

PROCEDURAL FAIRNESS

WHOLE SCHOOL



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1 NATURAL JUSTICE

Toowoomba Christian College (“the School”) has adopted the following policy as its approach to the issue of natural justice.

1.1 First principle

The principles of natural justice require that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person’s case to the decision-maker.

1.2 Second principle

The decision-maker must be unbiased.

1.3 Third principle

The principles require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.

https://www.legislation.qld.gov.au/Leg_Info/publications/FLPNotebook.pdf

2 PROCEDURAL FAIRNESS

These guidelines apply to all School staff.

1.4 What is 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.

1.5 Is there a difference between natural justice and procedural fairness?

The term procedural fairness is thought to be preferable when talking about administrative decision-making because the term natural justice is associated with procedures used by courts of law. However, the terms have similar meaning and are commonly used interchangeably. For consistency, the term procedural fairness is used in this policy.

1.6 The rules of procedural fairness require

- a. A hearing appropriate to the circumstances.
- b. Lack of bias.
- c. Evidence to support a decision.
- d. Inquiry into matters in dispute.

1.7 What is “the hearing rule”?

A critical part of procedural fairness is “the hearing rule”. Fairness demands that a person be told the case to be answered and be given the chance to reply before the School makes a decision that negatively affects a right, an existing interest or a legitimate expectation which the person holds. Put simply, hearing the other side of the story is critical to procedural fairness.



1.8 Rights under Procedural Fairness

In line with procedural fairness, the person concerned has a right:

- a. To know the allegations related to a specific matter and any other information which will be taken into account in considering the matter.
- b. To know the process by which the matter will be considered.
- c. To respond to the allegations.
- d. To know how to seek a review of the decision made in response to the allegations.
- e. To have an opportunity to reply in a way that is appropriate for the circumstances.
- f. For their reply to be received and considered before the decision is made.
- g. To receive all relevant information before preparing their reply. The case to be met must include a description of the possible decision, the criteria for making that decision and information on which any such decision would be based.
- h. To have a reasonable chance to consider their position and reply. However, what is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter.
- i. To genuine consideration of any submission. The decision-maker needs to be fully aware of everything written or said by the person, and given proper and genuine consideration to that person's case.

1.9 How does procedural fairness apply to an investigation conducted by School staff?

Depending on the circumstances, procedural fairness requires School staff to:

- a. Hear all parties to a matter and consider submissions.
- b. In most cases it is enough to give the person opportunity to put their case in writing. In others, however, procedural fairness requires the person to make oral representations.
- c. Make reasonable inquiries or investigations before making a decision. Your ultimate decision will often need to balance a range of considerations, including the consequences of the decision. A decision that will negatively affect a person should not be based merely on suspicion, gossip or rumour. There must be facts or information to support all negative findings. The best way of testing the reliability or credibility of information is to disclose it to a person in advance of a decision, as required by the hearing rule.
- d. Only take into account relevant factors.
- e. Act fairly and without bias. If a person raises a new issue that questions or casts doubt on an issue that is central to a proper decision, it should not be ignored. Proper examination of all credible, relevant and disputed issues is important.
- f. Conduct the investigation without unnecessary delay.

1.10 How does procedural fairness apply to the decision-maker?

- a. There must be an absence of bias by a decision-maker.
- b. The decision-maker must allow the individual a fair hearing (or verify that the individual has been granted a fair hearing) that is neither too early nor too late in the decision-making process.



1.11 When decisions about a person are made within the School, it is expected that:

- a. The dignity of all parties in the decision-making process is respected.
- b. The process is conducted in an orderly manner.
- c. Decisions are based on evidence.
- d. The alleged facts are clearly stated to the person who is the subject of any allegations.
- e. The person about whom a decision is to be made is given an opportunity to respond, before the decision is made.

It is also expected that evidence will be given appropriate weight according to the circumstances of each case.

1.12 The School's Commitment to Procedural Fairness

The School's commitment to natural justice should be implemented by following procedural fairness in situations when decisions may be taken, which could have a detrimental effect on the rights, interests or legitimate expectations of a person. Procedural fairness is integral to the management of processes affecting people under the School's policies, procedures and guidelines.

1.13 Summary of Procedural Fairness

The person involved is

- a. Informed of concerns or allegations being made.
- b. Treated impartially.
- c. Given the opportunity to respond.
- d. Informed of the complaints process and the review process which may be followed.

The process followed is

- a. The issue must be raised with the person within a reasonable time and outcomes reached as soon as reasonably practicable.
- b. Records of process must be maintained.
- c. If a decision-maker has any concerns about competing obligations advice should be sought from their supervisor as soon as reasonably possible.

3 REVIEW

The policy will be reviewed as required from time to time.