

IMPLICATION:		
a) Authority		
<ul style="list-style-type: none"> Duty to accord for PF is derived expressly/impliedly from statute: MIBP v SZSSJ (1990) CL duty to act fairly: Mason J in Kioa; implied condition of statutory grants: Brennan J in Kioa 'Hardly thought that modern legislature... intends that interests of individuals that do not amount to legal rights should be accorded with less protection (Brennan J 616-7 Kioa) 		
b) Categories of PF		
FORFEITURE CASES	EXPECTATION CASES	APPLICATION CASES
<ul style="list-style-type: none"> Loss of right/detriment to interest usually attracts PF: Cooper Personal liberty: Johns v Release on Licence Board; O'Shea (1987) Financial interest: FAI Reputation: Annetts [facts: Jackeroos – coroner]; Ainsworth Taxi licence – form of property and transferrable: Banks v TRB (1968) 	<ul style="list-style-type: none"> To be legitimate, the expectation must be reasonably held: Teoh Contracts: Heatley v Tasmanian Racing and Gaming Commission (1977) [facts: escorted off race track – as per ticket needed to give reason] Undertaking: Cole v Cunningham (1983) [facts: no 'record' of what happened on work record] Expectations of license being renewed: FAI Insurances v Winneke (1982) Announced policy: Haoucher v MIEA (1990) [facts: public policy – decisions can be sent to AAT for review; DM departed from such policy] Regular practice: CCSU v Minister for Civil Service [1985] [facts: spies; Thatcher – NO PF due to national security] Immigrant who had visa – LE that would be allowed to stay for the time: Schmidt v Secretary of State for Home Affairs [1969] LE even when case where absolute discretion of DM: Kioa 	<ul style="list-style-type: none"> LE that DM will adopt procedurally fair process: Kioa Unfair DM process will give rise to PF hearing – materials relied on (and critical to decision: not notified of allegation, extrinsic material, court will likely find applicant had a LE of being heard: Kioa
c) Direct and individual impact		
<ul style="list-style-type: none"> 'Direct and unique': 'substantially different from the manner which its exercise is apt to affect the interests of the public': Kioa per Brennan J at 619 		
d) Practical Unfairness		
<ul style="list-style-type: none"> Be possible to identify the 'PU' that results from DM process: Re MIMIA; Ex parte Lam (2003) [facts: drug charges, children, contact carer, DIMIA did not – not practically unfair] Not every departure from stated intention necessarily involves unfairness, even if it defeats an expectation (Gleeson CJ at 12-13) 'Fairness is not an abstract concept... concern of the law is to avoid practical injustice (Gleeson CJ at 14) EMPHASIS: impact of the DM process was unfair – how failure to allow individual a right to be heard and how this was detrimental to the case MIBP v SZSSJ (2016): [facts: published personal details of asylum seekers; did not get ITOA/IP address of who posted it] [held: not PU – were not denied the right to submit their submissions] 		

SCOPE AND CONTEXT OF DUTY & LIMITING/EXCLUDING PF	
a) Authority	
<ul style="list-style-type: none"> • Doctrine of PF does not apply to 'every decision which disadvantages individuals': Peko • In Kioa, Mason J listed a range of factors that should be considered 	
b) 'Mason factors' as per Kioa (FOR EXCLUSION)	
i. Statutory provisions	
<ul style="list-style-type: none"> • Courts will be unlikely to exclude PF where possible: Plaintiff S157 • Necessary however, that procedural requirement of PF does not frustrate the purpose of the act: Twist v Council of the Municipality of Randwick (1976) • Implied statutory intention to exclude PF must be clear and strong: Annetts v McCann (1990) • Not sustained by 'indirect referenced, uncertain inferences or equivocal considerations: Commissioner of Police v Tanos (1958) 	
ii. Special circumstances	
<ul style="list-style-type: none"> • National security: CCSU case • Public health and safety: Twist • Urgent decision: SA v Slipper (2004) • Maintain confidentiality: MIMA v VEAL 	
iii. Type of decision: Policy/public interest	
<ul style="list-style-type: none"> • Making of policy does not attract PF rights: Peko • Where DM decision is based on wide ranging public policy initiatives, PF may be limited or excluded: Peko • Public interest and balancing private interest of individual: O'Shea • Application of general policy can attract PF rights 'so long as there are circumstances personal to the individual which may influence the outcome': Blyth District Hospital Inc v SA Health Commission [facts: cut funding to the hospital] • National security: CCSU case • Public health and safety: Twist 	
iv. Type of decision: investigation/inquiry	
<ul style="list-style-type: none"> • PF in early stages is usually appropriate: Ainsworth • PF should be afforded before any final reports or findings are published: News Corp Ltd v National Companies and Securities Commission (1984) • Open-ended inquiry: PF may frustrate: News Corp • Inquiry in public interest limited PF rights of individual affected by hearing: Bond v ABT • Protect other rights/interests in investigation: Gypsy Jokers v Commissioner Police (2008) • Integrity of police investigation: K-Generation Pty Ltd v Liquor Licencing Court [2007] 	
v. Statutory procedural framework – alternative procedures	
<ul style="list-style-type: none"> • Some procedures may be intended to substitute for more expansive CL PF requirements: Re MIMA; Ex parte Miah (2001) [facts: procedural code did not exclude operations of CL principles of PF completely – code did not address all aspects of PF] • Procedures may 'commensurate with some of the rules of NJ' does not exclude/displace the wider application of these rules: Annetts • Right of appeal may be intended to displace PF; to make JR available would hamper the efficient application of the relevant DM power in the public interest: Twist • ARGUE: code that is meant to substitute for PF; OR this is case where when you look at the statute, it makes it clear that PF is important – entrenches PF • Thompson v Randwick Municipal Council – RoA was appeal to DC - could have legal representation – was appropriate • Existence of appeal rights may affect the extent to which the requirements of NJ apply... no general rule that RoA denies application of rules of NJ (McHugh J 98-9 in Miah) 	