



## **Office of the Inspector**

### **of the Independent Commission Against Corruption**

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#### **Working Definition of Maladministration Section 57B (4)**

##### **Contrary to law (s.57B(4)(a))**

- Failure to comply with or decisions or actions contrary to:
  - an Act or Regulation,
  - the common law,
  - a lawful and reasonable order from a person or body authorised to make such an order,
  - a legally binding document or contract.
  
- Continuation of practices or procedures which the courts have found to be unlawful.
  
- Decisions or actions ultra vires, i.e. not authorised, (the decision-maker had no power to make the decision or to do the act).
  
- Breach of natural justice/procedural fairness, including:
  - inadequate or no notice given,
  - inadequate or no opportunity given to be heard,
  - bias.
  
- Incorrect:
  - interpretation of the law,
  - application of the law.
  
- Legal requirements or procedures not observed.
  
- Improper exercise of a delegated power:
  - decision or action not authorised by delegation,
  - fettered discretion/acting under the direction or at the behest of another, i.e. acting under 'dictation',
  - criminal or corrupt conduct,
  - decisions or actions induced or affected by fraud,

- acceptance of bribes or secret commissions,
- unauthorised disclosure of confidential/secret/private information,
- breach of trust or fiduciary responsibilities.

### **Unreasonable (s.57B(4)(b))**

- Decisions or actions:
  - inconsistent with adopted guidelines or policies and that inconsistency is not adequately explained,
  - inconsistent with other decisions or actions which involve similar facts or circumstances,
  - made or taken without obvious relationship to the facts or circumstances,
  - not justified by any evidence,
  - partial, unfair or inequitable,
  - made or taken by a person with a conflict of interest,
  - arbitrary,
  - so unreasonable that no reasonable person could so decide or act (i.e. irrational),
  - unconscionable,
  - based on information that is factually in error or misinterpreted,
  - unreasonably delayed.
- Policy applied inflexibly without regard to the merits of individual cases.
- Application of procedure which fails to achieve the purpose for which it is intended.
- Relevant considerations not adequately taken into account and/or irrelevant considerations taken into account.
- Important facts omitted from reports or deliberations, or ignored.
- Denial of procedural fairness, including inadequate:
  - notice of proposed action, decision or hearing,
  - advice or notice as to rights,
  - reasons for decisions or actions,
  - opportunity to be heard,
  - consultation,

- Wrong, inaccurate or misleading advice leading to detriment, whether inadvertent or deliberate.
- Failure to apply an Act, Regulation or the common law:
  - Means used not reasonably proportional to ends to be achieved (i.e. excessive use of authority) including restraints imposed upon persons or property that are not necessary to preserve and protect rights of others.
  - Abuse of power, e.g. use of power for unauthorised purpose.
  - Failure to rectify identified mistakes, errors, oversights or improprieties.
  - Failure to appreciate impact on the public or an individual, or giving undue weight to agency's convenience, interests.
  - Failure to properly comprehend complaint or to respond appropriately to complaint.
  - Breach of trust
  - Failure to properly investigate.
  - Negligence or the absence of proper care and attention.

#### **Unjust (s.57(4)(b))**

- Decisions or actions:
  - not justified by any evidence,
  - partial, unfair or inequitable,
  - made or taken by a person with a conflict of interest,
  - arbitrary,
  - so unreasonable that no reasonable person could so decide or act (i.e. irrational),
  - unconscionable.
- Refusal of otherwise valid claims based on minor procedural defects.
- Means used not reasonably proportional to ends to be achieved ( i.e excessive use of authority)
- Abuse of Power
- Negligence or the absence of proper care and attention.
- Unfair or inequitable application of law so that burden or benefit does not reach all those to whom it is intended to apply.

#### **Oppressive (s.57B(4)(b))**

- Unconscionable.

- Punitive, harsh, cruel or offensive.
- Means used not reasonably proportional to ends to be achieved (i.e. excessive use of authority).
- Abuse of power/discretionary authority.
- Imposition of unreasonable preconditions to the provision of a legal entitlement.
- Intimidation or harassment.
- Use of superior position or knowledge to place a person at an unreasonable disadvantage or to obtain compliance with wishes in respect of an otherwise unrelated matter.

**Improperly discriminatory (s.57(4)(b))**

- Inconsistent application of laws, policies, etc. when there is no reasonable, justifiable or appropriate reason to do so.
- Distinctions applied not authorised by law, or failure to make a distinction which is authorised or required by law.
- Failure to perform duties impartially and equitably.
- Application of law or practice does or will produce a result that is unreasonable, unjust, or oppressive.

**Wholly or partly improper motives (s.57(4)(c))**

- Decisions or actions in whole or in part:
  - for a purpose other than that for which the power was conferred, i.e. the intent of a law, policy or procedure is ignored or disregarded in order to achieve a particular outcome,
  - motivated by favouritism, personal animosity or promotion of personal objectives other than those which merit and equity dictate,
  - for personal advantage,
  - made or taken by a person with a conflict of interest.
- Seeking or accepting gifts or benefits in connection with the performance of official duties.
- Misuse of confidential information to obtain improper advantage.
- Bad faith.
- Dishonesty.
- Misuse of public property, official services or facilities