**Administrative Decision Making**

Thursday 12 February 2015

10.35am – 11.20am

The Hon. Bruce Lander QC

The purpose of this seminar is to discuss the concept of administrative decision making in a practical way as has been explained by Justice Parker.

I do not think it is well understood amongst public officers that their role in decision making is entirely dependent upon a statutory instrument of some kind, which empowers them to make the decision.

Administrative decisions are not made in a vacuum. They are made in furtherance of a power given to the administrative decision maker by Parliament or by some form of delegated legislation such as a regulation.

Administrative decision making is usually only authorised by legislation and when the power is exercised it must be exercised in accordance with the legislation.

All of us in this room are from time to time administrative decision makers. Even Justice Parker who ordinarily exercises judicial power sometimes exercises administrative power.

For example, when Justice Parker is approached to issue a warrant under the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) he is then exercising an administrative power, not a judicial power.
Judges are aligned to the differences between the exercise of judicial power and the exercise of administrative power because the consequences of error in the exercise of the two different powers are quite different.

If a Judge makes an error in the exercise of judicial power then an appeal would lie from that decision to an appeal court. If on the other hand a Judge makes an error in the exercise of an administrative power, no appeal lies to a court from such a decision but the Judge will be subject to judicial review, subject to various rules that are associated with the challenge of the Judges exercise of administrative power, all of which do not need to be explained or enquired into today.

What is important for today is for all of us who exercise administrative power, which I do and you do, is to understand how the power is derived and how it must be exercised so as to put the exercise of power beyond challenge.

As you know my office’s primary function is to identify and investigate corruption in public administration and to refer serious or systemic misconduct or maladministration in public administration to the relevant body, giving directions or guidance to that body or otherwise exercising the powers of an inquiry agency as I consider appropriate.

A failure to make a decision in accordance with a power invested in an administrative decision maker by Parliament will not give rise to a question of corruption.

Corruption will occur if someone commits a criminal offence of the kind mentioned in s5 of the ICAC Act.
I am not so much interested in corruption today because corruption will ordinarily be investigated or dealt with by me or South Australia Police (SAPOL) and will not involve administrative decision makers.

However, a failure to make a decision in accordance with a power, or the making of a decision without power, may give rise to a question of misconduct or maladministration in public administration and therefore may be subject to an investigation or may be dealt with by an inquiry agency or a public authority or by me exercising the powers of an inquiry agency.

The title of my address is: “The Role of Administrators:

(a) in considering complaints in relation to potential issues of corruption, misconduct and maladministration in public administration; and

(b) in dealing with matters that have been referred to a public authority by the Independent Commissioner Against Corruption”

I will identify two ways in which the ICAC Act might impact upon you as a decision maker.

A public officer has an obligation under s20 of the ICAC Act to report to the Office for Public Integrity (OPI) conduct that the public officer reasonably suspects raises a potential issue of corruption or serious or systemic misconduct or maladministration.

Section 20 obliged me to prepare Directions and Guidelines governing reporting to the OPI of matters by an inquiry agency, public authority or public officer, which one reasonably suspects involves conduct of the kind that I just mentioned.
As you know an inquiry agency is the Ombudsman, Police Ombudsman or Commissioner for Public Sector Employment.

In the public sector a public authority includes all government agencies, statutory authorities, Members of Parliament, Ministers, the Commissioner of Police and a raft of other statutory office holders.

A public officer is a person who is a member of a statutory authority or employed in or by a public authority. Public officers include the Governor, Members of Parliament and even Judges.

The Directions and Guidelines needed to include provisions specifying the matters that are to be reported, and guidance as to how and to whom they should be reported.

Section 20(3) requires public officers as well as inquiry agencies and public authorities to make reports to the OPI in accordance with the directions and guidelines, and permits public officers to report to the OPI any other matter that the officer reasonably suspects involves corruption, misconduct or maladministration.

Public officers therefore must comply with those Directions and Guidelines and must report conduct of the kind with which the ICAC Act is concerned, failing which they may be considered to have engaged in misconduct.

As I have said, the scheme of the ICAC Act is that corruption will be investigated by my office, SAPOL or by the Police Ombudsman.
In fact, in practice, because the Police Ombudsman does not have any investigators within her office, corruption is investigated by my office or by the Anti-Corruption Branch of SAPOL and for that reason as I said earlier, will not involve administrative decision makers.

For that reason I am more concerned today with what happens if a matter is the subject of a complaint by a member of the public or reported by a public officer to the OPI that raises a potential issue of misconduct or maladministration.

If such a report is made then the OPI has an obligation to assess the conduct and to make recommendations to me as to how the matter should be dealt with.

In fact, if a matter is assessed as raising a potential issue of misconduct or maladministration the matter must be dealt with in accordance with s24(2) of the ICAC Act and that means in one of three ways:

a) it may be referred to an inquiry agency (the Ombudsman, the Police Ombudsman or Commissioner for Public Sector Employment) and I may give directions and guidance to that inquiry agency in respect of the matter; or

b) it may be referred to the public authority in which the conduct occurred and I may give directions and guidance to that public authority; or

c) I may exercise the powers of an inquiry agency in respect of the matter.

The scheme of the ICAC Act is that in most cases, conduct that has been assessed as misconduct or maladministration, will be dealt with either by an inquiry agency or the public authority in which the conduct occurred.
In practice, where the conduct has occurred within the public sector, most matters are referred to the public authority in which the conduct occurred.

Until the introduction of the ICAC Act the Ombudsman was not empowered to investigate misconduct, or more specifically misconduct as it is defined in the ICAC Act and therefore when the ICAC Act commenced, the Ombudsman had little experience in that type of investigation.

The Ombudsman’s experience was in its core business which was investigating administrative acts. An administrative act for the purpose of the Ombudsman Act 1972 is an act relating to a matter of administration on the part of an agency to which the act applies, or a person engaged in the work of such an agency, or an act done in the performance of functions conferred upon under a contract for services with the Crown or an agency to which this act applies. There are various exceptions to that definition.

In the first ten months of operation to the 30 June 2014, 65 matters were referred to inquiry agencies, which includes the Police Ombudsman, and 51 matters were referred to public authorities and in all cases, with directions and guidance.

Since 30 June 2014 more matters have been referred to public authorities rather than to inquiry agencies.

It is important to note that the referral must be made to the public authority concerned. In some cases, as I have said, a public authority may be a person e.g. a statutory office holder.

In fact, I am a public authority.
However, in most cases the public authority will be an agency such as Health, Education or Correctional Services.

In these cases the referral is to the authority, not to the Chief Executive or the Director of Human Resources. The public authority will have to determine who will deal with the referral.

Senior public officers in public authorities have had to deal with and will have to deal with matters that are referred to the public authority in accordance with the ICAC Act and with the directions and guidance under the ICAC Act.

The Act requires me, before referring a matter of misconduct or maladministration to a public authority, to take reasonable steps to obtain the public authority’s views as to the referral.

Ordinarily the public authority accepts the referral but in some cases presents persuasive evidence not known to the OPI or me that will mean that the matter is not referred to the public authority and is dealt with in some other way – usually by taking no action.

I have published standard directions and guidance to accompany a referral to the public authority. They are identified in section 14 of the Directions and Guidelines:

1) Identify all issues of misconduct and/or maladministration which are to be assessed;
2) Obtain all information from the witnesses who can give information relevant to the issues to be assessed;
3) Obtain all documentation relevant to the issues;
4) Make relevant findings in relation to the issues;

5) Take appropriate action, or alternatively determine not to take action; and

6) Report to the Commissioner within 56 days of the referral or such extended time as may be directed by the Commissioner:

   (i) the issues addressed;

   (ii) the findings made and the reasons for those findings; and

   (iii) the action taken and the reasons for that action, or, if no action is taken, the reason why no action was taken.

7) Where directed by the Commissioner, report to the complainant or reporting agency the matters referred to in (6).

Different but similar standard directions and guidance have been given to inquiry agencies.

The public authority which has been tasked with the referral must comply with those directions and guidance and therefore must understand the obligations that are imposed upon administrative decision makers dealing with matters that give rise to questions of misconduct and maladministration in public administration.

It is important to note from the outset that the standard directions and guidance require the authority to proceed in a structured way. That is because they have been referred matters that will or at the least may affect the rights of people who are employed by or deal with that public authority.

I thought it was important in publishing the directions and guidance to make it clear to both the public authorities and inquiry agencies the importance of proceeding in a structured and orderly way so that both the complainant and any person of interest can be satisfied that the matter has been dealt with according to law and I mean by law, Administrative Law.
You will see that the directions and guidance require the public authority to undertake some form of investigation at least if the public authority is to conform with the directions and guidance.

I might interrupt myself here just to mention that a public authority must in fact comply with the directions and guidance because otherwise I can, under the ICAC Act, if I am not satisfied that a public authority has duly and properly taken action in relation to a matter referred by me, inform the public authority of the grounds of my dissatisfaction to give the authority an opportunity to comment.

If I am not satisfied after receiving the public authority’s comment I can report to the Minister responsible for the public authority setting out the grounds of my dissatisfaction together with any comment that I have received from the public authority.

If, after considering any comment of the Minister who is responsible for the public authority I am still not satisfied that action has been duly and properly taken, I may provide a report setting out the grounds of my dissatisfaction to the President of the Legislative Council and the Speaker of the House of Assembly.

So the directions and guidance that have been published are meant to be complied with.

The investigation that is carried out must comply with the common law in so far as it relates to investigations, otherwise that investigation could be liable to be brought into court on a judicial review application for an order quashing the result of the investigation and restraining the department from acting upon any recommendations contained in the investigation.
The directions and guidance that have been given are quite basic and intentionally so. If the directions and guidance were too prescriptive it would make the way in which matters that are referred to public authorities difficult to address.

I modify the directions and guidance where necessary if I think the matter which I have referred ought to be dealt with under some other regime and in that case I will give particular directions and guidance in relation to that matter.

If a matter is referred to a public authority someone must be charged with the responsibility of dealing with the matter in accordance with the directions and guidance.

The person who is selected to become the investigator to deal with the matter that has been referred ought to have some experience in investigating questions of misconduct and maladministration and should have at the very least, a rudimentary understanding of the obligations of an administrative decision maker in carrying out such an investigation.

Misconduct by a public officer can lead to dismissal if the conduct is serious enough. The investigator should be aware therefore of not only the administrative law objectives but of the impact of industrial law.

In particular, the investigator needs to know that the *Public Sector Act 2009* incorporates Chapter 3 Part 6 of the *Fair Work Act 1994* which deals with Unfair Dismissal, which is a dismissal that is harsh, unjust or unreasonable.

The task that has been assigned to the person selected is important both from the perspective of the complainant or reporter and of course if there be a person of interest, to that person.
The person selected must be independent of the person who has made the complaint or report, the person who is the subject of the complaint or report and any witnesses who may need to be interviewed for the purpose of investigating the complaint or report.

The independence of the decision maker cannot be over emphasised.

If a decision maker is not independent of the persons to whom I have referred, any decision made by that person is liable to be quashed.

Not only must the decision maker be independent of the person to whom I have referred, the decision maker must be independent of the public authority which employs the decision maker, whilst carrying out the investigation that he or she has been charged to do as a result of the referral.

The person who is selected to carry out the investigation must not be subject to any direction by any person within the public authority as to the way in which he or she will carry out the investigation, except a direction consistent with the law.

In other words, the person who has to carry out the investigation cannot be told what might be the desirable result from the public authority's point of view or who should be interviewed or not interviewed or indeed, what is the question to be addressed.

Any such instruction of that kind will taint the investigation from the outset.

If a public authority is not confident that it has a person within its organisation who has the necessary degree of independence, the public authority should so say
when I write to the authority asking for its views in relation to the referral for investigation.

If there is no one who can carry out the investigation, that view should be stated immediately.

The independence of the investigator cannot be compromised. It is not permissible to ask the person who is being investigated to consent to an investigator who is not independent and who cannot bring, or be perceived to bring an impartial mind to the investigation.

The issues that need to be investigated must be identified precisely at the outset.

Those issues will be identified in the referral by my office. If the investigator charged with carrying out the investigation is under any doubt as to exactly what issues are to be investigated, the public authority, not the investigator, should inquire of my office as to the precise matters that have been referred to the public authority for investigation.

The reason why I say the public authority should make the inquiry is for the reason already mentioned - that the ICAC Act contemplates that I will refer matters to the public authority in which the conduct occurred.

As I have said, the issues ought to be precisely identified so that the investigation does not trespass on other issues that have not been referred to the public authority.
Administrative decision making is all about asking the right question. If the right question is not asked then of course the right answer cannot be given.

The right question must be asked in a precise form so that a precise answer can be given to the question.

The question must be precise for another reason and that is to accord procedural fairness to the person who is the subject of interest. This is because a person is entitled to know precisely what it is that they may be called upon to answer in an investigation, in relation to an allegation that they have engaged in misconduct or been involved in maladministration.

It is necessary once the issues have been precisely defined to determine what evidence there is relevant to the issues to be determined.

There are of course two types of evidence; documentary evidence and oral evidence.

All evidence of course should be given the weight which the evidence deserves and the weight will be determined in part by the quality of the evidence.

As one who has been involved in the gathering of evidence for far too long, I can tell you that it is my experience that the best evidence is usually the documentary evidence that was prepared contemporaneously with the conduct.

Experience shows that documents are usually prepared without an eye to a future inquiry. They usually contain a factual account of the events that occurred. That is not always the case. Some people prepare self-serving documents for the purpose of absolving the author or some other person whom the author wishes to have absolved. Some other documents are embellished to make good the point they are sought to make. Some others are frankly untrue.
However, usually where it is not expected that there will be any investigation into the conduct or events to which the document relates, the document will contain the best evidence of the events.

Documents also speak to each other and they will inform a person who is carrying out an investigation not only what has happened, but the order in which it has happened and importantly, why it has happened.

The documents will often explain circumstances that are otherwise unknown to the investigator.

That is not to say that documents must be preferred to the oral evidence of witnesses.

Where ever the content of a document is thought to be a relevant, a witness must be given an opportunity to comment on the content of that relevant document if it is relevant to that witness’s evidence.

What is required in the investigation is evidence. I do not by that mean evidence as we speak of in a court proceeding, or perhaps in a proceeding of a Tribunal where a witness is sworn or takes an affirmation and is examined and cross examined.

An investigator does not have the power nor the right to require persons to give their evidence upon oath or affirmation.

What an investigator must do is obtain the best evidence from relevant witnesses. The investigator needs a firsthand account of an event.
Allegations are not evidence. Evidence consists of a witness’s recollection of an observation or an event, or an account of a conversation, or an explanation of the conduct of a person.

The weight to be placed upon any evidence is of course for the decision maker, but the decision maker will take into account at least these matters:

- the apparent reliability of the evidence; and
- any consistencies or inconsistencies with other evidence; and
- the witness’s interest in the investigation; and
- any bias apparent in the witness’s evidence; and
- the manner in which the evidence was given.

Not too much emphasis should be put upon the demeanour of a witness or the way in which a witness has provided the witness’s evidence.

Some people are naturally timid or shy or indeed easily intimidated when presenting evidence. Some others are quite confident when they give their evidence.

In the end result, the quality of the evidence and the weight that must be given to evidence must depend upon the inherent reliability of the evidence itself.

Something that is inherently unlikely to have occurred probably did not occur. Something that is unlikely to be a coincidence is probably not a coincidence at all.
In giving the appropriate weight to evidence and in determining the evidence to be accepted in an investigation, the investigator has to have regard to his or her own common experience of life.

An investigator is much like a juror. He or she has probably been untrained in the law but the investigator will have life experience which allows the investigator to weigh any evidence that has been provided for the purpose of determining what is likely to have occurred.

The directions and guidance do not specifically require the public authority and the person charged with carrying out the public authority’s responsibility for dealing with the referral, to accord the person of interest natural justice.

I think on reflection when I re-write these directions and guidance I will include the obligation for the public authority to accord a person who is being investigated in relation to an allegation of misconduct or maladministration, natural justice.

Natural justice is sometimes described as procedural fairness. The two phrases may be used interchangeably.

The term procedural fairness is more often used now by the courts than natural justice because it better describes the concept.

The notion of procedural fairness is a common law right that can only be extinguished by the clear words of an Act of Parliament.

Traditionally procedural fairness has comprised two elements; the right to a fair hearing; and the right to an unbiased decision.
I have already dealt with the need for the independence of the person charged with the responsibility of carrying out the referral.

Of course, that independence must be maintained throughout the investigation and until such time as the person makes his or her findings.

More recently in Australia it has been said that procedural fairness also includes a right to have the decision based upon logically probative evidence and the right to have reasons to be given for the decision.

Undoubtedly, in any referral that I make to a public authority, the person of interest must be accorded procedural fairness in the sense that I have described.

It is sometimes said by the courts that the content of procedural fairness is sometimes not easy to discern and will depend upon the legislation which provides the power to make the decision. Content means the manner in which the person is accorded procedural fairness.

I think it best to proceed upon the basis that in any referral that I make under the ICAC Act to a public authority, the decision maker must accord the person of interest procedural fairness in the widest possible way.

In the end, the person of interest should be able to say that he or she was heard in the investigation.

That means that at some stage in the investigation, and it need not be at the outset of the investigation, the person of interest must be made aware of the investigation.
The only exception to that rule would be that if the investigator determined at an early stage in the investigation that the allegation of misconduct or maladministration was not supported by sufficient evidence to warrant a full investigation.

Otherwise, at some stage during the investigation and before there can be any suggestion that the decision maker has arrived at any type of conclusion, whether preliminary or otherwise, the person of interest must be informed in writing about the precise matters into which the investigator is inquiring.

I think the notice should be written so that it could not be later said that there was some confusion about the precise conduct that was being investigated.

The person of interest must also be provided with all relevant material obtained by the investigator to that point of time, which will include all documentary material and any evidence that has been obtained from any witnesses that have been interviewed by the investigators.

I should remark at this stage that if an investigator interviews a witness, the investigator must reduce into writing the content of the witness’s evidence so that it may be shown to the person of interest. The witness whose evidence has been taken should be given an opportunity to review the written statement and to sign it before it becomes part of the investigator’s record.

It is not permissible for the investigator to be given evidence orally which is not available to the person of interest.

After the person of interest has been informed of the matter which is under investigation, that person must be made aware of any further evidence that is obtained after that point of time. In some cases the person of interest must be
allowed to be present at the time of the gathering of evidence. For example, it may be necessary in according procedural fairness to that person of interest, that he or she be present whilst a particular witness is interviewed so that the person of interest can hear the evidence first hand and perhaps ask questions of that person if that is appropriate in the circumstances.

That is not to say that that must be done in every case but it may be necessary in some cases.

The concept of fairness cannot be over emphasised.

It is necessary that anyone who is likely to be adversely affected by the content of an investigation, be treated fairly and so therefore must be acquainted with the whole of the evidence that may be relied upon for the decision, and must be given an opportunity to comment upon that evidence before findings are made in relation to that evidence.

In many cases, especially the more serious cases, the person of interest should be given the opportunity of putting submissions or arguments to the decision maker on the evidence and the relationship of the evidence to the identified issues.

The directions and guidance require the public authority, through the designated investigator, to make findings. The common law does not require all decision makers to make findings and give reasons.

The directions and guidance require findings and therefore reasons.

Findings include a conclusion as to the acceptance or non-acceptance of evidence.
Before I deal with that I will say something about relevant and irrelevant considerations.

It is a principle of administrative law that a decision maker should not take into account irrelevant considerations and must take into account relevant considerations.

That sounds a simple enough proposition, but unfortunately it is often breached by decision makers who are distracted by irrelevant considerations or overlook relevant considerations.

A matter is not relevant to any inquiry unless it is probative of the decision to be made. What is meant by probative is that it tends to support a finding relevant to the investigation.

It is irrelevant for example to ordinarily take into account conduct of the person of interest that is un-associated with the matter being investigated.

If a person is being investigated in relation to particular conduct that impacted upon his or her dealing with the public, it would be irrelevant in determining if when the conduct occurred that the person of interest had had too much to drink at the Christmas party.

A decision maker must restrict himself or herself to the relevant evidence and must take all of the relevant evidence into account at the same time disregarding any irrelevant evidence.
The making of findings is an exercise of bringing together all of the evidence to determine what in all probability occurred.

A finding is an expression of an opinion that it is more likely than not that an event occurred in a particular way.

A decision maker cannot know whether the event occurred because he or she was not present when the conduct under investigation occurred. All a decision maker can do is determine for himself or herself whether it is more likely than not that the event occurred.

In making that determination the decision maker should not overlook the gravity of the allegation.

Although in the civil laws there is only one standard of proof and that is that something occurred on the balance of probabilities it is important to have regard to the gravity of the issue under consideration when deciding whether the evidence supports an ultimate finding that the conduct occurred.

The findings that are made by the investigator or the decision maker are the structure for the reasons for the decision.

In writing reasons for the decision, the decision maker is informing the reader why he or she came to the decision that has been or will be announced.

The reasons should set out the findings and the reasons why those findings lead to the conclusion that forms the decision.
Again, the common law does not necessarily require decision makers to give reasons, but because the conduct is serious enough to give rise to an investigation any decision that is made ought to be supported by reasons.

Although administrative decisions can be challenged by way of judicial review in the courts, the courts do not stand in the place of the decision maker and decide the issue on the merits of the case. The courts are only interested in determining whether process has been followed and that is to say whether the decision maker has taken into account a relevant matter, or failed to have regard to an irrelevant matter, or whether the person of interest has been accorded procedural fairness or the other matters to which I have referred.

There is one concept in administrative law to which Justice Parker referred which may be relevant on a referral of the kind that I have mentioned and that is whether the court addresses the reasonableness of the decision.

According to the common law a decision maker may not make a decision that is so unreasonable that no reasonable decision maker acting according to law could have made it. It is known as a Wednesbury Test.

The Wednesbury Test is less popular in Australia than it is in England where the test was first stated.

It is said by the courts in Australia that the test of unreasonableness must be framed narrowly and precisely. Otherwise, if the court considers the reasonableness of a decision the court might put itself in the position of the decision maker which will be to trespass on the domain of the decision maker.

In Australia the test of unreasonableness has been said to be that a decision is unreasonable if it is so illogical that no basis for it can be discerned.
Ordinarily in Australia a decision maker's decision will not be set aside on the ground of unreasonableness unless the court considers that it is both irrational and illogical a decision which Australian courts are cautious to make.

After the findings have been made and a conclusion reached, the directions and guidance then requires the public authority to take action in relation to the conduct. That action must be appropriate.

Of course the appropriate action will be informed by the decision at which the investigator has arrived.

If in the case of misconduct, if the investigator has concluded that the evidence does not support such a finding then the public authority of course can take no action in relation to that person of interest.

If on the other hand the investigator has concluded and reasoned that the allegation of misconduct has been made out then the question to be determined is what action the public authority should take.

It is well to remember at this stage the investigator's role must be clear. Does the investigator have the responsibility of recommending to the public authority the action that should be taken in view of his or her findings of misconduct or does the investigator after concluding that the misconduct has been made out, refer the matter back to the public authority for the public authority to determine the action to be taken having regard to the investigator's findings.

Again, the role of the investigator must be clearly identified.
In my opinion, if the misconduct is of a kind that the employee might be liable to be dismissed or subjected to a serious sanction that could impact upon that person’s career, the matter should be referred back to the person who has the responsibility for making a decision of that kind.

That will require that person to become entirely familiar with the reason for the decision of the decision maker and for that person then to conduct an inquiry in relation to the sanction that is to be imposed.

If that course is adopted the Chief Executive or whoever the person is who might impose a sanction, he or she must inform the person of interest of the sanctions that might be imposed. That information should be provided to the person of interest in writing.

At the same time, the person of interest should be invited to make whatever submission he or she thinks relevant in relation to the sanction to be imposed.

Those submissions will not be constrained by the facts that have been found to give rise to the finding of misconduct.

In determining the sanction to be imposed, matters that are not relevant to the question of misconduct will become relevant to the question of the sanction.

For example, the character of the person of interest, that person’s work history and other personal matters will be relevant in determining the appropriate sanction.
If dismissal is contemplated the person who is charged with this decision must be aware of the Fair Work Act and the right of a worker to claim that a dismissal is harsh, unjust or unreasonable.

If the matter that is being inquired into is one of maladministration it may be that the decision maker has found that a number of persons are responsible for what amounts to maladministration under the ICAC Act.

None of those persons could be sanctioned if the inquiry was simply into maladministration because they would not have been forewarned at the time of the inquiry that their conduct might give rise to a sanction.

It is important to keep in mind that at all stages of an investigation a person who may be affected by the decision is acquainted with the purpose and the ambit of the investigation and the possible consequences to that person in the event of a particular decision being made.

In an inquiry into maladministration no one could expect that that person would be disciplined as a result of finding maladministration without there being any further inquiry into that person’s own conduct for misconduct. Therefore, a finding of maladministration without an accompanying investigation into misconduct may ultimately lead to a further inquiry into the misconduct of a particular officer.

The law in Australia requires decision makers to ask themselves the right question and to give the right answers.
Those decision makers must also at all times act fairly in reaching their
decision to those who might be affected by the decision.

Their decision must be able to be explained and the decision must be rational.

I will review investigations that I have asked public authorities to make and if I
think the public authority has carried out an investigation or reached a decision
without complying with the principles of administrative law then I will not be satisfied
that action has been properly taken and I will require the matter be considered again
and action taken in accordance with the law.

Above all, I will require public authorities and those charged by public
authorities to deal with matters which have been referred to those public authorities
to act fairly to all those who might affected by their decision.