

# Compliance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)



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# Foreword

The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA), is pioneering legislation that intends changing the way Government interacts with the people it serves. It creates ways of enforcing the right to be treated fairly in administrative actions.

The PAJA seeks to protect the public from unlawful, unreasonable and procedurally unfair administrative decisions. It is a law that gives people affected by administrative decisions the right to be informed that a decision is to be taken, to be given reasons for decisions and to have decisions reviewed in court.

“If it protects people from unlawful, egotistical and domineering law enforcers, then the Act is necessary.” Principles such as openness, transparency and accountability emphasise the importance of the PAJA for citizens and the Public Service.

“Just knowing it exists makes the holders of information and decision makers think twice.” “It will become more effective if it is better applied and more widely promoted.” “If we are thorough in each and every interaction with the public we will avoid future problems.”

These viewpoints were articulated during the assessment. They send a clear message about the transformation of the Public Service. A culture of compliance with the constitutional values of openness, transparency and accountability is required to ensure that the implementation of the PAJA is more than merely legalistic compliance.

However, there are officials who say “we do not ask for trouble,” and citizens are therefore not informed of their right to appeal administrative decisions.

This report provides useful information to government departments regarding the status of implementation of the PAJA. The Department of Justice and Constitutional Development (DoJ&CD) and the Public Service Commission (PSC) hope that the report will enhance the ability of departments to implement the PAJA more effectively, creating awareness in innovative ways of the rights of citizens under the Constitution.

The PSC and the DoJ&CD are most grateful to the German Technical Cooperation Agency (GTZ) for funding the research.

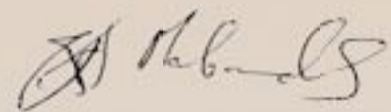
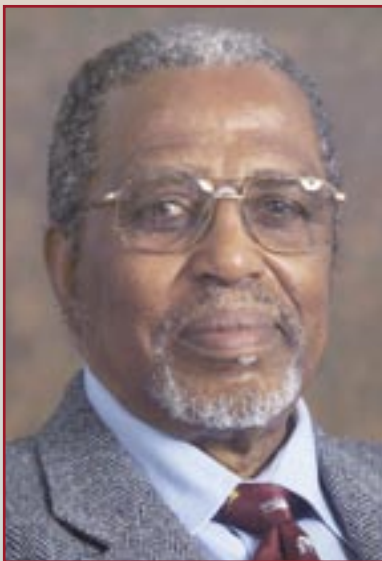
We trust that this report will add value to the current work of Public Service managers throughout South Africa.

Yours sincerely



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# Glossary

DoJ&CD	Department of Justice and Constitutional Development
DPSA	Department of Public Service and Administration
GTZ	German Technical Cooperation Agency
IDASA	The Institute for Democracy in South Africa
M&E Task Team	Monitoring and Evaluation Task Team
ODAC	Open Democracy Advice Center
OPSC	Office of the Public Service Commission
PAIA	Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
PAJA	Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)
PSC	Public Service Commission
RAU	Rand Afrikaans University
SAMDI	South African Management Development Institute

# Executive Summary



## 1. Background and Introduction

The Promotion of Administrative Justice Act, 2000 (Act 3 of 2000) (PAJA), ensures procedurally fair administrative actions, giving people the right to request reasons for administrative actions and decisions and to have such actions reviewed in court.

Reviewing the ability of the Public Service to implement the PAJA provides useful insight into the extent to which human rights are currently being protected and promoted. In order to develop a longer-term implementation strategy, insight into the effectiveness of previous efforts to promote implementation of the PAJA in the Public Service and in civil society is required.

## 2. Research Methods

A research instrument, the rapid assessment framework, was developed and is attached as Annexure A to the report. It specifically assesses the following:

- The degree to which public servants and staff in Civil Society Organisations are aware of the PAJA;
- The extent to which administrative decisions meet the fairness standards stipulated in the PAJA; and
- How far the Public Service has gone in systematically implementing the PAJA.

The research instrument comprised the following:

- A simple one-page, anonymous awareness survey to test the awareness of respondents and the source of their knowledge. In each department researched, 50 questionnaires were distributed randomly and completed.
- A questionnaire used to interview administrative decision makers on the procedures they used to reach decisions, their own attitudes to the PAJA and the need for it, their perceptions of their superiors' attitudes to the PAJA, and what they believed was needed to become compliant with it. Between eight and 10 of these interviews were undertaken in each department.
- A third questionnaire was used to review what institutions were doing to implement the PAJA in a systematic manner. This questionnaire was completed for each department.
- A modified questionnaire was also used to undertake interviews and assess awareness in a small selection of Gauteng-based organisations<sup>1</sup> that assist citizens in getting access to services.

The research focussed on Public Service institutions at all three levels of government, including a national department (Department of Home Affairs), two provincial departments (one that had received formal training<sup>2</sup> on the PAJA and one that had not received such training), and one local government institution that had received training on the PAJA.

The PSC, DoJ&CD and GTZ undertook the research themselves, visiting the departments, undertaking a wide range of interviews and supervising the completion of awareness surveys. The research instruments were developed in August-September 2005 and the research was undertaken in October-November 2005.

## 3. Overview of the Research Findings and their Implications

### 3.1. The degree to which public servants and staff in Civil Society Organisations are aware of the Act

The interviews revealed a worrying state of affairs in terms of how the PAJA is implemented, with a vague understanding and awareness of the PAJA prevailing in most institutions researched. This was the case at all levels of management.

<sup>1</sup>The following organisations were interviewed: Legal Resources Centre, SA National Council for the Blind, Justice and Peace, Black Sash, COSATU, National Council for People with Disabilities, St Charles Lwanga Advice Office.

<sup>2</sup>GTZ assisted the DoJ&CD in developing extensive training modules and materials. These courses are provided by Justice College.



It is clear from the responses that activities to increase awareness of the PAJA are definitely needed.

Some awareness-raising activities provide only a superficial understanding of the PAJA. While they communicate the need for administrative decisions to be fair they do not explain what this means in practice and that reasons should be provided.

Awareness-raising activities often do not create awareness of the need to provide reasons for decisions.

There is a very clear need for practical, case-based training interventions that assist administrators as well as for more visible support for the legislation from supervisors and senior managers. This is in addition to a broad-based training programme.

### 3.2. The extent to which administrative practices meet the standards of fairness stipulated in the PAJA

It seems that the implementation of the PAJA is not being prioritised or adequately addressed by government departments.

It seems that while there was a general and discernable desire and intention to make administrative actions fair and just, the legislation had not made a notable impact on administrative practices. The notable exception is the City of Cape Town, where procedural changes were made to ensure compliance with PAJA.

The Public Service had a definite need for manuals and guidelines that prescribe procedures, identify where decisions are made and that help minimise deviations from specific processes. Procedure manuals need to be aligned to the requirements of PAJA.

### 3.3. How far Public Service organisations have gone in systematically implementing the Act

This rapid assessment indicates that government departments have not properly implemented this important piece of legislation and therefore compliance with the requirements of PAJA are lacking. Implementation is uneven within the departments researched. In general, implementation plans are lacking, adequate training is not provided to staff, outside training institutions are mostly used for training interventions and awareness levels are very low.

Although some requirements of PAJA are implemented in departments, compliance is the direct result of other enabling legislation, for example, the right to appeal social security decisions is enshrined in other legislation (Social Assistance Act, 2004 (Act No.13 of 2004)). Authentic efforts seemed to be made to explain decisions to citizens, as this was a legal requirement of the enabling legislation. The procedures of the departments of Social Development (national and provincial) are well established and most respondents felt that it complied with the PAJA.

Although the provision of prior notice and the procedures for dealing with reasons for request are well established, they are provided in terms of specific legislation. This however does not always extend to informing citizens of their right to appeal as staff preferred not to “ask for trouble”.

### 3.4. Civil society responses

It was found that awareness of the requirements of the PAJA is much higher in Civil Society Organisations than the Public Service. However, in practice, the PAJA proved to be little used in conducting the business of Civil Society Organisations. This can be attributed partly to the following factors:

- The PAJA is perceived to be a difficult piece of legislation to implement and requires a thorough understanding of the legal concepts;

- The low levels of awareness of the Act;
- The use of alternative avenues to address problems, for example dealing directly with departments or using good working relations with high ranking government officials;
- A reluctance to challenge government for fear of victimisation and reprisals; and
- The delays caused by the Act, which allows a 90-day period for the processing of responses.

Most respondents felt that senior officials were aware of the PAJA, but that officials at a lower level that interact directly with the public were most in need of awareness training. It was not only skills training that was needed, but a shift in attitude and a change in culture, so that citizens would be treated with fairness and dignity.

Respondents called for a broad-based educational programme that included the popular media and schools (as part of life skills courses). PAJA training should be a component of all Public Service training programmes and integrated into as many other programmes as possible.

Very few Civil Society Organisations were involved in providing training to government on the PAJA. Resource limitations were cited as reasons for their non-involvement in the provision of training.

## 4. Possible Strategies to Increase Compliance

### 4.1. Awareness and communication

- 4.1.1. More needs to be done to promote the PAJA and encourage the implementation of its provisions. Targeted and strategic efforts are needed to increase awareness of the PAJA to address the current limited, often vague understanding of it.
- 4.1.2. Awareness-raising activities should also address the culture in the Public Service, specifically as regards informing the public of their right to appeal decisions, instead of keeping quiet in order not to “invite trouble”.
- 4.1.3. A strategy for integrating the PAJA awareness-raising activities into other Public Service programmes (e.g. induction courses, Batho Pele initiatives, and service delivery improvement programmes) should be sought, especially in partnership with the Department of Public Service and Administration (DPSA) and South African Management Development Institute (SAMDI).
- 4.1.4. Chapter Nine institutions<sup>3</sup> such, as the Office on the Status of Disabled People should play a bigger role in promoting awareness of PAJA.
- 4.1.5. Increased use of electronic media and direct emails to staff with access to computers should be made. Departmental web sites should clearly inform citizens of their right to appeal and to whom appeals should be addressed in relation to the specific services provided by the department.
- 4.1.6. A dedicated link on the government web site ([www.gov.za](http://www.gov.za)) should be created to inform citizens about the PAJA, the obligations it places on government and its implications for themselves. A summary of the main provision of the PAJA should be posted on the web site. This could be linked to other DoJ&CD or DPSA web sites, but it should be clearly and immediately visible on the [www.gov.za](http://www.gov.za) web site.
- 4.1.7. A short handbook, similar to the A5-sized books on the Constitution and the Public Service Code of Conduct should be compiled. It should be written in language that is accessible and easily understood by the end users and could possibly be titled “Transparency, fairness and justice in decision making- know your rights.”

<sup>3</sup>Chapter Nine institutions are state institutions supporting democracy, and include the Public Protector, Human Rights Commission, Auditor-General, Commission for Gender Equality, Electoral Commission, and Commission of the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. These institutions are independent, subject only to the Constitution and the law, and they report to the National Assembly at least once a year.

4.1.8. A summary PAJA handout, highlighting the main provisions of the PAJA, should be developed.

## 4.2. Training

4.2.1. A brief, accessible information/training module should be developed and integrated into all internally provided training programmes.

4.2.2. Awareness-raising activities should be supplemented by the provision of training and by developing practical guidelines and procedures that consistently ensure fairness in administrative decisions. Innovative strategies should be considered to address the training needs expressed by respondents.

4.2.3. Internal departmental training components should be targeted to undergo train-the-trainer courses, to enhance awareness of PAJA and ensure greater compliance with the PAJA in their respective departments.

4.2.4. The summary PAJA handout, which is developed to enhance awareness, can be distributed as part of related training programmes. The material should give a summary and explanation of the main provisions and requirements of the PAJA.

4.2.5. A standard short course, possibly of just a single day's duration, which can be delivered by independent trainers, should be developed. The course could also be tailored to address the training needs of civil society organisations.

4.2.6. Training that is topical, related to specific jobs, and based on common everyday situations requiring the application of the PAJA, should be developed by departments.

## 4.3. Integration with other government programmes

4.3.1. PAJA promotion should be included in current and future Batho Pele promotion initiatives.

## 4.4. Integration with business processes

4.4.1. The business processes in departments need to be systematically mapped, clearly indicating where and by whom decisions are taken. Manuals and guidelines that prescribe procedures, identify where decisions are made and assists in minimising deviations from specific processes, should be developed to enhance PAJA compliance.

4.4.2. Serious consideration should be given to amending the provisions of the PAJA allowing 90 days for the processing of requests. Practitioners and Civil Society Organisations, as shown by the study, seem to be of one mind that the 90-day period is "excessive". Exceptions could still be provided for should a shorter period be adopted.

4.4.3. Support should be provided to all government departments to become PAJA compliant. Although respondents suggested the development of a certification process through which institutions or programmes can be certified as being PAJA compliant, careful consideration should be given to the consequences of such a process, resulting in a multitude of certificates being issued.

4.4.4. Departments should develop an implementation strategy to address the elements that are hampering the effective implementation of PAJA.

## 5. Monitoring and Evaluation

The DoJ&CD needs to systematise and formalise its work regarding the PAJA into a clear programme, a process that has already started with the development of comprehensive Internal and External Action Plans (November 2004). Once these have been formally adopted, and implementation has commenced, reporting on the achievement of the indicators and verifiers should be provided regularly.

A standard reporting format is suggested for use and attached as Annexure B to this report.

# Chapter One

Background and  
Introduction

## 1.1. The Promotion of Administrative Justice Act

The Promotion of Administrative Justice Act (PAJA) (Act No. 3 of 2000), ensures procedurally fair administrative actions, giving people the right to request reasons for administrative actions and decisions to have such actions reviewed in court. It is an extremely challenging piece of legislation, which requires that procedures followed to take administrative actions be clearly stated and that affected people be given notice of their right to review or appeal decisions, as well as be provided with the reasons why decisions were made. Promoting accountability is an important part of protecting and advancing the public interest.

Reviewing the ability of the Public Service to implement the PAJA provides useful insight into the current situation and extent to which human rights are being protected and promoted. The PAJA needs to be understood in the context of both the Constitution of the Republic of South Africa, 1996, with its Bill of Rights, and the history of our country, which makes the provision of equitable, quality services for all South Africans imperative.

A task team comprising staff members from the DoJ&CD and Justice College is driving the implementation of the PAJA. A Joint Monitoring and Evaluation (M&E) Task Team, which includes representatives of the PSC, is assisting the PAJA Team, in terms of a memorandum of understanding reached between the two institutions, by undertaking relevant research and conducting monitoring and evaluation programmes. The DoJ&CD is being assisted by the GTZ in its overall efforts to implement the PAJA.

In order to develop a longer-term implementation strategy, the PAJA Task Team requires insight into the success of previous efforts to promote implementation of the PAJA in the Public Service and Civil Society.

The M&E Task Team therefore aims to provide the PAJA Task Team with the information it requires to undertake its strategic planning.

It seeks to do so in a way that builds the capacity of the Public Service to implement the PAJA by coordinating monitoring and evaluation processes that guide and support managers. This research report is intended to assist the DoJ&CD and other government departments in promoting the implementation of and compliance with the PAJA.

## 1.2. Aims and objectives of research

The research project was undertaken to provide information useful to the development of the Task Team Strategic Plan. The purpose of the research was to:

- Assess the current status of compliance with the provisions of the PAJA in national, provincial and local government and in a selection of Civil Society Organisations;
- Identify the reasons for non-compliance in agencies where support and promotional activities had been undertaken, as well as in those where they had not; and
- Develop suggestions and strategic advice to the PAJA Task Team for its work in the future.

It should be noted that the research was done in the form of a rapid assessment and was not intended to be a scientific exercise. The rapid assessment was intended to provide a series of rough snapshots that would offer a general insight into the situation on the ground.

Despite the inherent limitations of such an assessment, the research still clearly depicts the situation with regard to compliance with the Act and suggests a clear way forward for the PAJA Task Team.

# Chapter Two

## Research Method



## 2.1. Overall strategy

Discussions with the PAJA Task Team indicated that they aim to achieve results in three areas:

- Creating a general awareness of the PAJA and its provisions and requirements;
- Ensuring that work practices meet the requirements of the PAJA; and
- Ensuring that there is overall institutional compliance or distinct movement towards becoming compliant.

These three result areas were used as the basis for developing an assessment framework for the study. The rapid assessment was specifically intended to assess:

- The degree to which public servants and staff in Civil Society Organisations were aware of the PAJA;
- The extent to which administrative decisions met the fairness standards stipulated in the PAJA; and
- How far Public Service organisations had gone in systematically implementing the PAJA.

## 2.2. Research instrument

A research instrument was designed. It is attached as Annexure A to this report. It comprised the following:

- A simple one-page, anonymous awareness survey that simply asked whether respondents had heard of the PAJA, and if so, what they knew about it and what the source of their knowledge was. This survey was distributed in an unstructured, ad hoc fashion. Approximately 50 of these were completed for each department researched.
- A questionnaire to interview administrative decision makers on the procedures they used to reach decisions, their own attitudes to the PAJA and the need for it, their perceptions of their superiors' attitudes to the PAJA, and what they believed was needed to become compliant with it. Between eight and 10 of these interviews were undertaken in each department.
- A questionnaire to review what institutions were doing to implement the PAJA in a systematic manner. This questionnaire was completed for each department.

These questionnaires were used to undertake research in Public Service institutions at all three levels of government. The research was undertaken in the following:

- A national department that provides services directly to the public (the Department of Home Affairs), as the services provided by the Department have a profound impact on the lives of citizens, immigrants and foreigners.
- Two provincial departments, one that had received formal training<sup>4</sup> in the PAJA (the Northern Cape Department of Social Development) and one that had not received such training (Limpopo Department of Health and Social Development). The focus was specifically directed towards the social services departments, as the social grant system plays a significant role in the basic survival/ existence of many citizens.
- One local authority that had received training in the PAJA (Cape Town). Initially, the research was intended to include one that had not (Pretoria/Tshwane), but interviews with this local authority could not be undertaken.
- A small selection of Gauteng-based Civil Society Organisations that assist citizens in getting access to services<sup>5</sup>. A modified questionnaire was used for these interviews.

## 2.3. Research implementation

The members of the M&E Task Team undertook the research themselves, visiting the institutions, undertaking a wide range of interviews and supervising the completion of awareness surveys.

<sup>4</sup>GTZ assisted DoJ&CD in developing extensive formal training modules and materials. These courses are provided by Justice College.

<sup>5</sup>The following organisations were interviewed: Legal Resources Centre, SA National Council for the Blind, Justice and Peace, Black Sash, COSATU, National Council for People with Disabilities, St Charles Lwanga Advice Office.




This hands-on approach was slightly unusual, since this type of research is often outsourced to independent service providers. However, it provided the research team with valuable insights and provided them with a first-hand sense of current public administration practices and the quality and nature of service delivery.

The project was planned in July and September 2004, and visits and interviews were undertaken in October and November 2004.

In each department researched, a contact person was assigned to assist with the process and arrange interviews. The assistance of these individuals was invaluable, and without their help the project would not have succeeded.

# Chapter Three

## Acknowledgements



The research team gratefully acknowledges the contributions of the following institutions:

- Cape Town City Council
- The Limpopo Department of Health and Social Development
- The Department of Home Affairs
- The Northern Cape Department of Social Development
- All the Civil Society Organisations which participated –  
Legal Resources Centre;  
South African National Council for the Blind;  
Justice and Peace;  
Black Sash;  
COSATU (Congress of South African Trade Unions);  
National Council for People with Disabilities; and  
St Charles Lwanga Advice Office.

# Chapter Four

## Awareness of the PAJA

This part of the research focussed on the degree to which public servants and staff in Civil Society Organisations were aware of the PAJA and its requirements.

#### 4.1. Impact of training: Comparison between institutions where training had been provided and where no training had been provided

**Table 1: Impact of Training**

	Training provided	Never heard of PAJA	Heard of PAJA but knew nothing about it	Heard of PAJA and knew something about it
<b>Northern Cape Department of Social Development</b>	Yes	50%	28%	22%
<b>Limpopo Department of Health and Social Development</b>	No	86%	9,6%	3,8%
<b>Local Authority - City of Cape Town</b>	Yes	60%	6%	34%

The dramatic impact of training on awareness levels is clearly seen in the above table.

#### 4.2. In a national department (Department of Home Affairs)

Of all those who responded to the awareness survey, 96% indicated that they had never heard of the PAJA, while just one senior administration officer responded that while he or she had learnt of the existence of the PAJA from a web site, he or she knew nothing about it.

The respondents were all senior administration clerks and officers, many with over 15 years of working experience in the Department.

**Conclusion:**

*This very low level of awareness in such an important department is of great concern.*

#### 4.3. In a provincial department where training had been provided (Northern Cape Department of Social Development)

Of the 50 who responded –

- 50% had never heard of the PAJA;
- 28% had heard of the PAJA but knew nothing about it; and
- 22% had heard of the PAJA and said they knew something about it.

22% of those who had heard of the PAJA but knew nothing about it had learnt about it from a labour relations workshop. One person had heard about it through a SAMDI and Rand Afrikaans University (RAU) course. The rest did not indicate the source of their limited knowledge.

Of the 22% who said they knew of the PAJA and knew something about it –

- 72% had heard about it through a course they were taking (mostly the SAMDI/RAU social security programme mentioned above); and

- 27% had heard about it from various workshops provided by labour relations components and a provincial archivist, among others.

Several respondents mentioned more than one source.

### **Conclusions:**

*Training should be seen as being of value and should be increased. It seems that formal courses and workshops are the main sources of information about the PAJA.*

*Even though some training was provided to staff in the Department, the level of awareness was still very low and there is clearly a need for more training. Their responses indicated that staff knew only that the PAJA requires decisions to be fair. There was no mention of the need to provide reasons for decisions. This shows a very limited understanding of the PAJA.*

It can, however, be seen that training created a greater level of awareness in this Department than where no formal training had taken place, as can be seen from the following case.

#### **4.4. In a provincial department where training has not been provided (Limpopo Department of Health and Social Development)**

Of the 52 who responded –

- 86% had never heard of the PAJA;
- 9,6% had heard of the PAJA but knew nothing about it; and
- 3,8% had heard of the PAJA and knew something about it.

The group who had never heard of the PAJA was a relatively representative sample, from senior managers through to junior staff, although manual and maintenance workers were not included.

Of the seven respondents that knew of the PAJA –

- 28% did not indicate the source of their knowledge;
- 28% had heard about it from friends and colleagues;
- 28% had heard about it from the SAMDI/RAU course; and
- 14,2% knew about it from his or her work.

### **Conclusions:**

*These findings suggest a very low level of awareness of the PAJA at all levels in the Department and a clear need for training and other awareness-raising strategies.*

#### **4.5. In a local authority where training had been provided (Cape Town)**

Of the 50 who responded –

- 60% had never heard of the PAJA;
- 6% had heard of it (mostly from e-mails and from the radio) but knew nothing about it; and
- 34% had heard of it and knew something about it (usually that the public has the right to be provided with reasons for decisions). Most of those who knew about the PAJA were more senior members of staff or professionals.

Of the 34% that had heard of the PAJA –

- 47% had heard about it from a web site or from an e-mail;
- 35% had heard about it from their manager or employer;
- 23% had heard about it from training, half of whom mentioned GTZ's involvement;
- 5,8% had heard about it from members of the public; and
- 5,8% had heard about it from newspapers and the *Government Gazette*.

Several respondents mentioned more than one source.

**Conclusions:**

*As in provincial departments, training increased awareness. However, more awareness is still needed.*

*Awareness among managers and professional staff was higher than for other levels of staff.*

*The importance of the training support provided by GTZ and the SAMDI/RAU course is clearly seen as most of the respondents cited these two institutions as their source of information.*

*It is important to note that formal training and workshops did not constitute the main source of information on the PAJA, but internal resources, the media and web sites. The opportunities these sources of information provide to extend people's understanding of the PAJA should be utilised more effectively.*

#### 4.6. In Civil Society Organisations

Of the 19 who responded –

- 31,5% had not heard of the PAJA (most of these respondents were clerical and administrative workers);
- 26% (many of whom were paralegals) had heard of the PAJA but knew nothing about it; and
- 42% had heard of the PAJA and knew something about. Respondents who worked with public interest law had a more developed understanding than the others, some of whom had only a very general understanding of the PAJA.

**Conclusions:**

*Both those who had only heard of the PAJA and those who knew something about it, had learnt about it through their work. A formal LLB course and a newspaper were cited as sources of information.*

*The findings suggest a very basic and limited understanding of the PAJA, as almost a third of the respondents have not heard about it. Civil Society Organisations should be targeted for training and awareness-raising interventions.*



# Chapter Five

## Review of Administrative Practices

This part of the rapid assessment evaluated the extent to which administrative decisions met the fairness standards stipulated in the PAJA. It focussed on three key aspects:

- The knowledge administrators had of the obligations the PAJA places on them;
- The attitudes of administrators and their supervisors towards the PAJA; and
- The procedures that were applied on a daily basis and whether these met the requirements of the PAJA.

### 5.1. In a national department (Department of Home Affairs)

Fifteen interviews were undertaken: four with senior officials at the national office, and 11 in district offices - six with managers and five with administrators.

Responses to the questionnaire indicated only a very vague and general understanding of the PAJA, with both senior managers and administrators showing a very worrying lack of knowledge of its specific requirements.

Most people interviewed had not heard about the PAJA. Those that had heard about it had obtained their information from informal sources such as colleagues or the media. Limited mention was made of information provided by the DPSA and other formal sources such as training provided by Justice College.

There was widespread support for training on the PAJA and its requirements, with worrying exceptions among certain senior officials who expressed the view that training was not needed.

Almost all those who supported increased provision of training prioritised customer care and communication skills. Conflict management training and training in people skills were also frequently mentioned.

It was noted that training should be practical, case-based and delivered in user-friendly, simple and plain language. It should deal with real-life situations and be relevant to people's everyday work. It was also suggested that a concise reference source be compiled for everyday use. It is clear that the training should focus on understanding the implications of the PAJA in the workplace, and should not merely supply a basic understanding of the principles underlying the PAJA.

It was noted that the shortage of funds for staff training was a major concern in the Department.

All the respondents believed the PAJA was necessary and in keeping with the Constitution of the Republic of South Africa, 1996.

Some senior respondents said that the PAJA was effective, but needed to be implemented more systematically. However, most of the administrators stated very simply that since they had not heard about the PAJA and did not know how to implement it, it should be seen as ineffective.

Most respondents stated that their superiors supported the principles of the PAJA, but did not support it in a concrete way, since they had not heard it mentioned in operational contexts.

Procedures can be divided into two types:

- Administrative or routine procedures that seem to be fairly well-defined and followed with few deviations; and
- Discretionary procedures that leave room for actions to be based on the particulars of each case.

Most respondents said that recent legislative changes were bringing processes and procedures in line with the requirements of the PAJA (e.g. in respect of immigration), but those that were governed by long-standing legislation (e.g. in respect of the registration of births and deaths) were often not PAJA compliant and could be seen to be less fair.

Many respondents drew attention to the fact that staff were overworked and that as a result they often did not approach citizens with the right attitude, which had implications for the levels of fairness with which citizens were treated.

Many of the respondents also drew a direct link between the PAJA and the requirements of Batho Pele<sup>6</sup>, clearly suggesting that initiatives to encourage compliance with Batho Pele would also result in compliance with the PAJA. This link is very important, as it shifts the need to comply with the PAJA from a mere legislative requirement to client orientation and service delivery. PAJA compliance could therefore become part of service delivery improvement programmes.

### **Conclusions:**

*There is a very vague understanding of the PAJA and a worrying lack of knowledge of its specific requirements among both senior managers and administrators.*

*Informal sources such as colleagues or the media were the main sources of information on the PAJA.*

*Although the principles of the PAJA were supported, this had not led to them becoming internalised in the strategic or operational plans of the Department of Home Affairs.*

## **5.2. In a provincial department where training has been provided (Northern Cape Department of Social Development)**

Six interviews were undertaken: one with a deputy director, two with assistant directors, two with senior administration officers, and one with an administration officer.

As in the previous case, the responses indicated a vague understanding of the PAJA and its requirements. Respondents indicated that the PAJA was intended to ensure that administrative decisions were fair and protect the Constitutional rights of citizens. However, none of them stated specifically that reasons for decisions should be given or that opportunities to contest decisions should be provided.

Several respondents saw the PAJA as providing a justification for administrative decisions and empowering decision makers, a complete misconception of the PAJA's intentions.

Respondents had heard about the PAJA through a SAMDI training course on social security, from a workshop provided by the DoJ&CD, as a result of litigation against the Department; from the Internet; having read about it in the Constitution or from their supervisors.

All the respondents said that while they had basic skills, these needed to be enhanced. The skills respondents felt were needed include communication, listening, negotiation, and knowledge of legislation, particularly the Constitution. They wanted training to be practical and implementation-oriented in order to assist them with real situations.

All the respondents unequivocally supported the PAJA, saying that citizens deserve to be protected and should receive the best possible services from government.

<sup>6</sup>The White Paper on Transforming Public Service Delivery/Batho Pele White Paper of 1997 provided a policy framework and implementation strategy for the provision of more efficient, equitable and effective Public Service.

All the respondents saw the PAJA as effective, arguing, for example, that it had helped citizens win litigation against the Department and that better implementation by the Department would help prevent such lawsuits in the future. One of the respondents said that increased awareness of the PAJA was needed.

All the respondents were of the view that their managers supported the PAJA. They all stated that it was standard practice to provide reasons for decisions, with one stating that her manager “takes exceptional trouble in tracing people to inform them of decisions.”

Social grants are provided to citizens in terms of the Social Assistance Act, 2004 (Act No.13 of 2004). The Social Assistance Act is very prescriptive in terms of qualifying criteria and does not leave much room for discretion. Guidelines on procedure are contained in a manual and are available on the web site of the Department of Social Development. Procedures described by respondents therefore seem largely regulated and standardised, with most respondents substantiating each other’s descriptions (“the procedure is like a Bible”, “very clear”, “no deviations exist”). Fraud prevention procedures appear to be integrated into business processes and deviations seem rare.

However, one official argued that “there is no manual to follow; issues are dealt with separately, each on their own merit and this allows deviations from case to case.”

Three respondents stated that changes to procedures were not required. However, of these, one said that more could be done to explain the reasons for decisions to citizens, who could also be given more opportunities to state their cases. The means test, in particular, should be better explained.

Another respondent said that changes to the Social Assistance Act were needed, as it was not entirely PAJA compliant. However, specific aspects were not mentioned.

The other three respondents argued that changes to procedures were needed, since they were not clear and should be better specified.

They said that letters sent to clients did not explain the appeal procedure, which is problematic, and that communication, which sometimes took place through union representatives, should rather take place on an individual basis. They also noted that information from Head Office was often poorly communicated to administrators.

In general, there seemed to be support for the PAJA and an appreciation of its intentions.


### **Conclusions:**

*The understanding of the PAJA in the Department was vague, and the basic skills required to implement it should be enhanced.*

*It would appear that efforts by the province to promote compliance with the PAJA were having an effect, although this appeared to be uneven.*

### **5.3. In a provincial department where training had not been provided (Limpopo Department of Health and Social Development)**

Five interviews were undertaken: one with a district manager, two with sub-district managers, one with a service point supervisor and one with a senior administration officer.



Respondents' knowledge of the PAJA was extremely vague, and most of it appeared to be gleaned from the standard introduction to the PAJA read to them as part of the interview. One of the respondents knew that the PAJA required the provision of reasons for decisions and the provision of opportunities for appeal; the others simply stated that the PAJA protected citizens' rights.

Sources of information where information about PAJA were obtained included an internal Labour Relations Act course, a SAMDI customer care workshop, a RAU training course and the media.

All the respondents said they needed to know more about the PAJA and its requirements. They also highlighted the need for training in verbal and written communication, as well as in customer care and relations. One of the respondents pointed to the need for training in Batho Pele, arguing that this would help ensure that the requirements of the PAJA were met.

It was argued that PAJA-related training should be integrated into a broad human rights training programme in which the Bill of Rights and the Constitution were communicated properly to officials.

Another respondent also drew attention to the need to monitor the results and outcomes of training in order to ensure that what is promoted in the courses is put into practice.

Despite their limited awareness of the PAJA, all the respondents supported it, with comments such as "it is helpful for people whose rights have been trampled upon. They must know how things are administratively run and should be able to lodge complaints"; "it is very much necessary because of human nature. We tend to treat people differently. We need to treat customers fairly. Sometimes we practice nepotism. This is tarnishing the image of the public service."

The respondents argued that while the PAJA did make a difference, it needed to be better implemented in order to be effective. They drew attention to the need to monitor its implementation and increase awareness. The example of Black Sash using the PAJA to contest the suspension of pensions was cited.

All the respondents were of the view that their managers supported the PAJA, in spirit at least, since they encouraged a better attitude to customers and ensured that their dignity was respected. They all made the point that the PAJA was consistent with the overall efforts of government to change old practices and to become more citizen-centred, even if this was done without specific knowledge of the PAJA.

Four of the five respondents described the procedures for receiving and processing applications for social security payments. These correlated with each other and seemed largely standardised and consistent, although there were different opinions on how much discretion or deviation from the procedure was possible.

It seemed to be generally accepted that shortcuts in the process were possible when an application had taken an excessive time to be processed, although exactly what was considered an unreasonable period was not made clear.

A major concern is the time applications take to be processed and the tortuous route they follow to be approved. There seemed to be no awareness of the time limits set by the PAJA and little effort to ensure that applications were considered within a reasonable period.

The administrators emphasised that in most instances they did not make a decision. They viewed their role as procedural and as managing the movement of applications up the line and ensuring procedural compliance. In their opinion, the SocPen computer system made the decision and they simply managed and communicated it.

The implications of this perspective need to be considered, particularly since there is, in practice, a reasonable basis for this incorrect understanding. This perception may be attributable to the fact that the system generates standard letters. This has an implication for training and capacity building in the Department.

The respondents did not identify any procedural or documentary changes needed to become PAJA compliant and they were primarily concerned with the imminent changes that would result from the creation of the new social security agency.

They drew attention to the need to decentralise the capture and approval of applications to service points. They stated that they had the capacity to manage these functions at service points.

### **Conclusions:**

*Although the principles of the PAJA were supported, the level of awareness in this Department was extremely low and limited to the standard introduction of the PAJA during the interview. There seemed to be little awareness of the time limits set by the PAJA and little effort to ensure that applications were considered within a reasonable time frame.*

*Legal action taken against the Department had led to increased levels of awareness of the PAJA.*

*Although procedures for receiving and processing applications for social security payments seemed to be implemented consistently and in a standardised way, administrators viewed their role in the process as procedural, leading to a misconception that the SocPen system approved applications.*

## **5.4. In a local authority (Cape Town)**

Interviews were undertaken with six managers.

**Awareness and training.** Two of them had a detailed, current knowledge of the PAJA and were well placed to discuss its requirements. While their efforts to ensure compliance, were not systematic or structured, it seemed conscious and sustained. It should be noted this Local Council had provided training to its staff members on the PAJA.

The other four respondents had a general, non-specific awareness of the PAJA, with limited knowledge of specific provisions.

In discussion, they all argued convincingly that the requirements of the PAJA were addressed in the business style adopted by the Council and that, while they might not intentionally comply with the PAJA, in practice, they did so because it made good sense and was consistent with sound management.

The two respondents with a more developed understanding of the PAJA had participated in a training workshop provided by the Council's legal department, focussing on both the PAJA and the Promotion of Access to Information Act (PAIA). Other sources of information about PAJA were the Internet, the Council's web site and a briefing by a staff member who had been to a workshop. The others pointed out that the Council had not briefed them on the PAJA at all.

The respondents emphasised the need to provide training that would clarify the contents of the PAJA and what was needed to comply with it. One of the respondents said that the Council should seek to instil an overarching culture of fairness from the top down.

Two statements were made with regard to training, both of which are probably correct:

- Staff should be proficient in their field of expertise and should be conversant with all the relevant legislation and the implications of the PAJA in their particular area. In this regard, the PAJA training should be mainstreamed and integrated into all core skills training.

- There was a need for more general broad-based training that supported staff in writing and communicating decisions in simple, plain language so that the requirements of the Constitution and Batho Pele could be met. Guidelines on how to interact and communicate better with the public were needed.

It was argued, as it is elsewhere in this report, that training should be interactive and relevant to individual's everyday tasks.

**Support for the PAJA.** All the people interviewed strongly supported the PAJA. They said that it was valuable in that it "created a standard platform for fairness nationally" and that "if it protects people from unlawful, egotistical and domineering law enforcers, then the Act is necessary." They drew upon principles such as openness, transparency and accountability to explain their support for the PAJA.

With regard to effectiveness, the respondents said that "just knowing it exists makes the holders of information and decision makers think twice" and that it will become more effective if it is better applied and more widely promoted. "If we are thorough in each and every interaction with the public we will avoid future problems."

The existence of these viewpoints is critical and sends clear messages relating to the transformation of the Public Service. A compliance culture based on these principles is required to ensure that the implementation of the PAJA is about more than mere legalistic compliance.

**Implementation of the PAJA.** One respondent drew attention to the need for the PAJA to be stricter about the time allowed for administrative decision-making.

There were reservations expressed regarding the enforceability of the PAJA and the absence of sanctions to compel compliance.

With regard to town planning, it was noted that the field is a particularly complex one - "like a maze" - in which the PAJA is not very helpful.


The respondents generally expressed the view that the citizens of Cape Town were very aware of their rights and that its political leadership was keen to operate in a way that was visibly and demonstrably fair. However, they noted that this was not structured by awareness of the PAJA, but because of a commitment to the underlying principles and practices of fairness.

It was strongly argued that fairness in service delivery and in interactions with citizens was contradicted and undermined by politically motivated internal appointments and promotions that were often patently unfair. Other respondents quizzed on this claim did not agree.

The lack of resolution in appointments and the fact that most staff members have been acting in their positions for several years were often mentioned in the interviews, and suggest that resolving this matter would make staff members feel they were being treated more fairly.

The procedures for making the following decisions were reviewed and discussed: building plan applications, the holding of public gatherings, zoning applications, business licences and water disconnections. In each case, the procedure was clearly stated, mostly in written policy documents (provided to the researchers), and in some instances it was supported by electronic applications.

In instances where deviations were possible, they needed to be authorised by the managers responsible and, in such cases, the scope for discretionary decision-making seemed well regulated and controlled.



One of the drivers of the high standards seems to be the fact that the Council has often been taken to court over its decisions and this has necessitated clear guidelines and procedural fairness.

Two of the respondents drew attention to changes already made to ensure compliance with the PAJA, including documentation of workflows and procedures, centralised receipt of appeals, the appointment of an ombudsman, the creation of a standing committee to deal with certain appeals and an increase in the time for the lodging of certain objections.

A need to ensure greater public participation and consultation in the business process was identified.

The majority of managers were of the view that their existing administrative processes and procedures complied with the PAJA.

Most of them also said they would welcome some kind of accreditation that formally certified their compliance.

**Conclusions:**

*Focussed training definitely enhanced the ability of staff and a developed understanding of the PAJA. Informal sources of information also played a key role in enhancing awareness.*

*The PAJA was strongly supported and a definite desire was expressed for both specific and more general training on the PAJA.*

*The requirements of the PAJA were integrated into the business process of the Cape Town local authority. Internal changes were effected to ensure compliance with the PAJA, specifically dealing with appeals and objections. A high standard of procedural fairness was evident from written policies, detailed procedures and tight control of discretionary powers. This seemed to be an area of good practice.*



# Chapter Six

Institutional Efforts to  
Ensure Compliance with  
the PAJA

## 6.1. In a national department (Department of Home Affairs)

- There was no implementation plan, no responsibilities had been allocated and the designated trainer had left.
- Provision of prior notice was often carried out in terms of specific legislation, and officials executing line functions were made aware of those requirements, but PAJA requirements were not known about or taken into consideration.
- In terms of the making of representations, line functions kept their statistics at district offices and these could not be accessed.
- Decisions were usually communicated in writing and further details could be requested, although it was not clear what kind of response this would generate.

### **Conclusion:**

*There were almost no efforts to ensure compliance by the institution.*

## 6.2. In a provincial department where training had been provided (Northern Cape Department of Social Development)

A Compliance Officer within the Premier's office coordinated the focussed discussion. The focussed group discussion included representatives of the Premier's offices, the Office of the Public Service Commission (OPSC) and some of the Compliance Officers within the respective departments. The meeting was attended by half of the compliance officers, but the official representing the Department of Social Development could not attend.

The findings in this report reflects the reporting period from 2002 to date, as training on this piece of legislation commenced in the province in 2002.

The Northern Cape province followed a specific implementation process and it can briefly be described as follows:

### **The origin of Compliance Officers**

Initially, Compliance Officers within this province were appointed by the Office of Premier under the supervision of the Deputy Director General. Although deployed within this office, each Compliance Officer was responsible for a particular department. The Compliance Officers were appointed on the levels of Deputy or Assistant Director depending on the size of the department. Some have the responsibility for implementing the PAJA in two departments.

Later it was agreed that these Compliance Officers would be deployed within the departments they serve to ensure better interaction between the department and the Compliance Officers. The Compliance Officers are currently reporting to the different Heads of Departments.

However, these Compliance Officers are still operating as a unit with common interests within the Premier's office, and are serving as a committee for the province.

### **The role of Compliance Officers**

The Compliance Officers monitor compliance relating to all spheres of government reforms within departments. Compliance to the PAJA is therefore only one of the legislative reforms being monitored by Compliance Officers.

## Findings

Six out of the 12 provincial departments were represented at the focus group discussion.

- In general, there is no PAJA implementation plan for all the departments.
- Compliance Officers conducted workshops throughout the province as a means to raise awareness about the PAJA. Attendance of workshops or training interventions had a positive impact on awareness levels, but attendance by senior managers was problematic. Certain misconceptions still exist in the Health profession that the act only applies to administrators.
- The Compliance Officers raised concerns that there is no clarity on the role of compliance officers. In practice, departments do not deal with “requests for reasons” when requested to do so. Instead, they hand these requests over to the Compliance Officers for a response. In most cases, Compliance Officers find no audit trail of such requests because departments do not have fully updated records.
- Prior notice is given in most instances of disciplinary cases and human resource management issues. This is mostly due to the provisions of the Labour Relations Act and not necessarily indicative of the implementation of the PAJA. This is also applicable to aspects around the communication of decisions and the right to make representations.
- Procedures for dealing with reasons for request are well established as part of the operational procedures of some of the Departments. The importance of record management was highlighted as well as the reasons being provided by the decision maker.
- In most instances, the right of the individual to make presentations is upheld and implemented and is extended to making the public aware of this right.
- Good progress had been made with the implementation the PAJA, but training programmes, making the requirements more explicit and clear, should supplement these efforts and should eliminate existing misconceptions.


### 6.3. In a provincial department where training had not been provided (Limpopo Department of Health and Social Development)

- No clear implementation plan had been developed. There was a strategic plan for administration, but it did not refer to the PAJA.
- The Human Resource Manager and Legal Services Senior Manager were responsible for compliance with PAJA.
- Systematic training was not being provided.
- The right to appeal social security decisions is enshrined in the legislation (Social Assistance Act, 2004 (Act No.13 of 2004)) and authentic efforts seemed to be made to explain decisions to citizens. This seems to be an area of good practice.
- Prior notice was provided.
- The public were not informed of their right to appeal decisions, as staff preferred not to “ask for trouble.”
- Adequate efforts were made to implement the PAJA, but training programmes, making the requirements more explicit and clear, should supplement these implementation efforts.

### 6.4. In a local authority where training had been provided (Cape Town)

- A manual of procedures for appeals was being compiled.
- A Training workshop is being developed and PAJA will be addressed alongside the PAIA. Politicians will also be trained in the both these Acts.
- The Open Democracy Advice Centre (ODAC<sup>7</sup>) was used to provide training previously.
- It is possible that PAJA implementation may become the responsibility of a statutory compliance unit, but at the time, PAJA responsibility was not assigned to any official.
- Provision of prior notice varied from unit to unit.

<sup>7</sup>ODAC is section 21 organisation, whose mission is to promote transparent democracy, foster a culture of corporate and government accountability, and assist people in South Africa to realise their human rights. It was set up by a consortium that included IDASA.

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- The responsibility for managing appeals had been designated to an official. This is an area of good practice.
  - Appeals hearings were held by the City Manager every second Friday. Site visits and investigations were held. Only then were citizens given written decisions. This is an area of good practice.
  - There were clear procedures for the implementation of section 62 of the Local Government: Municipal Systems Act, Act 32 of 2000. This section provides for an internal appeals mechanism for those whose rights have been negatively affected by a decision taken in terms of delegated or sub-delegated power by a political structure, political office bearer, councillor or staff member of the municipality.
  - Implementation of the PAJA seemed advanced and compared well with that in other institutions researched.

# Chapter Seven

## Civil Society Responses

## 7.1. Awareness

Of the 12 interviews undertaken, 11 respondents had heard of the PAJA, but only two indicated that it had proved to be of practical use in their work.

Most of the organisations indicated that it was a potentially valuable tool, which strengthened the hand of citizens, but that they had not made use of it.

One respondent indicated that they had intended to make use of it, but that it had become unnecessary since they had forged good working relations with the MEC responsible for social security.

One of the respondents labelled the PAJA as a “difficult piece of legislation that causes delays in the process because it allows a 90 day period for the processing of responses”, and said that it was easier to deal directly with departments without making use of the PAJA.

Most respondents (10) considered it the role of government to promote the PAJA and increase awareness of it, while all respondents felt that Civil Society Organisations should be making greater use of the PAJA.

Several respondents thought that Chapter Nine institutions<sup>8</sup> should be playing a role in making sure the PAJA was better known and used.

A respondent from an organisation for people with disabilities said that the Office on the Status of Disabled People should become more involved in raising awareness of the PAJA, while another said that the media should be doing more to increase awareness.

Churches and paralegal organisations were also mentioned as having a role to play in increasing awareness.

## 7.2. Practices

None of the respondents had been involved in providing training to government on the PAJA, although the Commission for Justice and Peace<sup>9</sup> had delivered training on the subject to teachers and school governing bodies.

Most respondents cited resource limitations as reasons for their non-involvement in training provision.


Two respondents indicated a desire to be involved in monitoring the implementation of the PAJA.

Most respondents indicated that government officials needed training on the content of the PAJA and to be made aware of its existence and requirements. While senior officials were aware of the PAJA, those at the lower levels, who interacted directly with the public, were most in need of awareness training.

Many of the respondents emphasised that it was not skills training that was needed, but an attitude shift and a change in culture, so that citizens would be treated with fairness and dignity. They also argued that Batho Pele compliance should be more vigorously promoted.

<sup>8</sup>Chapter Nine institutions' are state institutions supporting democracy, and include the Public Protector, Human Rights Commission, Auditor-General, Commission for Gender Equality, Electoral Commission, and Commission of the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. These institutions are independent, subject only to the Constitution and the law, and they report to the National Assembly at least once a year.

<sup>9</sup>The Catholic Commission for Justice and Peace was formed by the National Catholic Bishop's Conference in 1968. The Commission is a Ministry within the Catholic Church and has branches throughout South Africa. It is a lobbying and advocacy organisation, which focuses on human rights, democracy, education, economic justice and gender equality. See [www.catholic-johannesburg.org.za](http://www.catholic-johannesburg.org.za).



Several respondents argued that improved communication skills were needed, as well as improvements in the ability of officials to use English that was accessible to all citizens.

Respondents generally believed that the PAJA training should be a component of all Public Service training programmes and integrated into as many other programmes as possible. It should be taught in schools as part of life skills courses, and should also be presented as a specific training course on its own.

### 7.3. Compliance

Most respondents thought that the PAJA was used so little because so few people were aware of it. They also perceived a reluctance to challenge government for fear of victimisation and reprisals.

Several respondents expressed the opinion that government was “afraid of the Act,” but that it should rather see the PAJA as a useful tool to ensure that it operated properly.

Respondents called for a broad-based educational programme that included the popular media, schools and a range of innovative strategies.

They also specifically argued for the time allowed to provide responses to be shortened.

# Chapter Eight

Overview of the  
Research Findings and  
Implications



### 8.1. The degree to which public servants and staff in Civil Society Organisations are aware of the Act

The interviews revealed a worrying state of affairs in terms of how the PAJA is implemented, with a vague understanding and awareness of the PAJA prevailing in most institutions researched. This was the case at all levels of management.

It is clear from the responses that activities to increase awareness of the PAJA are definitely needed.

Some awareness-raising activities provide only a superficial understanding of the PAJA. While they communicate the need for administrative decisions to be fair they do not explain what this means in practice and that reasons should be provided for decisions and administrative actions.

Awareness-raising activities often do not create awareness of the need to provide citizens with reasons for decisions.

### 8.2. The extent to which administrative practices meet the standards of fairness stipulated in the PAJA

Implementation of the PAJA is not being prioritised or adequately addressed by government departments. Administrative actions are not being undertaken as prescribed by the PAJA.

It seems that while there was a general and discernable desire and intention to make administrative actions fair and just, the legislation had not made a major impact on administrative practices. The notable exception is the City of Cape Town, where procedural changes were made to ensure compliance with the PAJA.

The Public Service had a definite need for manuals and guidelines that prescribe procedures, identify where decisions are made and help minimise deviations from specific processes.

There is a very clear need for practical, case-based training interventions that assist administrators as well as for more visible support for the legislation from supervisors and senior managers. This is in addition to a broad-based training programme.

### 8.3. How far Public Service organisations have gone in systematically implementing the Act

This rapid assessment indicates that government departments have not properly implement this important piece of legislation and compliance with the requirements are therefore lacking. Implementation plans are lacking, adequate training is not provided to staff, outside training institutions are responsible for most of the training interventions and awareness levels are very low.

Departments should develop an implementation strategy to address the elements that are hampering the effective implementation of the PAJA.

# Chapter Nine

Possible Strategies to  
Increase PAJA Compliance

## 9.1. Awareness and communication

- 9.1.1. More needs to be done to promote the PAJA and encourage the implementation of its provisions. Targeted and strategic efforts are needed to increase awareness of the PAJA to address the current limited, often vague understanding of it.
- 9.1.2. Awareness-raising activities should also address the culture in the Public Service, specifically as regards informing the public of their right to appeal decisions, instead of keeping quiet in order not to “invite trouble.”
- 9.1.3. A strategy for integrating the PAJA awareness-raising activities into other Public Service programmes (e.g. induction courses, Batho Pele initiatives, and service delivery improvement programmes) should be sought, especially in partnership with the DPSA and SAMDI.
- 9.1.4. Increased use of electronic media and direct e-mails to staff with access to computers should be made. Departmental web sites should clearly inform citizens of their right to appeal and to whom appeals should be addressed in relation to the specific services provided by the department.
- 9.1.5. A dedicated link on the government web site ([www.gov.za](http://www.gov.za)) should be created to inform citizens about the PAJA, the obligations it places on government and its implications for themselves. A summary of the main provision of PAJA should be posted on the web site. This could be linked to other DoJ&CD or DPSA web sites, but it should be clearly and immediately visible on the [www.gov.za](http://www.gov.za) web site.
- 9.1.6. A short handbook, similar to the A5-sized books on the Constitution and the Public Service Code of Conduct, should be compiled. It should be written in language that is accessible and easily understood by the end users.
- 9.1.7. A summary PAJA handout, highlighting the main provisions of PAJA, should be developed.

## 9.2. Training

- 9.2.1. Awareness-raising activities should be supplemented by the provision of training and by developing practical guidelines and procedures that consistently ensure fairness in administrative decisions. Innovative strategies should be considered to address the training needs expressed by respondents.
- 9.2.2. Internal departmental training components should be targeted to undergo train-the-trainer courses, to enhance awareness of PAJA and ensure greater compliance with PAJA in their respective departments.
- 9.2.3. The summary PAJA handout, which is developed to enhance awareness, can be distributed as part of related training programmes. The material should give a summary and explanation of the main provisions and requirements of the PAJA.
- 9.2.4. Material on the PAJA should be integrated into all internally provided training programmes by developing a brief, accessible information/training module.
- 9.2.5. A standard short course, possibly of just a single day's duration, which can be delivered by experienced and competent trainers, should be developed. The course could also be tailored to address the training needs of Civil Society Organisations.

9.2.6. Training that is topical, related to specific jobs, and based on common everyday situations requiring the application of the PAJA, should be developed.

### 9.3. Integration with other government programmes

PAJA promotion should be included in current and future Batho Pele promotion initiatives.

### 9.4. Integration with business processes

9.4.1. The business processes in departments need to be systematically mapped, clearly indicating where and by whom decisions are taken. Manuals and guidelines that prescribe procedures, identify where decisions are made and assist in minimising deviations from specific processes should be developed to enhance PAJA compliance.

9.4.2. Consideration should be given to amending the provisions of the PAJA allowing 90 days for the processing of requests, since this is regarded as excessive. Exceptions could still be provided for should a shorter period be adopted.

9.4.3. Support should be provided to all government departments to become PAJA compliant. Although respondents suggested the development of a certification process through which institutions or programmes can be certified as being PAJA compliant, careful consideration should be given to the consequences of such a process, resulting in a multitude of certificates being issued.

# Chapter Ten

## Monitoring and Evaluation

## 10.1. A monitoring and evaluation strategy

The DoJ&CD needs to systematise and formalise its work regarding the PAJA into a clear programme, a process that has already started with the development of comprehensive internal and external action plans (November 2004).

Once they have been formally adopted, and implementation of the action plans has started, reporting on the achievement of the indicators and verifiers should be provided regularly.

A standard reporting format is attached as Annexure B to this report.

## 10.2. Additional research

The research undertaken for this study should also be done in the DoJ&CD, in order to assess the current state of implementation in the legislation's "lead" department.

The findings of that research, along with those contained in this report, should be treated as baseline information.

Research to update this information should be done within two years, so that progress in and outside the DoJ&CD can be reviewed.

# Annexure A

Promotion of Administrative Justice Act:  
Monitoring and Evaluation Task Team

Rapid Assessment Project:  
Researcher's pack



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## 1. Project overview

<b>Background and introduction</b>	<p>This research project is part of the work of the joint PSC / DoJ&amp;CD M&amp;E Task Team. The Task Team aims to contribute to building the capacity of the public service to implement the Promotion of Administrative Justice Act (PAJA) by coordinating monitoring and evaluation processes that guide and support managers.</p> <p>In order to develop a longer-term strategy the Task Team requires insight into the current situation with regards to implementation and the effectiveness of previous efforts to promote implementation.</p>	
<b>Aims and objectives</b>	<p>Overall, this research project is to provide information useful for the development of the Task Team Strategic Plan. It will:</p> <ul style="list-style-type: none"> <li>Assess the current status in terms of compliance with the provisions of the PAJA in national, provincial and local government and in a selection of Civil Society Organisations.</li> <li>Identify the reasons for non-compliance in agencies where support and promotional activities have been undertaken as well as in those where such activities have not been implemented.</li> </ul>	
<b>Institutions to be researched</b>	<b>Institution</b>	<b>Research to focus on these administrative decisions</b>
	<b>National Department:</b> <ul style="list-style-type: none"> <li>Department of Home Affairs – National Office</li> <li>Department of Home Affairs – two district offices still to be identified<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>Change of adult's surname</li> <li>Registration of birth</li> <li>Registration of death</li> <li>Granting of political asylum</li> </ul>
	<b>Provincial Departments:</b> <ul style="list-style-type: none"> <li>Northern Cape Department of Social Development<sup>2</sup></li> <li>Limpopo Department of Social Development<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>Approval of applications for child support / disability / any grant</li> <li>Approval / cancellation of old age pension</li> <li>Registration or de-registration of Non-Profit Organisations.</li> </ul>
	<b>Local Authorities:</b> <ul style="list-style-type: none"> <li>Cape Town<sup>4</sup></li> <li>Pretoria<sup>5</sup></li> </ul>	<ul style="list-style-type: none"> <li>Granting of liquor licenses</li> <li>Discontinuation of services</li> <li>Exemptions from building regulations</li> <li>Planning and zoning related decisions</li> </ul>
	<b>Civil Society Organisations:</b> <ul style="list-style-type: none"> <li>Black Sash</li> <li>Legal Resources Centres</li> <li>A selection of Legal Advice Offices</li> <li>Two trade unions (COSATU / NEHAWU and PSA)</li> </ul>	
<b>Researchers</b>	<p><b>National Department:</b> Johann Weusmann (GTZ)</p> <p><b>Provincial Departments:</b> Marie van Blerk (N. Cape) (OPSC) Ooshara Sewpaul and Dugan Fraser (Limpopo) (DoJ&amp;CD, OPSC)</p> <p><b>Local Authorities:</b> Dugan Fraser (OPSC)</p> <p><b>Civil Society Organisations:</b> Claudia Lange (GTZ)</p>	

<sup>1</sup>Chosen because it provides services to citizens directly.

<sup>2</sup>Chosen because of the importance of the social security and the previous relationship with the province.

<sup>3</sup>Chosen to contrast against that of the Northern Cape: no support work has been done there.

<sup>4</sup>Chosen because a private consultant has provided training.

<sup>5</sup>Chosen because no training has been provided thus far.

<b>Implementation details</b>	Prepare questionnaires and report formats	17 August 2004
	Select participants	17 August 2004
	Sign and send out letters	23 August
	Facilitate access	30 August 2004
	Undertake interviews	End September 2004
	Analyse interviews and draft report	22 October 2004
	Workshop report and develop strategic implications	29 October 2004
	Use research outcomes to develop Task Team Strategic Plan	29 October 2004

## 2. Assessment framework

<b>Result area</b>	<b>Performance indicator</b>	<b>Verifier</b>	<b>Notes</b>
<b>Good governance</b>	Still to be identified: To be researched and options presented	To be determined	Responsibility to be allocated
<b>Awareness</b>	Proportion of departmental staff that are aware of the Act and its requirements	PAJA Awareness Survey	Appendix Three: Awareness survey
<b>Training</b>	Extent to which staff have the attitudes, knowledge and skills needed for application of the PAJA	Training Impact or Needs Assessment	Appendix Two: Training survey
<b>Compliance to PAJA requirements</b>	Efforts by the department are moving it towards compliance with the provisions of the PAJA.	Public Service M&E System Report Four: Register of requests and reviews	Appendix One: Selection from the PSC Public Service M&E System (Report format four)
<b>Further reforms:</b>	Mechanisms are in place to prevent conflicts with the PAJA	Ref. Legislative audit and Three yearly repeat	Not addressed in this project
<b>Reporting:</b>	Regular and reliable monitoring reports on progress in implementation of the Act are produced	Accuracy and frequency of reports	To be addressed once the rapid assessment has been completed

### Note:

Research into training and awareness must be undertaken before the research into compliance.

## Appendix One: Awareness survey

### PAJA Awareness Questionnaire

- **Please help us by completing this form! It will only take a couple of minutes!**
- We are finding out how aware people are of the "Promotion of Administrative Justice Act" (PAJA).
- This form should be completed by anyone working in the public service or in a local authority.

**Who is your employer?**

**How long have you been working there?**

**What is your job and your level?**

**QUESTION ONE: (Tick ONE of the following boxes)**

Have you heard of the "Promotion of Administrative Justice Act" before?

No, I have never heard of the Act



**NOW:** Please hand in this form.

OR

Yes, I have heard of the Act, but I don't know anything about it



**NOW:** Please answer Question Two below.

OR

Yes, I have heard of the Act. This is what I know about it:



**NOW:** Please answer Question Two below.

**QUESTION TWO:**

Where or from whom did you hear about the Act? (List more than one if necessary)

**NOW:** Please hand in this form.

**Thank you for your help!**

## Appendix Two: PAJA Practice Review

Instructions to researcher:

1. This questionnaire is to be completed by researchers in interviews with officials responsible for making the administrative decisions listed on page 36 of this document.
2. Each researcher is to complete at least six questionnaires from each of the institutions they are researching.
3. Ask the respondent the following questions, phrasing them exactly as stated below.
4. Assure respondents of the confidentiality of their responses.
5. Write down the respondents' answers in full as far as possible.
6. If necessary use additional sheets, numbering them clearly.

**Institution:**

**Respondent's title and name:**

**Respondent's position / job title:**

**Cell phone and land line numbers, email address.**

**Respondent's qualifications and the conferring institution**

Introduce the Promotion of Administrative Justice Act (PAJA) to the respondent as follows:

*"An administrative decision is any decision taken by an administrator. The PAJA seeks to protect the public from unlawful, unreasonable and procedurally unfair administrative decisions. It is a law that gives people affected by administrative decisions the right to be informed that a decision is to be taken, to be given reasons for decisions and to have decisions reviewed in court."*

**Knowledge:**

**I. What obligations does the law impose on administrators like you?**

<sup>1</sup>This should have been pre-selected by the researcher.

2. Where have you heard about the PAJA? Please mention all sources of information on the Act.

3. What skills do you think government officials need to implement the Act properly? Are these skills present?

4. What training do you think should be provided to you and your colleagues and how should it be delivered?

**Attitudes:**

5. Do you think the PAJA is necessary? Why?

6. Do you see the law as effective or not? Will it make administrators act more fairly? Explain your answer.

7. Does your Manager support the Act practically? Give examples or explain.

**Practices**

8. Please describe the procedure used to reach this decision:

Decision<sup>1</sup>:  
Procedure:

9. Is the procedure clear and is it always followed or are there sometimes deviations?

10. Do changes have to be made to your work procedures and documentation to comply with the Act? If yes, what changes, and if no, why not?

**Thank you!**

## Appendix Three: PAJA Compliance review:

Instructions to researcher:

- This report is to be completed by interviewing the manager responsible for this or similar areas.
- The head of the institution should identify this manager during your first meeting or conversation.
- It may be necessary to interview more than one person and may need more than one meeting to gather all the necessary information.

<b>Background</b>	
<b>1. Name of Department</b>	Full name.
<b>2. Name of reviewer</b>	Your name and position. Job title.
<b>3. Date of review</b>	Date on which review was undertaken.
<b>4. Reporting period</b>	What period is covered by this report?
<b>5. Constitutional Principle</b>	Number 4: Services must be provided impartially, fairly, equitably and without bias.
<b>6. Performance indicator</b>	The Department is making a concerted effort to move towards compliance with the provisions of the Promotion of Administrative Justice Act.
<b>7. Implementation plan</b>	<p><i>Overview:</i> Does the department have an implementation plan with a schedule to map all its administrative procedures and test them against the requirements of the Promotion of Administrative Justice Act? Are responsibilities assigned for these tasks? Obtain a copy of the plan. For which of the above administrative actions have the Promotion of Administrative Justice Act been complied with? Has any training been provided to staff on the Act? Has this had any particular impact?</p> <p>Areas of good practice or for improvement: (Please list any areas of good performance or any which need improvement.)</p>
<b>8. The provision of prior notice</b>	<p><i>Overview:</i> Complete Column B of Table One below</p> <p>Does the Department provide affected people prior notice of the nature and purpose of the proposed administrative action? How is this notice provided? If no notice is provided, is it justified in terms of section 3(4) and (5) of the Act? Is the provision of prior notice built into the business process or is it an exception made in certain cases?</p> <p>Areas of good practice or for improvement: (Please list any areas of good performance or any which need improvement.)</p>
<b>9. Opportunities to make representations</b>	<p><i>Overview:</i> Complete Column C of Table One below</p> <p>Are opportunities to make representations granted? What is the proportion/percentage of cases in which opportunities to make representations are granted? How can representations be made? Is the public made aware of these opportunities? How? If no opportunity to make representations is provided, is it justified in terms of section 3(4) and (5) of the Act? Is the provision built into the business process or is it an exception made in certain cases?</p> <p>Areas of good practice or for improvement: (Please list any areas of good performance or any which need improvement.)</p>

<p><b>10. Communication of decisions</b></p>	<p><i>Overview:</i> Complete Column D of Table One below.</p> <p><i>Comment:</i> In how many cases are administrative decisions clearly communicated and notices on the right to request reasons and the right to legal remedies given? Is adequate notice of the right to request reasons for decisions given? How is this notice given? (Section 24 of the Regulations on Fair Administrative Procedures.) Is adequate notice of the right to internal appeal or judicial review given? How is this notice given? (Section 25 of the Regulations on Fair Administrative Procedures). If no notices on the right to request reason and the right to legal remedies are given, is it justified in terms of section 3(4) and (5) of the Act?</p> <p>Areas of good practice or for improvement: (Please list any areas of good performance or any which need improvement.)</p>
<p><b>11. Reasons on request</b></p>	<p><i>Overview:</i> Complete Column E of Table One below.</p> <p><i>Comment:</i> Are reasons provided automatically or only on request? Are records kept of decisions that make the provision of reasons possible? Is there a procedure in place for handling requests for reasons for decisions? Describe the procedure? Is it the decision-maker who provides the reasons or is it a different official? If no reasons are provided on request, is it justified in terms of section 3 (4) and (5) of the Act? Are reasons given for the refusal to provide reasons?</p> <p>Areas of good practice or for improvement: (Please list any areas of good performance or any which need improvement.)</p>
<p><b>12. References</b></p>	<p>List all sources consulted in the preparation of this report. This should include a list of documents, electronic sources and officials interviewed including the date and location of the interview.</p>

**Table One: Review of departmental administrative decisions**

A	B	C	D	E
Administrative decisions taken in this department	Prior notice is given (Y/N)	Opportunities are made for representation (Y/N)	Decisions are communicated (Y/N)	Reasons are provided on request (Y/N)
1				
2				
3				
4				
5				

## Appendix Four: Questionnaire for use in interviewing Civil Society Organisations

**Organisation name and address:**

**Respondent's title and name:**

**Cell phone and land line numbers,  
email address:**

**Respondent's position / job title:**

### **Part One: Awareness**

**1. Have you heard of the Promotion of Administrative Justice Act (PAJA)? What do you understand the effect of the Act to be on you and your work?**

**2. Who do you believe should be making the public more aware of the PAJA and other similar legislation?**

**3. How should this be done?**

### **Part Two: Practices**

**4. Have you been involved in providing any PAJA-related training to government departments, communities or others? Please explain.**



**5. What skills do you think are needed by government officials to implement the Act properly? Do they have these skills?**

**6. Can you suggest ways in which PAJA information can be integrated into other training programmes?**

**Part Three: Compliance**

**7. How often and in what ways have you been able to make use of the Act in your work? In your opinion, is the Act working?**

**8. Why is so little use made of PAJA? What should be done to increase the use of it?**

**9. Do any of your supporters or donors focus on the Act specifically, for example by mentioning it in funding agreements?**

**10. Do you have any other comments or suggestions regarding the PAJA?**

**Thank you!**

## Appendix Five: Overall report format

1.	Executive summary
2.	Background and introduction (including study aims and objectives)
3.	Research method and limitations
4.	<p><b>Awareness</b> of the PAJA</p> <ul style="list-style-type: none"> <li>• In a national government department</li> <li>• In a provincial government where training has been provided</li> <li>• In a provincial government where training has not been provided</li> <li>• In a local authority where training has been provided</li> <li>• In a local authority where training has not been provided</li> <li>• In Civil Society Organisations</li> </ul>
5.	<p><b>Current practices</b> regarding administrative decisions:</p> <ul style="list-style-type: none"> <li>• In a national government department</li> <li>• In a provincial government where training has been provided</li> <li>• In a provincial government where training has not been provided</li> <li>• In a local authority where training has been provided</li> <li>• In a local authority where training has not been provided</li> <li>• In Civil Society Organisations</li> </ul>
6.	<p><b>Compliance</b> to the requirements of the PAJA:</p> <ul style="list-style-type: none"> <li>• In a national government department</li> <li>• In a provincial government where training has been provided</li> <li>• In a provincial government where training has not been provided</li> <li>• In a local authority where training has been provided</li> <li>• In a local authority where training has not been provided</li> <li>• In Civil Society Organisations</li> </ul>
7.	Conflicts between the PAJA and existing and future legislation
8.	Overview of the current state of PAJA compliance and strategies for its promotion
9.	Conclusion

# Annexure B

A Standard Monitoring  
and Evaluation Reporting  
Format

## Proposed monitoring framework for PAJA implementation

	<b>Result area</b>	<b>Performance indicator</b>	<b>Verifier</b>
<b>Monitoring and evaluation framework:</b>	Awareness:	All departmental staff are aware of the PAJA and its requirements	PAJA awareness survey
	Training:	Staff have the attitudes, knowledge and skills needed for application of the PAJA	Training needs and impact assessments
	Compliance to PAJA requirements:	The Department is making a concerted effort to move towards compliance with the provisions of the PAJA	Public Service M&E System Report Four Register of requests and reviews
	Further reforms:	No existing or envisaged legislation conflicts with the PAJA	Legislative audit repeated every three years
	Reporting:	Regular and reliable monitoring reports on progress in implementation of the PAJA are produced	Accuracy and frequency of reports