

PROMOTION OF ADMINISTRATIVE JUSTICE ACT (ACT 3 OF 2000)

- Commonly known as PAJA

BRIEF OVERVIEW OF PAJA

- Act of Parliament mentioned in s33 of Constitution
- Requires administrators to:
 - follow fair procedures when making decisions
 - give adequate reasons, when asked to do so
 - Inform people of rights to review or appeal and to request reasons
- Gives member of public right to challenge administrative decisions in court on certain grounds
- Lays down procedures to follow when seeking judicial review
- Ensures government is democratic, accountable, open and transparent

WHAT IS ADMINISTRATIVE ACTION?

- Decision:
 - of administrative nature
 - made in terms of empowering provision
 - not specifically excluded by PAJA
 - taken by an organ of state
 - adversely affects rights
 - having direct external legal effect

PROCEDURAL FAIRNESS

- Constitution and PAJA
 - administrative action must be lawful, reasonable and procedurally fair
- Two parts to procedural fairness
 - Administrator not to make decisions that adversely affect people without consulting them first
 - Decision-making process to be free from real or apparent partiality, bias or prejudice

MAKING DECISION WITH PAJA

- Two types of decisions affecting the public:
 - those affecting individuals
 - those affecting sections of public
- S 3(2) – fair procedure requirements

DISCRETIONARY PROCEDURES

- Administrator may be expected to also consider following 3 additional procedures to ensure fairness:
 - Providing assistance in responding to action, e.g allowing legal representation (complex matters)
 - Giving person opportunity to present information and arguments in their favour and to challenge information and arguments against them
 - Giving affected person opportunity to appear in person before administrator
- Administrator may deviate from requirements in s3(2)
 - Urgent cases
 - Procedure set out in empowering legislation is different but still fair

DECISIONS AFFECTING PUBLIC

- Procedure designed to involve public and help administrator gather information
 - Public inquiry
 - Notice and comment procedure
 - Both notice and comment and public inquiry
 - Another fair procedure (may be provided for in other legislation)
- Not prescribed but good

GIVING REASONS

- Why are reasons important?
 - Ensure fairness, openness & transparency in decision making process
 - Providing reasons ensure members of public that–
 - Decision maker concentrated on correct issues & relevant information
 - Decision was fair – decision maker was not unduly influenced
- Who can request reasons?
 - Anyone whose rights have been adversely affected may request written reasons
- When must reasons be requested?
 - Within 90 days of date person became aware of administrative action
- When must reasons be given?
 - In writing, within 90 days of date of request for reasons
- What are adequate written reasons?
 - Satisfactory explanation why decision was taken
 - Does not have to convince affected person that decision was correct
 - Enough detail to explain why administrative action was taken
 - Not enough to repeat relevant empowering provisions
 - Answer specific questions raised as far as possible
 - Written in language requester understands (prevent technical terms or quote huge part of empowering provision)
 - Length of statement depend on complexity, nature, & importance of decision e.g. more complex or serious - better motivation vital
- Structure of reasons-
 - Set out decision clearly
 - Provide adequate reasons for decision
 - Provide information on legal remedies available
- Reply include following parts:
 - Address block
 - Problem
 - Decision
 - Reasons for decision
 - Advice on legal remedies
 - Ending off

- What if administrator does not give reasons?
 - Bad administrative practice that may land one in trouble
 - PAJA has presumption that allows court hearing matter to presume that decision was taken without proper reason
 - PAJA empowers court to force administrator to give reasons
 - Best practice
 - Record reasons in writing when making decision
 - When informing affected person of decision, also inform him/her of reasons

JUDICIAL REVIEW

- Background
 - All rights enshrined in Constitution is enforceable
 - One way to ensure enforceability is by judicial review
 - Person believing administrative action is wrong can challenge decision in court
- Exhaustion of internal remedies first
 - Before court reviews decision, one must have exhausted internal remedies (NB rule of administrative law)
 - Apply judicial review as last resort
- Time limit
 - Application for judicial review must be made within 180 days of date on which all internal remedies were exhausted
 - If no internal remedies available – application be made within 180 days of date on which applicant became aware of decision
- Grounds for judicial review
 - Lack of authority and unlawful delegation
 - Bias
 - Procedural fairness
 - Error of law
 - Ulterior purpose/motive
 - Irrelevant considerations or relevant ones not considered
 - Decision taken because of unauthorised/unwarranted dictates of another person
 - Bad faith
 - Arbitrary decision
 - Unreasonableness
 - Failure to take decision
 - Otherwise unconstitutional or unlawful

For additional information on PADJA and the Act itself
click on the following link:

<http://www.doj.gov.za/2004dojsite/paja/new.htm>