

## **CONSTITUTION SECTIONS**

### **S33 - Valid/Just Administrative Action**

-Everyone has the right to administrative action, which is lawful, reasonable and procedurally fair.

-Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

-National legislation must be made to give effect to those rights and

>Provide for review of administrative action by a court

>Impose a duty on State to comply

>Promote efficient admin action

### **S38 - Locus Standi - Capacity to bring a matter to court**

-Anyone acting their own interests

-Anyone acting in interests of another who cannot act himself

-Anyone acting in the public interest

-Anyone acting as a member of a group or class of persons

-An association acting in the interests of its members

### **S195 - Values governing Public Action**

-Promote and maintain professional ethics

-Promote efficient use of resources

-Development orientated public administration

-Accountable public administration

-Promoting transparency by providing the public with timely, accessible and accurate information

### **S239 - Organ of State**

- Department of State or Administration – in National, Provincial or Local sphere of government.
- Institution or functionary –
  - Performing a public function or exercising public power in terms of the Constitution or Provincial Constitution.
  - Performing a public function or exercising a public power in terms of any legislation
- EXCLUDES a Judicial Officer or a Court

## **PAJA SECTIONS**

### **S1(1) – Definition Administrative Action – Any action taken or failure to take a decision by**

- An Organ of State exercising a public power or performing a public function in terms of the Constitution or any legislation
- A Natural or Juristic person, other than an Organ of State, performing a public function or exercising a public power in terms of an empowering statute

Which adversely effects the rights of any individual and has a direct external effect

### **S3 – Procedural Fairness**

S3(1) – Any administrative action which materially and adversely effects the rights or legitimate expectation of a person must be procedurally fair.

S3(2) – MANDATORY requirements for Procedural Fairness, The Administrator MUST give the affected person

- Proper notice of the intended action
- Reasonable opportunity to make representations
- Clear statement of admin action
- Notice of the right of review
- Notice of the right to request reasons

S3(3) – DISCRETIONARY requirements for Procedural Fairness, The Administrator MAY give the affected person the OPPURTUNITY to

- Appear in person
- Present info and arguments
- Get assistance

S3(3) – The Administrator may depart from S3(2) where it is REASONABLE looking at

- Purpose of the Legislation
- Purpose of the Action
- Effect of the decision
- Urgency involved
- Good governance

S3(4) – The Administrator can use a different procedure if

- It is fair

- It is authorized by Legislation

### **S5 – Reasons must be given at the request of any person whose rights have been materially and adversely affected**

S5(1) – Anyone not given reasons for the action, may within 90 days after becoming aware of the action, request that the administrator concerned, furnish written reasons for the decision

S5(2) – The Administrator must within 90 days of receiving such a request, furnish the person with adequate reasons

S5(3) – Failure to provide adequate reasons, raises the presumption that the administrative action was taken without good reason (failed to apply his mind to the matter) and the onus rests on the Administrator

### **S6 – The grounds for Judicial Review ( Gives effect to the right to reasonable administrative action by allowing the individual to institute proceedings )**

S6(2)(h) – Judicial review on the grounds that – The exercise of power or the performance of the function is so unreasonable, that no reasonable person could have exercised the power or performed the function

The Constitutional Court gave effect to the content of S6(2)(h) in the case of ***Bato Star Fishing*** when it held the following

- S6(2)(H) must be read inline with S33 of the Constitution
- An Administrative action is reviewable if it is one that a reasonable decision maker could not reach – simple test
- What constitutes a reasonable decision varies from case to case
- To determine whether a decision is reasonable, the following factors must be taken into account
  - Nature of the decision
  - Nature of the conflicting interests
  - Effect of the decision
  - Reasons for the decision
  - Impact of the decision on the lives of those affected

S6 contains the statutory grounds for judicial review which are further grouped into different categories based on:

#### 1. The decision maker (Administrator):

a. Ultra vires - the administrator lacked specified qualifications, he used his powers for an unauthorized purpose, he failed to adhere to the provisions relating to time

- b. Unauthorised delegation - the administrator was not authorized to delegate
- c. Nemo Iudex - the administrator was biased

2. The manner in which the decision was taken:

- a. The action was not procedurally fair
- b. The action was materially influenced by an error in law
- c. The action was taken:
  - i. For unauthorized reasons
  - ii. For unauthorized purpose
  - iii. In bad faith.

3. The administrative action itself:

- a. Contravenes the law / is unauthorized by the empowering provision
- b. Failure to take a decision
- c. Unreasonable action
- d. The action was unconstitutional or unlawful

**S8 – Orders that may be made by a Court**

- To give reasons
- To act in the required manner
- Prohibit the administrator from acting in a particular manner
- Set aside the decision
- Declare the rights of the parties
- An order as to costs
- Grant a temporary interdict