



**RULES BOARD FOR COURTS OF LAW
REPUBLIC OF SOUTH AFRICA**

**BRIEFING TO THE NATIONAL ASSEMBLY'S PORTFOLIO
COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES
15 MARCH 2016**

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**BRIEFING NOTE TO THE NATIONAL ASSEMBLY IN RESPECT OF THE
REVISED RULES MADE UNDER THE PROMOTION OF ACCESS TO
INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)**

A. BACKGROUND

1. Section 32(1) of the Constitution of the Republic of South Africa, 1996 guarantees everyone the right of access to:
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.

2. Section 32(2) of the Constitution requires that National Legislation be enacted to give effect to the rights under subsection (1)(a) and (b).

3. The Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA") has ultimately been enacted to give effect to the rights under subsection (1)(a) and (b).

4. The Rules Board for Courts of Law ("Rules Board") is authorised, in terms of section 79(1) of PAIA, to make rules of procedure, subject to approval by the Minister, for:
 - (a) a court in respect of applications in terms of section 78; and
 - (b) a court to receive representations *ex parte* referred to in section 80 (3)(a).

5. Section 79(3) of PAIA provides that any rule made under section 79(1) must, before publication in the *Gazette*, be approved by Parliament. Section 79 is attached as Annexure "A".

6. In addition, the Rules Board is mandated by section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985) ("Rules Board Act") to, amongst other things, review the existing rules of court from time to time on a regular basis, and subject to approval by the Minister make, amend or repeal the rules of courts with regards to various aspects. Section 6 of the Rules Board Act is attached as **Annexure "B"**.

B. DISCUSSION

7. The Rules Board made the existing PAIA Rules promulgated under Government Gazette No. 32622 of 9 October 2009, which came into operation on 16 November 2009. For ease of reference a copy of the existing PAIA Rules is attached as **Annexure "C"**.

8. Subsequently, the PAJA/PAIA Rules Committee ("PRC") of the Rules Board, in fulfilling its mandate of reviewing the rules of courts on an on-going basis, identified certain shortcomings in relation to some of the rules so promulgated. These shortcomings, together with some considered judicial pronouncements, resulted in the Rules Board resolving to embark on a holistic revision of the entire rules.

9. The PRC made amendments to PAIA rules of procedure, which amendments were sent out to role-players on 14 April 2014 for consideration and comments. Comments received from various role-players were then collated and deliberated upon, and the first draft of the revised PAIA Rules was produced, incorporating suggestions received from the consultative process. The revised draft was re-sent to selected role-players for submission of final comments, such role-players being those who initially submitted comments. The final comments and recommendations received were also collated and discussed by the PRC on 12 February 2015, resulting in the second revised draft rules.

10. The PRC then resolved that the second revised draft rules be submitted to the Rules Board for consideration and approval. These revised PAIA Rules were subsequently approved by the Rules Board at its meeting held on 20 March 2015.

11. Subsequent to approval by the Rules Board, the revised rules were sent to the Office of the Chief State Law Adviser ("OCSLA") for scrutiny. Comments and further recommendations were received from OCSLA around 8 May 2015, and these were duly incorporated into the final draft as they mainly concerned structure and format.

12. OCSLA's suggestions pertaining to structure and format were formally discussed at the PRC's meeting held on 26 June 2015, and the final draft of the revised rules was approved and/or endorsed by the Rules Board at its meeting held later on the same day, in the process the Board authorising the dispatching of the revised PAIA Rules to the Minister for approval.

13. On 16 December 2015, the Minister approved the Rules Board's revised PAIA Rules, which essentially repeal and substitute the existing PAIA Rules which were published on 9 October 2009.

14. Subsequent to Ministerial approval, a further memorandum was sent to the Ministry on 28 January 2016, requesting the tabling of the revised PAIA Rules in Parliament, which are in the cover hereto.

C. UNDERLYING PRINCIPLES

15. The principle underlying the revised PAIA Rules is that the rules formulated in terms of section 79(1) of PAIA should make provision for the existing procedure of High Court Rule 6 and Magistrates' Courts Rule 55 to govern applications for access to information in terms of PAIA.

16. In addition, the applicant now has a period of 180 days to bring the relevant application to court for appropriate relief in relation to an event contemplated in section 78(2) and (3) of PAIA, and the court can condone non-compliance with the stipulated period where the interests of justice so require.

17. Furthermore, *ex parte* application must be made under oath or affirmation of the truth thereof and must be supported by documentary proof where applicable.

D. RECOMMENDATION

18. It is recommended that the revised PAIA Rules be deliberated upon and approved by the National Assembly's Portfolio Committee on Justice and Correctional Services. The revised rules, in *Gazette* format and in duplicate, are in the cover.

ANNEXURE A**PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT NO. 2 OF 2000)****79 Procedure**

- (1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must, before 28 February 2009, subject to the approval of the Minister, make rules of procedure for-
- (a) a court in respect of applications in terms of section 78; and
 - (b) a court to receive representations *ex parte* referred to in section 80 (3) (a).

[Sub-s. (1) amended by s. 23 (a) of Act 55 of 2003 and by s. 27 of Act 66 of 2008.]

- (2) Until the rules of procedure in terms of subsection (1) (a) come into operation, an application in terms of section 78 must be lodged with a High Court or another court having jurisdiction.

[Sub-s. (2) substituted by s. 23 (b) of Act 55 of 2003.]

- (3) Any rule made in terms of subsection (1) must, before publication in the *Gazette*, be approved by Parliament.

ANNEXURE B**THE RULES BOARD FOR COURTS OF LAW ACT, 1985 (ACT NO. 107 OF 1985)****6 Powers of Board**

(1) The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts regulating-

(a) the practice and procedure in connection with litigation, including the time within which and the manner in which appeal shall be noted;

[Para. (a) substituted by s. 4 of Act 77 of 1989.]

(b) the form, contents and use of process;

(c) the practice and procedure in connection with the service of process or other documents, including the issue of interrogatories;

(d) the practice and procedure in connection with the execution of process, including writs and warrants;

(e) the practice and procedure in connection with the reference of any matter to a referee under section 38 of the Superior Courts Act, 2013, and the remuneration payable to any such referee;

[Para. (e) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(f) the compulsory examination by one or more registered medical practitioners of any party to proceedings in which damages or compensation in respect of alleged bodily injury is claimed and whose state of health is relevant for the determination of such damages or compensation, as well as the manner,

time, place and responsibility for the cost of the examination, and the making available to the opposing party of any documentary report on the examination;

(g) the procedure at or in connection with any enquiry as to the mental state of any person, and the findings or orders which may be made or issued at any such enquiry;

(h) the appointment and admission of commissioners to take evidence and examine witnesses;

(i) the manner in which documents executed outside the Republic may be authenticated to permit of their being produced or used in any court or produced or lodged in any public office in the Republic;

(j) the appointment and admission of sworn translators;

(k) the duties of sheriffs and other officers of court;

(l) fees and costs, including the fees payable in respect of the service or execution of process (except subpoenas or warrants issued at the request of the State in criminal matters) or in respect of the summoning of persons to answer interrogatories;

(m) the manner of determining the amount of security in any case where it is required that security shall be given, and the form and manner in which such security may be given;

(n) the hours during which the offices of registrars and clerks of the court shall be open for official purposes;

(o) the manner of recording or noting evidence and proceedings;

(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the High Court of South Africa;

[Para. (p) substituted by s. 23 (b) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

(q) the appointment of assessors in proceedings in lower courts;

(r) the tariff of fees chargeable by advocates, attorneys and notaries;

(s) the taxation of bills of costs and the recovery of costs;

(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the High Court of South Africa and the Lower Courts in civil as well as in criminal proceedings.

[Para. (t) substituted by s. 23 (c) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

[Sub-s. (1) amended by s. 23 (a) of Act 62 of 2000 and by s. 55 (1) (b) of Act 10 of 2013.]

(2) (a) Different rules may be made in respect of the Supreme Court of Appeal, High Court of South Africa and the Lower Courts and in respect of different kinds of proceedings.

[Para. (a) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(b) The Board may, with the approval of the Minister, make different rules in respect of-

(i)

[Sub-para. (i) deleted by s. 55 (1) (b) of Act 10 of 2013.]

(ii) the different Divisions of the High Court of South Africa; or

[Sub-para. (ii) substituted by s. 55 (1) (b) of Act 10 of 2013.]

(iii) the lower courts in different magisterial districts,

which shall be of force for the period or periods determined by the Board.

[Sub-s. (2) substituted by s. 24 of Act 139 of 1992 and by s. 23 (d) of Act 62 of 2000.]

(3) Rules made under any provision of a law repealed by this Act and in force at the commencement of this Act, shall, subject to the provisions of this Act and notwithstanding the repeal of that provision by section 10 or 11 of this Act, remain in force until amended or repealed under this section.

(4) No new rule or amendment or repeal of a rule shall commence unless it was published in the Gazette at least one month before the day upon which such rule, amendment or repeal is determined to commence.

(5) Every rule and every amendment or repeal thereof shall within 14 days after it commenced be laid upon the Table in Parliament if Parliament is then in session, or if it is not then in session, within 14 days after the commencement of its next ensuing session.

(6) The Board may advise the Minister on the monetary jurisdiction limits of lower courts, the limitation of the costs of litigation and any other matter referred to the Board by the Minister.

[NB: A sub-s. (6A) has been inserted by s. 62 of the General Law Third Amendment Act 129 of 1993, a provision which will be put into operation by proclamation. See PENDLEX.]

(7) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in order to give effect to the provisions of sections 2 and 3 of the Foreign Courts Evidence Act, 1962 (Act 80 of 1962).

(8) The power to make, amend or repeal rules under subsection (1) shall include the power to make, amend or repeal rules in relation to the application of the Admiralty Jurisdiction Regulation Act, 1983 (Act 105 of 1983), prescribing the following:

(a) The appointment of any person or body for the assessment of fees and costs, and the manner in which such fees and costs are to be assessed;

(b) measures aimed at avoiding circuitry or multiplicity of actions;

(c) the practice and procedure for referring to arbitration any matter arising out of proceedings relating to a maritime claim, and the appointment, remuneration and powers of an arbitrator.

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GOVERNMENT NOTICES

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 955

9 October 2009

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 RULES OF PROCEDURE FOR APPLICATION TO COURT IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

The Rules Board for Courts of Law has under section 79 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), made the rules in the schedule.

SCHEDULE

Definitions

1. In these rules -

- (a) any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned; and
- (b) any word or expression to which a meaning has been assigned in the rules governing the procedures of the court in which an application in terms of these rules is brought, shall bear the meaning so assigned, and unless the context otherwise indicates -

"Act" means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

"clerk of the court" means a clerk and assistant clerk of the court appointed under section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

"decision" means a decision in respect of which an application in terms of section 78 of the Act is brought;

"deliver" means serve copies on all parties and file the original with the registrar or

clerk of the court as the case might be; and

“registrar” means a registrar and assistant registrar appointed under section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959) or a registrar appointed under any law not yet repealed by a competent authority and in force, immediately before the commencement of the Constitution of the Republic of South Africa, 1996, in any area which forms part of the national territory.

Procedure in an application to court in terms of the Act

2. (1) The procedure prescribed in these rules must be followed in all applications contemplated in section 78 of the Act.
- (2) Unless as otherwise provided for in these rules, the rules governing the procedures in the court to which an application in terms of these rules is brought shall apply with appropriate changes, unless otherwise directed by the court.

Applications

3. (1) An application contemplated in section 78 of the Act must be brought on notice of motion that must correspond substantially in accordance with the form set out in the Annexure to these rules, addressed to the information officer or the head of a private body, as the case may be.
- (2) The notice of motion must:
 - (a) set out an address within eight kilometres of the court to which the application is brought, where the applicant will accept notice and service of all process;
 - (b) call upon the respondent –
 - (i) to give notice, within 15 days after receipt of the application, of his or her intention to oppose the application, which notice shall also contain an address within eight kilometres of the court to which the application is brought where notice and service of documents will be accepted; and
 - (ii) to file any answering affidavit within 15 days after service

- of the notice of intention to oppose the application; and
- (c) inform the respondent that –
- (i) if no notice to oppose the application is delivered in terms of subrule (2)(b)(i); or
 - (ii) if notice of intention to oppose has been delivered but no answering affidavit is delivered in terms of subrule (2)(b)(ii), the matter will be placed on the roll for hearing without further notice.
- (3) The notice of motion referred to in sub-rule (1) must be supported by an affidavit and be accompanied by true copies of all documents upon which the applicant intends to rely.
- (4) The affidavit referred to in subrule (3) must:
- (a) set out the facts and circumstances upon which the application is based;
 - (b) state whether the internal appeal procedure contemplated in section 74 of the Act has been exhausted and if so, provide particulars of the manner in which and date upon which the internal appeal procedure was exhausted and if not, the reasons for failing to exhaust such procedure; and
 - (c) explain the relevance of each document upon which the applicant intends to rely.
- (5) The information officer or head of a private body, as the case may be, must:
- (a) immediately after receipt of the application, notify, in writing, all other persons affected, of the application and attach a copy of the application to such notice; and
 - (b) within 15 days after receipt of the application –
 - (i) file with the clerk of the court or the registrar, as the case may be, two true copies of the request and the notification sent to the requester in terms of section 25(1)(b) of the Act;
 - (ii) notify the applicant in writing that the requirements of

subparagraph (i) have been complied with; and

(iii) serve on the applicant a true copy of the reasons, if they have not yet been provided.

(6) The applicant may, if the information officer or head of a private body as the case may be, fails to comply with the provisions of subrule (4), request the clerk of the court or the registrar as the case may be, in writing, to place the application before the court for an order in terms of section 82(b) of the Act.

Representations

4. (1) Representations contemplated in section 80(3)(a) of the Act must be -
- (a) made under oath in writing, and supported by documentary proof, where applicable; and
 - (b) filed with the clerk of the court or the registrar as the case may be, at least five days before the date of the hearing of the application.
- (2) The court receiving the representations referred to in subrule (1) shall take the steps that it may deem appropriate to bring the representations to the attention of the parties to the application.

Court fees

5. Any application in terms of these rules shall be subject to the payment of the court fees applicable in the court in which the application is brought, unless waived by the court at its discretion on such grounds as it deems appropriate.

Short title

6. These rules may be called the Promotion of Access to Information Rules.

Commencement

7. These rules come into operation on 16 November 2009.



GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R.....

.....2016

PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000 RULES OF PROCEDURE FOR APPLICATION TO COURT IN TERMS OF THE PROMOTION OF ACCESS TO INFORMATION ACT 2 OF 2000

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1. Definitions

In these rules -

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(b) any word or expression to which a meaning has been assigned in the rules governing the procedures of the court in which an application in terms of these rules is brought, shall bear the meaning so assigned, and unless the context otherwise indicates -

“Act” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

“High Court Rules” means the Rules Regulating the Conduct of the Proceedings of the Several Provincial and Local Divisions of the High Court of South Africa;

“Magistrates’ Courts Rules” means the Rules Regulating the Conduct of the Proceedings of the Magistrates’ Courts of South Africa.

2. Procedure in an application to court in terms of the Act

(1) The procedure prescribed in these rules must be followed in all applications contemplated in section 78 of the Act.

(2) Save as otherwise provided for in these rules, the rules governing the procedures in the court to which an application contemplated in section 78 of the Act is brought shall apply.

(3) An application contemplated in section 78 of the Act must be brought within 180 days from the date of the applicable event in sections 78(2) and (3): Provided that the court may condone non-compliance with the 180 day period within which to bring such application, where the interests of justice so require.

3. Applications

(1) An application contemplated in section 78 of the Act must be -

- (a) brought in accordance with, and be governed by –
 - (i) rule 6 of the High Court Rules, when brought in the High Court;
or
 - (ii) rule 55 of the Magistrates' Courts Rules, when brought in a Magistrate's Court; and
 - (b) served on –
 - (i) the information officer of a public body; or
 - (ii) the head of a private body, as the case may be,
and on the requester and any known third parties, where applicable.
- (2) The affidavit in support of an application contemplated in section 78 must state whether the internal appeal procedure contemplated in section 74 of the Act is applicable.
- (3) If the internal appeal procedure contemplated in section 74 of the Act is applicable, the affidavit must –
- (a) state whether such internal appeal procedure has been exhausted; and
 - (b) provide particulars of the manner in which and date upon which the internal appeal procedure was exhausted and, if not, the reasons for failing to exhaust such procedure.
- (4) Upon receipt of the application the information officer of a public body or head of a private body must provide a copy of the application, under cover of a written notice, to all other parties affected by the application who have not been cited therein.

4. *Ex Parte* Representations

- (1) Unless directed otherwise by the court *ex parte* representations contemplated in section 80(3)(a) of the Act must be made under oath or

affirmation of the truth thereof in writing, and where applicable, supported by documentary proof.

(2) The court receiving the representations referred to in subrule (1) may order that appropriate steps be taken to bring the representations to the attention of the other parties to the application.

5. Repeal of rules

The Promotion of Access to Information Rules published under Government Notice No. R. 965 of 9 October 2009 are hereby repealed.

6. Short title

These rules shall be called the Promotion of Access to Information Rules.

7. Commencement

These rules come into operation on **2016.**



GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R.....

.....2016

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and on the requester and any known third parties, where applicable.

(2) The affidavit in support of an application contemplated in section 78 must state whether the internal appeal procedure contemplated in section 74 of the Act is applicable.

(3) If the internal appeal procedure contemplated in section 74 of the Act is applicable, the affidavit must –

- (a) state whether such internal appeal procedure has been exhausted; and
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