

- Allow them to challenge any arguments or evidence that goes against them (either in writing or in person).

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 AJA?

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 AJA 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 AJA 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.

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

Because of the AJA, 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.



The AJA 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.



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.

7. When can I request reasons?

Anyone can request reasons for decisions that adversely (or negatively) affect their rights. Sometimes, these reasons will 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 AJA. 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, email address, and contact fax and telephone numbers; and
- Be sent by post, fax or email 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 AJA 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, this does not mean that they have to convince the person that their decision was correct.



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

10. When can I expect to receive reasons?

The AJA 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 AJA 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.



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.



Please note that the AJA 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 appeal). To avoid missing these deadlines, NGOs and CBOs must treat any cases brought to them as urgent.

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.



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.



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.



Review is expensive.

There are cheaper alternatives in some cases.

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.

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.