

STUDENT

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ASSIGNMENT

1 SEMESTER 2

UNIQUE NUMBER

680891

### Question 1

Yes, I recognise two organs of state

#### Organ of state

section 239 of the Constitution<sup>1</sup> gives the definition of organ of state as:

(a) any department of state or administration in the national, provincial or local sphere of government; or any other functionary or institution that:

(i) exercises a power or performs a function in terms of the Constitution or a provincial constitution; or

(ii) exercises a public power or performs a public function in terms of any legislation. However, a court or a judicial officer is not included.

In the given set of facts, the following organs of state are identified:

- a. Western Cape Department of Environmental Affairs and Development Planning is department of the provincial sphere of government exercising power in terms of the provincial constitution;
- b. Sedgefield, which is exercising power and performing state function of addressing water shortage by erecting a desalination plant. It is empowered by the Western Cape Department of Environmental Affairs using the following legislations:
  - I. National Environmental Management Act 107 of 1998 (thereafter NEMA)<sup>2</sup> and
  - II. Environmental impact assessment (thereafter EIA) in terms of the Environmental Impact Assessment Regulations of 2010<sup>3</sup>. This is a subordinate legislation.

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<sup>1</sup> Section 239(a) of the Constitution of the Republic of South Africa.

<sup>2</sup> Referred to in the ADL2601 Tutorial 101/3/2018 Semester 2 Assignment 1 Set of facts.

<sup>3</sup> Referred to in the ADL2601 Tutorial 101/3/2018 Semester 2 Assignment 1 Set of facts.

## Question 2

### Administrative action

Section 1 of the Promotion of Administrative Justice Act (PAJA) 3 of 2000<sup>4</sup> defines administrative action as

any decision taken, or any failure to take a decision, by

(a) an organ of state, when

(i) exercising a power in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, these does not include executive powers or functions of the National Executive, the Provincial Executive, the municipal council and the judicial functions of the judicial officer of a court.

Erecting of a desalination plant is an administrative action. Sedgefield here is a juristic person and is exercising public power since it is acting on behalf of Western Cape Department of Environmental Affairs and Development Planning. It is empowered by NEMA and EIA in terms of Environmental Impact Assessment Regulation of 2010. Since the local ratepayer's association is aggrieved and feels that they were not given opportunity to make input, they were not given reason for the decision, the expensive infrastructure which will be funded by public money and the negative impact to the environment, the decision to commence with the erecting of the plant adversely affect the said association and has external legal effect.

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<sup>4</sup> Section 1 of the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

## **References**

ADL Tutorial 101/3/2018

Constitution of the Republic of South Africa, 1996.

Public Administrative Justice Act 3 of 2000.

#### ACADEMIC HONESTY DECLARATION

1. I understand what academic dishonesty entails and am aware of Unisa's policies in this regard.
2. I declare that this assignment is my own, original work. Where I have used someone else's work, I have indicated this by using the prescribed style of referencing. Every contribution to, and quotation in, this assignment from the work or works of other people has been referenced according to the prescribed style.
3. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
4. I did not make use of another student's work and submit it as my own.

NAME: IC - SELOETNO

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STUDENT NUMBER: 4084 6113

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