

EMPLOYMENT INSTRUCTION NUMBER 3

NATURAL JUSTICE

1. SCOPE AND PURPOSE

This Employment Instruction identifies the basic principles of the rules of natural justice. Its purpose is to ensure that persons exercising powers and functions under the *Public Sector Employment and Management Act* (the Act) are aware in general terms of their obligations under these rules.

2. LEGISLATIVE BASIS

There is no legislative basis in the Northern Territory for the rules of natural justice. The rules of natural justice are a legal concept developed by the courts designed to ensure procedural fairness in the exercise of administrative power.

3. AGENCY ACTION REQUIRED

The rules of natural justice shall be observed in all dealings with employees under the Act other than those referred to in section 50 of the Act, Summary Dismissal (see also Employment Instruction Number 7 - Discipline). Where doubt arises as to what natural justice may mean in a given set of circumstances, the Office of the Commissioner of Public Employment should be consulted prior to any action being taken.

4. NATURAL JUSTICE

The concept of natural justice is in this context comprised of two fundamental principles:

- a person directly affected by an impending decision must be afforded a fair hearing prior to that decision being made; and
- the decision maker should be impartial.

It should be noted that the term "decision", when used in this context includes action taken pursuant to a power under the Act.

4.1 Fair Hearing

While the exact requirements of a fair hearing will vary according to the seriousness of the proposed action and the other circumstances of a particular case, it will ordinarily involve the following action prior to any decision being made:

- (i) giving the person directly affected adequate notice;
- (ii) furnishing the person with the content of the material which is to be considered and which is adverse to his or her cause; and
- (iii) providing an opportunity for the person to answer that material and otherwise make his or her submissions.

4.2 Impartiality

The requirement to act impartially stems from the principle that a person shall not be judge in his or her own cause. Hence the decision maker should not have a personal interest in the outcome or otherwise be perceived to be biased.

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COMMISSIONER FOR PUBLIC EMPLOYMENT

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