



PROMOTION OF ADMINISTRATION JUSTICE ACT FRAMEWORK

File Name	Paja Framework
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1 INTRODUCTION

In South Africa, administrative decision-making is promulgated through the Promotion of the Administrative Justice Act 3 of 2000 (PAJA) as part of general administrative law. PAJA sets out the general rules that govern how administrators must take decisions; reasonably, justly and procedurally fairly (Republic of South Africa, 2000).

2 PURPOSE

To provide the Department with administrators in the public service with a guidance and introduction to the most important requirements of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) it also aimed at promoting an efficient accountable, open and transparent administration.

2.1 PAJA has:

- 2.2 Set out rules and guidelines that administrators must follow when making decisions:
- 2.3 Requires administrators to give reasons for their decisions:
- 2.4 Requires administrators to inform people about their rights to review or appeal and request reasons:
- 2.5 Give members of the public the right to challenge the decision of the administrators in court.

3. OBJECTIVE

To give effect to the right to a administrative action that is lawful, reasonable and Procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996.

4. PROCEDURAL FAIRNESS

The constitution says that administrative action must be lawful, reasonable and procedurally fair and that reasons must be given for administrative action that adversely affects rights.

5. WHAT DOES PROCEDURAL FAIRNESS MEAN

In terms of section 3, there are 2 parts of procedural fairness:

is unfair for the administrator to make a diverse decision that affects a person without consulting them first eg. Dismissing a person without giving him the opportunity to present their case.

The decision making process must be free from any real or apparent partiality, bias, or prejudice. When the administrator is making decision, he must be seen by everyone to be making the decision fairly and impartially and not because of his or her own private interest in the matter.

6. MAKING DECISIONS WITH PAJA

The PAJA has set out rules needed to be followed when making decisions. It deals with two types of decisions affecting the public:

- Those affecting individuals and
- Those affecting sections of the public

7. DECISION AFFECTING THE PUBLIC

In terms of section 4 of PAJA, the administrator has to decide which public procedure has to be followed when administrative action has to be taken especially when the person's right is adversely affected.

In case where administrative action materially and adversely affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, the following must be taken into account:

- 7.1 To hold a public enquiry:
- 7.2 To follow a notice and comment procedure:
- 7.3 Where the administrator is empowered by any empowering provision to follow a procedure which is fair but different, to follow that procedure, or
- 7.4 To follow another appropriate procedure which gives effect to fair administration

7.1.1 DECISION TO OLD PUBLIC ENQUIRY

If an administrator decides to hold a public enquiry, the administrator should conduct the

public enquiry or appoint a suitable qualified person to do so. The panel should determine the procedure for the public enquiry, which should include public hearing and compliance with the procedures to be followed in line with the public enquiries.

7.1.2 DECISION TO FOLLOW NOTICE

If anyone's right is adversely affected by this decision, the proposed administrative action must be published by way of a notice and must now be set to the person before the decision is taken. A notice must give them adequate notice of the nature and purpose of the administrative action, and a reasonable opportunity to make representations.

8. ADEQUATE NOTICE OF THE NATURE AND PURPOSE OF THE ACTION

Means more than just informing a person that an administrative action is being planned. A person must be given enough time to respond to the planned administrative action. The person also needs to have enough information to be able to work out how to respond to the proposed action. They need to know the nature of the action (what is being proposed) and the purpose (Why the action is being proposed).

9. A REASONABLE OPPORTUNITY TO MAKE REPRESENTATIONS

The length of time to allow a person to make representations will be different in different circumstances.

10. DECISIONS AFFECTING INDIVIDUALS

In terms of section 3 of PAJA which deals with fair procedures when making decisions with a particular impact. However there are procedures that need to be followed by administrator before making any decisions, which are mandatory and other procedures that can be considered by the administrator but discretionary procedure dos, not have to be followed.

11. REQUEST FOR REASON

It is generally a good administrative practice to give reasons for all reasons taken. According to or Constitution "administration must be accountable for its use of public power. These suggest being able to explain decisions to the people who are affected by them. According to PAJA, the request for reasons must be made within 90 days of the date on which the

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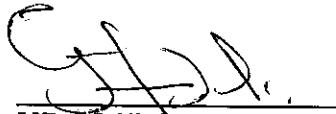
person become ware or should have become aware of the administrative action. Adequate reasons must be given in writing within 90 days.

12. JUDICIAL REVIEW

Any person who is not satisfied with the administrator's decision and or has exhausted all internal appeals and still not satisfied may take a matter to court for review.

For the rights to just administrative action to be more than just rights on paper, there must be a way to enforce them. The most important way in which these rights can be enforced is by judicial review.

POLICY APPROVAL



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HEAD: CULTURE, SPORT AND RECREATION
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