



To	Hon David Seymour, Minister for Regulation		
Title	Statutory powers for Ministry for Regulation reviews	Number	2024-041
Date	24 May 2024	Priority:	Medium
Action Sought	Discuss with officials	Due Date	Tuesday 28 May
Contact Person	Melleny Black, Policy and Strategy Lead	Phone	9(2)(a) [REDACTED]
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Attachments	Yes	Security Level	IN CONFIDENCE

Executive Summary

1. This briefing and annexes are intended to support a discussion on the types of statutory functions, powers and requirements (statutory mechanisms) that the Ministry for Regulation (the Ministry) will need to carry out reviews, and other functions such as monitoring the regulatory management system.
2. We have previously briefed you on existing statutory mechanisms across the public service landscape [2024-026 refers] and are considering how these may be adapted and expanded to provide a flexible toolkit that can be drawn on within the scope of the Ministry's functions.
3. Our proposed approach highlights the need for broad flexible powers as the scope and subject matter of reviews will be varied, balanced with requirements for the Ministry to demonstrate transparency and accountability.
4. We have grouped the powers in order of a phased review process, modelled on what other agencies do, while noting we may approach different reviews in different ways. We have also included powers that are important for other functions, including the Ministry's intended oversight of the Regulatory Management System (RMS).
5. We propose a range of specific statutory mechanisms including a monitoring function, information gathering (including forecasting) and sharing, flexible procedure setting and initiation, reporting requirements and issuing standards and guidance.
6. We will be undertaking further work on specific design choices and how we will use non-statutory mechanisms to support our functions.



Recommended Action

7. We recommend that you:

- **discuss** this briefing and attached slides at your meeting with officials on 28 May
- **agree** that officials continue developing this work in line with the proposed approaches in this paper
- **note** that we will brief you further on specific design decisions related to this work.

We recommend that you:

- | | | |
|---|--|-------------------------|
| a | discuss this briefing and attached slides at your meeting with officials on 28 May | <i>Note</i> |
| b | agree that officials progress work to include statutory functions, powers and requirements in the Regulatory Standards Bill | <i>Agree / Disagree</i> |
| c | note that we will brief you further on specific design decisions related to this work | <i>Note</i> |

Proactive Release Recommendations

- | | | |
|---|--|-------------------------|
| d | agree that this briefing is withheld until after government policy decisions are made | <i>Agree / Disagree</i> |
|---|--|-------------------------|

9(2)(a)

Melleny Black
Policy and Strategy Lead
Ministry for Regulation
Date: 24 May 2024

Hon David Seymour
Minister for Regulation
Date:



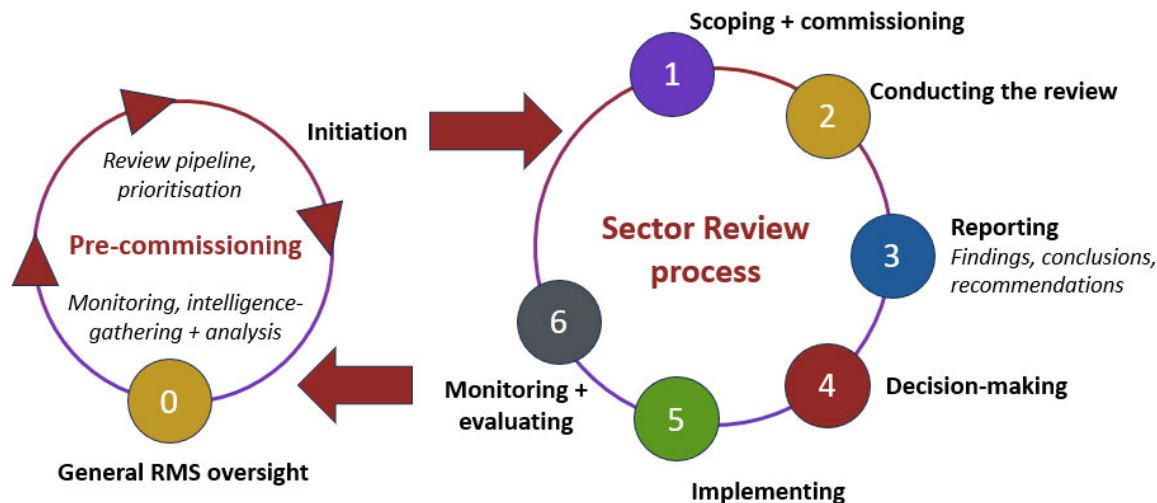
Purpose of Report

8. To provide information on the types of statutory mechanisms for the Ministry to carry out reviews and inquiries, and in undertaking its wider roles and responsibilities.
9. This advice follows last week's Aide-Memoire *Current information-gathering and inquiry powers* [2024-026 refers] which provided an overview of existing statutory powers and tools relating to inquiries and reviews across the public sector.
10. We have identified a range of mechanisms that are likely to be important, and analysed the existing legislative provisions the proposed approach could be modelled on.
11. We are keen to get your feedback on whether this approach aligns with your thinking. To support the discussion **Annex One** provides notes on the framework for design of powers. The summary table included in **Annex Two** provides further detail about the rationale for powers presented in the advice.

Analysis:

Context

12. We recently conducted a review of existing statutory powers for inquiries and reviews across the public sector [refer briefing 2024-026]. We found that several agencies and Crown Entities have existing statutory mechanisms that will also be important for the Ministry's purposes of undertaking reviews, and support other proposed and possible functions.
13. The overall objectives of reviews involve:
 - Assessing whether regulation is achieving appropriate outcomes
 - Driving incentives to improve the quality of New Zealand's stock of regulation and regulatory practice
 - Reducing regulatory burden by examining the cumulative impacts of multiple regulatory systems across a sector, considering issues beyond the responsibility of any single regulatory system or agency.
14. While reviews will be varied in scope and size, there are likely to be common phases in their process. The diagram below illustrates these phases, which are based on previous discussions with you and our research into other agencies' review processes:
 - Pre-commissioning (issues are investigated and assessed suitable for review)
 - Scoping and commissioning (how the review will be done)
 - Conducting the review
 - Reporting (providing our analysis, findings and recommendations)
 - Decision-making (taking action in response to findings and recommendations)
 - Implementation of decisions or recommendations
 - Monitoring and evaluating (checking that implementation has happened and outcomes are as intended).



Relationship between general monitoring and specific sector review functions

15. For each phase in this process, we have identified powers and requirements that will be essential to ensure that the Ministry can effectively carry out reviews and other functions. Where possible, we have noted what existing legislative provisions the proposed approach could be modelled on.

16. A summary table of the proposed general and review-specific statutory powers with notes of relevant rationales is included in **Annex Two**.

General powers and non-statutory mechanisms

17. We envisage a suite of general powers for the Ministry, with specific powers for reviews. Some powers will be legislative, but supported by administrative (non-statutory) tools embedded through Executive process such as the Cabinet Manual, CabGuide, and Cabinet Circulars.

18. Any powers and tools used by the Minister or the Ministry must link directly to the scope of its functions. Several powers useful for reviews should be applicable to all Ministry functions generally.

19. This briefing covers a range of possible powers, some of which are extensive in nature, particularly where we have proposed powers to require information from private citizens and entities. At this stage, there is still more detailed consideration to be given to who, how and when such powers will be exercised, as well as to oversight and governance arrangements.

20. Powers and tools will also need to have checks and balances, for example, relating to process, transparency, natural justice and information-handling.

21. The functions that underpin use of these powers include:

- Monitoring the health and operation of the Regulatory Management System (RMS)
- Improving the functioning of existing regulatory systems, including the stock of regulation
- Ensuring new regulation is of high quality
- Improving regulatory practice and capability.



22. The Ministry’s RMS monitoring function will require comprehensive information-gathering powers. Monitoring the RMS will allow the Ministry to assess information on regulatory system performance and regulator capability, which in turn will inform our review pipeline and work programme – to support the pre-commissioning phase of the review process in the diagram above.

Pre-commissioning

23. The pre-commissioning phase is where information from monitoring of sectors and the RMS is assessed to investigate potential issues and suitability for review by the Ministry.

24. It will be important for the Ministry to monitor performance and collect enough information to determine if a review is appropriate. The monitoring function and broad information-gathering powers would be available to the Ministry across all functions so as not to restrict the use of powers to after a review has been initiated.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory function to monitor and investigate. • Statutory powers for information-gathering that include forward-looking information and apply to all Ministry functions. • Ability to share and exchange information across public service agencies and statutory entities. 	<p>Commerce Act 1986:</p> <ul style="list-style-type: none"> • The Commission may require a person to supply information, documents or give evidence for the purposes of carrying out its functions and exercising its powers. <p>Retail Payment System Act 2022:</p> <ul style="list-style-type: none"> • To investigate efficiency and effectiveness and how standards are being applied. • Require information that includes forecasts, forward plans, and other information. <p>Public Service Act 2020:</p> <ul style="list-style-type: none"> • Review the design and operation of the system of government agencies – to improve delivery of services, inter-agency cohesion, governance and functions. • To conduct investigations and inquiries, obtain information and enter premises.



Scoping and commissioning

- 25. The scoping and commissioning phase often comprises two statutory elements: initiation and developing terms of reference. Having a statutory initiation and terms of reference requirement will be important for the Ministry to have transparency and ease of working with other agencies, the private sector and individuals.
- 26. We see it as important that this phase of the process remains adaptable to different contexts, as the form and functioning of reviews will be sector-dependent. We are also keen to ensure our review process remains flexible and avoids being overly burdensome.

Initiation

- 27. We found that statutory initiation requirements across other agencies varied in formality. Some public inquiries require establishment by the Governor-General by Letters Patent or Order in Council while others (e.g. the Corrections Inspectorate and the Independent Childrens’ Monitor) have statutory powers to initiate their own reviews and inquiries, as necessary.
- 28. The power to self-initiate reviews will be important to the Ministry, as it may streamline the process in some cases, however we also propose that the Minister for Regulation can also initiate reviews.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory requirement for initiation least formal possible. • Statutory power for Minister for Regulation to direct the initiation of a review or inquiry. • Statutory power for Ministry to be able to commission reviews and inquiries as it sees fit. 	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> • Commissioner may conduct investigations and inquiries that the Commissioner think necessary or desirable or that the Minister directs. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> • Royal commissions, public and government inquiries. • One or more Ministers may, by notice in the Gazette, establish a government inquiry.

Procedure-setting and terms of reference

- 29. Most agencies with inquiry or review powers can set their own procedures as they see fit. In many cases, terms of reference are required to establish the scope and methodology of a review. We consider it desirable for the Ministry to have a similar approach to allow for flexibility and clarity.
- 30. For some types of review, there are requirements for terms of reference to be consulted with specific parties, and/or made public. Publishing these once finalised may be a useful mechanism for accountability and transparency.



Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory power to set own procedure for inquiries and reviews. • Statutory requirement to develop terms of reference for reviews, but without prescribed content. • Statutory requirement to note application of Inquiries Act to the investigation or inquiry. • Statutory requirement to publish final terms of reference. 	<p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> • Sets own process, including how to call witnesses, hold hearings, how to receive evidence. • The terms of reference may set out any matters relevant to the inquiry, including scope and purpose; administrative or procedural matters; and reporting timeframes and dates. <p>Public Service Act 2020:</p> <ul style="list-style-type: none"> • Application of the Inquiries Act to an investigation or inquiry – when the Commissioner has certified that Inquiries Act provisions should apply. • No power to determine civil, criminal or disciplinary liability of a person but may make findings of fault, recommendations for further steps to determine liability and for the improvement and benefits of State services relevant to the findings of the investigation. • The Commissioner may authorise an advisory committee to make inquiries, conduct research, or make reports to assist with the efficient carrying out of the Commissioner’s functions. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> • Competition study terms of reference.

31. Further consideration needs to be given to whether conditions are imposed on the Ministry’s discretion to set our own process and terms of reference. For example, the Independent Children’s Monitor must consult on its tools and approaches with relevant chief executives and the Commissioner of Police. Our view is that careful consideration of this is needed to avoid restricting the Ministry, as reviews will be varied and a process may have unique elements.
32. We will also need to consider consultation requirements on the terms of reference, however we do not recommend making this a statutory requirement. It will be important to balance any consultation requirements against the Ministry and review’s independence.
33. In addition, further consideration needs to be given to where the finalised terms of reference be published or notified. The publication requirement will ensure transparency of reviews and provide additional accountability for both the Ministry for Regulation and relevant agencies.



Conducting the review

34. Conducting reviews will require information-gathering powers, and a function to undertake inquiries or reviews.

Information-gathering

35. There are different agency information-gathering powers and approaches across the public service, from consent-based to coercive. A mix of these powers is proposed.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory power to compel information from public service agencies, Crown entities, and other regulatory agencies. • Statutory powers for information-gathering that include forward-looking information. • Ability to share and exchange information across other agencies. 	<p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> • Require any person to produce documents or things, provide information, make statutory declarations. • Receive and take evidence. • Summon witnesses. <p>Public Service Act 2020:</p> <ul style="list-style-type: none"> • Able to trigger inquisitorial powers under the Inquiries Act 2013 where it is determined that it is reasonably necessary to do so. <p>Retail Payment System Act 2022:</p> <ul style="list-style-type: none"> • Require information that includes forecasts, forward plans, and other information. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> • Require persons to supply information or give evidence. • Power to search. • Power to take evidence. • Sharing of information and documents with public service agencies, statutory entities.

36. Most agencies with coercive powers to compel information have made operational decisions to request information on a voluntary basis first. However, coercive powers are an important backstop, and useful when working to tight timeframes, and when requesting information from outside the public service (such as statutory entities and independent Crown Entities or State-Owned Enterprises).

37. As previous mentioned, we are considering applying the Ministry’s information-gathering powers broadly to all functions (including monitoring), to cover forecasts and similar forward-looking information, and extending to private citizens and entities (although we envisage this would be used by exception only).



Reporting

- 38. The reporting phase of a review involves the preparation of a report, often with findings or recommendations. Reports are usually published, and a response may be required.
- 39. Our proposed approach for reporting balances the use of reports as a transparency and accountability mechanism, while keeping the process and requirements for reports adaptable to different contexts.

Completing a report

- 40. Completing a report is a useful mechanism for accountability both for the inquirer and the entities subject to review.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory requirement to complete a report. • Statutory power to make recommendations or findings as the Ministry sees fit (binding and non-binding). 	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> • May make findings of fault, recommendations that steps be taken to determine legal liability of a person, and findings or recommendations for improvement and benefits of the State services relevant to the findings of the investigation. • May receive or make a report to any person. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> • May recommend changes to legislation, other instruments, or policies and practices of government or relevant organisation. • May recommend changes to amount or type of information made available. • May recommend that a person or organisation research or monitor a matter. • May recommend changes to behaviour. <p>Corrections Act 2004:</p> <ul style="list-style-type: none"> • May issue direction to avoid or reduce immediate danger to any person. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> • Final report must set out findings and any recommendations.

- 41. Further consideration is needed about whether we want to prescribe timeframes for review reports, as is the case for the Independent Childrens’ Monitor which is required to produce two different annual reports and one three-yearly review report. Our initial view is that this there needs to be flexibility, and that this aspect would be detailed in the terms of reference for each review.



Publishing a report

42. Several inquiry or review reports are required to be made public, and some must be presented to the House of Representatives.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> Statutory requirement to make reports public. 	<p>Commerce Act 1986</p> <ul style="list-style-type: none"> Report must be provided to the relevant Minister, then made public. <p>Corrections Act 2004:</p> <ul style="list-style-type: none"> May issue direction to avoid or reduce immediate danger to any person. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Final report must be presented by the Minister to the House of Representatives.

43. We propose that as a government agency, we have an obligation to make reports public. However, an alternative model (such as in the Public Service Act 2020) would be to have a statutory power to make reports public, while retaining the ability not to do so. This might be preferable given the unknown, varied nature of future reviews. We will continue to consider this as we progress this work.
44. Further consideration will need to be given to whether reports are presented to the House of Representatives, as is the case under the Inquiries Act 2013. Our initial view is that while this is an additional mechanism for transparency and accountability, it may make it more difficult to provide free and frank information in the reports.

Decision-making

45. The decision-making phase of a review is when the response to a report's findings and recommendations, and is formally articulated. This might include making directions to agencies or parts of a sector, issuing instructions, creating new regulations, or amending/repealing existing regulations. Most of the decision-making phase is likely to be achieved through Executive process rather than a statutory mechanism. However, there are some statutory mechanisms that might be useful for the Ministry.
46. Reviews will result in a range of recommendations, intended to be binding and/or non-binding, with a range of parties accountable for the outcomes. Our proposed approach highlights that the Ministry's powers will place accountability for change on the correct person or agency, which will provide a useful backstop if there is difficulty or reluctance in actioning recommendations.
47. We also suggest that powers for decision-making apply to all Ministry's functions, so that (for example) standards and guidance can be issued broadly across the public service and Crown Entities, reflecting the Ministry's proposed function to improve regulatory practice.



Proposed approach	Modelled on...
<ul style="list-style-type: none"> Statutory function or power to set standards and issue guidance. Statutory requirement for relevant agency, Chief Executive, Minister or other person to respond to report. Statutory power to issue instructions. Non-statutory, executive process-based. 	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Ability to set standards, issue guidance, review design and operation of system of government agencies and advise Ministers on possible improvements. <p>Oversight of Oranga Tamariki System Act 2023:</p> <ul style="list-style-type: none"> Response to report required by the Chief Executive of the subject agency. Content prescribed including what action will be taken, specify timeframe for changes, and how they will be monitored. <p>Public Finance Act 1989:</p> <ul style="list-style-type: none"> Treasury and the Minister of Finance may issue instructions to departments and Chief Executives (that have the status of secondary legislation, but do not need to go through an OIC process). Agencies must comply to the extent the instructions apply to their department.

48. Further consideration will need to be given to who is required to respond to the report and at what level, and what the outputs of this report might be.

Implementation

49. Responsibility for implementation of review outcomes is likely to be shared between relevant agencies and entities, and the Ministry for Regulation. We propose that responsible Ministers of relevant agencies and entities take ownership for implementation. How this works in practice will depend on the findings and recommendations and what the response is, and will vary between reviews.

50. Implementation will most likely be achieved initially without statutory mechanisms. Our approach will consider options which place more onus on the responsible Ministers or agencies to make the changes needed, exploring the delivery of omnibus bills, changes to secondary legislation and reviewing how Executive process may be streamlined. We will continue developing this approach and advise you further.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> Monitoring implementation activities owned by responsible Ministers and agencies. 	<p>Non-statutory mechanisms such as:</p> <ul style="list-style-type: none"> Legislation priority-setting. Omnibus Bills. Changes to secondary legislation. Streamlined Executive process.



Monitoring and evaluating

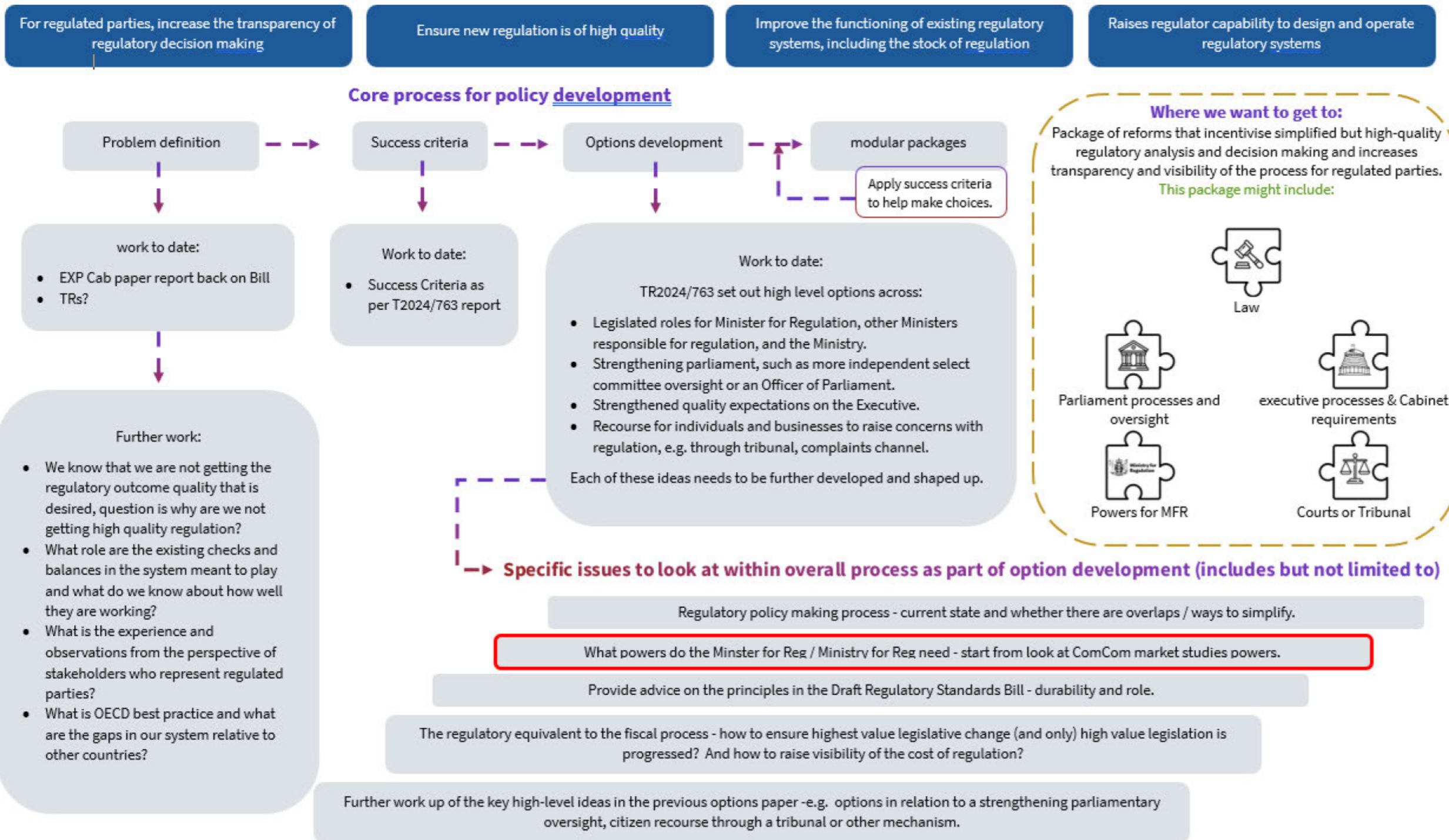
51. The monitoring and evaluating phase is where the outcomes of a review are monitored to confirm that changes are implemented and are working as intended. This will input into the Ministry's oversight of the regulatory management system.
52. It will be important for the Ministry to be able to monitor performance and collect enough information to determine if a review has worked as intended. As mentioned in the pre-commissioning section, this power should be available to the Ministry across all its functions so as not to be unduly restrictive.

Proposed approach	Modelled on...
<ul style="list-style-type: none"> • Statutory function to monitor and investigate. • Statutory powers for information-gathering that include forward-looking information and apply to all Ministry functions. 	<p>Commerce Act 1986:</p> <ul style="list-style-type: none"> • May require a person to supply information, documents or give evidence for the purposes of carrying out its functions and exercising its powers. <p>Retail Payment Schemes Act 2022:</p> <ul style="list-style-type: none"> • Investigates efficiency and effectiveness and how standards are being applied. • require information that includes forecasts, forward plans, and other information.

Next Steps

53. We look forward to discussing this with you at the officials' meeting on 28 May, and receiving your feedback on our proposed approach.
54. We will continue to develop this work along these choices, in order to inform the Cabinet paper for the Regulatory Standards Bill.

Context – current work programme



This Annex includes a series of A3s to support discussion around general powers and specific powers for sector reviews.

There are interdependencies across other workstreams, particularly relating to work on principles, and strengthening parliamentary oversight, and ensuring legislation can be revised and kept up to date.

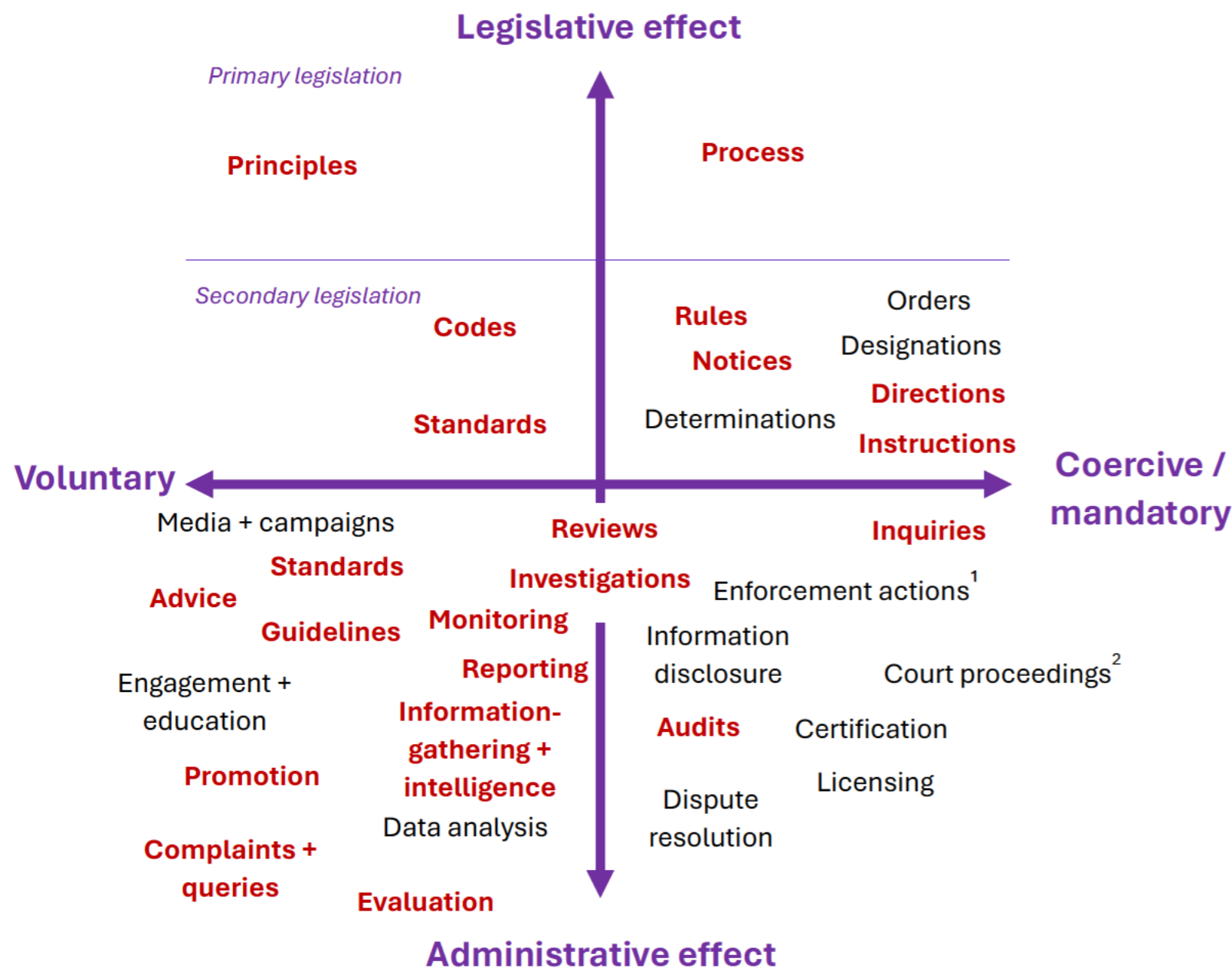


Considering a toolkit for the Ministry

Any powers and tools used by the Minister or the Ministry must link directly to the scope of its functions. Functions could cover:

- Monitoring health and operation of the Regulatory Management System (RMS)
- Improving the functioning of existing regulatory systems, including the stock of regulation
- Ensuring new regulation is of high quality
- Improving regulatory practice and capability.

The range of tools common in regulatory systems and enabling system oversight is shown in the diagram.



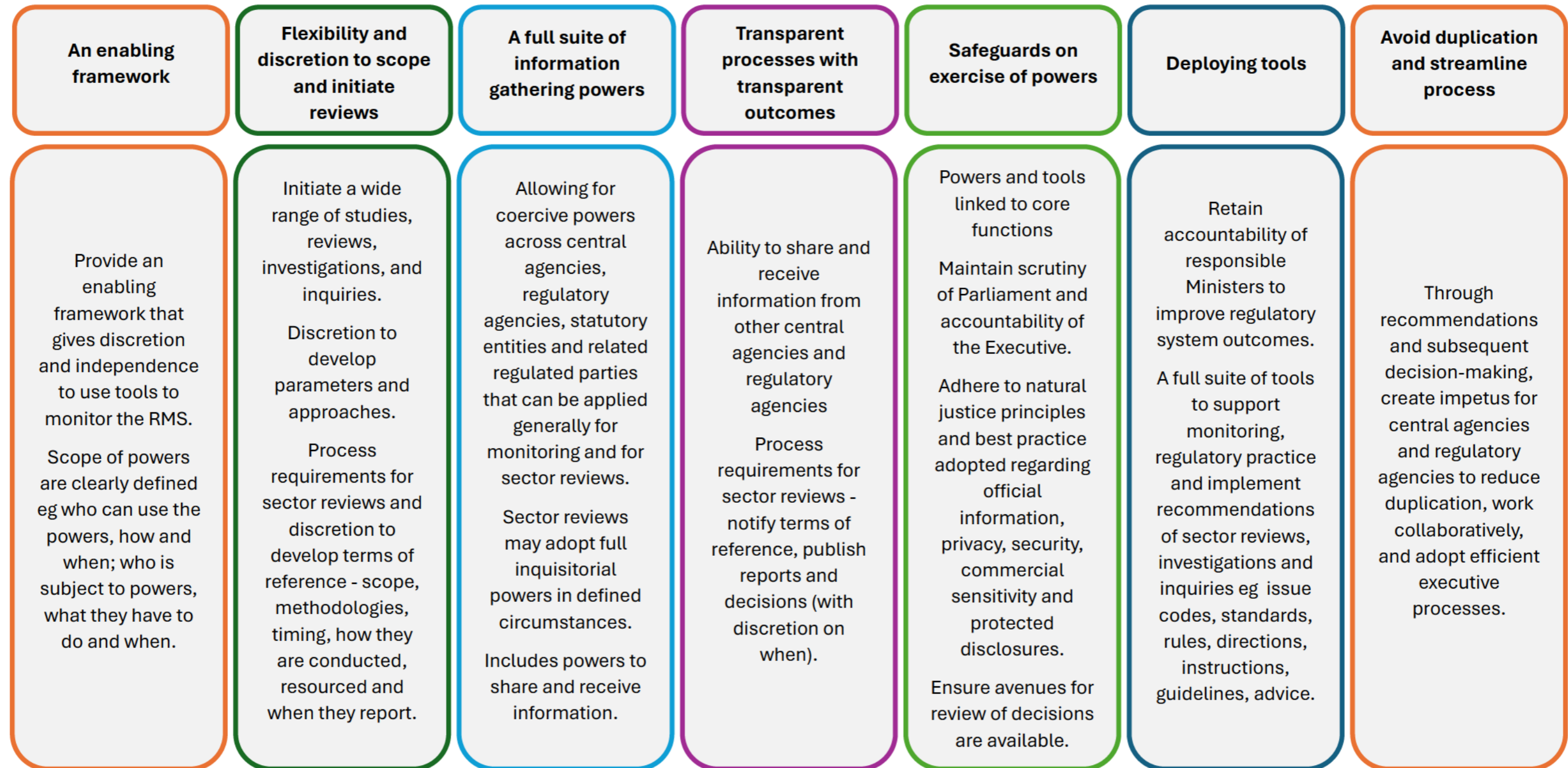
- A mix of statutory and non-statutory tools/mechanisms will be needed.
- In line with the above functions, the tools in **red bolded** text are being considered, based on our scan of existing agency powers.
- We envisage a suite of **general** powers with **specific** powers for sector reviews - some legislative tools, but mainly administrative tools that are embedded through Executive process eg Cabinet Manual, CabGuide, Circulars.
- Powers and tools will also need to have checks and balances in the form of associated requirements, for example, relating to process, transparency, natural justice and information-handling.

**Are you comfortable with pursuing this range of tools?
Are there other tools that you wish to consider?**

Sector Reviews – framework for design of powers

The overall objectives of reviews involve:

- Assessing whether regulation is achieving appropriate outcomes
- Driving incentives to improve the quality of New Zealand’s stock of regulation and regulatory practice
- Reducing regulatory burden by examining the cumulative impacts of multiple regulatory systems across a sector, considering issues beyond the responsibility of any single regulatory system or agency.



Does this capture your thinking about general and specific sector review powers and tools?

Are there other aspects we need to consider?

Annex Two – Summary of general and review powers

Proposed approach	Rationale	Modelled on...
Pre-commissioning		
<p>General powers</p> <ul style="list-style-type: none"> Statutory function to monitor and investigate. Statutory powers for information-gathering that include forward-looking information and apply to all Ministry functions. Ability to share and exchange information across public service agencies and statutory entities. 	<p>To be able to effectively and efficiently monitor performance and collect enough information to determine if a review is appropriate.</p> <p>This includes anticipating that information might be from a wide range of sources and enabling the Ministry to specify how information is provided, in what form, for what period, by whom, and when (for example, requesting information by a specified date).</p> <p>For statutory entities outside the core public service (and potentially from regulated parties) it will be useful to have powers to compel release of information or to provide analysis of data or information (including forecasts and forward plans). It is envisaged that this would be used on a case-by-case basis, for example where there might be agency barriers to releasing certain types of information (sensitivities, or privacy concerns).</p> <p>Safeguards will be needed regarding the reasonableness of requests and a mechanism for parties to extend timeframes or refuse to provide information.</p>	<p>Commerce Act 1986:</p> <ul style="list-style-type: none"> The Commission may require a person to supply information, documents or give evidence for the purposes of carrying out its functions and exercising its powers. Sharing information and documents with public service agencies, statutory entities, Reserve Bank and NZ Police. <p>Retail Payment System Act 2022:</p> <ul style="list-style-type: none"> To investigate efficiency and effectiveness and how standards are being applied. Require information that includes forecasts, forward plans, and other information. <p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Review the design and operation of the system of government agencies – to improve delivery of services, inter-agency cohesion, governance and functions. to conduct investigations and inquiries, to obtain information, to enter premises.
Scoping and commissioning: Initiation		
<p>General and review powers</p> <ul style="list-style-type: none"> Statutory requirement for initiation least formal possible. Statutory power for Minister for Regulation to direct the initiation of a review or inquiry Statutory power for Ministry to be able to commission reviews and inquiries as it sees fit. 	<p>To have flexibility about the scope of a review, transparency and ease of working with other agencies, the private sector and individuals.</p> <p>Initiation requirements need to be as straight-forward as possible to ensure the process is streamlined. Depending on the issues emerging or known, there will be cases where a full sector review might be considered. In other cases, a limited, targeted investigation or inquiry might be warranted. Full inquiry powers might be needed in some cases, less formal approaches in others or where greater level of independence is desired.</p>	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Commissioner may conduct investigations and inquiries that the Commissioner think necessary or desirable or that the Minister directs. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Royal commissions, public and government inquiries. One or more Ministers may, by notice in the Gazette, establish a government inquiry.



Proposed approach	Rationale	Modelled on...
	<p>Ministers may also recommend other forms of inquiry under the Inquiries Act 2013 for matters of significant public interest eg Royal Commission of Inquiry, public inquiries and government inquiries. Such inquiries are usually coordinated, managed and resourced through the Department of Internal Affairs.</p>	
Scoping and commissioning: Terms of reference and procedure-setting		
<p>Review powers</p> <ul style="list-style-type: none"> Statutory power to set own procedure for inquiries and reviews. Statutory requirement to develop terms of reference for sector reviews, but without prescribed content. Statutory requirement to note application of Inquiries Act to the investigation or inquiry. Statutory requirement to publish final terms of reference. 	<p>To be transparent about reviews and alert interested parties to the review, its scope, methodology, timeframes and how parties might provide input.</p> <p>Linking initiation to elements of the Inquiries Act provisions reduces the need to duplicate requirements in empowering legislation about procedures, compulsion of information, evidence-gathering and handling of information.</p> <p>Consensus on the terms of reference for a review might be desirable in some cases. However, in light of variation in the sectors considered, and the scope and size of reviews that might be necessary, flexibility about the degree of consultation and engagement on a particular sector review is needed.</p> <p>Safeguards will be needed regarding whether any procedural or consultation requirements are desirable in setting the process included in the terms of reference for a sector review (or a general inquiry or investigation).</p>	<p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Sets own process, including how to call witnesses, hold hearings, how to receive evidence. The terms of reference may set out any matters relevant to the inquiry, including scope and purpose; administrative or procedural matters; and reporting timeframes and dates. <p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Application of the Inquiries Act to an investigation or inquiry – when the Commissioner has certified that Inquiries Act provisions apply. No power to determine civil, criminal or disciplinary liability of a person but may make findings of fault, recommendations for further steps to determine liability and for the improvement and benefits of State services relevant to the findings of the investigation. The Commissioner may authorise an advisory committee to make inquiries, conduct research, or make reports to assist with the efficient carrying out of the Commissioner’s functions. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> Competition study terms of reference.
Conducting the review: Information-gathering		
<p>General and review powers</p> <ul style="list-style-type: none"> Statutory power to compel information from public service agencies, Crown entities, and regulatory agencies. 	<p>To be able to effectively and efficiently collect information and evidence, and interview parties to support investigation and analysis during the course of a review.</p> <p><i>See also Pre-commissioning above.</i></p>	<p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Require any person to produce documents or things, provide information, make statutory declarations Receive and take evidence Summon witnesses.



Proposed approach	Rationale	Modelled on...
<ul style="list-style-type: none"> Statutory powers for information-gathering that include forward-looking information. Ability to share and exchange information across other agencies. 	<p>This includes anticipating that information might be from a wide range of sources and enabling the Ministry to specify how information is provided, in what form, for what period, by whom, and when (for example, requesting information by a specified date).</p> <p>For statutory entities outside the core public service (and potentially from regulated parties) it will be useful (as a back stop power) where, for example, voluntary provision has failed to produce adequate information for the review, to have powers to compel release of information, give evidence and to interview employees of statutory entities / regulatory agencies.</p> <p>In addition, it will be important to be able to share and exchange information for the purposes of the inquiry or investigation across relevant organisations.</p> <p>Safeguards will be needed regarding the use of powers, safe-guarding sensitive information, and the reasonableness of requests. A mechanism will also be needed for parties to object to the request, extend timeframes or refuse to provide information or give evidence.</p>	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Able to trigger inquisitorial powers under the Inquiries Act 2013 where it is determined that it is reasonably necessary to do so. <p>Retail Payment System Act 2022:</p> <ul style="list-style-type: none"> Require information that includes forecasts, forward plans, and other information. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> Require person to supply information or give evidence. Power to search. Power to take evidence. Sharing of information and documents with public service agencies, statutory entities.
Reporting: Completing a report		
<p>Review powers</p> <ul style="list-style-type: none"> Statutory requirement to complete a report. Statutory power to make recommendations or findings as the Ministry sees fit (binding and non-binding). 	<p>To ensure there is an output from a review and that information and evidence provided by parties has been represented fairly.</p> <p>Producing a report (and or other outputs) from a review will be an important element giving credibility to the function and confidence and trust in the work of the Ministry.</p> <p>As there will be variation in the subjects and sectors considered, and the scope and size of reviews, flexibility about the content of the report will be needed and the mix of findings, conclusions and recommendations drawn from the analysis.</p> <p>It will be important to ensure reports are accurate, represent information and evidence appropriately and that findings and recommendations are reasonable based on the analysis undertaken.</p>	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> May make findings of fault, recommendations that steps be taken to determine legal liability of a person, and findings or recommendations for improvement and benefits of the State services relevant to the findings of the investigation. May receive or make a report to any person. <p>Commerce Act 1986:</p> <ul style="list-style-type: none"> May recommend changes to legislation, other instruments, or policies and practices of government or relevant organisation May recommend changes to amount or type of information made available. May recommend that a person or organisation research or monitor a matter. May recommend changes to behaviour.

Proposed approach	Rationale	Modelled on...
	Processes adopted for finalising reports also need to provide adequate opportunity for parties to respond to statements made about them and that the information or evidence they have provided is accurately represented.	<p>Corrections Act 2004:</p> <ul style="list-style-type: none"> May issue direction to avoid or reduce immediate danger to any person. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Final report must set out findings and any recommendations.
Reporting: Publishing a report		
<p>Review powers</p> <ul style="list-style-type: none"> Statutory requirement to make reports public. 	<p>To maintain transparency and accountability of the Ministry for the work; ensure the relevant sector parties receive the report.</p> <p>While the default position is that all reports prepared by the Ministry are published, the Minister may need discretion around when a report is published. For example, when recommendations are subject to Cabinet conventions around policy decisions, or where there is sensitivity around content (for privacy, commercial sensitivity or similar reasons).</p> <p>A further consideration is if, and when, a report is presented to the House of Representatives.</p>	<p>Commerce Act 1986:</p> <ul style="list-style-type: none"> Report must be provided to the relevant Minister, then made public. <p>Corrections Act 2004:</p> <ul style="list-style-type: none"> May issue direction to avoid or reduce immediate danger to any person. <p>Inquiries Act 2013:</p> <ul style="list-style-type: none"> Final report must be presented by the Minister to the House of Representatives.
Decision-making		
<p>General and review powers</p> <ul style="list-style-type: none"> Statutory function or power to set standards and issue guidance. Statutory requirement for relevant agency, Chief Executive, Minister or other person to respond to report. Statutory power to issue instructions. Non-statutory, executive process-based. 	<p>A full suite of tools is needed to support monitoring, regulatory practice and implement recommendations of sector reviews and other investigations and inquiries.</p> <p>It is envisaged that to support implementing recommendations of sector reviews, general powers to issue codes, standards, rules, directions, instructions, guidelines and advice will be needed.</p> <p>It is also envisaged that decision-making following receipt of a sector review report will be through preparation of a Cabinet paper (we are continuing to develop this approach and consider non-statutory process and powers and Executive processes).</p>	<p>Public Service Act 2020:</p> <ul style="list-style-type: none"> Ability to set standards, issue guidance, review design and operation of system of government agencies and advise Ministers on possible improvements. <p>Oversight of Oranga Tamariki System Act 2023:</p> <ul style="list-style-type: none"> Response to report required by Chief Executive of subject agency. Content prescribed including what action will be taken, specify timeframe for changes, and how they will be monitored. <p>Public Finance Act 1989:</p> <ul style="list-style-type: none"> Treasury and the Minister of Finance may issue instructions to departments and chief executives (that have the status of secondary legislation, but do not need to go through an Order In Council process). Agencies must comply to the extent the instructions apply to their department.



Proposed approach	Rationale	Modelled on...
Implementation		
General and review powers <ul style="list-style-type: none">Monitoring implementation of outcomes owned by responsible Minister(s) and agencies.	Retain accountability of responsible Ministers to improve regulatory system outcomes and implement decisions resulting from reviews.	Non-statutory mechanisms such as: <ul style="list-style-type: none">Legislation priority-settingOmnibus BillsChanges to secondary legislationStreamlined Executive process