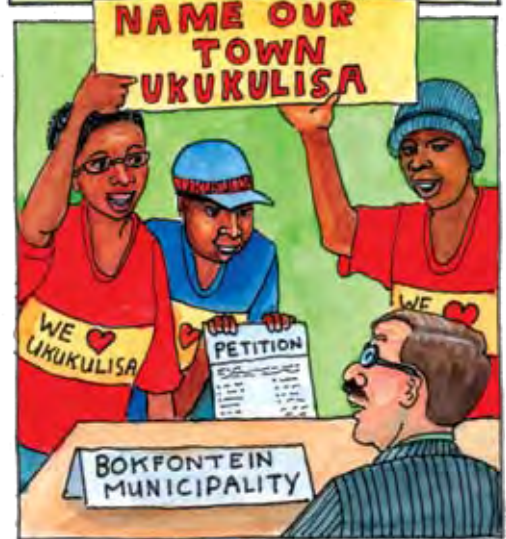


Promotion of
ADMINISTRATIVE JUSTICE
Act (3 of 2000)



IMPROVING SERVICE DELIVERY FOR ALL

ABOUT THIS BOOKLET

The Promotion of Administrative Justice Act (PAJA) gives effect to the right to administrative justice in our Bill of Rights. It applies to most decisions taken by government that affect ordinary people – from applications for social security grants and housing subsidies, to decisions to increase the cost of electricity or to change the name of a town (and many, many in between).

PAJA helps to improve service delivery by making sure that all of these decisions are taken in a way that is transparent and fair. It gives people the right to request written reasons and to challenge decisions they believe are wrong. In this way, it also helps to reduce the risk of corruption and favouritism when decisions are made and to ensure we get the services we are entitled to.

This booklet has been produced by Department of Justice and Constitutional Development in collaboration with the German International Cooperation (GIZ) on behalf of the German Government to explain, in plain language:

- ★ The type of decisions covered by PAJA.
- ★ The procedure government administrators are meant to follow when making decisions.
- ★ How to request written reasons for decisions that go against you.
- ★ What to do if you believe such a decision is wrong.

The booklet is for everyone, but it will also be very useful for people like teachers and community workers who can use it to inform others about what PAJA is and how to use it to achieve their right to just administrative action.

For more information on PAJA, please visit the following website:
<http://www.justice.gov.za/paja/new.htm>.

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INTRODUCTION

1 BACKGROUND

South Africa has faced problems in service delivery for many years – both under apartheid and since the beginning of democracy. Under apartheid, most people were excluded from essential services. Since then, the public service had to change quickly to be more representative, which meant some people were put into positions before they had been properly trained.

Many decisions by government that affected people's lives were taken in a way that left people in the dark about how the decision had been reached. In the past, many decisions by government that affected people's lives were taken in a way that left people in the dark about how the decision had been reached. This led to corruption and nepotism, especially with government contracts.

The procedures used were often unclear and unfair and differed from one department to the next. This made it hard for people



NEPOTISM

This is the practice of awarding jobs, contracts and services to friends and family.

to know how to get the services they needed and led to people not getting what they were entitled to.

Where a decision went against a person or group of people (such as a decision to forcibly remove them to another area), they were rarely given reasons for the decision – leaving them unsure of why a

decision had been taken against them and what they could do in response.

To prevent this type of decision making, our Constitution includes the right to just administrative action in the Bill of Rights (Section 33).

**JUST ADMINISTRATIVE ACTION
(SECTION 33 OF THE CONSTITUTION)**

- (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- (2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- (3) National legislation must be enacted to give effect to these rights, and must
 - (a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
 - (b) impose a duty on the state to give effect to the rights in Subsections (1) and (2); and
 - (c) promote an efficient administration.

The Constitution is the highest (supreme) law of the country and must be followed by everyone – including the President and Premiers, Ministers and Members of Executive Councils, the police, and every government department. Any decision or action that goes against the Constitution will be changed or set aside.

The right to administrative justice in Section 33) is part of the Bill of Rights in the Constitution – which means it is a **human right** that everyone in South Africa is entitled to.

Because the Bill of Rights is part of the Constitution, it must also be followed by everyone and any decision or action that violates any of the rights in it will also be set aside.

The right to just administrative action in Section 33 gives everyone the right to administrative action that is:

- ★ Lawful (allowed by and in keeping with the law).
- ★ Reasonable (it must be fair and make sense).
- ★ Procedurally fair (the procedures used when making decisions must be fair).



ADMINISTRATIVE ACTION

An administrative action is:

- ★ A final decision that affects any member or members of the public.
- ★ Taken by:
 - ☆ Any government department (including the police).
 - ☆ Parastatals, like ESKOM, Telkom and the SABC.
 - ☆ The President, Premiers, Ministers or Members of Executive Councils – but only in some cases.

It also says that:

- ★ Anyone who has been adversely (negatively) affected by the decision is entitled to written reasons.
- ★ National legislation must be passed to 'give effect' to the right and to ensure that people are able to ask a court to review any decisions against them.

2 WHAT IS THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT?

The Promotion of Administrative Justice Act is the 'national legislation' referred to in Section 33. It was passed in 2000 and is often referred to as 'PAJA'.

PAJA gives effect to the right to administrative justice by:

- ★ Setting out a basic procedure to be followed when decisions are taken by an administrator (unless there are good reasons for deviating from the procedure).
- ★ Allowing people to have their say before a decision is taken.
- ★ Requiring administrators to provide written reasons to anyone adversely affected by the decision (or at least telling them that they are entitled to request written reasons).
- ★ Giving people the right to challenge the decision:
 - ☆ On appeal (where there is an internal appeal process in the department that took the decision); or
 - ☆ On review to a Magistrate's or High Court (where there is no internal appeal or the appeal has failed).
- ★ Giving Courts hearing the review wide powers to rectify errors.



ADMINISTRATORS

We use the term 'administrators' in this booklet to describe people within government who take administrative decisions – decisions affecting members of the public.

By doing so, PAJA ensures that decisions by administrators are taken fairly and transparently – and that they can be corrected when they are wrong. It helps to prevent nepotism and corruption and makes sure that people get the services that they are entitled to.

And, because PAJA 'gives effect' to a right in the Bill of Rights, it is 'superior' to other laws.

Not all laws are the same in South Africa – some are 'superior' to others. For example:

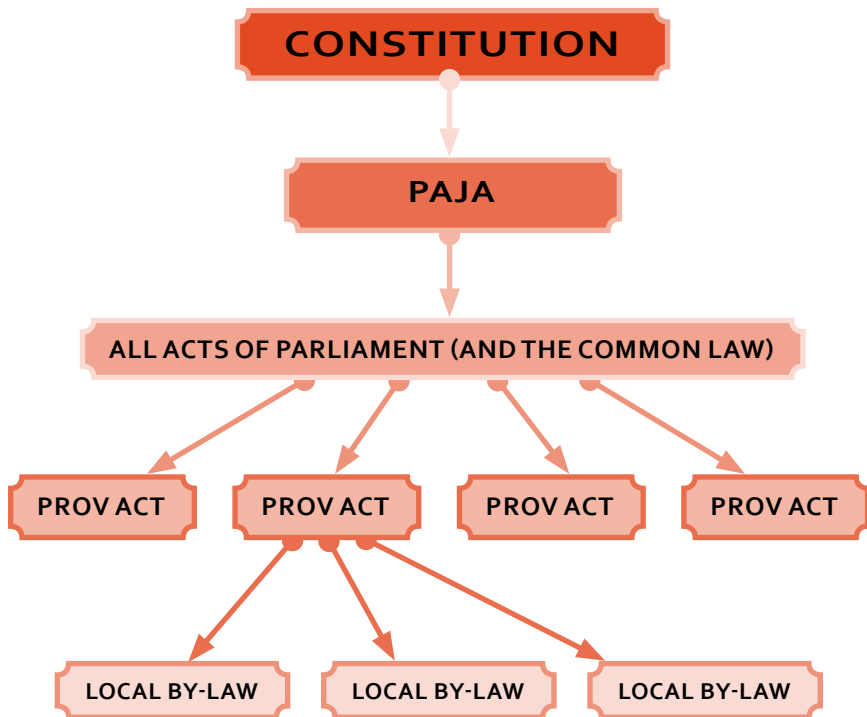
- ★ The Constitution is the highest law. Any law that goes against it will have to change.
- ★ A Provincial Health Act cannot differ from the National Health Act – if it does, the Provincial Act will have to change.
- ★ The 'order' of laws in South Africa looks like the chart on the opposite page.

That means that all administrators must follow at least the basic rules and procedures in PAJA, regardless of what the law they usually follow says. If their procedure not as good as that in PAJA, then they are required to 'top up' the procedures they use with those in PAJA.



EXAMPLE

If the procedure that a department follows is set out in a law, but the law says nothing about the right to written reasons, administrators in the department must still provide written reasons to anyone adversely affected because PAJA requires it.



3 WHAT IS AN 'ADMINISTRATIVE ACTION'?

There is a complicated definition of 'administrative action' in PAJA that can be summarised as:

- ★ A **decision** that affects any member or members of the public.
- ★ Taken by:
 - ☆ Any government department at national, provincial and local levels (including the police).
 - ☆ Parastatals, like ESKOM, Telkom and the SABC.
 - ☆ The President, Premiers, Ministers or Members of Executive Councils – but only in some cases.

4 WHAT TYPE OF DECISIONS DOES PAJA COVER?

PAJA covers four types of decisions:



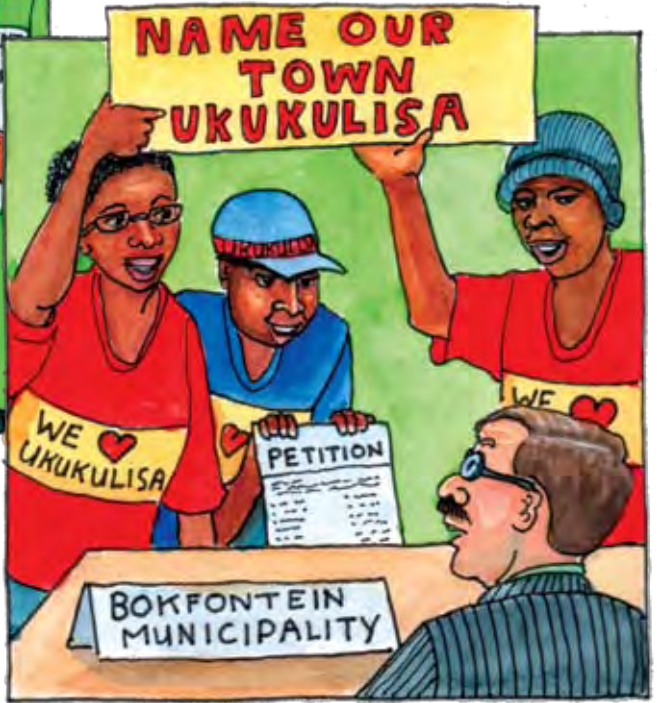
(1) Decisions that affect something **an individual** already has, such as a liquor licence or housing subsidy.

(2) Decisions when **an individual** applies for something, such as an old age grant or a tender process.





(3) Decisions that affect the rights of **the public**, such as a decision to flood a community when building a dam.



(4) Decisions when **the public** apply for something, like an application to change the name of a town.



More examples of 'administrative action' that are covered by PAJA are on the next page.

GENERAL

ALL GOVERNMENT TENDERS

- ★ Decisions to award or withdraw **bursaries**
- ★ Decisions to grant or withdraw **subsidies** (such as housing subsidies)
- ★ Decisions to award or withdraw **grants** (such as Child Support Grants, Disability Grants and Old Age Pensions)
- ★ Decisions to award or refuse an application for any **licence**
- ★ Decisions to award or withdraw **certificates**
- ★ Decisions to **register** someone or to remove them from a register (like a register of health care practitioners)
- ★ **Government job applications** (although the rules in PAJA can often be relaxed for these – see text box)
- ★ Any **failure to take a decision within a reasonable time** (see text box)
- ★ Decisions to **stop a prosecution**

NATIONAL LEVEL

DECISIONS TO AWARD OR WITHDRAW:

- ★ Social grants
- ★ Support to farmers (under land care programmes or as support grants for poor farmers)
- ★ Licences to import or export animals, animal products, plants and seed
- ★ Water licences
- ★ Access permits to state forests
- ★ Firearm licenses
- ★ Learnerships and internships
- ★ Licensing of petroleum products
- ★ Funds for renewable energy
- ★ Disaster relief

OTHER EXAMPLES:

- ★ Decisions related to **trade control**
- ★ Decisions related to breach of **environmental legislation**
- ★ Decisions related to breaches of **labour law**

| PROVINCIAL LEVEL | LOCAL LEVEL |
|--|--|
| <p>DECISIONS TO AWARD OR WITHDRAW:</p> <ul style="list-style-type: none"> ★ Housing subsidies ★ Liquor licenses ★ Vehicle registrations and licences ★ Drivers licenses ★ Taxi licenses ★ Subsidies for taxies ★ Permission to import and export wild animals or animal products ★ Hunting licenses ★ Land leases, loans and grants for farmers ★ Registration of independent or home schools ★ Subsidies to child care homes ★ Subsidies to homes for aged ★ Registration of child care homes, homes for the aged and treatment centres <p>PAJA also applies to decisions based on findings related to vehicle control</p> | <p>DECISIONS TO AWARD OR WITHDRAW:</p> <ul style="list-style-type: none"> ★ Housing subsidies (including rural housing subsidies) ★ Approval of building plans and permission for use of land. PAJA also applies to decisions taken when someone objects to the plans or applications related to land use ★ Permission related to land use ★ Permission for a gathering or demonstration ★ Liquor licences ★ Permission for street traders to trade <p>PAJA ALSO APPLIES TO:</p> <ul style="list-style-type: none"> ★ Decisions based on building inspections ★ Decisions based on the findings of health inspections ★ Decisions of school governing bodies regarding discipline of learners (and decisions of the MEC to expel a learner) |

5 WHAT DECISIONS DOES PAJA NOT APPLY TO?

A. DECISIONS BY PRIVATE INDIVIDUALS OR BODIES

Usually, PAJA only applies to decisions by government – decisions by private individuals or bodies are usually excluded. The only time these are covered by PAJA is when the private person or body is 'performing a public function'. For example, bodies like the South African Football Association, South African Rugby Football Union and the Jockey Club of South Africa are all private bodies. But they perform a function that government would have to perform if they were not there. Decisions of these **are** covered by PAJA.

B. EXCLUSIONS

PAJA specifically excludes and does not cover the following (although they can still be challenged under other laws):

- ★ Decisions by Parliament, provincial legislatures and Municipalities to make new law or change existing laws.






DECISIONS TO START, CONTINUE, STOP AND RE-START A PROSECUTION

Because people will have a chance to have their say during the criminal trial, PAJA does not apply to decisions to start or continue a prosecution. But it **does** cover the decision to stop a prosecution. The reason for this is that victims will obviously like to know why the decision was taken, whether there is any relationship

between the offender and the police official or prosecutor making the decision, or whether any bribes were paid. Whenever a decision to withdraw a charge or to stop a prosecution is made, victims must be:

- 
- ★ Notified and given an opportunity to have their say **before** the decision is made.
 - ★ Given reasons for the decision once it has been made (or at least told that they have the right to request reasons).
 - ★ Advised that they have the right to challenge the decision if they believe it is wrong (and how to make this challenge).

The question of whether PAJA applies to a decision to **re-start** a prosecution is a bit more complicated. Our courts have recently said that, regardless of whether or not PAJA applies, the Constitution requires people be given an opportunity to make representations before the National Prosecuting Authority decides to re-start a prosecution.

- ★ Decisions of courts or traditional leaders when they are deciding cases that the law allows them to decide.
- ★ Decisions by the President, Premiers, Ministers, Members of Executive Councils or Municipalities when they are exercising a power or performing a function given to them in the Constitution. PAJA **does** apply though when they are given the power or function by any other law. For example, PAJA applies to decisions by the Minister of Health when fixing prices of medicines, because the Minister gets this power from the National Health Act.
- ★ Decisions taken under the Promotion of Access to Information Act. Decisions by the Judicial Service Commission regarding the nomination, selection or appointment of Judges.
- ★ The decision to start or continue a prosecution.

C. DISCIPLINARY ENQUIRIES

For people employed in the private sector, disciplinary matters are always covered by only the Labour Relations Act (66 of 1995). But for those working in the public service, the situation was a bit confusing for a while.

PAJA was passed in 2000 – five years after the Labour Relations Act (LRA). At first, the LRA did not apply to members of the public service and so PAJA was used to make sure that the procedures being followed were fair.

Once the LRA was changed to include members of the public service, some people found guilty during disciplinary enquiries used PAJA to have the decision reviewed, while others used the LRA.



Although the procedures required by both Acts are almost exactly the same:

- ★ Reviews under PAJA are done by the High Court or Magistrates Court.
- ★ Those under the LRA are dealt with by the Labour Court.
- ★ Recently, our courts have decided that **everyone** wanting to review the decision of a disciplinary enquiry must use the LRA and the Labour Court.

THE PROCEDURE IN PAJA

PAJA sets out a minimum procedure that must be followed in all administrative decisions (see flowchart on following page).

1 NOTICE OF THE INTENDED DECISION

DECISIONS WHERE AN INDIVIDUAL OR MEMBERS OF THE PUBLIC APPLY FOR SOMETHING:

In these cases, people are not usually notified of anything before they make the application. For example, a person wanting to apply for a child support grant does not have to wait to be told that these are being considered. Instead, they can apply for them at any time.

In some cases though, notice of the intended action is required. For example, where a department is running a tender process, it must publish a notice of this, telling people how to apply and what the deadline is.

DECISIONS THAT AFFECT A RIGHT AN INDIVIDUAL OR MEMBERS OF THE PUBLIC ALREADY HAVE:

Notice must **always** be given when the government is thinking about taking away or changing something that a person or the public already has. For example, when Eskom intends increasing the cost of electricity, PAJA requires they notify people of their intention and give them people a reasonable opportunity to make representations.

The notice itself will be different for decisions affecting individuals and those affecting the public:

- ★ With decisions affecting an individual, the 'notice' is usually a letter.
- ★ Where the decision may affect a number of people, PAJA allows three different procedures:
 - ☆ **Notice and comment.** Here, a notice is published (printed in a newspaper, pinned to a wall or broadcast on the radio and television, depending on what decision is planned) and people are invited to make written comments.
 - ☆ **Public enquiry.** Here, a public enquiry is convened. People who may be affected by the decision are notified of the date, venue, and issues to be discussed. The hearing is then held and the results are published.
 - ☆ **A combined notice and comment and public enquiry.**



ANYONE AFFECTED BY THE INTENDED DECISION

Notice must be given to **anyone** who may be affected by the decision. In cases like the application for a disability grant, the only person who will be affected by the decision is the person who has applied. But in other cases, like an application for a building permit, the new building may encroach on a neighbour's property or block their view. The neighbours must therefore be notified of the intended decision and given an opportunity to have their say before the decision is taken.

Anyone whose rights might be affected by the decision must be told (given notice) that the decision is being considered **before** the decision is taken.

They must be given a reasonable opportunity to **make representations** (in writing or in person depending on the circumstances).

Once the decision has been taken, everyone affected by it must be notified.
This notice must:

- ★ Include written reasons for the decision. If these are not provided, then the notice must tell the person they have a right to request reasons and how to do so.
 - ★ Their right to an internal appeal (if there is one) or to have a court review the decision.
 - ★ How to lodge an appeal or bring an application for review.

Once reasons have been provided, anyone adversely affected by the decision who believes it is wrong must be allowed to request an internal appeal (if there is one).

If there is no internal appeal, or if the appeal fails, anyone adversely affected by the decision can ask a court to review it.

On review, the Court can:

- ★ Confirm the decision is correct.
- ★ Set aside the decision if the procedure was wrong and require the administrator to re-take the decision after following the correct procedure.
- ★ Set aside the decision and replace it with their own decision.

2

A REASONABLE OPPORTUNITY TO MAKE REPRESENTATIONS

Anyone who may be affected by a decision must be given a 'reasonable opportunity to make representations'. What does this mean?

- ★ Where you are applying for something (such as a gun license), filling in the application is your 'opportunity to make representations'. Unless the decision is very complicated, you will not be given another opportunity before the decision is made.
- ★ Where the decision is to take away or change something that you already have, the notice must:
 - ☆ Tell you that you have right to make representations.
 - ☆ How to make them.
 - ☆ Who they must be made to and by when.
- ★ Where the decision will affect you only, you will usually only be able to make written representations. But:
 - ☆ If the decision will have a serious impact on you, the person making the decision must consider allowing you an opportunity to make your representations in person.
 - ☆ If the decision involves complicated legal issues, the decision-maker must consider allowing you to be represented by a lawyer.

If the decision-maker does not consider these options, it will be a ground for challenging the decision on the basis that the procedure used was not fair.

- ★ Where the decision is one that affects of the public generally:
 - ☆ In a 'notice and comment' procedure, you can only submit written representations.
 - ☆ In a 'public enquiry', members of the public will be allowed to have their say during the hearing itself.

3 THE DECISION

PAJA doesn't actually say how administrators must decide. But it does set out grounds on which decisions can be challenged. Based on these, it is possible to work out that:

- ★ The decision-maker must be legally allowed to take the decision.
- ★ The decision must be one that the law allows.
- ★ The decision must be made within a reasonable period of time. If it is not, then PAJA regards this as a decision against you).
- ★ The decision-maker must be not be biased or even be 'reasonably suspected' of bias. (See text box).
- ★ The decision-maker must take the decision themselves – although they can ask for assistance, the final decision must be theirs.
- ★ All of the representations must be taken into account before the decision is made.



- ★ Only relevant considerations should be taken into.
- ★ Decisions must be **reasonable** – they must make sense, particularly when compared to the reasons provided.
- ★ Decisions must not be taken in bad faith or arbitrarily (for example, by throwing all applications into the air and choosing the one that lands on the desk).



ACTUAL BIAS AND A REASONABLE SUSPICION OF BIAS

Actual bias is where the decision-maker has an interest in the outcome of the decision or stands to gain something from it.

Decisions can also be challenged if there is a '**reasonable suspicion**' that the decision-maker **might** have been biased. For example:

A senior government official is given a gift by someone. Later, their department conducts a tender and the giver of the gift applies. Even if the administrator dealing with the tender is not biased, someone outside the department might reasonably suspect them to be biased. The mere fact that there is a reasonable suspicion of bias is enough to challenge the decision and to ask for it to be set aside.

4 AFTER THE DECISION

Once the decision has been taken, all of the parties must be **notified** of the decision.

When it is a decision affecting individuals, the notice will be a letter from the decision maker.

- ★ When it is a decision that affects the public generally:
 - ☆ In a notice and comment procedure, the notice must be published in the same way that the request for comments was published.
 - ☆ When it is a decision after a public enquiry, a written report must be prepared and a summary of the report must be published.

In all cases, the notice must:

- ★ Clearly explain what decision has been taken and who made the decision.
- ★ Contain written reasons for the decision, or explain how to request these.
- ★ Include information on the internal appeal if there is one.
- ★ If there is no internal appeal, the notice must explain the right to review.

5 DEVIATIONS FROM THE RULES

PAJA allows administrators to deviate from its minimum requirements:

1. In **urgent** cases. For example, if a child welfare officer finds a neglected child in a dangerous situation, they can remove the child without first notifying the parents. But once they have acted, the urgency will be over and they must immediately notify the parents or guardian of the child.
2. If the procedure being used is **fairer** than that in PAJA.
3. If there is a **very good** reason for using a different procedure – such as when it would place an unfair burden on administrators.



AN UNFAIR BURDEN

Although decisions about government job applications are administrative decisions, departments receive thousands of applications for each job advertised. Expecting them to notify every unsuccessful applicant and to provide reasons for the decision in each case would place an unfair burden on them. As a result, most of these job adverts will say something like 'if you have not heard from us in 2 months, please consider your application unsuccessful'.

On the other hand, if it is a senior position where only a few people can be expected to apply, the administrator is expected to comply with PAJA.

THE RIGHT TO WRITTEN REASONS

1 THE RIGHT TO REASONS IN THE CONSTITUTION – AND TO REQUEST THEM UNDER PAJA

Providing reasons makes sure that we can see whether:

- ★ The decision makes sense (even though we might not agree with it).
- ★ There may have been bias or any irregularity.
- ★ There is any chance that an appeal or application for review will succeed.

It therefore helps to prevent corruption and nepotism and to make sure that people get the services to which they are entitled.

Section 33 of the Constitution says that anyone 'adversely affected' by a decision is entitled to written reasons. However, PAJA limits this a bit by saying that people who have been **materially** and adversely affected by the decision have a right to **request** reasons.

While some departments provide reasons in the notice of the decision, some do not.

2 REQUESTING REASONS

Where reasons are **not** provided, you have a right to be told that you can request them and how to go about doing so.



EXAMPLE



The government decides to build a new soccer stadium. Those people whose houses are demolished are **materially** affected by the decision. People who live some way away from the stadium might not like the view of the stadium from their homes – but the decision hasn't had a 'material' (significant) impact on them. They cannot request written reasons.

Recently, rules have been published to cover what people bringing an application for review must do. As part of these rules, a new form (Form A) has been produced that must be used by anyone applying for reasons.

Hopefully, the letter stating that you have the right to request reasons will also include a copy of Form A. If it doesn't, you could:

- ★ Ask the decision-maker to send you a copy.
- ★ Draw up your own form based on the one on the following pages.
- ★ Write a letter requesting reasons and including all of the information that the form requires.

On the next few pages, we show you how to complete the form and what it would look like once it is filled in.

3 WHO CAN REQUEST REASONS?

Anyone whose rights have been **materially and adversely** affected by a decision – **provided** they have not already been given written reasons.

You should note too that it is not only when a decision goes completely against you that you can request reasons – you can request reasons even where a decision goes partly in your favour but you are not given everything you asked for.



EXAMPLE

If you apply for a housing grant and are given less than you asked for, you are entitled to ask for reasons for the decision not to give you what you requested.

4 HOW LONG DO YOU HAVE TO MAKE THE REQUEST?

You have 90 days from the date on which you found out about the decision. You can ask for this date to be extended using Part C of Form A.

FORM A
REQUEST FOR REASONS

PART A: DETAILS OF REQUESTER

1. If an individual:
 - Full name SIAMEO KEABINDE
 - Date of birth 7 MAY 1961
 - Identity or Passport number 630507 5043 089
2. If a company, closed corporation, partnership etc:
 - Name and description
 - Registration details, if any N/A
 - Persons authorised to act on its behalf
3. Your contact details:
 - Telephone number 031-743-9210
 - Email address siameo.keabinde@hotmail.com
 - Details of legal representative (if represented) N/A
 - Postal address HOUSE 731, AREA 4, KUSA WILLOW, 0479
 - Manner of delivery PLEASE REPLY BY EMAIL
4. Explain why you are materially and adversely affected by the administrative action.
I APPLIED FOR A HOUSING SUBSIDY AND IT WAS REJECTED. I DON'T KNOW WHY IT WAS REJECTED THIS HAS AFFECTED ME AND MY FAMILY BADLY
5. When and how did you become aware of the administrative action?
I GOT A LETTER FROM YOU ON 12 DECEMBER 2009 THAT SAID MY APPLICATION WAS REJECTED. THE LETTER HAS A REFERENCE NUMBER HD073/12/09

PART B: NAME AND DETAILS OF ADMINISTRATOR

1. Details of administrator who took the action (if known):
 - Full name ELIZABETH GUMBERG
 - Official designation HOUSING SUBSIDY CLERK
 - Work address SMALL HOUSE, 7TH FLOOR, SOUTH STREET, DUNEDIN
 - Contact details including facsimile, telephone number and email address.
TEL 031-433-5555 FAX 031-923-5546(Note – if you do not know the name of the administrator, you can leave point 1 out. But you must fill in point 2)
2. Details of department or institution responsible for the action:
 - Name of department or institution DEPT OF HOUSING
 - Address AS ABOVE
 - Contact details including facsimile, telephone number and email address AS ABOVE
 - Head of the office UNKNOWNS

PART C: DETAILS OF THE ADMINISTRATIVE ACTION

1. Have you been informed of the administrative action? If "yes" provide:
 - The date of the administrative action 12 DECEMBER 2009
 - Any file or reference number used by the administrator HD073/12/09
 - Any other details that will assist in identifying the administrative action NO
 - In terms of which law was the administrative action taken (if known)? I DON'T KNOW
2. If you have not been informed of the administrative action, then provide:
 - A description of the administrative action
 - Any details that will assist in identifying the administrative action N/A
 - Any file or reference number used in any documentation concerning the administrative action
3. Have you been provided with reasons for the administrative action referred to in this section?
yes/no NO

PART D: REQUEST TO REDUCE OR EXTEND TIME PERIODS

1. Do you want to extend the time period of 90 days to make a request for reasons? Yes/No if yes, give the reasons for the extension. NO
2. Do you want to reduce the time period of 90 days for the administrator to submit written reasons? Yes/No If yes, give the reasons for reducing the period. NO

5 WHAT REASONS CAN YOU EXPECT?

PAJA says administrators must provide 'adequate' reasons, but does not say what this means. Obviously, this will differ from case to case – but they should clearly explain to you why the decision was taken, what law applies, and what facts were considered.

[Have a look at the filled in version of Form B on the opposite page for an example of what to expect.]

6 WHEN CAN YOU EXPECT THEM?

- ★ The administrator must reply within 10 days of receiving the request (using Form B) saying whether they will provide reasons or not.
- ★ If they agree to provide reasons, these must be provided to you within 90 days of your request (unless you have agreed to a longer period, or a court has allowed one).



90 DAYS

The 90 day period can be extended by agreement or court order.

7 WHEN CAN AN ADMINISTRATOR REFUSE TO PROVIDE REASONS?

An administrator can refuse to provide reasons:

- ★ If they have already given you written reasons.
- ★ If written reasons are publicly available. In such cases, they must tell you where to find them.
- ★ If your rights were not materially and adversely affected by the decision.

FORM B
RESPONSE TO REQUEST FOR REASONS

PART A: NAME AND DETAILS OF ADMINISTRATOR

Details of administrator responsible for the administrative action

Name: Ms Florence B Gcabashe
Official designation: Housing Subsidy Clerk
Department or institution: Department of Housing, KZN
Address of the administrator or institution Shell House, 7th Floor, 659 Smith Street, Durban
Telephone numbers: 031-925-5555
Fax number: 031-925-5546
Email address: fbgcabashe@housingkzn.gov.za

PART B: RESPONSE TO REQUEST FOR REASONS

Will reasons be provided? Yes

I received your application for a housing subsidy on 12 November 2009. In your application form, you state that you are already receiving a housing subsidy for House 8932, Area B, Lamontville. In terms of Part 3, Chapter 2, Section 2.2.1 (f) of the National Housing Code, only people who are first time property buyers qualify for a subsidy. Since you are already receiving a subsidy and are not a first time buyer, I unfortunately have to decline your application.

If no, reasons for refusal:

If the reasons are publicly available, please give details of how and where they are available:

PART C: REQUEST TO REDUCE OR EXTEND TIME PERIODS

Will the request for variation of time be agreed to?: Yes/No Not applicable

If no, reasons for refusing:

- ★ If they have a good reason or valid ground for refusing to provide them.

When an administrator refuses to provide reasons, they **must** tell you the reason for this refusal.

8 WHAT IF REASONS ARE NOT PROVIDED?

If you do not receive a reply to your request for reasons or the administrator refuses to provide them, then you are entitled to appeal (if there is an internal appeal) or to take the matter on review.

Where reasons are simply not provided at all, the court dealing with the review will either:

- ★ Order that the administrator provides you with written reasons by a set date.
- ★ Presume that the administrator had no good reason for their decision and almost certainly rule in your favour.
- ★ What if You Disagree With the Reasons Provided?

If you disagree with the reasons provided (or if they are not provided at all), you can appeal (if there is an internal appeal) or take the case on review.

We look at both of these, and some simpler and cheaper options, in the next part of this booklet.

INTERNAL APPEAL, REVIEW AND OTHER SOLUTIONS

1 INTERNAL APPEAL

Some departments have an internal appeal procedure if you believe the decision is wrong. If there is one, then you must:

- ★ Be told about it – including when the appeal must be lodged and who it must be sent to.
- ★ **Use it before** considering a review. If you don't, the court will refuse to hear the review.

The decision of the internal appeal body is **also** an administrative decision and you are entitled to reasons for it. If they are not provided, you can request reasons using Form A (see above).

2 JUDICIAL REVIEW

During judicial review, a High Court or Magistrate's Court will look mainly at the procedure used to see if it was reasonable and fair. If it is not, they will usually send it back to the administrator to correct mistakes or even to start again.

3 WHO CAN APPLY FOR JUDICIAL REVIEW?

Anyone materially and adversely affected by the decision can apply for review. In most cases, the person applying will have been one of the parties to the decision. But the law does allow people to bring an action for review even where they weren't involved in the decision.



EXAMPLES

- ★ People applying on behalf of a child or someone living with a physical or mental disability.
- ★ People acting 'in the public interest'. For example, if a criminal is released on medical parole and some people believe that the decision wasn't reasonable, they can use PAJA to have the decision reviewed – since it is in the public interest not to have criminals living amongst them.

4 HOW LONG DO YOU HAVE TO APPLY?

You have 180 days (6 months) to bring the application. This period starts to run:

WHERE THERE IS AN INTERNAL APPEAL

- ★ From the date reasons were provided to you by the appeal body (either with the decision or after you requested them).
- ★ From the date you received a notice from the appeal body to say that reasons would not be provided to you.



EXTENSIONS OF TIME PERIODS

The 6 month periods can be extended:

- ★ If both parties agree.
- ★ If a court orders it.

WHERE THERE IS NO INTERNAL APPEAL

- ★ From the date reasons were provided to you by the administrator (either with the decision or after you requested them).
- ★ From the date you received a notice to say that reasons would not be provided to you.

5 WHICH COURT WILL HEAR THE REVIEW?

Until recently, only the High Court could review administrative decisions. This made applications for review difficult and expensive.



Since Magistrates' Courts are closer to the people and cheaper to use, PAJA allows some Magistrates' Courts to hear some of these cases. Magistrates have been trained and the first of these courts will start hearing review cases in 2010.

6 WHAT CAN THE COURT DECIDE?

The Court may find that the procedure used **did** comply with PAJA. This is obviously a decision against you and, if you can afford to, you can then appeal to a higher court – all the way up to the Constitutional Court.

If the Court finds that the procedure **did not** comply with PAJA, it will usually send it back to the administrator ordering them to correct their mistakes or start again.

In rare cases, where it is very clear that the wrong decision was reached **and** what the correct decision is, the court will actually change the decision.

7 HOW TO APPLY FOR REVIEW – AND SOME CHEAPER OPTIONS

Firstly, if there is an **internal appeal** mechanism or body, you **must** use it. Not only are these free, but a Court will not hear a review application if you have not used the appeal.



IMPORTANT NOTE!

The 'Rules of Procedure for Judicial review of Administrative Action' are new and your lawyer or NGO might not know about them.

Where there is no internal appeal, you should consider a review. But remember that, even though some judicial review cases will be dealt with by Magistrates' Courts, the procedure involved is complicated and you will need a lawyer to assist you.

If you cannot afford a lawyer, you can apply for legal aid.



LEGAL AID

Legal Aid South Africa provides lawyers for people who cannot afford a lawyer – provided they own very little property and earn below a certain level. To apply for legal aid, you need to visit a Justice Centre. Most Magistrates' Courts will have a Justice Centre – or you can call 0861 053 425 to find the one closest to you.

When bringing an application for review, your lawyer will be asked whether you will agree to **mediation** rather than a court review. You should seriously consider this option, since it is much cheaper and less difficult than judicial review. If you agree, someone that you and the department agree to will be asked to try and help you reach an agreement about what should be done without going through a lengthy court case.

If none of these options seem right for you, there are some cheaper and easier things you could do to try and get your situation resolved, on the next page.

- ★ For decisions of a **Municipality**, write to the **area** or **regional manager** of the department concerned.
- ★ For decisions of a **provincial department**, complain to your **Ward Counsellor** or the **MEC** of the relevant department.
- ★ For decisions of a national department, write to the **Minister** or **Director-General** in charge of the department (or the **MEC** of the Provincial Department).
- ★ **President's hotline.** You can report bad administrative practice (such as the failure to provide reasons after you have requested them) by calling – **177 37**.
- ★ **Anti-Corruption hotline.** The National Anti-Corruption Forum has a hotline to call to report any suspicion of corruption – **0800 701**.





★ **The Public Protector.** In cases of bad administrative practices or corruption, contact the Public Protector, who might take up the case (for free). You can find the closest office by calling – **0800 112 040**.

★ **South African Police Services** (or Force!!!!!!). Of course, you can (and should) report any suspicion of corruption to the police.

★ **The South African Human Rights Commission.** Some decisions may violate your rights in the Bill of Rights. For example, you may have been discriminated against on the basis of your race, sex, gender, language or HIV status. In such cases, you can ask the SAHRC to assist you (free of charge).

★ Contact an **NGO, CBO or Paralegal.** There are many non-governmental organisations (NGOs), community based organisations (CBOs) and paralegals in South Africa. Although only a few of these have the lawyers and resources to bring an application for judicial review on your behalf, they can all help in some way (usually for free). For example, they can:

- ☆ Offer you advice on whether or not you should consider appeal or review.
- ☆ Help you to write letters and fill in Form A.
- ☆ Assist you to find a lawyer.
- ☆ Write letters on your behalf.

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