



Preparing for an MHRT Hearing

Understanding natural justice

Why is natural justice relevant to MHRT hearings?

The *Mental Health Act 2016 (Act)* states that when conducting a proceeding the Tribunal must observe the rules of natural justice. The Tribunal is also required to act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters before it.

The MHRT must therefore balance complying with the rules of natural justice with conducting hearings in a way that is not too formal and technical.

What is natural justice?

Natural justice describes a set of rules or principles aimed at safeguarding the rights of a person subject to a hearing.

Three key principles for MHRT hearings are

Hearing rule

Rule against bias

No evidence rule

The rules are not absolute in terms of content and scope. They are flexible and can vary according to the nature of the decision to be made, the subject matter of issues to be decided, the legislation and rules under which the decision is being made, the urgency the situation, and of course the circumstances of the matter.

To comply with these rules, the MHRT may require certain documentation be provided, require certain people to attend the hearing or conduct the hearing in a certain way. Sometimes the MHRT will adjourn a hearing to ensure compliance with the rules of natural justice.

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 or submit an application for applicant review to the Tribunal.

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



HEARING RULE

A person is entitled to be given notice of relevant matters and be provided with the opportunity to present his/her case. Information which may be adverse to a person should be disclosed to them and they should be given an opportunity to respond.

Application to the MHRT

- Patient must be given notice of the time, date and location of the hearing.
- Patient must be given a copy of documents and information that the MHRT will consider, including the clinical report.
- Documentation/information the MHRT will take into account must be given to the patient with enough time to allow them a fair opportunity to consider it and prepare their response.
- The clinical report must be given at least 7 clear days before the hearing.
- Patient is entitled to have a legal representative and a support person at the hearing.
- Statutory exceptions to this rule are confidentiality orders and the confidentiality of victim impact statements.

RULE AGAINST BIAS

A person is entitled to an impartial hearing, free from actual or apparent bias.

A suspicion of bias in a decision maker can arise from things the decision maker says or does that indicate that she/he may have formed prejudgments and is not open to persuasion.

Application to the MHRT

- 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.
- MHRT rotates members across different matters and hearing locations.
- MHRT members are independent and not subject to direction in their decision making.
- MHRT members are required to treat all parties fairly and with respect during hearings.

NO EVIDENCE RULE

A decision must 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.

Application to the MHRT

- 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 for each hearing.
- Parties may request a statement of reasons which explains the evidence that the MHRT relied upon when making its decision.