Response:

In the submission we make, discounts would be unnecessary, in the light of a $1 annual fee.

· *Appropriate equity arrangements for special circumstances (such as, where owners only have water-based access to their properties).*

Response:

The appropriate equity charges for WAOPs is simple: we want to pay no more than our counterparts in mainland communities when we access our homes. In principle, we pay the same income tax, state taxes and council rates as mainlanders. We arguably pay more petrol taxes in our essential boat use that is supposed to finance roads. The river is our road, and it costs the government nothing to maintain.

2. Mechanisms for streamlining the administration of licences, leases or other instruments administered by the Department of Lands and Waterways Authority. The Tribunal should consider:

Response:

To streamline administration and costs on WAOPS, it needs a single authority to establish the initial lease and issue formal consent for local Councils to establish DA/BA outcomes. The consent authority (one of) would then only act to approve assignation of leases to new owners on behalf of the Minister. The authority may then act, if it sees fit, to institute five-yearly inspections to ensure compliance. The fee for inspection might be $100 or $20/year (not more) to ensure a return of inspection costs for the Authority.

· *The different legislative requirements in the administration of licences, leases or other instruments, by the two agencies.*

Response:

Crown land must receive valuable consideration (in principle), tenure needs to be guaranteed and be able to be assigned on sale. Leases are capable of providing this need. Leases need land management assessments. These assessments are for existing facilities currently on license in a small number of existing communities. A land assessment can be carried out on a "precinct basis" at government cost (yes, about time the government participated in some small contribution towards equity and in some equally small measure as a compensation for fees taken to date). I am saying a solution exists, if the government wishes to avail itself of it. If, however the typical "Yes Minister" attitude continues, then "let the ba***rds pay" will prevail.

· *The most appropriate basis of tenure and conditions on these instruments of waterfront tenancies in NSW (eg. lease, licence or any other instrument).*

Response:

The only fair form of tenure for WAOP's is a lease. The term should be 99 years, something for which the CLA 1989 makes provision. The cost for WAOP's due to the essential nature of the access and the lack of provision of infrastructure by successive Governments should be $1.00 per annum. The only reason for $1.00 is the need for compensation for the use of crown land required by the CLA 1989.

5. Issues

In conducting this review, the Tribunal invites submissions which address the Terms of Reference.

The following points set out some of the key issues that this review will need to consider:

1 The setting of rentals aligned with market values.

Response:

The concept of market value is flawed and any charge that is developed from this concept in relation to the "formula" will lead to iniquitous outcomes. We do not accept any consideration of market value for a relatively small amount of water space, that nobody else wants, to gain access to our homes. For a market to exist there needs to be more than one contender.

The CLFTP Section 2.2 Page 3 states:

> "Foreshore Crown Land Occupations whether by way of lease or license, will normally be granted to persons or corporations where such persons or corporations are the *" owner of the adjacent lands"*

Section 5.2 Page 3 and 4 states:

> "Subject to land assessment, consent to the lodgement of Development Applications will be given by the Lands administration in respect of proposed structures where such structures will not encroach onto the water space fronting adjoining freehold lands, other than lands owned by the proponent/proposed lessee/proposed licensee"

For a market to exist there needs to be more than one person contending to lease. As the statements above preclude this, there is no market and therefore no market value.

In considering a form of rental that is aligned with market values, the Tribunal will need to:

· evaluate the value of current rentals generated from waterfront wetland used for private recreation purposes;

Response:

When you live on the river as a WAOP access is a matter of necessity that is "access of necessity" not a "private recreational purpose". The Government and the Department need to acknowledge this and make specific provision in the CLA as a matter of clarity and equity.

· *ensure that rentals received covers at least administrative costs. The Tribunal will need to determine the efficient costs involved in administration of these tenancies;*

Response:

Administrative costs have been previously discussed. Efficient costs will be achieved when local Councils, with an existing structure, for D.A. and B.A. approvals, predominantly manage waterfront issues. Until this occurs we will have the inevitable, unfair and unequal outcomes we now experience from the two different departments. Decent and equitable results will not occur until there is a distinct culture and attitude change. This will occur when management is moved away to more appropriate and specialised managers.

· *consider alternative valuation methods to determine the method that is most suitable for the valuation of small parcels of waterfront wetland (The Lands Department and Waterways Authority formula uses the Valuer General's Statutory Land Value (SLV) per square metre);*
· *examine alternative approaches to derive an annual rental from the valuation. The Department of Lands and the Waterways Authority use the formula referenced above. The Tribunal will need to determine the applicability of this formula, taking into account the matters set out under section (1) of the Terms of Reference;*
· *determine the frequency with which rentals should be reviewed, given the concern to maintain rentals at market value.*

Response:

The three paragraphs above are answered by 99 year leases at $1.00 per annum with one front end payment. The last sentence in relation to maintaining market value rentals, continues to demonstrate the presumption and pre-disposition of the Government to the continuing inequity of charging for essential access.

2 Applying the new rentals - equity considerations and rights of appeal

Response*:*

Once again the presumption of a rental and in the next breath equity, considerations that will actually guarantees inequitable outcomes.

The Terms of Reference require the Tribunal to consider equity issues, such as:

· *The situation of pensioners, welfare beneficiaries and others who may have*

limited ability to pay;

Response:

Pensioners traditionally receive a discount, however a 50% inequity is still an inequity, just a matter of degree. Of those who may have a limited ability to pay the Government may well have a big surprise, surely this is not a suggestion of means testing.

· *Cases where the only access to the adjoining private property is by water;*

Response:

This is the second mention of WAOP's and represents 5 years of lobbying to-date. I think the case is already well made.

· *The extent to which access to leased property should be shared with others or allowed for exclusive use.*

Response:

For isolated WAOP's access facilities are never truly exclusive and the CLFPT page 9 in the definition of license reminds us that:

"a license may not necessarily confer exclusive use by a licensee**"**

All manner of Government and service employees alight and depart without request or fee. People land in emergency and neighbours assist each other with use of facilities. Where it is practical to share a facility it occurs however there are many good reasons for shared facilities to be non-compulsory. As river communities are largely already fully developed and have virtually no ability to be increased by further expansion the issue of shared facilities is not really an issue.
If the question of exclusivity addresses alienation of Crown Land from public use then I would say the water area covered by 800 to 1000 WAOP structures, that precludes public use, is an infinitesimally tiny amount in relation to waterway available in N.S.W. for public use. If it is seen as a significant amount I consider it more than out balanced by the alienated public land covered by cars in the suburbs of N.S.W.

In practice, a number of lease/licence fees have not been reviewed for some time, so it is possible that rentals will increase, at least for some lessees. The Tribunal will consider lessees' ability to pay and other special circumstances.

Response:

Licenses are re-valued every five years on the northern side of the Hawkesbury and every three years on the southern side and CPI indexed in between I believe these re-valuations have been applied in general to WAOP's in Pittwater and the Hawkesbury alike. Re-valuation of licenses always occurs on sale of property and issue of new licenses. Most land if not all land will be hugely re-valued by the Valuer-General shortly. No fees are likely to go down but if they did while others went up, it could hardly be considered equitable. (particularly in relation to the simple necessity of getting home).
I seek to quote from the statement of the Honourable Minister Tony Kelly on his announcement of this IPART Review on the 28 October 2003 on page 4140 of Hansard (see appendix 2) as follows:

"the Government is concerned that waterfront rents have not increased in 15 years"

Strictly not true Minister.

"taxpayers of NSW were effectively subsidising exclusive waterfront property"

Where do WAOP'S apply for this subsidy Minister?

"*most premium properties in the State are charged a pittance*"

WAOP's are rarely premium property and I guess a pittance is relative to a persons income.

"*it is about time Sydney rents caught up to the country rents*"

Will the catch–up be achieved by applying the same dollar per metre charge of country NSW or will this be a *catch down*.

"*NSW taxpayers continue to subsidise the privileged few*"

Yes relatively speaking there are few of us (WAOP's) but we enjoy no privilege only anonymity in the Minister's address to the House and continuing inequity from the Department he administers. In fact the Honourable Minister is as silent on WAOP's as the Crown Land Act itself.

Transparency considerations indicate that the review may need to consider the need for some appeals mechanism to arbitrate disputes about the rental determined. Mechanisms to consider cases of hardship also need to be reviewed.

Response:

In the first instance transparency requires that all Crown Land dealings are available for Public scrutiny. To this end it is essential that the rights under "the freedom of information act" be respected and supported by the Government of NSW. It is an anachronism to rule by the "divine right of God and the King". Right of appeal is the mark of a just society, right of appeal also encourages accountability. Waterways Authority does not allow appeals- what you are offered is what you get. Land NSW allow appeals after 3 or 5 years into a sentence…I mean license.. The current terms under which a license is "offered", or more correctly, "imposed " may well contravene the Contracts Review Act which describes an unjust contract in the following terms:

"one that is unconscionable, harsh or oppressive" "where one party has been tricked or pressured" "where the contract has been achieved with unequal bargaining positions of the parties, unreasonable or difficult conditions"

It also requires that the parties have opportunity to obtain independent legal advice. This is an opportunity that needs to be, but is not advised, to the lessee by the lessor. The right of appeal needs to be independent and the Land and Environment Court is the obvious choice.

The Tribunal notes that there are no appeal rights to existing Waterways Authority leases. Licences issued by the Department of Lands may be appealed following the rent review, scheduled for every five years. A right of appeal is available against the Valuer-General's SLV, which forms the basis of the proposed formula.

Response:

As discussed above.

3 Streamlining tenancy administration

The Terms of Reference include a specific request that the Tribunal consider mechanisms to streamline the administration of these tenancies. To achieve this, the Tribunal will examine the present requirements and administrative practices of the Waterways Authority and the Department of Lands. In particular, it will analyse the rationale for any difference in the approach adopted by the two agencies.

Response:

Opportunities for streamlining administration have been previously discussed. Put simply one Authority for formal consent and initial establishment of leases (ie Waterways Authority). Local Councils to establish approval of structures and compliance. Waterways to inspect 5 yearly to establish compliance and inform Councils who handle non-compliance and appeals and reviews with the ultimate option of appeals to the Land and Environment Court.
Present Crown Land lease requirements involve "land assessment" which could be achieved on a *precinct basis.* As the structures, largely, already exist it would be hard to believe a land assessment would contradict the existing use. Native Title requirements could be handled in the same way with predictable outcomes given Native contact with the Lands involved has not been maintained and therefore is unlikely to succeed.
The last request for an analysis of a "rationale for any difference in the approach" can only be a rationale that also supports inequity.

Tribunal will also consider means to maximise the efficiency of administration of domestic waterfront tenancies.

Response:

As discussed previously.

The Terms of Reference ask the Tribunal to examine the nature of the tenancy instrument used (lease, licence or other instrument) and any appropriate condition on these instruments. In examining appropriate conditions, the Tribunal will consider such issues as the relative benefits of exclusive use tenancy compared with shared tenancy.

Response*:*

The nature of leases versus licenses has been previously discussed with a clear pre- disposition for leases for WAOP's .
On the subject of exclusive use tenancy, it is well covered in previous statements.

Tribunal has been advised that a method of rental calculation determined by this review may be applied without the need for any legislative or regulatory change. In relation to Waterways Authority leases, existing lease provisions provide for annual reviews. In relation to the Department of Lands, existing tenancy review provisions also enable this, subject to Ministerial approval and acceptance of the formula across all

waterfront tenancies.

Response:

It is impossible to create equity while ever the Crown Land Act is silent on WAOP's. An individual class or identity for WAOP's can only be established by Legislative change. The fact that no Legislative statement exists allows Land NSW to continue to ignore our protests and submissions. This absence of definition has allowed the discrimination against a minority group, water access only communities, to continue. This absence further allows the Honourable Minister to not acknowledge our existence in statements he makes about Crown Land tenants in the House. We are incorrectly lumped in with that category described by the Minister as "exclusive premium property". We expect better than this.

The Tribunal invites submissions on the setting of new rentals, the application of these new rentals and streamlining the administration arrangements.

Response*:*

This homogenous statement continues to presume that a rental will be the outcome for all Crown Land tenure. We continue to remind the Government that this would be an iniquitous outcome for water access only properties and that now is the time to correct these faults.
We believe there should be an immediate moratorium on the license fees charged to WAOP's while the Government enacts legislation to create a special class for water access only properties allowing 99 year leases at $1.00 per annum. This is the very least we expect for the years of mismanagement and neglect.

Yours faithfully

Carl Joy