

14. ANSWERS

To the Exercises in the Workbook

Exercise 3

A number of scenarios was posed, and you were asked to identify if they qualified as administrative actions, or not, according to the definition under the AJA that you have been given.

1. School governing body

This **is** administrative action, because:

- There **is a decision**;
- **By an organ of state**: the governing body is constituted and given power by the South African Schools Act. This is a public function to do with the provision of education;
- The decision goes **against parents' legitimate expectations**, because they are required to buy an additional set of uniforms that they have not budgeted for. It imposes an undue burden on them; and
- Decisions of a school governing body are **not expressly excluded** by the AJA.

2. No payment for pensioners

This is **not** administrative action, because:

- There **is** a decision;
- By an **organ of state** (the presidency);
- The decision will **negatively affect the rights** of pensioners to their pensions; but
- The function of the presidency as part of the executive, and in matters that have to do with policy of the executive are **excluded by the AJA**.

3. Good and Easy Payment Systems

This is administrative action, because:

- There is **decision**;
- By a **private body performing a public function**: Good & Easy is under contract to pay social grants on behalf of the Department of Social Development;
- The decision **goes against people's rights** because some beneficiaries will not be paid in the allocated days; and
- The function of Department of Social Development to provide social grants is **not excluded by the Act**.

4. Kokolaola Town Council

This is not clear – it could be argued both ways:

- There is a **final decision**;
- By an **organ of state** (the town council);
- The decision goes against the **legitimate expectation** of residents to receive basic services; but
- The function of the Town council **seems to be excluded by the AJA** in section 1, because the council can be executive or legislative at some times. However the directions from the courts seem to suggest that it is not important which organ performs the function, what is important is what function is being performed. The functions that are not of policy nature, but have to do with implementation of legislation or exercise of public power or have to do with provision of public service will be judged to be covered by the Act. (See the SARFU case in your trainer's manual.)

5. Department of Health

This is an administrative action, because:

- There is a **decision**;
- By an **organ of state** (the Department of Health);
- Which has a **negative effect** on those that do not live in the districts that will receive the health service; and

- The function of the Department of Health in providing health care is **not expressly excluded** by the Act.

6. Forest road

This is not an administrative action, because a final decision has not been made. However, it will become one as soon as a decision is made to build the road, because:

- There is **no final decision** – the department is still thinking about erecting the road; but
- It is to be made by an **organ of state**, the Department of Transport;
- It appears that there will be a **negative effect** on the people who use the forest if the road is built; and
- The provision of roads by the Department of Transport is **not specifically excluded by the Act**.

As an NGO this would be an opportune time for you to intervene. When a decision is to be made that will affect the rights of the public, or a community, negatively, it is your responsibility as NGOs and members of the public to bring these issues to the attention of the administrator. Even when a decision has not yet been made, but there is a possibility that it will have a negative effect, the administrator is required to follow a fair procedure, and to allow those who will be affected the opportunity to make representations.