



Promotion of Administrative Justice

# Act 3 of 2000

You have the right  
to be given written reason



the **doj&cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA

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# content

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# introduction

## introduction

Because it makes the administration accountable to people for its actions, the Promotion of Administrative Justice Act (PAJA) is an extremely important law in ensuring South Africa's democracy continues to grow. Together with the Constitution (and particularly Section 33 – the right to just administrative action) and the Batho Pele Principles, the PAJA forms part of a new approach, aimed at ensuring a much more effective and people centred administration.

### The PAJA:

- Ensures procedurally fair administrative action;
- Gives people the right to request reasons; and
- Gives people the right to have administrative action reviewed by the courts.

**Part 1** of this booklet provides information on the PAJA and highlights what people need to know about the Act.

**Part 2** deals with how your organisation can use this information to assist people you serve and what you can do to make sure people learn about the Act.

### THE CONSTITUTION

Section 33 of the Constitution guarantees that administrative action will be reasonable, lawful and procedurally fair, and it makes sure that people have the right to request written reasons for administrative action that negatively affects them. Section 33 also required Parliament to pass the PAJA to “give effect to” this right.

# part 1

## How to use this guide

At the end of each section, you will find a block highlighting important information that people need to know. This can be used to develop lesson outcomes or objectives for any information or education you provide on the Act. They are the key bits of information that members of the public should be aware of. Also highlighted are other pieces of important information and guidelines you will need to apply to timing of requests under the PAJA.



What people need to know



Important Information



Timing Guidelines

# part 1

## 1. What is the Promotion of Administrative Justice Act (PAJA)?

The South African Bill of Rights guarantees the right to “just administrative action” to all in South Africa. This right (in Section 33 of the Constitution) says everyone in South Africa has the right:

- To fair and reasonable administrative action that is allowed by the law; and
- To be given reasons for administrative action that affects them in a negative way.

This Section also required the government to pass a law setting out the detail of this right. This

is the Promotion of Administrative Justice Act (3 of 2000).



The right to just administrative action is a basic human right.

The PAJA provides the detail on how this right works in practice.

## 2. What is administrative action?

The administration is made up of:

- All government departments (at national, provincial and local levels);
- The police and army; and
- Parastatals, like ESKOM, Telkom and the SABC.

Whenever the administration takes a decision that affects people’s rights, they are performing an administrative action.

### EXAMPLE

*When a person applies for a disability grant or old age pension, the provincial department of welfare must decide whether or not to award it. This decision is an administrative action.*



The failure to take a decision can also amount to administrative action.

For example, if someone applied for a pension but their application was never processed.

Other examples are:

- Applying for an ID or birth certificate
- Applying for a first time home owners subsidy
- Applying for a work or residence permit
- Applying for refugee or asylum seeker status

The PAJA only deals with administration that adversely (negatively) affects rights. In other words, decisions that go in favour of people (such as the decision to award someone a disability grant) are not covered by the PAJA.

Sometimes though, a decision in favour of one person might adversely affect the rights of someone else (a 3rd party). For example, if someone applies for permission to make alterations to their house, this might affect the view of their neighbour. In such a case, the neighbour would be protected by the PAJA.

### 3. What does the PAJA deal with?

The PAJA says administrators must:

- Follow fair procedures when making decisions;
- Allow people to make representations before taking any decision that might adversely affect their rights;
- Clearly explain the decisions they take;
- Inform people of any internal appeals within their department. If there is no internal appeal, they must tell people they can take the decision on review by a court; and
- Tell people they have the right to ask for written reasons for the decision.



Administrative action means decisions that the administration takes that have an effect on people's rights.

The PAJA covers decisions by the administration that have a negative effect on people's rights.



The PAJA requires administrators to:

- Follow fair procedures when taking decisions;
- Clearly explain their decisions;
- Tell people about their right to an internal appeal or review; and
- Tell people they have a right to ask for written reasons.

## 4. What are the “fair procedures” administrators must follow?

For the actions of the administration to be “just”, the procedures that they follow when making decisions must be fair. Although this booklet only deals with decisions affecting individuals, the PAJA also sets out procedures for decisions that affect the general public.

### Decisions affecting individuals

The PAJA sets out procedures that administrators must follow before taking a decision and afterwards:

**Before taking a decision**, administrators must give people whose rights may be affected:

- Proper notice of what they plan to do; and
- Enough time for people to make representations.

Administrators must consider these representations before they decide.

**After taking a decision**, administrators must give anyone whose rights have been affected:

- A clear statement of what they decided;
- Notice of any right to review or internal appeal; and
- Notice that they can request reasons for the decision.

Although they don’t have to, administrators can also:

- Assist people whose rights will be affected;
- Allow them to be represented by a lawyer; and
- Allow them to challenge any arguments or evidence that goes against them (either in writing or in person).



People must be told in advance what action is being planned and they must be allowed to tell their side of the story.

After the decision is taken, they must be told what it is, that they have the right to request reasons, and that they have the right to appeal or to take the matter on review.

## Decisions involving the general public

There are two main types of procedures:

- Notice and comment. Here, the administrator must publish a notice saying what they are planning to do and asking people to comment. The administrator must then consider these comments before deciding what to do.
- Public inquiry. In this procedure, a person or panel is appointed to hear arguments from people at a public hearing. These arguments must also be considered before a decision is taken.

In some cases, administrators may choose to use both notice and comment and public inquiry procedures.

## 5. Why do we need the PAJA?

In the past, government often took decisions that affected people's lives without really explaining what they were doing. By clearly setting out the rights people have, the PAJA makes sure the administration acts fairly and that people know why decisions were taken. It also allows them a chance to have their side of the story heard before any decision is taken. In this way, the PAJA makes sure that the administration works in a way that is transparent and that it is accountable for its actions. It also makes sure that decisions are taken properly. For example, a decision of an administrator that is biased or based on considerations that are not relevant, can be set aside.

# part 1

## 6. What should I expect when I apply for something?

Because of the PAJA, people can now expect to be:

- Told in advance of any planned action that may affect their rights (although this may be impractical in reality);
- Allowed to have their side of the story considered before a decision is made (again, this may be impractical);
- Told what the decision is and of their right to internal appeal or review;
- Told that they have the right to request reasons;
- Given proper reasons on request; and
- Able to challenge the decision in court.

### EXAMPLE

*If someone applies for a disability grant, they can expect to be told, before the final decision is made, whether or not this will be granted to them. If not, they can make representations (such as pointing out any relevant information that has not been taken into account). If the decision still goes against them, they can ask for written reasons explaining why this happened. If they still believe the decision is wrong, they can appeal to any appeal board within the provincial department. If they are still not successful, they can ask a court to review the matter.*

## 7. When can I request reasons?

Anyone can request reasons for decisions that adversely (or negatively) affect their rights. Sometimes, these reasons will



The PAJA is an important part of democracy. It makes sure that there is openness and transparency in the way the administration works, and it makes the administration accountable to people for what it does.



People can expect to be treated fairly whenever they apply for anything from the government (such as a housing subsidy, old age pension and so on).

They will be given a chance to have their side of the story heard.

They can challenge decisions that go against them if they think they are wrong.



If they are not told why the decision went against them, people can request written reasons for the decision.

be given without a person having to request them. If not, they must request written reasons within 90 calendar days of finding out the decision.

## 8. How to request reasons

The method of requesting reasons is set out in the regulations to the PAJA. Requests must:

- Be in writing;
- State what decision you are requesting reasons for;
- Say why you think the decision is wrong;
- Say which rights of yours have been affected (if possible);
- Include your name, postal address, e-mail address, and contact fax and telephone numbers; and
- Be sent by post, fax or e-mail or be delivered by hand.

If people cannot write, they should ask a friend, relative, paralegal and so on to assist them. The regulations also say that administrators must provide assistance to people who cannot write. So, a person could go to the office that made the decision and ask for assistance in writing down their request.

## 9. What reasons will be given?

The PAJA says administrators must give “adequate” reasons. The use of the word “adequate” is extremely important. Administrators cannot just say that they thought about the matter and reached their decision. They must say how they reached it. If the person requesting reasons has raised questions, these must all be answered. In short, administrators must provide a satisfactory explanation for their action. Of course,



Requests must be made within 90 days of finding out the decision.



People should be aware of the method of requesting reasons and what the request should contain.

They can get assistance from an administrator to write the request.



People can expect to receive a proper explanation for why the decision went against them.

# part 1

this does not mean that they have to convince the person that their decision was correct.

## 10. When can I expect to receive reasons?

The PAJA says reasons must be given within 90 days of the administrator receiving the request.



Reasons must be given within 90 days.

## 11. Can reasons be given verbally?

The short answer is “no”. The PAJA says quite clearly that the reasons must be given in writing. However, if a person is given reasons verbally and is satisfied with this, then there is no problem. Even then, the person should also ask for the reasons to be given to them in writing so that they can easily refer to them should they decide to challenge them or the decision later on.



People have the right to written reasons.

## 12. What if I am still not satisfied?

Some departments have an internal appeal procedure. Where there is an internal appeal procedure, this must be used before any other action can be taken.

### EXAMPLE

*The Department of Home Affairs has an Appeal Board to hear appeals about decisions of Refugee Status Determination Officers. If someone applies for asylum seeker or refugee status and is refused, they can appeal to this Board.*

Where there is no internal appeal procedure, or where this has been used and the person is still not satisfied with the decision, they have the right to take the matter to court and to ask the court to review the decision.



People can challenge decisions if they do not agree with them. They must follow any internal appeal procedure, if there is one. They can take the decision on review:

- If there is no internal appeal; or
- If they have used the internal appeal and are still not satisfied with the decision.

There are time limits within which a review must be launched.

### Time limits

Where there is an internal appeal procedure, the matter must be taken on review within 180 days (6 months) of this internal appeal having been decided. Where there is no internal appeal, the matter must be taken on review within 180 days of the person becoming aware of the decision.



Unsuccessful internal appeals must be taken on review within 6 months. There are also deadlines for internal appeals.

### Note

Where departments have an internal appeal procedure, they will usually also have time limits within which an appeal must be made. This differs from department to department, but the notice of the decision and the right to appeal must set out the time limits as well.

## 13. Are there any other remedies?

Like any court procedure, taking a matter on review can be extremely costly. Luckily, there are other, cheaper ways of dealing with decisions that people are not happy with.



Please note that the PAJA has time limits for bringing an application for review (that is, 6 months after using the internal appeal or 6 months after becoming aware of the decision where there is no internal review). To avoid missing these deadlines, NGOs and CBOs must treat any cases brought to them as urgent.

### Internal Appeals

Many departments and government structures have internal appeal bodies. These must be used before taking a matter on review and usually there is no charge for the appeal.

### The local level

People could:

- Check if there is a constituency office of a political party in their area that may be able to help them;
- Complain to the area or regional manager of the department concerned; or
- Complain to their Ward Counsellor or Provincial MEC of the relevant department.



Review is expensive.

There are cheaper alternatives in some cases.

# part 1

## **Letter to the Minister or Director-General**

It can be quite helpful to write to the Minister or Director-General in charge of the department concerned. This is cheap and, in some cases, quite effective. Letters should contain similar information to a request for reasons.

## **NGOs, CBOs and Paralegals**

There are many non-governmental organisations (NGOs), community based organisations (CBOs) and paralegals in South Africa that can help. Most will do so for free. People should be encouraged to check in their community whether there are any of these they can ask for assistance.

## **The Public Protector**

Where it seems there has been misadministration (for example, if it seems someone was bribed to take a decision or was biased or there was any form of corruption involved), people can approach the Public Protector for assistance. This is provided free of charge.

## **The South African Human Rights Commission**

Since decisions will involve possible violations of Section 33 of the Constitution, people can ask the SAHRC to assist them. Again, this will be done free of charge if the SAHRC believes there is a violation.

## **Legal Aid Board and Justice Centres**

Justice Centres are being set up at courts around the country. These have lawyers available to provide free services to poor people. If there is not yet a Justice Centre in a person's area, they can ask the Legal Aid officer at the nearest Court to give them a lawyer free of charge.



Contact details for these organisations appear at the back of this booklet

# part 2

## 1. Why should people be informed about the PAJA?

South Africa has a long history of a public service that has not been accountable to the public and that has worked in ways that are secretive and lead to distrust. While people applying for services, licences and so on were often told they had been unsuccessful, they were not told why this was so.

The administration is there to serve the public

– hence the term “public service”. However, this is not how they have traditionally been seen or how they have seen themselves. Everyone has stories to tell of the frustrations they have been exposed to whenever they have interacted with the public service.

By knowing what the PAJA covers people will be able to:

- Protect their rights;
- Ensure they are treated fairly;
- Know why decisions have been taken; and
- Help to develop a public service that is accountable to the people.

## 2. What do people need to know?

Essentially, people need to know that there are rules that administrators need to follow whenever they make decisions. The notes in Part 1 will help you to understand what these rules are.

# part 2

## 3. How to use this booklet

Although the text in Part 1 is aimed at the public, this booklet can be used by NGOs and CBOs in two ways:

- Since many organisations provide legal and paralegal assistance to people whose rights to administrative justice have been infringed, the booklet can be used to improve the manner in which your organisation works; and
- It can be used to conduct education, awareness and information on the Act with the communities they serve. This will help to empower members of these communities to enforce their rights.

NGO and CBO staff should read this booklet to see how the PAJA affects their work. For example, if a para-legal regularly deals with pension or disability grant problems, they can use the information in the booklet to find out how to request written reasons, how to demand that people's views are taken into account before decisions are made and so on.

## 4. What about training members of the administration?

This booklet provides information on how the PAJA affects the lives of ordinary people and is not really suitable for training administrators. This is because the training administrators need to go through is more comprehensive and focuses not only on the PAJA, but also on how to make decisions, how to write the letters and notices required by the Act, and how to draft written reasons.

As part of their efforts to ensure an open and democratic society based on the rule of law, the Department of Justice, assisted by GTZ (German Development Cooperation) and



There are two ways that you can build information on the PAJA into your education work:

- You could run training on the Act itself; or
- You could build the PAJA into training you already run.

For example, if your NGO conducts education on pensions to members of rural communities, you can mention that the PAJA exists and that, as a result, pension applications have to be dealt with in a new way. You could then cover what this means by showing what the PAJA requires administrators dealing with such applications to do.

SAMD I (South African Development Institute) are running training for administrators. To support this, a series of publications have been produced:

- A Practical Guide;
- A Trainers Manual;
- A Workbook;
- A Benchbook;
- An awareness poster; and
- A public awareness pamphlet.

#### **For more information**

Please contact the Department of Justice and Constitutional Development at the address on the back cover of this booklet if you would like:

- Information on the project to train administrators; or
- Copies of any publications mentioned.

Copies of the PAJA and its regulations can be purchased from the Government Printers. You will also find copies of the Act on the following websites:

- [www.justcol.org.za](http://www.justcol.org.za)
- [http://www.parliament.gov.za/pls/portal/web\\_app.app\\_acts\\_list2](http://www.parliament.gov.za/pls/portal/web_app.app_acts_list2)

For the latest version of the Regulations to the Act, please visit:

- [http://www.doj.gov.za/legislation/regulations/2002\\_adminjustice\\_procedures.pdf](http://www.doj.gov.za/legislation/regulations/2002_adminjustice_procedures.pdf)

# important addresses

## important addresses

### **The Office of the Public Protector**

Private Bag X677  
PRETORIA 0001  
Tel: (012) 366 2700  
Fax: (012) 362 3473  
Website: <http://www.publicprotector.org>

### **South African Human Rights Commission**

Private Bag X2700  
HOUGHTON 2041  
Tel: (011) 484 8300  
Fax: (011) 484 1360/7146  
Email: [sahrcinfo@sahrc.org.za](mailto:sahrcinfo@sahrc.org.za)  
Website: <http://www.sahrc.org.za>

### **Legal Aid Board and Justice Centres**

Tel: (012) 401 9200  
(or visit their offices at any court near you)



This booklet provides useful information for NGOs and CBOs on the new Promotion of Administrative Justice Act 3 of 2000 ("the PAJA"). These organisations may find this useful when dealing with the administration and they may wish to share the information with the communities they serve.

**For more copies of this booklet, or for other publications on the PAJA, write to:**

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GTZ (German Technical Co-operation)



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