



## Purpose

This Guide explains how RHealth ensures Natural Justice, also known as Procedural Fairness, when making administrative decisions that may adversely affect a person's rights, interests or legitimate expectations.

It provides practical guidance for decision-makers, investigators and managers to ensure decisions are **fair, transparent, defensible, and compliant with Australian common law and relevant legislation**, including:

- workplace and HR matters
- whistleblower disclosures under Commonwealth law
- safeguarding and child safety-related investigations
- service access and eligibility decisions
- disciplinary and termination decisions

## Scope

This Guide applies to all RHealth employees, contractors, volunteers, students, Board and committee members.

It applies to **all investigations and determinations** where findings may impact individuals, including:

- workplace and service complaints
- safeguarding matters involving children and young people
- whistleblower disclosures
- allegations of misconduct or improper conduct
- disciplinary or performance-related investigations
- decisions restricting access to services or roles

This Guide operates alongside, and must be read in conjunction with, RHealth's:

- Whistleblower Policy and Procedure
- Child Safety and Safeguarding Framework
- Complaints Management processes
- Code of Conduct
- Risk, Incident and Governance policies

## Core Principles of Natural Justice

Natural justice (procedural fairness) is a common-law obligation that applies whenever a decision may affect a person's rights, interests or legitimate expectations.

The duty to act fairly requires a process that a reasonable and fair decision-maker would adopt in the circumstances.

The content of procedural fairness varies depending on context, seriousness, risk, and legislative requirements.

There are three core rules of natural justice:

### The hearing rule

People who may be adversely affected by a decision must be given a reasonable opportunity to be heard and to respond to relevant allegations or adverse material before a decision is made.

### The bias rule

Decision-makers must be, and be seen to be, impartial and free from actual or apprehended bias.

### The evidence rule

Decisions must be based on logically probative evidence, not speculation or assumption.

These principles derive from Australian High Court authority, including *Kioa v West* (1985), *Ex parte Lam* (2003), and *Australian Broadcasting Tribunal v Bond* (1990)



Applying the rules of procedural fairness promotes sound decision making.

## When Natural Justice is Required

Natural justice applies to all RHealth processes that may adversely affect an individual, including, but not limited to:

- disciplinary or performance management decisions
- findings arising from investigations
- safeguarding and child-safety responses
- whistleblower-related matters
- service access, restriction or termination decisions
- volunteer or contractor engagement decisions
- termination of employment or duties

## Applying Natural Justice or Procedural Fairness

Natural justice must be applied flexibly and proportionately, recognising that different investigation types involve different risks.

Any process purporting to comply with natural justice must be:

- fair
- proportionate
- transparent
- clearly explained to those affected

Fairness does not require a rigid or legalistic process; it requires practical justice in the circumstances.

Fairness is not an abstract concept and decision makers should be concerned with avoiding practical injustice.<sup>1</sup> When making a decision that affects the rights, interests and legitimate expectations of any person, the critical question is: what does the duty to act fairly require in the circumstances of the particular case?<sup>2</sup>

The modification, staging or exclusion of natural justices or procedural fairness may be justified in certain limited circumstances, for example where urgent action needs to be taken to prevent harm, interference with inquiries, or trauma or in the public interest. Even where immediate action is required, affected persons must be afforded procedural fairness as soon as practicable. Natural justice does not prevent decisive safeguarding action, but ensures subsequent decision-making is fair, reasoned, and accountable.

### The hearing rule

The hearing rule provides the right to a fair hearing, which will generally involve:

- timely notice to the person that matters affecting their interests are under consideration
- disclosure of the substance of relevant allegations or adverse issues
- disclosure of material relied upon, subject to lawful confidentiality limits
- a reasonable opportunity to respond (in writing and/or meeting)
- consideration of whether an oral hearing is necessary or whether written submissions suffice<sup>3</sup>
- genuine consideration of any response before findings are made

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<sup>1</sup> *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1 [37].

<sup>2</sup> *Kioa v West* (1985) 159 CLR 550, 585.

<sup>3</sup> Mark Aronson and Matthew Groves, *Judicial Review of Administrative Action* (Thomson Reuters Australia, 2013) 397.



Natural justice does not require disclosure of irrelevant information, nor disclosure that would be unlawful or undermine statutory protections.

In many cases fairness, can be achieved without an oral hearing.

## The bias rule

The bias rule provides that decision-makers and investigators must not:

- have a personal interest in the outcome
- have pre-judged the matter
- have prior involvement that creates a reasonable apprehension of bias <sup>4</sup>

The test is whether a fair-minded and informed observer might reasonably apprehend bias.

Where bias may arise:

- decision-makers must recuse themselves, or
- additional safeguards must be implemented (peer review, external investigator).

## The evidence rule

The evidence rule provides that decisions should be based on evidence that is:

- relevant
- reliable
- logically capable of supporting findings

Decision-makers should:

- take into account only relevant considerations
- weigh conflicting evidence
- avoid speculation or unsupported inference
- apply the balance of probabilities, with greater care for serious allegations
- give proper, realistic and genuine consideration to all submissions
- document the reasoning process
- not make a decision that is so unreasonable that no reasonable person could have made the decision

An inference should only be made if it is reasonably open on the facts.<sup>5</sup>

Decision makers should give proper, genuine and realistic consideration to any submissions and obtain further evidence, if required.

## Limited Exclusion or Modification of Natural Justice or Procedural Fairness

Natural justice may be limited or deferred only where:

- urgent protective action is necessary
- legislation expressly authorises modified process
- its consideration would cause serious harm or unlawful disclosure

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<sup>4</sup> Ibid, 609.

<sup>5</sup> *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321.



Any limitation must be:

- justified
- proportionate
- documented
- reviewed as soon as practicable

## Records and Accountability

All investigations and decisions must be supported by:

- accurate contemporaneous records
- documented reasoning
- evidence of procedural fairness steps taken
- secure handling of confidential information

## Review

RHealth is not obliged to reopen an investigation in the absence of new or materially different information, but remains committed to ensuring fair and lawful processes.