

know
your
rights

PROMOTION OF



ADMINISTRATIVE

JUSTICE ACT



German Technical Cooperation



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* Main picture: Children of the San tribe play on a sand dune in ancestral lands in the Kalahari Desert which were handed back by the government in a ceremony on Sunday 21 March 1999.

Introduction

Because it makes the administration accountable to people for its actions, the Promotion of Administrative Justice Act (AJA) 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 AJA forms part of a new approach, aimed at ensuring a much more effective and people centred administration.

The AJA:

- 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 AJA 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 AJA to "give effect to" this right.

Part 1

This booklet follows the flow of information in the pamphlet “You and the Promotion of Administrative Act”. Copies of these pamphlets, or this information booklet are available on request from:

Justice College
Att: Natasha Jeftha
GTZ
c/o SA Law Reform Commission
Private Bag X668
PRETORIA
0001



What people need to know



Important information



Timing guidelines

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 AJA.

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

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 AJA 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.



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.

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. 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 AJA 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 AJA.

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 AJA.



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

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

3. What does the AJA deal with?

The AJA 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.



The AJA 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 AJA also sets out procedures for decisions that affect the general public.

Decisions affecting individuals

The AJA 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



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.