



Pacific Judicial
Integrity Program

Advanced Managing and Reporting on Fraud and Corruption Cases Online Course

Procedural fairness

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**FEDERAL COURT
OF AUSTRALIA**



Papua New Guinea
Centre for Judicial Excellence

Recap: Procedural fairness

The duty to accord a person procedural fairness or natural justice arises when a decision is made that affects a person's rights, interests or legitimate expectations.



Recap: Procedural fairness

Procedural fairness is concerned with the procedures used by a decision maker, rather than the actual outcome reached.

It requires a fair and proper procedure be used when making a decision.

In the court context, this includes how a proceeding is case managed.



Procedural fairness



French CJ in the High Court of Australia judgment of *International Finance Trust Company Ltd v New South Wales Crimes Commission* (2009) 240 CLR 319 said:

“Procedural fairness or natural justice lies at the heart of the judicial function... It requires that a court be and appear to be impartial, and provide each party to the proceedings before it with an opportunity to be heard, to advance its own case and to answer, by evidence and argument, the case put against it...”



Procedural fairness



Procedural fairness is to be determined by
an objective standard



i.e. what a reasonable person would believe
was a reasonable opportunity in the
circumstances

Procedural fairness

Procedural fairness requires that a person brought before a court for a fraud, bribery or other corruption offence is given a reasonable opportunity, not a perfect opportunity, to put their case.





Procedural fairness

Procedural fairness requires that:

- a decision-maker is impartial, and free from actual or apparent bias (the **bias rule**);
- a person whose interests will be affected by a proposed decision receives a fair hearing, including the opportunity to respond to any adverse material that could influence the decision (the **hearing rule**); and
- findings are based on evidence that is relevant and logically capable of supporting the findings made (the **evidence rule**).

Bias Rule

A decision-maker is to be impartial, and free from actual or apparent bias.

Decision-makers must be objectively impartial and not pre-judge the outcome.

They should not:

- have a close personal or family relationship with any parties who have an interest in the outcome.
- have a direct or indirect financial or other interest in the outcome of the decision.
- be a person with a closed mind or pre-conceived ideas about the outcome.



Hearing Rule

A person whose interests are affected by a proposed decision is to be given a fair hearing, including being provided with:

- reasonable notice of the case to be met, including sufficient information (e.g. particulars of each charge) about the matter to be decided.
- reasonable time to prepare and the opportunity to respond, including calling any relevant evidence in relation to any adverse material that could influence the decision.
- the opportunity to appeal the decision that has been made.



Evidence Rule



- All evidence is relevant and logical.
- Findings / decisions are based on evidence that is relevant and logically capable of supporting the findings / decision made.



The role Court Officers play to ensure procedural fairness



- It is important that Court Officers understand that they also have important obligations to ensure that procedural fairness is afforded to **all** trial participants.
- This includes identifying procedural fairness issues from the moment a proceeding is lodged with the Court, including case allocation and case management of the proceeding.

Self-represented litigants



It is well established that a Court has an obligation to take appropriate steps to ensure that an unrepresented litigant has sufficient information about the practice and procedure of the Court.



Scenario

Discuss the scenario (hand out)

Nominate one person on the table record the table's views.

Nominate one person to speak on behalf of the table to share the table's views.

Key messages



- Ensure transparency.
- Provide opportunities for input.
- Avoid preconceived judgments.
- Follow fair procedures.





See
you
tomorrow