



**MYBURGH
ATTORNEYS**
INCORPORATED

THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT (PAJA)

WHAT IS PAJA?

The Promotion of Administrative Justice Act (hereafter referred to as PAJA) has been put in place to promote Democracy (and more specifically Section 33 of the Constitution – the right to just administrative action) and to ensure that when government makes a decision that might affect you that they act fairly in doing so. Should a decision not go your way then you are entitled to be informed about the adverse decision that is about to be made, and you should be afforded the opportunity to say why the decision should not go against you.

Should a decision by government not be taken in your favour then PAJA affords you the right to request written reasons for that decision. You are also entitled to make use of any internal appeals available within the department (which administrators must inform you of) which has given the decision or to have the administrative action reviewed by the courts.

To summarise, the PAJA aims to ensure that administrative action is lawful, reasonable and procedurally fair.

WHAT DOES ADMINISTRATIVE ACTION MEAN AND WHO FALLS UNDER THE ACT?

The administration is:

- All government departments (at national, provincial and local levels)
- The Army and Police
- Parastatals such as the SABC, Eskom and Telkom.

Whenever the administration makes a decision or sometimes fails to make a decision and such a decision affects the rights of people, then they will be performing administrative action.

WHAT SHOULD I BE EXPECTING WHEN I APPLY FOR SOMETHING FROM THE GOVERNMENT & WHAT “FAIR PROCEDURES” SHOULD ADMINISTRATORS FOLLOW?

You should be:

- Informed what decision is being planned before it is taken;
- Be given enough time to make representations or comment so as to tell your side of the story before a decision is made (the administrators must consider these representations);
- Informed what the decision is (a clear statement) and of your right to internal appeal or review;
- You must be informed that you have the right to request reasons;
- If you do request written reasons you must be provided with proper written reasons for the decision; and
- Able to change the decision in court.

HOW DO YOU REQUEST REASONS?

If there has been a decision made which negatively affects your rights you can request reasons for that decision. On occasions, you will be provided with reasons for the decision without you having to ask for them. If you haven't



been given reasons, you should request these reasons within 90 days of finding out about the decision to find out if the decision was in fact justified or taken properly.

The written reasons supplied by the decision maker should clearly explain how the decision was taken and why it went against you. You must also be informed whether there is an internal appeal mechanism that you can use.

Examples are when you apply for:

- An old age pension
- An ID or birth certificate
- A first time home owner's subsidy from the government
- A work or resident permit
- Refugee or asylum seeker status

You should request reasons in the following way:

- In writing;
- Mention the decision that you are requesting reasons for;
- State which rights of yours have been affected;
- Explain why in your opinion the decision made against you is wrong;
- Include all your details in the correspondence such as: your name, postal address, email address, telephone numbers and fax number;
- You should send this correspondence by post, fax, email or have it delivered by hand.

If you need assistance in this manner it is best to ask an experienced attorney to help you. You can also ask someone at the department to write your request for you.

WHAT REASONS WILL I BE GIVEN?

Reasons must be given to you within 90 days of the department receiving your request.

The administrators are under an obligation to give you "adequate" reasons. What this means is that the department must explain how it reached its decision. If in your request you have asked questions you are entitled to have these questions answered.

Reasons cannot be given to you verbally and must be in writing unless you have agreed to them being given to you verbally. A word of advice is even if you are satisfied with the reasons given to request that it be written and sent to you.

WHAT IF AFTER YOU HAVE BEEN GIVEN REASONS YOU ARE STILL NOT SATISFIED?

There are a number of things you can do and avenues you can follow.

a. Internal Appeals:

Some departments give an internal appeal for decisions that go against you. Where this option is available it must be used before any other action can be taken.

Where there is no internal appeal procedure or you have already exhausted this option and are still not satisfied then you can go to court and apply to the court to review the decision. However, if you have used the internal appeal procedure you must ask for a review within 180 days or if there was no internal procedure within 180 days of being aware of the decision.

- Should you choose this option it would be best to bring all the information that you already have and to consult with an experienced and competent attorney who can guide you and advise you correctly!!!

b. Local level:

- Ask a constituency office of a political party in your area for help;
- Complain to the area or regional manager of the department concerned; or
- Complain to their Ward Counsellor or the Provincial MEC of the relevant department.

c. Write to the Minister or Director-General:

Using the same format as the letter that you use to request reasons for the decision you can find out which Minister is in charge of the department and write a letter to them (or the Director-General / Head of the department) telling them what your problem is.

This is cheaper and can be effective at times.

d. NGO's CBOs and Paralegals:

There are many non-governmental organisations (NGOs), community based organisations (CBOs) and paralegals in South Africa that can help.

e. The South African Human Rights Commission (SAHRC):

You can ask the SARC for help. If they agree, they will do so for free. Call the SAHRC, toll free, on 0860 12020.

REMEMBER PAJA IS THERE TO PROTECT OUR RIGHTS!!!