



<b>Minister and Portfolio:</b>	<b>Hon David Seymour, Minister for Regulation</b>		
<b>Title:</b>	<b>Current information-gathering and inquiry powers</b>	<b>Number</b>	<b>2024 -026</b>
<b>Date:</b>	<b>17 May 2024</b>	<b>Security Level:</b>	<b>IN CONFIDENCE</b>

**Purpose** To provide an overview of existing statutory powers for inquiries and reviews from across the public service which will inform our advice about appropriate powers for the Ministry of Regulation’s sector review function.

**Background** In discussions with you, we have mentioned that the Ministry for Regulation is likely to require a range of powers to undertake its functions, particularly relating to conducting sector reviews. As part of developing our advice on what powers we might need, we’ve been looking at the powers that other agencies across the public service have related to information gathering and enquiries. We thought it would be helpful to provide you with an overview of what we are finding, as background to inform future discussions and advice.

**Information gathering and inquiry powers** A sample of agency powers with examples of specific inquiries, studies, investigations and reports is provided at **Annex 1**.

In our work to date, the functions and powers used by agencies relate to the following areas:

- Monitoring and evaluating
- Information gathering
- Initiating and scoping sector reviews (including resourcing)
- Reporting – findings, conclusions, recommendations
- Decision-making, requirements to respond and implement.

We anticipate the Ministry will need statutory and non-statutory powers in these areas. We note the importance of clearly describing an agency’s functions to provide a coherent basis for exercising any powers granted.

In addition, powers in these areas are usually granted with associated requirements, for example inquiry or review procedures, publication and information handling requirements.

**Next steps** In late May/early June, we plan to provide a briefing on the range of general and specific powers, functions and requirements we recommend for the Ministry to support sector reviews and wider functions.

**Author** Charlotte Temple-Camp, Senior Analyst, Policy and Strategy Team  
Pippa Player, Principal Analyst, Policy and Strategy Team

**Manager** Melleny Black, Policy and Strategy Lead



### Annex 1 – Public Service organisations and their powers for inquiries, studies, investigations and reports

**Department of Internal Affairs (DIA)** As the coordinating agency for Royal Commissions of Inquiry, public inquiries and Government inquiries (public and Government inquiries), the DIA exercises powers under the Inquiries Act 2013.

#### ***Powers***

Public and Government inquiries have formal initiation procedures. Royal Commissions and other public inquiries require the Governor General to establish via the Letters Patent or Order in Council, but Government inquiries only require a *Gazette* notice from one or more Ministers. Public and Government inquiries have strong coercive powers to require information from any person and summon witnesses.

Once established, inquiries set their own process. They may make non-binding recommendations, but cannot determine legal rights and liabilities.

#### ***Checks and balances***

The inquiry and each of its members must act independently, impartially and fairly. There is also a statutory requirement to produce a final report which sets out findings and recommendations, and present this to the initiating person (the Governor General or appointing Minister), and to the House of Representatives. Once the inquiry has reported, all documents created or received during the inquiry are official information.

#### ***Examples***

- [Inquiry into the Attack on Christchurch Mosques 2020](#)
- [Inquiry into the EQC 2020](#)
- [Auckland Fuel Line Disruptions 2019](#)

#### ***Comment***

These inquiries are generally used for matters of significant national interest and where full independence is desired. Royal Commissions are the most formal kind of inquiry, take at least 18 months and are resource intensive. Other public inquiries have similar timeframes and formality, whereas Government inquiries are intended to be quicker to establish and can take less time (under 12 months). The establishment and reporting requirements are more formal than other types of review, however there is flexibility in the inquiry process and robust information-gathering powers.

**Public Service Commission (PSC)**

PSC can conduct investigations and inquiries under the Public Service Act 2020.

#### ***Powers***

PSC inquiries are initiated by Ministerial direction or by the Commissioner. The Commissioner (or delegate) has powers to require information from an agency or its functional chief executive, may enter premises of a public sector agency, and require a public service employee to answer questions.

Several sections of the Inquiries Act 2013 apply to PSC inquiries, including the ability to set its own process.



PSC inquiries may result in reports but do not have to, including findings of fault and recommendations for next steps to determine legal liabilities. The Commissioner may also make recommendations for the improvement of the relevant State services. The Commissioner also has general statutory functions and powers to set standards and issue guidance that apply across the public sector, and advise Ministers on matters related to performance, function and structure of the public service.

### **Checks and balances**

The Inquiries Act 2013 requirement to act independently, impartially and fairly applies to PSC inquiries.

### **Examples**

- [Accredited Employer Work Visa Scheme 2024](#)
- [Public Service Code of Conduct – Standards of Integrity and Conduct 2007](#)

### **Comment**

PSC inquiries have less establishment and reporting requirements and the same flexibility in procedure as public and Government inquiries. PSC inquiries which have published reports take around 6-12 months. However, the scope of these inquiries and therefore the exercising of the powers are narrower, as they relate specifically to the public service.

## **The Treasury**

The Treasury (in conjunction with the Minister of Finance powers) has the ability to issue instructions to government departments relating to information-gathering, publishing requirements and standards, accounting policies and practices and financial and non-financial reporting standards. This includes some restrictions on contracting, for example use of indemnities in public service contracts.

### **Powers**

Departmental chief executives are required to follow Treasury and Ministerial instructions. In addition, regulations can be made with slightly wider scope.

### **Checks and balances**

The main safeguards relate to domestic and international reporting an transparency (for example, Auditor-General, International Monetary Fund).

### **Comment**

Treasury instructions are narrowly focussed and heavily technical, with reach limited to the broader public sector and have correspondently few constraints.

## **Commerce Commission**

The Commerce Commission has general coercive powers to gather information, documents or give evidence from any person – in line with its functions and powers under the Commerce Act 1986, and through legislation related to its wider regulatory functions (for example, search and investigations under the Fair Trading Act 1986). It can also conduct competition studies (commonly referred to as market studies) under the Commerce Act 1986.

### **Powers**

To initiate a competition study, the Commission or Minister must prescribe the study's terms of reference and the date of the final report, by *Gazette* notice.



The Commerce Commission sets its own procedure for competition studies, but terms of reference are partially prescribed. The Commission is able to require information from any person, and require any person to appear in front of the Commission.

A report with the study's findings must be prepared. Recommendations may be made including changes to legislation, policies and practices or information availability, and research or monitoring of a specific matter, or behavioural change within an industry. Recommendations are not determinations.

Note that the Retail Payment Systems Act 2022 (RPSA) allows the Commerce Commission more expansive information gathering powers to support monitoring at a system level (but for a much narrower purpose). The RPSA provides a 'function' enabling the Commission to require forecasts or other forward plans in a prescribed way, rather than only enabling access to information that already exists.

### **Checks and balances**

Reports are prepared by the Commerce Commission, which is independent from the Minister (an Independent Crown Entity). Draft reports must be consulted publicly, and the final report must be provided to the Minister and published. The Minister must respond to the report's findings after it is made public.

### **Examples**

- [Personal banking services market study \(draft report\) 2024](#)
- [Market study into residential building supplies 2022](#)
- [Market study into the grocery sector 2022](#)
- [Market study into retail fuel 2019](#)

### **Comment**

Competition studies are generally flexible in process and have robust information gathering powers. However, there can be limitations in that under the Commerce Act, information-gathering is generally restricted to obtaining existing documents and information. The provisions in the RPSA are more comprehensive for system oversight and monitoring. Due to the nature of the Commerce Commission's purposes and functions, the scope of how powers can be applied can be narrow. Timeframes for competition studies are 12-18 months.

## **Productivity Commission**

The Productivity Commission undertook inquiries and research, under the repealed New Zealand Productivity Commission Act 2010.

### **Powers**

Inquiries were commissioned either by Ministerial referral with relevant portfolio Ministers, with research commissioned on the Productivity Commission's own initiative.

The Productivity Commission determined its own procedures. It had discretion to choose to publish papers, and invite submissions on papers and draft reports, and could consult with any persons, bodies, organisations or agencies. Terms of reference for inquiries were set by Ministers in consultation with the Productivity Commission which had to be complied with. Reports for inquiries had to be prepared.



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### **Checks and balances**

The Productivity Commission was an Independent Crown Entity. Terms of reference for inquiries had to be made public once received.

Final reports for inquiries had to be presented to the referring Ministers, and the House of Representatives. After this, the report had to be made publicly available.

### **Examples**

- [Immigration - Fit for the future. Final report 2022](#)

### **Comment**

The Productivity Commission's reports had minimal statutory powers and instead relied on voluntary provision of agency information and "soft", non-statutory powers. The Terms of reference were a key mechanism determining how inquiries proceeded.

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### **Independent Children's Monitor (ICM)**

The ICM monitors and reports on the performance of the Oranga Tamariki system under the Oversight of Oranga Tamariki System Act 2022, and works closely with the Ombudsman and Mana Mokopuna, the Children and Young People's Commission. It produces a range of reports such as experiences of care reports, in-depth review reports and system monitoring reports.

### **Powers**

The ICM is required by legislation to complete two annual reports, and one additional report every three years. It may conduct other in-depth reviews as it sees fit. Minimum content for all mandatory reports is prescribed in secondary legislation.

Tools and approaches are developed by the ICM, but they are required to consult on these with the chief executive of Oranga Tamariki and relevant approved services, and the Commissioner of Police. The ICM must make information rules relating to collection, use and disclosure of information to the ICM.

The ICM can require information from relevant agencies, but must gain consent to gather information from a child or young person, or their caregiver. Additionally, there is a statutory power to allow the ICM to work with the Ombudsman and Children and Young People's Commission, including by consulting and sharing information as appropriate.

### **Checks and balances**

The ICM is required to act independently. Under its legislation, a Minister must not direct or stop the ICM carrying out an activity.

Statutory reports must be provided to relevant Chief Executives, Ministers, the Ombudsmen, the Children and Young People's Commission, and presented to the House of Representatives. The Chief Executive of an agency that is the subject of a report must provide a written response to the report, including stating the agency's planned action, timeframes and a plan to monitor changes. Reports and responses must be made publicly available.

Information rules set by the ICM for its monitoring function are secondary legislation and must protect the privacy of children, young people, their families and whānau.

### **Examples**

- [Access to Primary Health Services and Dental Care 2024](#)
- [Experiences of Care in Aotearoa 2022/2023](#)



- [Third Monitoring Report 2020](#)

### **Comment**

The scope of ICM reports is proportionate to its functions, which is narrower than other public sector inquiries. The powers provide flexibility in process, while prescribing certain elements such as how information requests are made from agencies (and associated parties). The mechanism of reporting annually and requiring a response to each report allows progress to be regularly monitored and could be an effective accountability tool.

### **Corrections Inspectorate**

The Corrections Inspectorate conducts reviews and investigations into prison operations and/or performance under the Corrections Act 2004. It also produces thematic reports to consider and report on wider system issues.

### **Powers**

A Corrections Inspectorate investigation is initiated when there is a complaint or death in custody. Reviews can also be referred by the Chief Executive, or if concerns or patterns are identified across issues raised, the Inspectorate will initiate its own review.

An inspector may investigate a complaint in any manner the inspector considers appropriate. Inspectors have extensive powers of entry and access to relevant locations, people and records. They cannot compel interview but can request and compel to provide information.

An inspector of corrections may make recommendations about practices or procedures, or issue a direction necessary to avoid or reduce immediate danger.

### **Checks and balances**

The Inspectorate is part of Corrections, but is independent of operational activities and management. If a matter involving a Police jail is reported on, the report must go to the Police Commissioner.

The Chief Executive of Corrections may revoke a direction, however they must inform the Chief Ombudsman of this and the reasons.

### **Examples**

- [Special investigation into minimum entitlements at Auckland Prison 2024](#)
- [Mothers and Babies: Prison management of pregnant women and mothers of infants 2023](#)
- [Findings of the Coordinated Review of the management of the LynnMall supermarket attacker 2022](#)

### **Comment**

The Corrections Inspectorate has powers which enable proactive and reactive means to respond to complaints, deaths in custody or other matters in a flexible way and to work across a range of agencies and organisations as well as with individuals.

The power to make directions is uncommon, although in the statutory powers landscape, it should be noted that the Treasury has powers to issue instructions to public service chief executives.