



Preparing for an MHRT Hearing

Understanding natural justice

Why is natural justice relevant to MHRT hearings?

Section 733(3) of the *Mental Health Act 2016 (Act)* states that when conducting a proceeding the Tribunal must observe the rules of natural justice.

That section also requires the Tribunal to act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before the Tribunal.

The MHRT must therefore balance compliance with the rules of natural justice with the manner in which the MHRT is required to operate – with little formality and technicality.

What is natural justice?

Natural justice is used to describe a selection of rules, the aim of which is to safeguard the rights of a person the subject of a hearing. Essential rules of procedural fairness for the MHRT's purposes include: the hearing rule, the rule against bias and the no evidence rule.

It is important to note that the rules are not absolute in terms of content and scope. The rules are flexible and can vary according to the nature of the decision-making body, the subject matter of issues to be decided, the rules under which the decision-making body operates, the urgency the situation, and of course the circumstances of the matter.

The MHRT may adjourn a hearing to ensure compliance with the rules of natural justice.

Rule	Application to MHRT
Hearing rule	
The right of a person to be given notice of relevant matters and to be provided with the opportunity to present his or her case. An essential element of natural justice is that information which may be adverse to the party and which is credible, relevant and significant should ordinarily be disclosed and the party given an opportunity to address the decision-maker in respect of that information.	<ul style="list-style-type: none"> • Patient is entitled to attend the hearing and may speak at the hearing. • Patient must be given a copy of documents and information that the MHRT will consider, including the clinical report. • Patient must receive clinical report at least 7 days before hearing to be given a fair chance to consider it and prepare submissions. • Entitlement to have a representative • Exceptions to this rule are specified in the Act: <ul style="list-style-type: none"> ○ confidentiality orders ○ restrictions on disclosure of a victim information statement.



Rule against bias	
Refers to the entitlement of a person to an impartial hearing, free of actual or apparent bias. A suspicion of bias can arise from things the decision-maker says or does that indicate s/he may have formed prejudgments and is not open to persuasion.	<ul style="list-style-type: none"> • The MHRT has a conflict of interest policy to guide members in making decisions about whether to hear particular matters which may create an actual or apparent bias. • The MHRT rotates members across different matters and locations. • MHRT members are independent and not subject to direction in their decision-making.
No evidence rule	
Requires that a decision be made on logically probative evidence. A decision-maker may only take into account those matters that are relevant and are required to be considered.	<ul style="list-style-type: none"> • MHRT members are required to consider the criteria and factors for each decision specified in the Act. • It is important that clinical reports are complete, accurate and up to date in all respects for each hearing. • Parties may request a statement of reasons.

What if there has been a breach of natural justice?

If a party to the proceeding believes that the MHRT has not complied with the rules of natural justice when making a decision, the party may wish to appeal the decision to the Mental Health Court. Who may appeal to the Mental Health Court is set out in Schedule 2 of the Act.

The Act also sets out who is entitled to apply for an applicant review of a treatment authority (s413), forensic order (s432), treatment support order (s465) or a person's fitness for trial (s486).

Concerns about the MHRT's procedures can also be raised with the MHRT's Executive Officer.