

Corporate governance framework

Corporate objectives and values

Corporate goals, objectives and values were established in the Department of Commerce Corporate Plan 2006-2011. Goals and objectives are detailed in Commerce's Results and Service Plan.

Governance principles

Commerce's governance principles are:

- clear role and responsibilities
- transparent and accountable decision-making
- effective, efficient and ethical decision-making
- respect for the law and high probity standards.

Governance framework

The Corporate Governance Framework is comprised of the following elements:

- strategic corporate planning
- people and learning strategy
- financial strategy
- ethical culture strategy
- information technology strategy
- compliance strategy
- communications strategy
- business planning
- business monitoring and reporting
- risk management.

In conjunction with developing a Corporate Governance Policy, the Governance and Risk Branch is liaising with the owners of each of the ten elements to develop action plans for drafting policies.

Corporate performance management

Results and Services Plan

The Results and Services Plan is the service delivery and funding plan that identifies what Commerce seeks to achieve with current resources. In accordance with NSW Government Policy, components of the plan, the Results and Services Plan indicators, service measures and service group expenses are presented annually through the NSW Government's Budget Estimates preparation process.

This format provides a framework for improving disclosure of the Department's service delivery performance and is an annual public presentation of those aspects of the Department's Results and Services Plan which can be directly linked to its annual Budget.

Within the Results and Services Plan, Commerce's strategic objectives in fulfilling its charter are outlined together with strategies on how it will support the Government's goals and priorities.

The Results and Services Plan also details the key performance indicators and service measures by which Commerce will monitor the effectiveness and efficiency of service implementation. Quality, access, timeliness and cost of service delivery are assessed within the service measures. Key performance indicators and services measures are published in the 2008/09 NSW Budget Papers as well as in the annual report.

Total asset management plan

The total asset management plan outlines Commerce's asset strategy together with business cases and Gateway Review reports that support major capital projects; this outlines how Commerce assets support effective, efficient and cohesive service delivery identified within the Results and Services Plan.

The purpose of the total asset management plan is to ensure that the asset strategy is aligned with corporate objectives and that associated risks are also appropriately managed.

Corporate Plan 2006-2010

The Department of Commerce Corporate Plan 2006-2010 outlines:

- the Department's purpose
- how Commerce will achieve its long-term objectives and address current key issues
- how it will achieve the performance indicators and services measures identified within the Results and Services Plan.

The Corporate Plan builds on past achievements and sets direction for the next four years. In 2008/09, Commerce contributed to the Government's priorities by delivering services that support:

- maximising value for government agencies in delivering services to clients, customers and the community
- simplifying processes for dealing with government
- promoting a fair marketplace for consumers and traders
- promoting fair and productive workplaces.

Other strategic level plans have been developed to support corporate objectives and high performance service delivery outcomes. These plans include the:

- Commerce people strategy
- Information and Communications Technology strategic plan.

These plans are regularly reviewed and are a vital component of Commerce's management of identified strategic risks.

Risk management

Corporate risk management

Risk management is a critical component of corporate governance within Commerce. The Legal and Governance division is currently reviewing and developing the Department's risk management policy and framework in accordance with AS/NZS 4360:2004.

Risk management fosters:

- a confident, rigorous basis for decision-making and planning
- better identification of opportunities and threats
- proactive, rather than reactive management
- more effective allocation and use of resources

- improved incident management, reduction in loss and the cost of risk
- improved stakeholder confidence and trust
- improved compliance with relevant legislation
- better corporate governance.

The Commerce risk management framework will underpin its strategic planning (Results and Services Plan, Corporate Plan, Total Asset Management Plan and People Strategy). These plans are reviewed by Commerce's Executive and are a vital component in the management of identified strategic risks

The Legal and Governance division is facilitating a program to develop risk identification and management in each business unit by conducting risk management training and facilitating risk assessment workshops with a view to embedding appropriate risk management in the everyday operations of business units. A workshop was conducted for the Office of Fair Trading to identify critical risks that have an impact across individual business units. Initial risk identification and assessment workshops will be held for the People Workplace and Planning and Finance and Shared Services units.

Legal and Governance division also provided risk identification and assessment training to NSW Procurement managers, team leaders and team members to assist in their operational risk management.

Business continuity management

The existing Business Continuity Management Policy was reviewed in early 2009 and, as a result, a more up to date and streamlined approach was adopted.

The draft Commerce Business Continuity Management Policy, Local Business Continuity, Crisis Management and Communications plans are being developed. Initial training within Commerce business units has already been undertaken.

Insurable risk activities

A key strategy to manage risk is to protect insurable asset and liability exposures through membership of the NSW Treasury Managed Fund, a self insurance scheme. Commerce worked in partnership with stakeholders to meet Treasury Managed Fund Service Level Agreement objectives and responsibilities.

Commerce reports incidents promptly and works proactively to manage insurance issues. It also participates in the Self Insurance Corporation Non Workers Compensation Portfolio Service Level Agreement Working Party.

Aggregated insurable risk premiums for 2008/09 increased 7.98 per cent compared to 2007/08, the primary reason for which was higher workers' compensation premiums. Improved premium performance was achieved for liability and comprehensive motor vehicle insurable risk coverage.

The total net incurred cost of Commerce registered claims for 2008/09 was 57.32 per cent lower compared to 2007/08. Commerce's premium performance for the liability, property and motor vehicle insurable risk lines was significantly better than the primary pool, in which it is a participant.

Claims history

Number of claims	2005/06	2006/07	2007/08	2008/09
Workers' compensation	109	145	121	120
Motor vehicle	266	235	222	214
Property	26	18	20	10
Liability	10	5	6	7
Other	2	0	0	0
Total	413	403	369	351

Claims cost

Net incurred cost	2005/06	2006/07	2007/08	2008/09
Workers' compensation	598,496	2,414,185	1,853,510	760,375
Motor vehicle	656,127	684,438	578,342	501,732
Property	360,698	124,240	172,758	145,984
Liability	149,502	58,627	1,040,529	147,705
Other	1,455	0	0	0
Total	1,766,278	3,281,490	3,645,139	1,555,796

Average claims cost

Net incurred cost	2005/06	2006/07	2007/08	2008/09
Workers' compensation	5,072	16,095	14,149	6,284
Motor vehicle	2,467	2,913	2,605	2,345
Property	13,873	6,902	8,638	14,598
Liability	14,950	11,725	173,422	21,101
Other	728	0	0	0

Audit and compliance

Commerce Risk and Audit Committee

During 2008/09, the Risk and Audit Committee met five times to oversee financial reporting, systems of internal control, risk management, corruption prevention, compliance systems and other regulatory requirements, and the internal and external audit functions.

Permanent members of the Risk and Audit Committee at 30 June 2009 were:

John Brown	Chair and Independent Member
Graeme Head	Director General
Paul Dexter	Chief Financial Officer
Susan Bentley	Acting General Counsel and Director, Legal and Governance
Brian Baker	Acting Deputy Director General, Office of Public Works and Services

Internal audit

Audit Branch plays an important role in the governance framework by reviewing the compliance, efficiency and effectiveness of priority programs and processes and the adequacy of internal controls. The Annual Audit Plan is endorsed by the Risk and Audit Committee and approved by the Director General. During 2008/09, Audit Branch was engaged in a range of audit related projects, including 37 planned audits, 76 special projects and 24 investigations. Some of the significant projects included:

- Measurement & Technical Services – Office of Fair Trading
- Registry of Cooperatives and Associations – Office of Fair Trading
- external database usage – Office of Fair Trading
- Rental Bond Board IT security penetration testing – Office of Fair Trading
- regional office audits – Office of Fair Trading
- Bankstown contact centre – Office of Industrial Relations
- Government Radio Network financial management – Government Chief Information Office
- emergency management – Government Chief Information Office
- StateFleet fleet management system – NSW Procurement
- Heritage & Building Services – Office of Public Works and Services
- review of major tender process – Office of Public Works and Services
- Manly Hydraulics Laboratory performance and IT security review – Office of Public Works and Services
- regional office audits – Office of Public Works and Services
- IT security assessment of jobs.nsw – Strategic Communications & Government Advertising
- financial assurance audits of ServiceFirst – Finance and Shared Services
- general computer controls – Finance and Shared Services
- SAP health check review – Finance and Shared Services
- email management – Finance and Shared Services
- internal procurement – Finance and Shared Services
- managing unsatisfactory performance – Finance and Shared Services
- annual credit card usage certification 2008/09 – Finance and Shared Services.

Internal Audit also participated in the following activities:

- participation on steering committee for implementation of recommendations arising from the Department of Premier and Cabinet's review of internal audit capacity in the NSW public sector
- ongoing involvement and advisory services provided to: Risk and Audit Committee, Conduct and Ethics Committee, Information Management Steering Committee, Corruption Prevention Network, NSW Public Sector Audit and Risk Professionals Network
- monitoring and review of ICAC investigations into RailCorp and NSW Fire Brigades
- facilitation of fraud control and corruption prevention plans for Office of Fair Trading centres.

External audit

During 2008/09, the Audit Office of NSW carried out a comprehensive audit of Commerce's financial statements and associated financial systems.

The Audit Office commenced a performance audit of the Government Licensing Service, the objective of which is to determine if the Government Licensing Service has standardised and simplified the licensing process in accordance with the original strategy and business case. The Audit Office is expected to report on the audit in the third quarter of 2009.

The Auditor-General's report to Parliament (volume 6 tabled on 9 December 2008) for 2007/08 identified the following key issues:

- Government Licensing Service implementation delays – Commerce has noted the recommendations and developed a business case with a revised implementation plan. The business case is currently being reviewed and finalised for submission to the Cabinet
- Excess flexitime and recreation leave balances – Commerce implemented procedures to monitor and manage the excess balances and has made significant progress in reducing the balances
- Shared corporate services – the audit recommendations were noted and Commerce implemented procedures to ensure effective internal controls over processing of all client agency transactions.

Ethics and probity

Commerce has a major role in the delivery of NSW government services, including procurement, construction, consumer protection and industrial relations. The Department is committed to promoting integrity, ethical conduct and accountability in all areas of public administration and, to do its job well, it relies on business partners and suppliers.

Just as Commerce expects its staff to behave ethically and comply with its code of conduct, it expects high standards of behaviour from firms and individuals that do business with it.

The Commerce Business Ethics Statement gives clear guidelines on how it expects its business partners and suppliers to behave and it tells them what to expect of it.

All individuals and organisations that deal with Commerce must adopt these standards of ethical behaviour.

A copy of the Statement is available on the Commerce website ([www.commerce.nsw.gov.au/About Commerce](http://www.commerce.nsw.gov.au/About%20Commerce))

Conduct and Ethics Committee

The Conduct and Ethics Committee met fortnightly in 2008/09. The Committee's terms of reference are to:

- provide a central repository for conduct and ethics incidents, within the bounds of confidentiality and due process
- monitor the status of grievances, investigations, and disclosures in relation to meeting key milestones and deadlines
- ensure correct process for conduct and ethic investigations is followed
- provide peer review of incidents from a human resources, legal and audit perspective
- recommend appropriate consultation with relevant stakeholders
- advise on appointment of external specialists for investigations
- provide strategic advice to the Director-General on request
- report trends in conduct and ethics across the Department back to the Risk and Audit Committee, with suggested remedial action
- ensure recommended action impacts and risks are adequately managed.

The activities and findings of the Conduct and Ethics Committee are reported as standing items to the Risk and Audit Committee. Committee members are listed in Appendix 4 – Committees and Boards.

Code of conduct

This code is a statement of the Department's collective commitment to maintaining the highest ethical standards of behaviour. It applies to all individuals employed, appointed or otherwise engaged to work in Commerce. This includes permanent, temporary and casual staff, as well as consultants, contractors and agency staff engaged to perform work for or on behalf of the Department. A deliberate act breaching this code, or the Department's policies referred to in this code, may constitute 'misconduct' under the Public Sector Employment and Management Act 2002.

The code of conduct is closely linked with Commerce's mission and corporate values. A copy of the code can be found on the Commerce website (www.commerce.nsw.gov.au/AboutCommerce).

Accessing information

Freedom of Information

Commerce received 189 freedom of information (FOI) applications during the year under the *Freedom of Information Act 1989*, (FOI Act).

Six applications were brought forward from 2007/08, making 195 applications to be processed. Of these:

- nine applications were transferred to other agencies
- 20 applications were withdrawn at the applicants' request
- 14 applications were carried forward to the next reporting period
- 85 were granted full access
- 46 were granted partial access
- 11 were refused access
- eight notices were issued confirming no documents were held
- one applicant failed to pay processing charge advance deposits
- one applicant failed to amend a request that would have been an unreasonable diversion of resources to complete.

During 2008/09, fifteen personal applications were received; two were brought forward making a total of 17 to be processed. No applications were withdrawn and, of the 17 required to be processed, eight applicants were granted full access, seven were partial access, one with no documents held and one application was refused.

In the previous year, 196 determinations were made, resulting in 136 with full access, 25 partial access, 17 were refused access to held information and in relation to 18 matters, no documents were held by the Department. Taking into account the significant reduction in the number of processed applications the level of access granted to applicants decreased slightly compared to the previous year.

There were seven internal review applications received during the year compared to five in the previous year. The resulting determinations upheld the original decisions in all seven matters.

The Ombudsman's Office conducted one review this financial year and the recommendations made by the investigating officer were received on 24 June 2009. The advice of the Ombudsman is being acted on and, in order to comply with related FOI legislation time limits, the matter will be completed early in July 2009.

There were no appeal matters to the Administrative Decisions Tribunal during 2008/09.

Statistical information complying with Appendix B of the Freedom of Information Manual is shown in Appendix 10 – Freedom of information.

Freedom of Information – Statement of Affairs

The FOI Act gives the public the legal right to:

- obtain access to information held by the Department
- request amendments to records of a personal nature that are inaccurate
- appeal against a decision not to grant access to information or to amend personal records.

Under the FOI Act, the Department is required to publish an annual Statement of Affairs. This annual report includes all the requirements of the Department's Statement of Affairs, including the structure and functions of the Department, how these functions affect the public, the kind of documents the Department holds, and how members of the public may access and amend the Department's documents.

Programs and activities

The structure and functions of the Department and how these functions affect the public are detailed elsewhere in this annual report. Information about the Department's programs and activities, publications and its policies can also be found on the Commerce website (www.commerce.nsw.gov.au).

Documents held

The Department holds the following categories of documents:

- policy documents and correspondence
- documents on internal administration
- policy, minutes and correspondence to/from boards and committees
- policy documents and correspondence concerning grants, agreements and contracts.

Under the *Privacy and Personal Information Protection Act 1998*, the Department holds certain classes of personal information as shown below.

Accessing the Department's documents

Policies and publications can be accessed in several ways:

- Summary of affairs published in the NSW Government Gazette No 94 of Friday, 26 June 2009
- Internet www.commerce.nsw.gov.au
- FOI coordinators (see below).

Accessing and amending the Department's documents

Requests under the FOI Act for access to documents held by the Department are the responsibility of the Department's FOI coordinators.

Applications for access to documents under the provisions of the Act must be in writing, either on an application form or by letter, accompanied by the \$30 application fee and sent to:

Commerce	Fair Trading	Industrial Relations
The FOI Coordinator Department of Commerce Level 22, McKell Building 2-24 Rawson Place Sydney NSW 2000 Tel: (02) 9372 8720	The FOI Coordinator Office of Fair Trading P O Box 972 Parramatta NSW 2124 Tel: (02) 9895 0362	The FOI Coordinator/Executive Officer Office of Industrial Relations Level 23, McKell Building 2-24 Rawson Place Sydney NSW 2000 Tel: (02) 9020 4505

FOI application forms may be obtained by contacting the FOI coordinators who can assist with completion of the application.

Processing a freedom of information request

The FOI coordinators will acknowledge the request and decisions on access are normally made within 21 days. If the processing time has to be extended, the coordinators will keep the applicant informed about the progress of their application. The applicant may be required to clarify the request and sometimes a request may be referred to another department if the request is more closely connected to the functions of that department.

A request may be refused if the document is held to be exempt under Schedule 1 Part I of the FOI Act. The departmental FOI determining officers will provide reasons why the document is exempt in an "access decision" letter. If the request is refused, the applicant has rights of appeal and may apply for an "internal review" of the decision. Reviews by the Ombudsman and further appeals to the Administrative Decisions Tribunal can also be made under the FOI Act.

Charges for access

Charges for access to documents are set out above. There is a 50 per cent discount for holders of a Pensioner Health Benefits Card, for people who can demonstrate financial hardship or if the document was accessed in the public interest.

Privacy management

The *Privacy and Personal Information Protection Act 1998* (the Privacy Act) introduced binding privacy standards for the NSW public sector. These standards, known as information protection principles, regulate the way public sector agencies deal with personal information in relation to its collection, storage, use and disclosure.

Three privacy management plans, which cover all Commerce offices, have been lodged with the Privacy Commissioner and the Attorney General has approved any code of practice related to the Department's operations. The plans set out the policies and practices adopted to ensure compliance with the legislative provisions as well as establishing procedures to deal with complaints about its conduct and the disclosure of personal information held on public registers. Copies of the plan documents and further information about the Privacy Act are available to the public on request.

In March 2009, work commenced on the preparation of a consolidated Privacy Management Plan for Commerce, which is compliant with the Privacy Act, to be lodged with the Privacy Commissioner. The project includes the conduct of an extensive survey across all offices to determine the extent to which personal information is collected and general compliance with the protection principles under the Privacy Act. The project is continuing and will be completed in the first half of the 2009/01 financial year.

Individuals can apply under the Privacy Act for access to personal information held by the Department. A complaint, or internal review, can be lodged if a person believes Commerce has breached an information protection principle under the Privacy Act or its Code of Practice.

Codes of practice – Office of Fair Trading

A Code of Practice is in place that modifies the application of the Privacy Act for the Office of Fair Trading. The Code of Practice authorises non-compliance with the information protection principles where they prevent OFT from carrying out its functions. OFT is also covered by the provisions of the Investigation Code of Practice, the Code of Practice for Inter-agency Transfers of Information and the Privacy Code of Practice for the NSW Public Sector Workforce Profile.

Applications made under the Privacy Act 2008/09

There were no access applications received and there were no appeals to the Administrative Decisions Tribunal during the financial year.

Fees and charges

The current privacy management plans provide for the payment of an application fee of \$30 (plus GST). The fee is applicable to requests for access to personal information, which may be held by the department.

A processing charge of \$30 per hour (plus GST) is applied after the first 20 hours of work. No fees or charges apply for applications for reviews under Part 5 of the Privacy Act.

Further information is available from:

Commerce	Fair Trading	Industrial Relations
Privacy Coordinator Department of Commerce	Privacy Coordinator Office of Fair Trading	Privacy Coordinator Office of Industrial Relations
Level 22, McKell Building, 2-24 Rawson Place Sydney NSW 2000	1 Fitzwilliam Street Parramatta NSW 2150	Level 23, McKell Building, 2-24 Rawson Place Sydney NSW 2000