

**Submission by the
Commonwealth Ombudsman and
ACT Ombudsman**

**Scoping the establishment of a federal
judicial commission**

Submission by the Commonwealth and ACT Ombudsman, Iain Anderson

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Introduction and summary

1. The Office of the Commonwealth Ombudsman and ACT Ombudsman (the Office) welcomes the opportunity to make a submission to the Attorney-General's Department's (the department) public consultation on the potential establishment of a federal judicial commission.
2. In preparing this submission the Office drew upon its experience as ACT Ombudsman in the capacity of Principal Officer supporting the ACT Judicial Council.
3. Part A of this submission provides information on judicial oversight arrangements in the ACT. Part B of this submission responds to questions in the Discussion Paper released by the department in January 2023.

Background

4. The purpose of the Office of the Commonwealth Ombudsman is to:
 - provide assurance that the agencies and entities we oversee act with integrity and treat people fairly, and
 - influence systemic improvement in government administration.
5. We aim to achieve our purpose by:
 - independently and impartially reviewing complaints and disclosures about government administration
 - influencing government agencies to be accountable, lawful, fair, transparent, and responsive, and
 - providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.
6. The Commonwealth Ombudsman is also the ACT Ombudsman.
7. The Office is funded by the ACT Government under a Services Agreement to deliver the ACT Ombudsman service in accordance with the *Ombudsman Act 1989* (ACT). Under section 4A of that Act, the ACT Ombudsman is an independent Officer of the Legislative Assembly and reports through the Speaker of the Assembly.
8. The role of the ACT Ombudsman is to influence systemic improvement in public administration in the ACT and provide assurance that ACT Government agencies and other designated entities in our jurisdiction act with fairness and integrity.
9. The ACT Ombudsman undertakes this role through complaint handling activities and through oversight of:
 - the ACT Freedom of Information framework
 - the ACT Reportable Conduct Scheme
 - ACT Policing
 - the ACT Integrity Commission (as the Inspector).
10. Of particular relevance to this consultation process, the Act Ombudsman also supports the Judicial Council as the Principal Officer.

Part A: ACT judicial oversight arrangements

ACT Judicial Council and judicial commissions

11. The *Judicial Commissions Act 1994* (ACT)¹ (ACT Judicial Commissions Act) initially established an ACT Judicial Commission to examine complaints about the conduct of judicial officers where the ACT Attorney-General believed the complaint could, if substantiated, warrant the removal of the judicial officer from office. There was no formal mechanism for dealing with a complaint that, while requiring attention, did not warrant removal of the judicial officer from office.
12. The ACT Judicial Commissions Act was amended to address this gap, creating a statutory framework for handling complaints against judicial officers including the establishment of a part-time judicial council (ACT Judicial Council). The ACT Judicial Council was established on 1 February 2017 with powers to receive, investigate and report on complaints, and take appropriate action to address complaints.²
13. In practice, these actions include conducting preliminary examinations of complaints, dismissing complaints, finding complaints to be partly or wholly substantiated and making recommendations: either to the head of jurisdiction, or to the Executive that a judicial commission should be established.
 - If the ACT Judicial Council is satisfied on reasonable grounds that a complaint is wholly or partly substantiated, and if the complaint could justify parliamentary consideration of the removal of the judicial officer, the Council is required to recommend that the Executive appoint a judicial commission to examine the complaint.³ To date, no complaints considered by the ACT Judicial Council have required the establishment of a judicial commission.
 - If the ACT Judicial Council is satisfied on reasonable grounds that a complaint is wholly or partly substantiated and could not justify parliamentary consideration of the removal of the judicial officer, the ACT Judicial Council must refer the complaint to the head of jurisdiction.⁴
14. The ACT Judicial Council's functions also include responding to enquiries about the complaint process.
15. The ACT Ombudsman is the principal officer supporting the ACT Judicial Council in exercising its functions.⁵

¹ [Judicial Commissions Act 1994](#) (ACT)

² See Part 2A of the [Judicial Commissions Act 1994](#) (ACT).

³ Sections 17 and 35J of the [Judicial Commissions Act 1994](#) (ACT).

⁴ See section 35J of the [Judicial Commissions Act 1994](#) (ACT).

⁵ Section 5H of the [Judicial Commissions Act 1994](#) (ACT).

Table 1: Complaints received by the ACT Judicial Council – 1 February 2017 to 30 June 2022

Period	Number of complaints received	Issues raised	Complaints outcome
1 February 2017 to 30 June 2017	3	Delay in the delivery of judgment, failure to give a fair hearing, inappropriate comments, discourtesy, bias	One complaint substantiated and referred to the relevant head of jurisdiction. Two complaints dismissed.
1 July 2017 to 30 June 2018	12	Bias, conflict of interest, inappropriate comments, discourtesy and failure to give a fair hearing	One complaint partly substantiated and referred to the relevant head of jurisdiction. Eleven complaints dismissed.
1 July 2018 to 30 June 2019	12	Bias, failure to give a fair hearing, bullying, discourtesy, and inappropriate comments Complaints about incorrect decisions: the Council advised the complainant may wish to seek legal advice about appeal options as the ACT Judicial Council has no ability to examine or change the merits of a judicial officer's decision	Two complaints were wholly or partly substantiated and referred to the head of the relevant jurisdiction Seven complaints dismissed. As at 30 June 2019, the ACT Judicial Council was assessing 3 complaints.
1 July 2019 to 30 June 2020	8	Bias, failure to give a fair hearing, discourtesy, speaking in a threatening tone, failure to recuse, unfamiliarity with the law and failing to properly weigh evidence. Incorrect decisions (advice provided as above).	Two complaints partly substantiated and referred to the relevant head of jurisdiction. Eight complaints dismissed. As at 30 June 2020, the ACT Judicial Council was assessing one complaint.
1 July 2020 to 30 June 2021	7	Bias, failure to give a fair hearing, discourtesy, incorrect application of the law, bullying and intimidation Incorrect decisions (advice provided as above).	Four complaints dismissed including one from the previous period. As at 30 June 2021, the ACT Judicial Council was assessing 4 open complaints.
1 July 2021 to 30 June 2022	6	Bias, failure to give a fair hearing, discourtesy, incorrect application of the law, bullying, and intimidation. Incorrect decisions (advice provided as above).	Seven complaints dismissed, including 4 from the previous period. At 30 June 2022, the ACT Judicial Council had 3 open complaints.

16. Further information is included in ACT Judicial Council annual reports, available at: <https://www.actjudicialcouncil.org.au/annual-report>.

ACT Integrity Commission and Inspector of the Integrity Commission

17. The functions of the ACT Integrity Commission include to investigate conduct that is alleged to be corrupt conduct and refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action.⁶
18. Section 102 of the *Integrity Commission Act 2018* (ACT) (the Integrity Commission Act) provides that in investigating judicial officers, the ACT Integrity Commission must have proper regard for the preservation of the independence of judicial officers and must consult the head of jurisdiction unless doing so would prejudice an investigation, or it is the head of jurisdiction being investigated.
19. Section 110 of the Integrity Commission Act provides for the ACT Integrity Commission to refer matters to the ACT Judicial Council or a judicial commission if the matter is relevant to those bodies' functions and the ACT Integrity Commission considers it appropriate to refer the matter. To date, the ACT Integrity Commission has made no referrals to the ACT Judicial Council or a judicial commission.

⁶ Section 23 of the *Integrity Commission Act 2018* (ACT).

Part B: Response to Discussion Paper questions

Composition and decision making

Question 1: Should the membership of a federal judicial commission include some or all of the heads of jurisdiction of the High Court of Australia, the Federal Court of Australia and the Federal Circuit and Family Court of Australia?

20. The ACT Judicial Council consists of the ACT Chief Justice (ACT Supreme Court), the ACT Chief Magistrate (ACT Magistrates Court), a legal practitioner jointly nominated by the council of the law society and the council of the bar association, and a community member who is appointed by the Executive on the basis of being sufficiently qualified and experienced to assist the council in the exercise of its functions.⁷
21. The ACT Judicial Council may recommend the appointment of a judicial commission.⁸ An ACT judicial commission, when constituted, must consist of a presiding member and 2 other members appointed by the Executive.⁹ A person must not be appointed as a member of a judicial commission unless the person is or has been a judge of the Federal or Family Court or of a state or territory Supreme Court, or a judge of the High Court, or a judge or acting judge of the ACT Supreme Court.¹⁰
22. Having the head of each jurisdiction involved in federal judicial oversight arrangements would provide those officers with transparency and oversight in relation to the court for which they are responsible and the Commonwealth jurisdiction more broadly. Heads of jurisdiction would bring their significant experience and knowledge to contribute to the operation of federal judicial oversight arrangements, with flow on benefits for the Commonwealth judicial system more broadly.
23. The formal involvement of the head of each jurisdiction would also support any cultural and institutional changes required within courts and the Commonwealth judicial system generally, to ensure effective implementation and the successful operation of federal judicial oversight arrangements.
24. Representation from the head of each jurisdiction would also assist in the day-to-day consideration and handling of complaints as each court has its own processes and works with different types of matters and parties. The involvement of each head of jurisdiction would provide a valuable source of information and insight on each court falling within the purview of federal judicial oversight arrangements.

⁷ Section 5B of the [Judicial Commissions Act 1994](#) (ACT).

⁸ Section 17(1) of the [Judicial Commissions Act 1994](#) (ACT).

⁹ Section 6 of the [Judicial Commissions Act 1994](#) (ACT).

¹⁰ Section 7 of the [Judicial Commissions Act 1994](#) (ACT).

Question 2: Should a federal judicial commission have any other ex officio or appointed members? If so, how many members should constitute the commission, and what criteria and appointment processes should apply?

25. The ACT Judicial Council includes 2 members in addition to the Chief Justice and the Chief Magistrate – a legal practitioner and a community member.¹¹ These members are appointed by the ACT Attorney-General for 3 years after a recruitment process run by the ACT Justice and Community Safety Directorate. As discussed in question 1, above, ACT judicial commissions are comprised only of judicial or ex-judicial members.
26. In the ACT Ombudsman’s experience, non-judicial memberships allow for additional perspectives to be brought into the oversight process.
27. There may also be value in encouraging diversity among the membership of the federal judicial commission, for example gender diversity and cultural diversity including a First Nations representative.

Question 3: How should decisions of a federal judicial commission be made where the members are not able to unanimously agree?

28. A question before the ACT Judicial Council must be decided in accordance with the opinion of a majority of members or, if the Council is equally divided, in accordance with the opinion of the head of the Council.¹²
29. A question before a judicial commission must be decided:
 - if the commission is constituted by 3 members – in accordance with the opinion of the majority of the members; or
 - if the commission is constituted by 2 members and those members cannot reach agreement – in accordance with the opinion of the presiding member.¹³

Judicial Officers

Question 4: Should a federal judicial commission be empowered to examine complaints about a justice of the High Court in addition to other federal judges?

30. While recognising the unique complexities that apply in relation to the High Court, empowering a federal judicial commission to examine complaints about a justice of the High Court may boost support public confidence in the effectiveness and rigour of the commission’s oversight.
31. Excluding justices of the High Court from the commission’s jurisdiction altogether may detract from public confidence, due to a perception that oversight arrangements in the Commonwealth judicial sphere are patchy or otherwise incomplete. As an alternative, consideration could be given to specialised arrangements within the commission to manage complaints about justices of the High Court.

¹¹ Section 5C of the *Judicial Commissions Act 1994* (ACT).

¹² Section 24A of the *Judicial Commissions Act 1994* (ACT).

¹³ Section 25 of the *Judicial Commissions Act 1994* (ACT).

Question 5: Should a federal judicial commission be empowered to examine complaints about a former judicial officer and, if so, in what circumstances?

32. As a matter of policy, the ACT Judicial Council does not accept complaints about former judicial officers. The Office understands this is consistent with the equivalent bodies in NSW, Victoria, South Australia and the Northern Territory. This may raise a question should a complaint be made that relates to a person who was a judge at the time of the complaint but who has since been appointed as a judge in another jurisdiction, and as a result, ceased to hold office as a judge in the first jurisdiction.
33. The ACT Judicial Commissions Act provides a mechanism for the early dismissal of complaints if the ACT Judicial Council is satisfied on reasonable grounds that “the person complained about is no longer a judicial officer”.¹⁴ Sections 35D and 35I operate to mandate the dismissal of a matter if after examination of a complaint, the Council finds the person complained about is no longer a judicial officer.¹⁵

Question 6: Should a federal judicial commission be empowered to examine a complaint related to any matter that, if substantiated, the commission is satisfied:

- a) **may justify removal by the Governor-General in Council on an address from both Houses of the Parliament on the ground of proved misbehaviour or incapacity, or**
- b) **warrants further consideration on the ground that it may affect or may have affected:**
- I. **the performance of judicial or official duties by the officer, or**
 - II. **the reputation of the court of which the judge is or was a member?**

34. The ACT Judicial Commissions Act allows for a broad range of complaints to be considered by the ACT Judicial Council, encompassing complaints that may be dismissed following a preliminary enquiry through to complaints that, if substantiated, may justify parliamentary consideration of the removal of the judicial officer.
35. As discussed above, if the ACT Judicial Council is satisfied on reasonable grounds that a complaint is wholly or partly substantiated, and the complaint:
- could justify parliamentary consideration of the removal of the judicial officer – the Council is required to recommend that the Executive appoint a judicial commission to examine the complaint.¹⁶
 - could not justify parliamentary consideration of the removal of the judicial officer – the Council must refer the complaint to the head of jurisdiction.¹⁷
36. The ACT Judicial Commissions Act makes no specific reference to reputation of the court, but instead broadly states that a person may make a complaint about a matter that relates to or may relate to the behaviour or physical or mental capacity of a judicial officer.¹⁸

¹⁴ Section 35B(g) of the *Judicial Commissions Act 1994* (ACT).

¹⁵ Section 35I provides a complaint *must* be dismissed if the Council is satisfied that any of the matters mentioned in section 35B apply following an examination of the complaint under section 35D.

¹⁶ See sections 17 and 35J of the *Judicial Commissions Act 1994* (ACT).

¹⁷ See section 35J of the *Judicial Commissions Act 1994* (ACT).

¹⁸ See section 14(1) of the *Judicial Commissions Act 1994* (ACT).

Question 7: Are there any circumstances in which a federal judicial commission should not be empowered to examine a complaint that meets one of the above criteria?

Question 8. Are there any circumstances in which a federal judicial commission should be empowered to examine a complaint that does not meet the above criteria?

37. See the response to question 6, above, about the arrangements that apply to examination of complaints by the ACT Judicial Council and an ACT judicial commission.
38. In addition, the ACT Integrity Commission can consider a complaint, or parts of a complaint, about an ACT judicial officer if the complaint relates to alleged corrupt conduct.
39. Currently the *National Anti-Corruption Commission Act 2022* (Cth) does not apply to the conduct of judicial officers.¹⁹ However, the Integrity Commission Act (ACT) does not have an equivalent exclusion. The ACT Judicial Commissions Act allows for the disclosure of information to the ACT Integrity Commission where a corruption complaint is being referred to the ACT Integrity Commission by the ACT Judicial Council or a judicial commission.²⁰
40. The ACT Judicial Council and the ACT Integrity Commission have a memorandum of understanding in place outlining the circumstances in which matters about judicial officers should be referred between the two bodies.
41. If a federal judicial commission is established, the interactions of that body with other Commonwealth and state and territory integrity bodies will need to be considered carefully and supported at a practical level with frameworks such as memoranda of understanding.

Question 9. Would it be appropriate to have any additional limitations on a federal judicial commission's jurisdiction to handle complaints about a matter arising after the resignation of a judicial officer, or concerning conduct alleged to have occurred before the appointment of a judicial officer to judicial office or before the commencement of any enabling legislation?

42. As set out above in response to question 5, above, as a matter of policy the ACT Judicial Council does not accept complaints about former judicial officers. The ACT Judicial Commissions Act also provides mechanisms for the dismissal of complaints if the ACT Judicial Council is satisfied the person complained about is no longer a judicial officer.
43. Further, as a matter of policy, the ACT Judicial Council does not accept complaints about conduct arising before the appointment of a judicial officer to judicial office.
44. An ACT judicial commission (if established) must not consider a matter arising before the appointment of a judicial officer unless the commission considers it necessary and desirable to do so for the full and proper examination of the complaint.²¹

¹⁹ See section 8(2) of the *National Anti-Corruption Commission Act 2022* (Cth).

²⁰ See section 28(2) of the *Judicial Commissions Act 1994* (ACT).

²¹ See section 21(2)(b) of the *Judicial Commissions Act 1994* (ACT).

Avenues for receiving complaints

Question 10. Should a person be able to make a complaint to a federal judicial commission anonymously, and in what circumstances would this be appropriate?

45. Anonymous complaints cannot be accepted by the ACT Judicial Council. The ACT Judicial Commissions Act stipulates that a complaint must be made in writing, include the name and address of the complainant, identify the judicial officer concerned and contain full particulars of the complaint.²²
46. An anonymous complainant would make it difficult to fully consider a complaint. Without the name of the complainant and other details of the complaint, it may be difficult or impossible to obtain court transcripts and other information necessary for the consideration of the complaint. Conversely, an anonymous complaint may not remain so after a transcript is obtained.
47. The ACT Judicial Council affords procedural fairness to both the complainant and the judicial officer subject of the complaint. The judicial officer is provided with a copy of the complaint (with personal contact information of the complainant removed) and is invited to provide a response for the Council's consideration.

Question 11. Should it be open to professional bodies to make complaints to a federal judicial commission? If so, should any limitations apply?

48. Anyone can make a complaint to the ACT Judicial Council, including members of the public, legal practitioners and members of organisations such as the Law Society, Bar Association and Legal Aid. The ACT Attorney-General can also refer complaints to the Council.
49. A professional body may be in a position to make a complaint where individuals face constraints. For example, a junior lawyer may wish to make a complaint but feels unable to do so without the support of a professional body or their employer.

Question 12. Should any person be able to make a complaint to a federal judicial commission with a request for confidentiality regarding the particulars of the complaint, or the identity of the complainant?

50. There are a range of reasons why a complainant may wish to request confidentiality. Providing this option to complainants may increase public confidence and support the effective operation of federal judicial oversight arrangements.
51. Requests for confidentiality would have to be balanced with affording procedural fairness to all parties and the need for a commission to obtain enough information to properly consider the complaint. There are options to mitigate the risk of the complainant being identified by the judicial officer that is the subject of the complaint, but it may be difficult to eliminate that risk.
52. As discussed in the response to question 10, above, the ACT Judicial Council provides the judicial officer with a copy of the complaint with personal contact information of the complainant removed.

²² See section 14(3) of the [Judicial Commissions Act 1994](#) (ACT) and section 59 of the [Integrity Commission Act 2018](#) (ACT).

Question 13. Should a federal judicial commission have the discretion to:

- a) consider multiple complaints together, and**
- b) take into account repeat conduct of the same or similar nature in relation to the same judicial officer,**

and if so, should any limitations apply?

- 53. Considering multiple complaints together could assist with identifying systemic issues, if any, and result in a more efficient and effective consideration of complaints.
- 54. In practice, as principal officer the ACT Ombudsman provides complaint reports for consideration by the ACT Judicial Council. This typically includes a history of previous complaints made by the complainant and their outcomes (whether they are complaints about the same judicial officer or different judicial officers); as well as a history of previous substantiated complaints, if any, about the judicial officer. This assists the ACT Judicial Council to identify systemic or repeating issues.

Question 14. Should a federal judicial commission have discretion to initiate an investigation on its own motion if it considers a matter would otherwise meet its thresholds for consideration if it were the subject of a complaint?

- 55. Given its unique position of oversight, this may be an appropriate and useful discretion to grant to a federal judicial commission.
- 56. The ACT Judicial Commissions Act does not provide for an own motion investigation by the ACT Judicial Council or a judicial commission. However, the Act does provide that the ACT Judicial Council, in dealing with a complaint about a judicial officer, is not limited to the matters raised initially in the complaint; and if matter which might constitute grounds for a complaint about another judicial officer comes to the attention of the ACT Judicial Council, the Council may consider that as a complaint as well.²³

Question 15. Should consideration be given to providing a federal judicial commission with express powers to declare a person to be a vexatious complainant?

- 57. The ACT Judicial Commissions Act provides that:
 - The ACT Judicial Council may dismiss a complaint after a preliminary examination if satisfied on reasonable grounds that a complaint is frivolous, vexatious or not in good faith, or the subject matter of the complaint is trivial (among other matters)
 - a commission may discontinue the examination of a complaint if the commission considers that it has been made vexatiously, frivolously or without reasonable grounds.²⁴
- 58. However, the ACT Judicial Council is not provided with express powers to declare a person to be a vexatious complainant.

²³ See section 35K of the *Judicial Commissions Act 1994* (ACT).

²⁴ See sections 35B and 57 of the *Judicial Commissions Act 1994* (ACT).

Actions a commission may take

Question 16: Should the grounds on which a federal judicial commission may appoint an ad hoc investigatory panel to investigate and report on a complaint be expressly limited to matters that a commission considers could, if substantiated, justify removal from office? Alternatively, would it be appropriate for a federal judicial commission to have a discretion to establish an ad hoc investigatory panel to investigate and report on a complaint if the commission considers such an investigation to be appropriate in the circumstances?

59. As discussed in the response to question 6, above, the ACT Judicial Council must recommend establishment of a judicial commission if reasonably satisfied that a complaint is wholly or partly substantiated and could justify parliamentary consideration of the removal of the judicial officer.

Question 17. Should the identity of judicial officers, the subject matter of complaints, and/or the findings or recommendations made by a federal judicial commission or ad hoc investigatory panel be made publicly available? If so, at what stage in the complaints process and on what, if any, conditions?

60. The ACT Judicial Council provides de-identified information about the complaints it receives in its Annual Report each year, including the type of complaint, the type of complainant, and the outcome.
61. An ACT Judicial Council preliminary examination under section 35A, an examination under section 35D and any inquiries, must, as far as practicable, be in private.²⁵ Hearings held by the ACT Judicial Council, in connection with a complaint under section 35E, must also be held in private, unless the ACT Judicial Council decides on reasonable grounds that it is in the public interest for the hearing to be held in public.²⁶ What is in the public interest is not defined in the ACT Judicial Commissions Act and is something that would be considered on a case-by-case basis.
62. Where an ACT judicial commission has completed an examination of a complaint, it is required to prepare a report of its examination and submit the report to the ACT Attorney-General.²⁷ In its report, the judicial commission may recommend that the report not be submitted to the ACT Legislative Assembly, which the Attorney-General can accept. Otherwise, the Attorney-General must table the report in the ACT Legislative Assembly (at which point it becomes publicly available).

Composition of an investigatory panel

Question 18. How should an ad hoc investigatory panel established by a federal judicial commission be constituted? What criteria and appointment processes should apply?

63. Part 3 of the ACT Judicial Commissions Act provides for the establishment of the ad hoc judicial commission which operates as a secondary mechanism to examine serious complaints. This judicial commission provides an example of one way such an ad hoc panel could be established at the federal level.

²⁵ See sections 35A(3) and 35D(3) of the [Judicial Commissions Act 1994](#) (ACT).

²⁶ See section 35E(2) of the [Judicial Commissions Act 1994](#) (ACT).

²⁷ See section 22(1) of the [Judicial Commissions Act 1994 | HTML view](#)

64. The Act provides for the panel to be constituted in the following way:
- it must consist of a presiding member and 2 other members appointed by the Executive
 - members must be either a judge of the Federal or Family Court or of a state or territory Supreme Court, or a judge of the High Court, or a judge or acting judge of the ACT Supreme Court
 - a member holds office on such terms and conditions as determined in writing by the Executive
 - a member ceases to hold office when the commission's report of its examination of the complaint has been submitted to the ACT Attorney-General, or when the commission notifies the ACT Attorney-General that any outstanding matters have been finalised
 - the Executive may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
65. Since the establishment of the ACT Judicial Council on 1 February 2017, no complaints have required the constitution of a judicial commission.

Powers of the commission and an investigatory panel

Question 19. Would it be appropriate for a federal judicial commission to have the same powers as an ad hoc investigatory panel established by the commission, including the ability to issue summonses and examine witnesses? If not, how and why should the powers of the commission differ from the powers of an investigatory panel?

66. The ACT Judicial Council has powers to request information from the ACT Courts and Tribunal, to inspect documents and to examine witnesses.²⁸
67. In certain circumstances the ACT Judicial Council or a judicial commission may request a judicial officer to undergo a specified medical examination and give the council a copy of any report of the medical examination.²⁹
68. The presiding member of a judicial commission (once established) can issue:
- a search warrant for a police officer or an authorised person named in the warrant with such assistance, and by such force, as is necessary and reasonable, to enter and search premises, seize things of a relevant kind and deliver anything seized to the commission.³⁰
 - a subpoena requiring a person to appear at a hearing to give evidence and/or produce a statement document or other thing.³¹
69. A lawyer assisting a judicial commission can examine or cross-examine witnesses.³²

²⁸ Sections 34 and 35H of the [Judicial Commissions Act 1994](#) (ACT).

²⁹ Section 35 of the [Judicial Commissions Act 1994](#) (ACT).

³⁰ Section 33 of the [Judicial Commissions Act 1994](#) (ACT).

³¹ Section 43 of the [Judicial Commissions Act 1994](#) (ACT).

³² Section 42 of the [Judicial Commissions Act 1994](#) (ACT).

70. If a person served with a subpoena fails to appear or attend under the subpoena, the presiding member of a judicial commission may, on proof of the service of the subpoena, issue a warrant for the apprehension of the person.³³
71. A federal judicial commission is likely to require a similar range of powers, including requiring witnesses to give evidence, to produce documents and to issue search warrants. The powers given to the commission and any investigatory panel would need to be sufficient for the bodies to effectively and efficiently undertake their functions.

Intersection with other bodies and processes

Question 20. How could a federal judicial commission best complement or support the role of existing judicial education bodies, such as the National Judicial College of Australia and the Australasian Institute of Judicial Administration?

72. The Principal Officer to the ACT Judicial Council uses guidance provided by judicial education bodies. When considering complaints and preparing complaint reports for the ACT Council, staff refer to the *Guide to Judicial Conduct (Third Edition)* published by the Australasian Institute of Judicial Administration and will conduct research using information published by the NSW Judicial Commission and the Victorian Judicial Commission.
73. The Office considers there would be great value in a federal judicial commission engaging regularly with existing judicial education bodies, as well as State and Territory counterparts. There would be opportunities for sharing best practice and influencing positive cultural change within the judiciary.

Question 21. Should complainants be able to rely on evidence resulting from a complaints process, or the findings or recommendations made by a federal judicial commission, in other proceedings?

74. The ACT Judicial Commissions Act does not include any provisions relating to complainants relying, or not, on evidence resulting from a complaint process.

³³ Section 44 of the [Judicial Commissions Act 1994](#) (ACT).