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NSW Department of Commerce Annual Report 2007/08

**Corporate Governance**

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## Corporate governance framework

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.

### *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*

A new governance framework for Commerce was approved by the Executive and will be implemented throughout Commerce during 2008/9.

## Performance management

### *Results and Services Plan*

The Results and Services Plan is the service delivery and funding plan that identifies what Commerce plans to achieve with its current resources. This plan is also used by the New South Wales Government's Budget Committee to determine an agency's budget allocation.

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

As well as explaining what Commerce plans to deliver, the Plan details the key performance indicators and service measures by which Commerce will monitor the effectiveness and efficiency of its implementation. Quality, access, timeliness and cost of service delivery are assessed within the service measures.

The Corporate Plan details how Commerce intends to deliver on its objectives as outlined in the Results and Services Plan. Strategic level plans have been developed to deliver outcomes in such key result areas as:

- Total Asset Management Plan
- 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.

### *Corporate Plan 2006-2010*

The Department of Commerce Corporate Plan 2006-2010 outlines:

- the Department's purpose - what we do
- how Commerce will achieve the long-term objectives and address current key issues (strategies)

- and how Commerce 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 2007/08, 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.

These goals help Commerce fulfil its purpose of supporting, connecting and delivering value.

### *Total Asset Management plan*

The Total Asset Management (TAM) 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.

The purpose of the TAM plan is to set the strategic direction for Commerce's physical asset and infrastructure planning and management. This ensures that the asset strategy, its management and planning are aligned with the objectives and that associated risks are also appropriately managed.

The TAM plan also includes supporting plans such as the capital investment strategic plan, office 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 (Results and Services Plan, Corporate Plan, TAM plan 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 were further consolidated during the year through better monitoring of risk management activities through the Results and Services Plan reporting. This also supports the concept that the management of risks changes over time and that mitigation activities can be flexible.

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. 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.

During 2008/09, the Governance & Risk Branch will facilitate a program to develop risk identification and management in each business unit with a view to embedding appropriate risk management in the every day operations of Commerce's business units.

Commerce's strategic risks are periodically reviewed by the Executive and focus on such areas as attracting and retaining key staff, management of major projects, inadequate response to major disaster and loss of IT capability. Progress on actions to manage those risks is reviewed regularly by the Executive.

### *Insurable risk activities*

Commerce continued to participate in the NSW Treasury Managed Fund to cover all insurable asset and liability exposures. Commerce worked closely with key external insurance stakeholders.

As a member of the Self Insurance Corporation General Claims Management Working Group, Commerce contributed to the development of Service Level Agreements for the property, liability and miscellaneous insurable risk lines that apply across the Treasury Managed Fund.

Overall, insurable premiums increased 6.58 per cent compared to 2006/07. The result was driven by higher premiums in the motor vehicle and property lines. Offsetting this result was the ongoing improvement in liability premium costs which were lower than the primary pool.

Future workers' compensation premium results may change with the introduction by the Self Insurance Corporation of a new benchmark premium methodology which commences 1 July 2008.

Registered claims were lower in frequency and cost generally for all lines of insurance cover compared to 2006/07.

### **Claims history**

Number of claims	2004/05	2005/06	2006/07	2007/08
<b>Workers' compensation</b>	148	116	148	111
<b>Motor vehicle</b>	276	255	257	227
<b>Property</b>	39	20	19	18
<b>Liability</b>	6	9	5	3
<b>Other</b>	3	2	0	1
<b>Total</b>	472	402	429	360

**Claims cost**

Net incurred cost	2004/05	2005/06	2006/07	2007/08
<b>Workers' compensation</b>	802,453	669,742	1,654,066	791,630
<b>Motor vehicle</b>	732,371	676,485	774,609	658,597
<b>Property</b>	251,111	697,579	144,254	98,533
<b>Liability</b>	35,618	212,270	61,983	31,300
<b>Other</b>	1,254	1,456	0	0
<b>Total</b>	1,822,807	2,257,532	2,634,912	1,580,060

**Average claims cost**

Net incurred cost	2004/05	2005/6	2006/07	2007/08
<b>Workers' compensation</b>	5,421	5,773	11,176	7,131
<b>Motor vehicle</b>	2,653	2,652	3,014	2,901
<b>Property</b>	6,438	34,878	7,592	5,474
<b>Liability</b>	5,936	23,585	12,396	10,433

**Audit and compliance***Commerce Risk and Audit Committee*

During 2007/08, 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 2008 were:

- John Brown                      Independent Member and Chair
- John Lee                         Director-General, Commerce
- Marcia Doheny                 General Counsel and Director, Legal and Governance
- Brian Baker                     A/Deputy Director-General, Office of Public Works and Services
- Glenn Smith                    Director, Corporate Services and Review
- Paul Dexter                      Chief Financial Officer

*Internal audit*

Commerce's Audit Branch reports to the Director-General for the audit function and the Director, Legal and Governance for advice on strategic and corporate issues particularly regarding governance and risk.

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

The Chief Auditor is the Corruption Prevention Officer, Protected Disclosures Coordinator and is a permanent invitee to the Risk and Audit Committee, which has an oversight role of Audit Branch activities.

The Annual Audit Plan is formulated using the corporate goals, strategic risks and governance issues and is endorsed by the Risk and Audit Committee and approved by the Director-General. During 2007/08 Audit Branch addressed 59 planned projects, 82 special projects and 18 special investigations. Some of the more significant projects were:

- business continuity planning
- management assurance framework for smartbuy® and NSW eTenders
- NSW Telecommunications Authority
- Registry of Co-operatives and Associations
- Measurement & Technical Services
- Newcastle Contact Centre
- legal policy and expenditure compliance
- recruitment
- procure to pay process
- accounts payable, receivables and fixed assets
- payroll
- annual credit card usage
- facilities management
- motor vehicle fleet usage
- investigations of alleged inappropriate conduct.

Other activities included:

- review of Commerce Business Ethics Statement
- advice and assistance to NSW Procurement direct negotiation policy
- development of Computer Assisted Audit Tools and Techniques (CAATTS) Strategy
- briefing on implications of findings from ICAC RailCorp enquiry for Commerce
- ongoing involvement and advisory services provided to: the ERP Program Steering Committee, Conduct and Ethics Committee, Corruption Prevention Network, and the implementation of recommendations arising from the performance review of the Internal Audit Capacity in the NSW public sector.

An independent quality assessment was performed on the operations of the Audit Branch by the Institute of Internal Auditors against the International Standards for the Professional Practice of Internal Auditing. The quality assessment concluded that the Audit Branch conducts its assignments in accordance with the Standards and, in most respects, could be considered as representative of better practice in internal auditing.

### *External audit*

During 2007/08, the Audit Office of NSW carried out comprehensive audits of Commerce's annual financial statements and associated financial systems.

The results of the performance audit on government advertising were received in late 2007 and the Government is considering Audit Office recommendations to improve transparency with respect to expenditure reporting including review and approval; process and issue updated guidelines.

Also during the year the Audit Office completed a performance audit on the April 2003 amalgamation and creation of a number of government agencies including Commerce.

The statutory audit report issued by the Auditor-General to Parliament (Volume 5 – tabled 28/11/2007) for 2006/07 identified the following:

- excess flexitime and annual leave balances (repeat issues) - management accepted the recommendations of the Audit Office and implemented procedures to address these issues including the movement of staff to a single flexitime agreement.
- engagement of long term contractors – a policy for the management of contractors was adopted in October 2007, and Audit Office accepts that the engagement of contractors is now adequately documented and is effectively controlled.

## 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 expect 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. The Business Ethics Statement is available on the Commerce website ([www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au))

### *Conduct and Ethics Committee*

The Conduct and Ethics Committee, formed 7 December 2005, continued to meet during 2007/08. 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.

During 2007/08, the Committee met fortnightly to carry out its charter. Its members were:

- Glenn Smith, Director, Corporate Services & Review and Chair
- Marcia Doheny, General Counsel, Director, Legal and Governance
- Leanne Byrne, A/Executive Director, Director-General's Unit
- Charlie Sherlock, Chief Auditor, Audit Branch, Director-General's Unit

- Penny Hume, General Manager, People, Performance + Development.

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. A copy of the Code can be found on the Commerce website ([www.commerce.nsw.gov.au/About+Commerce](http://www.commerce.nsw.gov.au/About+Commerce))

## Accessing information

### *Legislative Council resolutions calling for papers under Standing Order 52*

During 2007/08 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:

- Yasmar Estate at 185 Parramatta Road, Haberfield - conservation, lease or disposal of any part of the site.
- Stein Report on the review of the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Amendment Bill 2006,

### *Freedom of Information*

The Department received 223 Freedom of Information (FOI) applications during the year under the *Freedom of Information Act 1989*, (FOI Act).

There were 15 applications brought forward from 2006/07, making 238 applications to be processed. Of these:

- nine applications were transferred to other agencies
- 20 applications were withdrawn at the applicants' request
- six applications were carried forward to the next reporting period
- 136 were granted full access
- 25 were granted partial access
- 17 were refused access.
- 18 notices were issued confirming no documents were held.
- seven applicants failed to pay processing charge advance deposits.

During 2007/08 ten personal applications were received, one was brought forward making a total of 11 to be processed. No applications were withdrawn and of the 11 required to be processed ten applicants were granted full access and one was partial access.

Of the 178 determinations made during the year, 136 provided full access, 25 granted partial access and 17 were refused access to information held by Commerce. In the previous year, 163 determinations were made, resulting in 105 with full access, 43 partial access and 15 were refused access to information held by Commerce. Overall, 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 FOI Act.

There were five internal review applications received during the year compared to the same number in the previous year. Of the five processed, four 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 2007/08 and it was transferred to the State Archives Authority of NSW for processing. The appeal was dismissed.

Freedom of Information statistical information complying with Appendix B of the Freedom of Information Manual is shown in Appendix 9 - 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 on the Department's programs and activities, publications and its policies can also be found on the Commerce website ([www.commerce.nsw.gov.au](http://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 77* of Friday, 27 June 2008
- Internet [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au)
- Freedom of Information 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 Freedom of Information 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 directed to:

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

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

### Processing a Freedom of Information request

The Freedom of Information 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.

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.

### Privacy management

The *Privacy and Personal Information Protection Act 1998* (the Privacy Act) introduced a set of binding privacy standards for the New South Wales 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. 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 2007/08**

There were no access applications received and there were no appeals to the Administrative Decisions Tribunal during 2007/08.

### **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	Privacy Coordinator	Privacy Coordinator
Department of Commerce	Office of Fair Trading	Office of Industrial Relations
Level 22, McKell Building,	1 Fitzwilliam Street	PO Box 847
2-24 Rawson Place	Parramatta NSW 2150	Darlinghurst NSW 2010
Sydney NSW 2000		