



NSW RURAL FIRE SERVICE NATURAL JUSTICE

NATURAL JUSTICE - A LEGAL REQUIREMENT

The Service Standards state that the rules of natural justice must be observed:

- (1) when an ADA is conducting a disciplinary hearing; and
- (2) when the Commissioner or a Director to whom the Commissioner has referred an appeal, is hearing an appeal.

The rules of natural justice, also known as procedural fairness, have developed to ensure that decisions are fair and are seen to be fair. What is fair in a given situation depends on the circumstances.

A breach of the rules of natural justice can lead to the decision being declared invalid by a court.

Natural justice involves concepts of procedural fairness, the main rules of which are:

- (1) related to the hearing - the Hearing Rule; and
- (2) to the tribunal itself - the Bias Rule.

The notes set out below are not, and are not intended to be, exhaustive. They are intended to give an indication to the reader of the way in which the relevant hearing should be approached. The overriding consideration is that of fairness.

THE HEARING RULE

▪ A hearing appropriate to the circumstances

A disciplinary hearing is different from proceedings before a court. An ADA is not a court and the rules of evidence do not apply as they would in a court.

An oral hearing may not always be necessary or, indeed, appropriate. A member who is the subject of disciplinary proceedings ("**the respondent**") may choose not to appear at the hearing but simply submit a letter or other submission for consideration by the ADA. Similarly, an appeal may be considered and decided on the basis of the written record and written submissions from the respondent.

Nevertheless, the Service Standard makes provision for an oral hearing and that should always be undertaken if sought by the respondent.

▪ A hearing before the decision

Natural justice must be afforded *before* a decision is reached and before a final view is formed as to what decision to make. If there is not an oral hearing, the material submitted by the respondent must be considered before any decision is reached. This principle is breached if the respondent

is told that a "draft" or "in principle" decision has been made, yet suspended until after their submission has been received.

- **Full disclosure before the decision**

The respondent is entitled to know the nature and substance of the allegations that have been made against him or her before the hearing. The identity of the person making the allegation may be relevant and if it is then it should be made known to the respondent

This aspect of the rules of natural justice will normally be satisfied by providing the respondent with a copy of the report referred to in clause 2.6 of SOP 1.1.2 -2, including a copy of the allegation that has been made.

Sometimes it may be necessary to give the respondent more than one hearing in order to comply with the requirements of natural justice. For example, if further adverse information is collected, or new allegations made, after the date of the earlier hearing. In such a case, the further information or new allegations must be given to the respondent and a reasonable opportunity to allow the respondent to respond to such material.

- **A reasonable opportunity to respond**

A respondent must be given a reasonable period in which to consider the allegations that have been made against them and to respond.

What is reasonable may vary, depending upon the complexity of the issue, whether an urgent decision is essential, and other relevant factors.

In most cases this issue is dealt with by the Regulations or Service Standards. However, the ADA or person hearing an appeal must be willing to consider applications for extensions of time or the adjournment of a hearing in appropriate circumstances.

Where an extension of time or an adjournment is granted the decision maker should advise the respondent of any new deadline or hearing date in writing so there can be no misunderstanding.

- **Genuine consideration of any submission**

The ADA or person hearing an appeal must give proper and genuine consideration to what is said by the respondent.

THE BIAS RULE

Bias can take a number of different forms, including:

- (1) being partial, or favouring one person over another; or
- (2) being closed-minded and not listening to or taking into account what has been said on behalf of the respondent; or
- (3) having a conflict of interest between findings of fact and possibly gaining some personal advantage or avoiding a personal disadvantage from the outcome.

Even where no actual bias exists the ADA or person hearing an appeal must be careful to ensure that they avoid any appearance that they may be biased. The bias rule will be broken where there is a reasonable apprehension of bias attaching to the person who makes a decision - that is, if an onlooker would reasonably apprehend bias. This may exist, for example, if the decision maker has a family or financial interest in a decision; has displayed hostility towards one party, or favouritism towards another; or has or appears to have prejudged the issues to be decided.

Thus, the ADA or person who is to hear an appeal should ask themselves:

Q1. Do I have a personal relationship with any of the people involved in the inquiry?

Mere knowledge of a person, or the fact that you have worked with them, is not enough to make out bias on your part. You should look to see whether your personal relationship with the person is based on a close friendship, or based on animosity or other adverse response. If it is, you should not be involved in inquiring into matters concerning that person.

Q2. Was I a participant in any of the issues involved in the inquiry?

If you witnessed something or managed or supervised a particular area, you should not be involved in inquiring into those matters.

Q3. Do I have a financial or other interest in any matter involved in the inquiry?

If you or a family member are likely to gain or lose money or gain some advantage or experience some disadvantage from a decision or finding of the inquiry you should not be a part of it.

Q4. Am I prejudiced in any way in favour of or against a person involved in the inquiry, or does my behaviour or do my comments suggest I may have prejudged any of the issues or people involved?

If the answer is 'yes', you should not participate as a member of the ADA or hear the appeal.

It is not ordinarily a breach of the bias rule that the decision maker will be inclined one way or another, has previously made an adverse decision affecting the member in question, or is known to have opinions or views on the issue in question. A closed or prejudiced mind must be shown.

WHAT HAPPENS IF THE RULES ARE BROKEN?

A breach of the rules of natural justice will usually result in the decision reached at the hearing or appeal will be invalid. To correct or cure the defect, it is usually necessary for the hearing or appeal to be re-heard in its entirety by a different ADA or person.

For more information on Natural Justice, please refer to [Fact Sheet 14](#) published by the NSW Ombudsman.