The Crux of Administrative Law - Memorize

Administrative Action:

Administrative Action is by the PAJA defined as:

- Administrative action means any decision\(^2\) taken, or failure\(^1\) to take a decision\(^2\) by –
  a. An Organ of state\(^3\), when –
    i. Exercising a power in terms if the Constitution or a provincial constitution; or
    ii. Exercising a public\(^4\) power or performing a public\(^4\) function in terms of any legislation; or
  b. A natural or juristic person, other than an organ of state\(^3\), when exercising a public\(^4\) power or performing a public function in terms of an empowering provision\(^5\), which adversely affects the rights of any person and which has a direct, external legal effect.

The right to Just Administrative Action

Section 33 of the Constitution of South Africa 108 of 1996 grants all the right to Just Administrative Action in terms of section 33. Section 33 reads as follows:

- Just Administrative Action:
  1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.\(^6\)
  2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.\(^7\)
  3. National legislation\(^8\) must be enacted to give effect to these rights, and must-
    a. Provide for review of administrative action by a court or, where appropriate, an independent and impartial tribunal.
    b. Impose duty on the state to give effect to the rights in subsections (1) and (2); and
    c. Promote an efficient administration.

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\(^1\) Includes a refusal to take a decision

\(^2\) Any decision of an administrative nature made, proposed to be made, or required to be made, under an empowering provision i.e. making, giving, suspending, revoking, restricting, retaining, demanding, refusing to act, permitting, consenting etc.

\(^3\) Organ of state – section 239 of the Constitution
  a. Any department of state or administration in the national, provincial or local sphere of government; or
  b. Any other functionary or institution –
    i. Exercising a power or performing a function in terms of the Constitution or provincial constitution; or
    ii. Exercising a public power of performing a public function in terms of the Constitution or a provincial constitution.

\(^4\) Any group or class of the public

\(^5\) Empowering provisions:
  - A law
  - A rule of common law
  - Customary law
  - An agreement
  - Instrument or other document in terms of which an administrative action was purportedly taken

\(^6\) Fair administrative action constitutes:
  - Adequate notice of the nature and the purpose of the proposed administrative action;
  - A reasonable opportunity to make representation
  - A clear statement of the administrative action
  - Adequate notice of any right of review or internal appeal, where applicable
  - Adequate notice of the right to request reasons in terms of section5

\(^7\) These provisions are set out in the PAJA in s 5.

\(^8\) National legislation includes – Section 239 of the Constitution
  a. Subordinate legislation made in terms of an Act of Parliament
  b. Legislation that was in force when the Constitution took effect and that is administered by the national government.