IPAA Seminar

Adelaide 12 February 2016

Administrative law principles application to decision-making

The Hon Justice Greg Parker
President, South Australian Civil and Administrative Tribunal

What is administrative law?

The law that regulates the exercise of public power

Sources

Judicial Review by the Supreme Court

Different from an appeal

Remedies

Mandamus   compels the making of a decision

Certiorari   quashes a decision

Prohibition   prevents something being done

Declaration   court declares legal rights

Injunction   prohibitory (stops) or mandatory (compels)

Ultra Vires

Literally "beyond power" ie lacks power

Narrow sense means not empowered to act

Broad sense means while ostensibly had power, defective decision-making process negated exercise of power

Ultra Vires in the narrow sense

Does the relevant legislation authorise the decision?

Whom does the legislation empower?

Valid Delegation?

Met any pre-conditions to the making of a decision?

Ultra Vires in the Broad Sense

Taking into Account an Irrelevant Consideration or

Failure to Take into Account a Relevant Consideration

Unreasonableness

Uncertainty

Failure to Exercise Power

Inflexible application of policy or rule

Ultra Vires in the Broad Sense (cont)

Inflexible application of policy

Entitled to have general policy to govern exercise of discretionary powers in ordinary cases <u>but must be prepared to depart from the policy in exceptional cases</u>.

Acting under dictation

Procedure Fairness or Natural Justice

Two elements

Hearing Rule

Bias Rule

When does procedural fairness apply?

In most circumstances, where a decision will adversely affect rights, interests or legitimate expectations.

When does procedural fairness not apply?

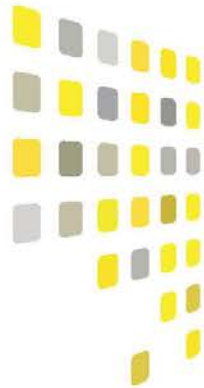Policy and legislative changes
When excluded by statute

Bias Rule

Would an independent observer, being fully informed of the relevant facts, reasonably apprehend that the decision-maker may not approach the matter with an impartial mind.

The Hearing Rule

Reasonable opportunity to respond to potentially adverse material

sacat.

South Australian
Civil and Administrative Tribunal