

Corporate Governance



Corporate governance

Commerce's Corporate Governance framework consists of the following interrelated components:

Corporate objectives and values

Corporate goals, objectives and values were established in the Commerce Corporate Plan 2006-2011. Goals and objectives are detailed in the Results and Services Plan. The goals, objectives and values are aligned with the State Plan's priorities and targets.

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.

Report back system

Commerce implemented a new reporting system in March 2007 to provide the Director-General and Executive with greater assurance of effective governance within the Department.

The objects of the system are to ensure the Executive:

- is provided with the opportunity to proactively nominate topics that it would like to consider
- regularly considers all significant governance issues
- sets the strategic directions and policy for Commerce
- determines directions for cross agency issues
- gathers and shares business intelligence for Commerce.

Corporate governance framework

The objectives of the governance framework are to ensure that:

- there are improved and consistent governance structures and mechanisms to provide information and assurance that Commerce is successfully performing to deliver results which are aligned with the Government's priorities
- appropriate governance mechanisms are in place and there is clarity in reporting so that sound information is available for decision-making
- roles and responsibilities of individuals and committees are clearly understood and there is identification of who is accountable for establishing, maintaining and reporting on key governance mechanisms
- there is increased awareness by all staff of the meaning and importance of corporate governance and their individual governance roles and responsibilities
- Commerce's values are more firmly embedded throughout the agency, leading to an improved ethical culture
- there is improved compliance with statutory requirements and internal values
- there is improved stakeholder confidence leading to greater trust in and acceptance of decision-making and willingness to engage and collaborate with Commerce.

The framework pulls together business unit initiatives and ensures the Executive is informed of key governance issues and projects through the new reporting arrangements.

During 2006/07 the Executive monitored the:

- Conduct and Ethics Committee (established on 7 December 2005 - to ensure consistent decision making and cross referencing)
- Code of Conduct training across the agency
- Procurement Ethics Committee
- Office of Industrial Relations research with Sydney University.

Performance management

Results and Services Plan

The Results and Services Plan (RSP) outlines Commerce's broad objectives in fulfilling its charter and how it is supporting the goals and priorities outlined by the NSW Government in its State Plan.

The RSP explains what Commerce plans to deliver, as well as detailing the key performance indicators by which the Executive will monitor the efficacy of the plan's implementation.

This in turn informs the Corporate Plan, which details how Commerce intends to deliver on its objectives as outlined in the RSP. Strategic level plans have been developed to deliver outcomes in key result areas, these are:

- Total Asset Management Plan (TAM)
- Commerce People Strategy
- Information and Communications Technology (ICT) Strategic Plan.

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

Corporate Plan 2006-2010

The *Department of Commerce Corporate Plan 2006-2010* outlines: Commerce's purpose, what we do; how Commerce will achieve the long-term objectives and address current key issues (strategies); how we will achieve the RSP; and the indicators and measures that will demonstrate performance.

The Corporate Plan builds on our past achievements, links our goals to those of the State Plan and sets our directions for the next four years.

In 2006/07, Commerce contributed to the State Plan 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

Supporting the RSP and Corporate Plan is the *Information and Communications Technology (ICT) Strategic Plan*.

Progress has been made in a number of areas as planned in the *ICT Strategic Plan 2006-2010*. In particular a range of ICT projects have contributed to this success:

- ERP Program
- Government Broadband Services implementation
- Information Management Program
- Personal Computer Standard Operating Environment rollout
- McKell Building cabling upgrade.

This plan is updated annually to build on progress to date and incorporate developments since the last revision. The revised plan will continue to support the State Plan, the People First Government ICT Plan, and the Commerce Results and Services Plan. There will be an increased emphasis on:

- Enterprise Resource Planning (ERP) systems
- Telecommunications (data and voice)
- Information management.

Total Asset Management plan

The Total Asset Management (TAM) plan provides Commerce's asset strategy, which outlines how Commerce assets support service delivery. The purpose of the TAM plan is to manage our assets so that they are aligned with the Commerce objectives and that associated risks are properly managed.

The TAM plan also includes supporting plans such as the Capital Investment Plan, Accommodation Strategy, Maintenance Plan and Disposal Strategy.

Risk Management

Corporate risk management

Risk management is considered a critical component of corporate governance within Commerce. Corporate Risk Services has developed the Department's risk management policy and framework and deals with insurable risk. The Commerce Executive, through the Commerce Risk and Audit Committee, has established a policy and framework consistent with AS/NZS 4360:2004.

This framework recognises that 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 and reduction in loss and cost of risk
- improved stakeholder confidence and trust
- improved compliance with relevant legislation
- better corporate governance.

The Commerce risk management framework underpins the Commerce strategic planning documents (RSP, Corporate Plan, TAM and People Strategy). These plans are regularly reviewed by the Executive and form a vital component in Commerce's management of identified strategic risks. The links with corporate planning was further consolidated during the year through better monitoring of risk management activities through the RSP reporting. This also supports the concept that the management of risks change over time and mitigation activities can be flexible.

To enable Commerce to effectively identify and manage risks at all levels, the Executive has established corporate risk tolerances, which define both adverse impacts, opportunities and risk priorities. The risk tolerances, assessment process and strategic risks form an integral part of the Commerce enterprise-wide risk framework and the context in which the operational level risks are assessed.

The Commerce training and awareness strategy is key to building risk management capability and was awarded the Public Sector Risk Management Association Learning and Development Award for 2006. The cornerstone of this strategy is the accredited risk management course run jointly with NSW TAFE and its partner. The training provides staff with an externally accredited risk management qualification, and provides them with a variety of tools and techniques that will assist in undertaking their work within Commerce and building a risk aware culture. Together, the framework and improving capability places Commerce in a strong position to contribute to the management of risk across the public sector.

Commerce's strategic risks are periodically reviewed by the Executive team and focus on such areas as inadequate response to major disaster, loss of IT capability and failure to adequately manage OH&S, environmental and industrial legislation compliance issues.

Risk financing

Insurance portfolio

Commerce manages its insurable risks through participation in NSW Treasury Managed Fund (TMF). This is a 'pooled' indemnity scheme that has unique and wide-ranging coverage and a fundamental premise is that members implement risk management practices as a way to lessen exposure to the pool. Insurance lines covered are property, liability, motor vehicle, workers' compensation, travel and personal accident.

The 2006/07 Fund Year saw total premium cost reduction of 10%, building on a strong reduction of 28 per cent in 2005/06. This exceeds the performance of the overall Primary Pool.

Premiums were reduced on all lines of cover with substantial reductions achieved for property (\$174,170) and liability (\$150,660) lines. Factors contributing to property and liability line results

were the combination of improved Commerce and Primary Pool claim experiences. Motor premiums were generally influenced by a decrease in fleet numbers. A modest premium reduction was achieved for the workers compensation line, based on Commerce claims experiences and the positive performance of the Primary Pool.

Premiums for all lines of insurable risk continue a downward trend from previous years as shown in Table 1 below.

Table 1 – Percentage change comparison against total cost of premium

Insurable Risk	Fund years 03/04 & 04/05	Fund years 04/05 & 05/06	Fund years 05/06 & 06/07
Workers Compensation	-0.31%	-16.92%	-3.21%
Liability	-16.56%	-40.22%	-8.36%
Motor vehicle	18.72%	-30.14%	-13.40%
Property	43.42%	-6.15%	-36.30%
Travel & personal accident	-0.91%	-11.01%	-28.35%

Claims performance

During the year, 219 motor vehicle claims occurred with the highest frequency in the accumulated damages category. The number of occurred property claims decreased 38 per cent. Occurred liability claims remained stable (114 occurred workers compensation claims were registered and this is similar to 2005/06 when 113 were recorded). About 48 per cent of the workers compensation claims are attributed to the injury categories – body stressing (31) and falls, trips and slips (28).

Audit and compliance

Commerce Risk and Audit Committee

During 2006/07, the 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.

Members of the Risk and Audit Committee at 30 June 2007 were:

- John Brown Chair and Independent Member
- Lyn Baker Deputy Director-General and Commissioner for Fair Trading
- Alan Marsh Acting Director-General, Office of Public Works and Services
- Paul Hopkins Deputy Director-General, Office of NSW Procurement
- Pat Manser Deputy Director-General, Office of Industrial Relations
- Elizabeth Zealand Director, Corporate Services and Review
- Alastair Hunter Chief Financial Officer

The external Chair arrangement commenced on 25 July 2006.

Internal Audit

Audit Branch plays an important role in the Commerce governance framework by reviewing the compliance, efficiency and effectiveness of Commerce priority programs and processes.

The Annual Audit Plan is endorsed by the Risk and Audit committee and approved by the Director-General. During 2006/07 Audit Branch performed a substantial amount of work including addressing 46 planned audits, 103 special projects and 16 investigations. Some of the significant projects included:

- Renting Services, Office of Fair Trading
- Motor Vehicle Repair Industry Authority, Office of Fair Trading
- Industrial Complaints Handling Process, Office of Industrial Relations
- Fair Trading Receipting System

- Government Architect's Office, Office of Public Works and Services
- StateFleet Services, Office of Public Works and Services
- Annual Credit Card Usage Certification
- Workplace Advice Seminar Program, Office of Industrial Relations
- Award Subscription Service, Office of Industrial Relations
- Intelligent Information System - Security of Data, Office of Fair Trading
- Data Centre Management
- Salary Sacrifice Motor Vehicle Calculations
- Consultancy and advisory services to SAP implementation.
- Investigations of alleged inappropriate conduct.
- Consultancy and advisory services to Contracting Services Change Program, NSW Procurement.

Other activities included:

- Involvement in Code of Conduct Awareness Training Program across Commerce
- Ongoing involvement and advisory services provided to: the ERP Program Steering Committee, Conduct and Ethics Committee, Corruption Prevention Network and NSW Procurement Ethical Behavior Working Group
- Advice on Commerce Sponsorship Policy
- Facilitated response to the ICAC Survey Profiling the NSW Public Sector 2007.

Compliance with NSW Government requirements for disclosure on government tenders and contracts

On 1 January 2007, new contract disclosure requirements under the *Freedom of Information (Open Government - Disclosure of Contracts) Act 2005 No 115* came into operation. Prior to the introduction of the revised arrangements Premier's Memorandum No.2000-11 set out requirements for disclosure of information on government contracts with the private sector.

The abovementioned legislation amended the *NSW Freedom of Information Act 1989 (FOI Act)* and established clause 15(A) of the FOI Act, which sets out requirements for disclosure of information on government contracts with the private sector for all procurements, sale and disposal contracts including capital works, goods, services, information and communications technology, property and other contracts.

The Department's tendering guidelines and Tendering Manual were updated to cover the new requirements. As a result, Commerce discloses the results of Government tenders and contracts on the websites <https://tenders.nsw.gov.au/commerce> and <http://tenders.nsw.gov.au>.

NSW Procurement continues to monitor and report on the extent of the Department's compliance with the requirements for disclosure of tenders and contract information, reporting to the Director-General each quarter.

Legislative Council resolutions calling for papers under Standing Order 52

During 2006/07 Commerce responded to two resolutions of the Legislative Council calling on the government to table all documents. The resolutions identified Commerce in relation to the following:

- Canterbury Multicultural Aged & Disability Support Services Inc.
- New Hunter Rail cars and the "H set" trains or Outer Suburban CARS (OSCARS).

External audit

During 2006/07, the Audit Office of NSW carried out comprehensive audits of our annual financial statements and associated financial systems.

The Audit Office also completed a performance audit on government advertising. During the year Audit Office commenced a performance audit on the April 2003 amalgamation and creation of a number government agencies including the Department of Commerce.

The statutory audit report issued by the Auditor-General for 2005/06 identified instances of employees working overtime without prior written approval, and accumulation of substantial levels of flextime balances, as significant matters. Management has accepted the recommendations of the Audit Office and has implemented procedures to address these issues.

Ethics and probity

Business ethics statement

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.

Conduct and Ethics Committee

The Conduct and Ethics Committee, formed 7 December 2005, continued to meet during 2006/07. 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 ethics 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.

During 2006/07, the Committee met fortnightly to carry out its charter. Its members comprised:

- Elizabeth Zealand, Director Corporate Services and Review and Chair (up to 18 June 2007)
- Glenn Smith, Acting/Director Corporate Services and Review and Chair (from 21 June 2007)
- Marcia Doheny, Corporate Counsel, Legal Services
- Jill Pattison, A/Executive Director, Director-General's Unit
- Charlie Sherlock, Chief Auditor, Audit Branch, Director-General's Unit
- Penny Hume, General Manager, Human Resources, Corporate Services and Review.

The activities and findings of the Conduct and Ethics Committee are reported as standing items to the Risk and Audit Committee.

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 the Department. 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 of Conduct, 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.

Ethics program

The Code of Conduct training began in February 2006 and continued this year. This is a joint project between the Organisational Development team and the Audit Branch. The Code of Conduct training program is designed to raise awareness of the Code of Conduct and ethical behaviour and to provide guidelines for ethical behaviour. It addresses various issues including:

the use of internet and email; conflict of interest; gifts and benefits; secondary employment; use of resources; protecting confidential information; and ethical decision making.

Case studies, video and personal experiences are used to illustrate the value of ethical behaviour to our organisation and staff are encouraged to participate in workshop discussions.

By 30 June 2007, 90 per cent of Commerce staff required to undertake training had attended the Code of Conduct sessions. The final sessions will be conducted in July and August 2007. After that, sessions will be conducted for new staff on a quarterly basis and managers/supervisors reminded to discuss the code at staff meetings and forums.

Access to information

Freedom of Information

Under the *Freedom of Information Act 1989*, the Department received 204 Freedom of Information (FOI) applications during the year.

There were 17 applications brought forward from 2005/06, making 221 applications to be processed. Of these:

- 8 applications were transferred to other agencies
- 14 applications were withdrawn at the applicants' request
- 15 applications were carried forward to the next reporting period
- 105 were granted full access
- 43 were granted partial access
- 36 were refused access.

During 2006/07 17 personal applications received, two were brought forward making a total of 19 to be processed. One application was withdrawn and of the 18 required to be processed 14 applicants were granted full access, three partial access and one was refused.

Of the 221 determinations made during the year, 105 provided full access and a further 43 granted partial access. In the previous year, 199 determinations were made, resulting in 117 with full access and 47 partial access. In overall terms the level of access granted to applicants remained the same as the previous year reflecting the Department's ongoing commitment to the objects of the *Freedom of Information Act 1989*.

There were five internal review applications received during the year compared to eight in the previous year. Of the six processed, five determinations were upheld and one decision was varied.

The Ombudsman's Office conducted no reviews this financial year.

There was one appeal before the Administrative Decisions Tribunal during 2006/07 and it was dismissed.

The table of FOI statistical information complying with Appendix B of the FOI Manual is shown in Appendix 9 - Freedom of Information.

FOI Statement of Affairs

The Freedom of Information Act 1989 (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 on the Department's programs and

activities, publications and its policies can also be found on the Internet at 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 76 of 23 June 2006.
- 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 FOI Act must be in writing, either on an application form or by letter, accompanied by the \$30 application fee and directed 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 an FOI 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 FOI 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.

Occasionally, 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 in the table below. 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.

Nature of Application	Application Fee	Processing
Access to records by natural persons about their personal affairs, the first 20 hours	\$30	\$30 an hour after the first 20 hours
All other requests	\$30	\$30 per hour
Internal review (all circumstances)	\$40	Nil
Amendment of records	Nil	Nil

Amendment to personal records

Applicants can request an amendment of documents containing information about their personal affairs where they consider that the information is incomplete, incorrect, out-of-date or misleading. If the Department refuses to amend the record, the applicant has the right to include with the record, a statement outlining why they consider the record to be incorrect and any information they feel is necessary to correct the record, complete it or bring it up-to-date.

Applications must be in writing, identifying the information alleged to be incorrect, provide details of why the information to be amended is incomplete, incorrect, out-of-date or misleading, and, if necessary, include documentation in support of their claim.

Privacy management

The *Privacy and Personal Information Protection Act 1998 (Privacy Act)* introduced a set of 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.

All Commerce offices have privacy management plans that 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. These plans have been lodged with the Privacy Commissioner and the Attorney General has approved any Code of Practice related to Commerce's operations. Copies of these documents and further information about the *Privacy Act* are available to the public on request.

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

Codes of practice

A Code of Practice is in place that modifies the application of the *Privacy Act* for the Office of Fair Trading (OFT). 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 2006/07

For the year, there were no access applications received and there were no appeals to the Administrative Decisions Tribunal.

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 can be obtained from:

Commerce	Fair Trading	Industrial Relations
Privacy Coordinator Department of Commerce Level 22, McKell Building, 2-24 Rawson Place SYDNEY NSW 2000	Privacy Coordinator Office of Fair Trading 1 Fitzwilliam Street PARRAMATTA NSW 2150	Privacy Coordinator Office of Industrial Relations PO Box 847 DARLINGHURST NSW 2010