



**Revised Rules –
Promotion of
Administrative
Justice Act 3 of
2000**

First Briefing on the Revised Rules

- On **15 March 2016** a delegation from the Rules Board and the Justice Department briefed the Committee on the Revised Draft Rules in terms of the Promotion of Administrative Justice Act of 2000 (PAJA). These Rules set out procedures for Judicial Review.
- The PAJA provides in sections 7(5) that:
Any Rule that deals with a rule of procedure for judicial review must, before publication in the Gazette, be approved by Parliament.
- No quorum of Members on the 15 March 2016 so the Committee was unable to deliberate on the Rules.

Brief History of the 2009 Rules (Part 1)

- Section 33 of the Constitution guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair. PAJA gives effect to this right.
- Section 7 of PAJA provides for a procedure for judicial review (to challenge an administrative decision which is unlawful, unreasonable or unfair.) The Rules Board **must** make rules for this procedure.
- The first PAJA Rules were approved in February **2009** but were challenged in court and not brought into operation.
- It should be noted that the 2009 Rules were a radical departure from the existing procedural rules for judicial review as set out in Rule 53 of the Uniform Rules of the High Court.

Brief History of the 2009 Rules (Part 2)

- In **2012** the North Gauteng High Court found that certain provisions of the 2009 Rules were unconstitutional. (*Lawyers for Human Rights v Rules Board for Courts of Law and Minister of Justice* [2012] 3 All SA 153 (GNP)).
- The Court was of the view that the Rules, 'sought to replace existing mechanisms with new ones that will chip away at the constitutional commitment to administrative justice.'
- Essentially the Court found;
 - the Rules departed significantly from the existing Uniform Court Rule 53 procedure which provides for access to the full record of the administrative proceedings. The reasons for this drastic and dramatic change were not clear.

Brief History of the 2009 Rules (Part 3)

- the definition of 'relevant documents' (which effectively deprived an applicant from access to the full record) was too restrictive. This violated an applicant's right to access information and right to just administrative action;
- the provision which allowed an administrator to refuse to provide a copy of documents "on any valid ground" was too vague; and
- the grounds which allowed an administrator to declare documents confidential was also vague and provided no guidance to the administrator.

Rules Board - Revised Rules

- In **2013**, in response to the court judgement, the PAJA Rules Committee drafted Revised Rules.
- These Rules were sent out for comment, were further amended and the final version was then approved by the Rules Board in February 2014.
- The Revised Rules were finally approved by the Justice Minister in January **2015** and then tabled in Parliament.
- Significantly:
 - Unlike the 2009 version the Revised Rules don't adopt a special procedure. This ensures a uniform approach to judicial review applications.

Issues Raised by the Portfolio Committee on 15 March 2016

- **Adequate consultation.** The Department indicated that the consultative process had involved as many role players as possible. These included lawyers' organisations, non-governmental organisations (NGOs), academics and members of the judiciary. Comments had been sought from these groups and incorporated into the new rules.
- **The long period between the invalidation of the 2009 PAJA Rules and the Revised Rules** (especially with respect to litigants' access to justice). The Department indicated that the existing Uniform Rule of Court 53 procedure had been used in the intervening period of the PAJA Rules' invalidation, so there had been no real lacuna in the administration of justice.
- **Role/input of the Minister** (the reason the 2014 Revised Rules were only approved by the Minister in January 2015). The Department reported that this was due to the delay that resulted from the elections and the appointment of a new Minister who had to be briefed on the matter.
- **Reason why the Select Committee had been briefed first.** The Department reported that they had briefed the Select Committee first because they had responded to a request to provide a briefing.