

Grounds of Review: Natural Justice

Is there a **GROUND OF REVIEW**?

****Basically the same in *ADJR* + GenLaw****

1. State the RULE...

- ***ADJR* s5(1)(a)** allows an App to apply to the FC for relief on the basis that NJ hasn't been applied
- GenLaw – DMs must afford NJ unless the statute in que. states otherwise > *Kioa* (Mason)

2. THRESHOLD Question: *Is there an obligation to accord NJ?*

In order to show one is owed NJ, one must prove...

- The decision affected their “**rights interests or legitimate expectations**” > *Kioa v West* (Mason CJ)
 - Rights + interests must be ‘**direct + immediate**’ > *Kioa v West* (Mason CJ, Brennan) [LINK: Standing]
 - If they are, even **preliminary decisions** will attract NJ > > *Ainsworth*; *Plaintiff S10*
- NJ can **ousted by a ‘clear and contrary intention’** in the Statute > *Miah*; *Jarratt*; *Epeabaka*

A failure to afford a party an **opportunity to be heard** is a **denial of procedural fairness** which **gives rise to jurisdictional error** (*Aala*) The **particular content** of the requirement to accord procedural fairness to a person affected by a decision will depend on the facts and circumstances of the individual case, including the particular statutory framework (*SZBEL*). Exhaustive statements can exclude NJ (*Lay Lat '06*; *Miah*). However, their language will have to be ‘clear and unambiguous’ (*Miah*) and the circumstances will have to be particular given the Crt will interpret Statutes according to the principle of legality, whereby they will assume Parliament does not intend to overrule of individual rights and freedoms.

- Additionally...
 - If it is a **multi-stage** decision-making process – if NJ can be proved to have been accorded as a whole > *O'Shea* [Parole board – later DM had discretion]
 - A right of appeal may cure a prior breach of PF > *Miah* (McHugh)

EXAMPLES OF RIGHTS + INTERESTS

Status

- ✓ Generally no NJ for appointment unless special factor – Ex-immigration officer told would leave w’ clean record **HELD** NJ was due to allow App to respond to bad character reference > *Cole v Cunningham (1983)*

Preservation of livelihood

- ✓ Dismissal of a worker from tourism bureau **HELD** livelihood + possibly reputation > *Sanders v Snell (1998)*
 - ✗ Cf. airforce officer’s appointment held at ‘pleasure of GG’ **HELD** NJ excluded > *Coutts v Cth (1985)*
- ✓ License renewal w’out which couldn’t provide worker’s compensation **HELD** livelihood > *FAI*
- ✓ Refusal of application for renewal of firearms license **HELD** NJ owed bc refusal had impact on livelihood Nt. **App had satisfied stat. criteria** > *Ex P Clift*
 - ✗ Cf. refusal to renew boxing manager’s license **HELD** No NJ owed – no stat. criteria + was discretionary > *McInnes v Onslow*

Preservation of Reputation

- ✓ CJC report to parl. committee w’ recommendation **HELD** Commercial, business or personal reputation > *Ainsworth*
 - ✗ Cf. distinction made btw broadly known reputation instead of just known by govt members to whom the report is made > *Apache Northwest* [not persuasive given lower crts have been more liberal]

Proprietary rights + interests’

- ✓ Transcripts of appearance b4 ASC **HELD** confidentiality of transcripts enough of an interest > *Johns*
- ✓ demolishing of house **HELD** to be property interest > *Cooper v Wandsworth*
 - ✗ cf. airport noise over house where **all would have been affected** > *Village Building Co*
NOTE: the large/more variable the class of ppl effected, the less likely to have NJ > *Castle v DG SES* (Baston)
- ✓ Stat. right to access files **HELD** proprietary right > *Herald & weekly Times (2006)*
- ✓ Recognises membership of prof, vocational + similar non-stat. bodies > *Ridge v Baldwin (1964)*
- ✓ Expectation that pub office position be **termination on specific grounds** > *Ridge v Baldwin (1964)*
- ✓ Right to PF when **dangerous dog** sent to be put down > *Isbester v Knox City Council (2015)* [LINK: Bias]

****RIGHT TO PF BC SOMETHING IS IMPORTANT TO YOU SEEMS TO BE A RELAXATION OF MASON’S TEST!!!**

3. CONTENT Question: *If the obligation applies, what does it require?*

Requirements of NJ will depend on the **nature of the inquiry, subject matter** and relevant **rules** > [Kioa](#) (Mason)

- The two traditional elements of NJ are:
 - The right to have a fair hearing [**Hearing Rule**]
 - The right to be heard without bias [**Bias Rule**]

3.1 HEARING RULE

Most admin. Decisions are less formal than courts, but must still be subject to minimum standards to ensure justice. There are **3 minimum requirements** under this rule...

3.1.1 Adequate Prior NOTICE of a decision being made...

- **FORM** generally in writing ([Andrews v Mitchell](#)) but can be oral if given enough time ([HREOC](#) 1.40 hrs not enough to prepare submission)
- **CONTENT** must have...
 - Details of the address + date > [Cooper](#)
 - Enough specification to know what they are meeting > [Ansell v Wells](#) [summary ok]
 - More detail is required the bigger the impact on rights/liberties > [Seiffert](#)
- **TIME** Notice must be given so as to allow **adequate time to prepare** a case ([Jaffarie](#); [Ex parte Polemis](#)). Examples of inadequate notice include:
 - 2 weeks w' large document + uneducated, imprisoned man > [Sales](#)
 - BUT 6 weeks to respond to visa cancellation **HELD** enough > [Moores](#)
 - Providing a letter w' new issue on the day of the meeting > [Macquarie](#); [Ex parte Ong](#)
 - 1.40 hrs to prepare submission > [HREOC](#)

3.1.2 Adequate DISCLOSURE of relevant ISSUES

An investigatory body is not required to show their hand at every stage of an investigation ([NCSC v News Corp](#)). However, information must be disclosed where...

- It is **critical/central** to the issue being decided > [Aala](#) [belief of concocted fear]; [Miah](#) [Change of govt in home country – went to fear of prosecution]
- It is **credible, relevant and significant** – particularly if **damaging** to the App's case ([VEAL v MIMIA](#); [Muin per Kirby](#)); or
- It is from an **external source**, is information **personal** to the App, + where the decision-maker intends to reject the application by reference to it (per Mason J in [Kioa v West](#); [VEAL](#) letter)
- If release of the info may cause harm – may still need to disclose to legal rep > [Re Pochi](#)

EXAMPLES OF DISCLOSURE

- ✓ [Macquarie Uni; Ex Parte Ong](#) Not disclosing **new + issues** (no opp to respond to new issues) **HELD** breach of NJ
- ✓ [Miah](#) New info relating to change of govt of home country (protection visa application) **HELD** info **relevant to central issue** RE: fear of persecution, newness + unexpectedness, + how applicant's view would be constructive ∴ breach of NJ by not disclosing
- ✓ [DPP v Shoan VSCA](#) Judge didn't disclose departure from common assumption that prison not on table **HELD breach** bc should have given opp to say why it wasn't appropriate departure
- ✓ [Xstrata Tribunal didn't disclose how would use report on emissions doubting effect on climate change](#) **HELD breach**
- ✓ [Aala](#) Tribunal no disclosing belief that App had concocted fear of persecution **HELD** breach bc **belief central** to issue
- ✓ [NIFF](#) Tribunal member promising to write to X RE: inconsistencies + allowance of opp to respond BUT failed **HELD** breach bc tribunal member evidently thought fair trial couldn't be made off given evi
 - !! BUT [Lam](#) [no breach in not contacting App's children – **NOTE** the factual differences!]
 - !! BUT now must see in light of [WZARH](#) [Appeal Arg that there was **NO actual unfairness**]

3.1.3 Right to be Heard

App has right to written submissions BUT there is no general right to an oral hearing [**will depend on facts**]
However, an oral hearing **may be granted** when...

- to resolve **inconsistencies in evidence** > [Heatley \(1993\)](#)