

SUMMARY OF SUBMISSIONS: RULES OF PROCEDURE FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

RULE NR	SUBMISSION	COMMENT	RESPONSE	PROPOSED AMENDMENT
General	1. Nele Meyer 2. Dr R Naidoo	Procedures are complex. Use procedures for equality courts as model. Application for judicial review in electronic format should be provided for. Training of judicial officers with specific focus on the Constitution.	The framework in the Equality Act caters for appropriate assistance. Various legislative, policy and IT solutions required to give effect to the proposal. Government initiatives in this regard under investigation.	
Preamble	Mr P Bracher	A preamble is unnecessary	It is deemed necessary to provide for preamble as the enabling Act is constitutionally mandated and the interpretation of the rules will be informed by section 33(1).	
Rule 1 Subrule (1)	1. Mr P Bracher	Subrule (1): The rules should apply to proceedings in all the courts and not only in the Labour Court, the High Court and the Magistrates' Courts	Subrule (1): Applications may be brought in many other courts under different circumstances and sufficient flexibility must be ensured to deal with applications	

	2. Nele Meyer	Subrule (1): With reference to the Chirwa case, the reference to Labour Court is incorrect	expeditiously and appropriately. Need to consider relevant case	
	3. Mssrs E Horn and G Bellairs	Adjusting of rules according to circumstances welcomed but be careful for "circus". Underlines necessity of harmonising the rules of the various courts. No direction on which court application is to be brought in and what about jurisdiction	It is counterproductive to provide in detail for the various procedures and possibilities whilst having rules which have stood the test of times. The Act regulates which courts have jurisdiction.	
Subrule (2)	1. Mr P Bracher	Subrule (2): Why should other courts have the power to apply these rules or not. It places such courts in a better position than the High Court	See response in respect of subrule (1) above.	
Subrule (3)	Mr P Bracher	Subrule (3): The court in which the issue is raised should be given the power to decide the issue in the course of those proceedings	The rules, to a great extent allows for this.	

Subrule (4)	Mr P Bracher	Subrule (4): Proposed technical changes to the wording of the subrule	The qualification in the first part of the subrule is important. Reverting to the rules of the court should be limited.	
Rule 2 Subrule (1)	Mr P Bracher	Subrule (1): The definitions in other Acts should only apply if required by the context	Conventional way of dealing with definitions. The only Act applicable here is the enabling Act. Amendments incorporated in principal Act. Need definition to limit documents to ground of judicial review. Definition still to be interpreted by courts.	
Subrule (2)	1. Mr P Bacher	Subrule (2): Definition of "Act" -The rules relate to the Act as amended not the Act as passed in 2000. Definition of "relevant document" – no need for definition, the court to have a discretion	Rules refer to different forms and no uncertainty	
	2. Nele Meyer	Subrule (2) – definition of "rules" to insert "A to E"	Must give applicants sufficient time to exercise right.	
	3. Mr E Horn	"day" should mean calendar days to speed up process. Definition of "administrator" in Act to be amended - difficult to know what legal status of respondent is.	Noted. Cannot amend definition in Act through rules.	
Rule 3	1. Prof G Quinot	Rule 3 is unlawful:	Have reconsidered	Possible solution to

	<p>(University of Stellenbosch)</p> <p>2. Mr P Bracher</p> <p>3. Nele Meyer</p>	<p>(a) It goes beyond the powers of the Rules Board: It deals with the request for reasons and not with rules of procedure for judicial review which is the mandate of the Rules Board.</p> <p>(b) Section 10 of the Act mandates the Minister to make regulations dealing with the procedure for requesting reasons. Regulations in this regard have been made. (Forms A and B should be deleted)</p> <p>Rule 3 is beyond the powers of the Rules Board and it deals with matters which are in the Act and which have nothing to do with judicial review.</p> <p>Rule beyond power in view of section 10 and meaning of rules for procedure of administrative review</p>	<p>sections 10 (and the regulations made) and 7(3). It is arguable whether section 7(3) is not wide enough to cater for reasons. If rule 6 falls within the ambit, then the requirements for a proper application under the rules – namely the request in the prescribed manner and the response- can hardly fall outside it. Deems it necessary to provide for matter in the rules to facilitate the review process.</p> <p>See response above</p>	<p>retain rule and to amend the regulations to incorporate by reference the applicable rule.</p>
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Subrule (1)	Nele Meyer	Subrule (1): Insert the words "and who has not given adequate reasons" after the word "administrative action"	See response above	
Subrule (2)	Nele Meyer	Subrule (2): Use of specific form is required, how will applicant get form, in which languages will it be available. How will access be insured where applicant seeks reasons because no decision was taken. What if form is not used? Provide for alternative if applicant does not want to use form and writes letter. Simplify the form and make it available certain Centres What are consequences of formal deficiencies in procedure?	Subrule provides for two issues, and the proposed words not applicable to second issue (variation). Making available of forms can be dealt with administratively. Forms contain notes and use thereof will assist applicants. Forms part of rules and rules to be in English and Xhosa. Translation into other languages to be considered later. Normal court rules will apply.	
Subrule (4)	Nele Meyer	Subrule (4): Insert the word "written" before the word "reasons"	Sec 5 of the Act makes it clear that reasons are to be in writing.	
Subrule (5)	Nele Meyer	Subrule (5)(a): Add the word "adequate" before the word "written"	See sec 5(2)	

		Subrule (5)(d): Insert the word "written" before the word "reasons" and divide the subrule into two subrules	See comment above regarding "written"	Subrule to be amended by inserting a new paragraph (e).
Rule 4	1. Mr P Bracher	Rule goes beyond powers of the Rules Board and deals with pre-judicial review disclosure, which matters are dealt with in the Promotion of Access to Information Act. Rule 4(1)(b) differs from section 9(1) of the Act – rules cannot amend the Act.	International precedents for disclosure in pre-application stage to limit costs. Promotion of Access to Information Act allows for other legislation to provide for access to documents, including rules of court Rule 4(1)(b) in line with section 9 of Act.	
Subrule (3)	2. Nele Meyer	Applicant to be informed about the right to request disclosure of documents	Suggestion to be considered	
	3. Prof G Quinot (University of Stellenbosch)	(a) Rule 4(3) is not clear: How is the 15 day period in the rule calculated in the absence of a request for reasons (b) Is the 15 day period in rule 4(3) adequate? Advisable to extend the time-frame	Nothing prevents a request for disclosure at any time after administrative action was taken, even before reasons are given. Cut-off date for request is important to proceed to next step.	Days extended to 20 days i.e. 4 weeks.

Subrule (6)	3. Nele Meyer	Right to disclosure not to be limited to documents identified by administrator but allow requester to inspect all relevant documents. Determine a time period in which for disclosure must take place	This rule read with rule 7 constitutes a shift from the normal application of discovery rules. Aim is to prevent abuse of rules of discovery in pre-application stage to circumvent PAIA. Applicant may require disclosure after institution of proceedings for judicial review under the normal rules of discovery.	
Rule 5 Subrule (1)	Mr P Bracher	Subrule (1): No provision in Act authorising the administrator to alter the time periods in terms of the Act. In some cases the administrator may not be a party to the review. The rules cannot purport to amend the Act.	Section 9 allows for variation of time periods by agreement between parties or by order of the court	
Subrule (2)	Mr P Bracher	Subrule (2): Current rules of the Supreme Court sets out clear procedure which should be harmonised with the	To the extent possible and appropriate, the normal rules of court have been retained. The Act also envisaged	

		Act	something new.	
Rule 6 Subrule (1)	Mr P Bracher	Subrule (1): Rule not within powers of Rules Board. It purports to make different law from what is in section 5(3)	Sec 8(1)(a)- Court may direct the administrator to give reasons. Sec 5(3) merely provides for a presumption.	
Subrule (2)	Mr P Bracher	Subrule (2): See comment in respect of subrule (1)		
Rule 7	1. Prof G Quinot (University of Stellenbosch)	The rule does not allow for any challenge to a decision of an administrator to list documents in Part 2 of Schedule A of Form D. It does cater for a challenge in respect of documents in Part 1 of Schedule A of Form D	See response in respect of rule 4(6) above.	
	2. Mr P Bracher	Comments in respect of rule 4 applicable – Promotion of Access to Information Act deals with matters provided for in rule	See response in respect of rule 4	
Subrule (2)(c)	3. Nele Meyer	Subrule (2)(c): It is not clear what point in time the term "failure" determines?	Noted	Rule 7(1) to be amended by inserting the words "within the time period referred to in rule 4".

Subrule (8) – (9)	<p>3. Prof G Quinot (University of Stellenbosch)</p> <p>4. Mr P Bracher</p>	<p>provided its Equality Act. Follow more inquisitorial approach with fact-finding competencies for court.</p> <p>Subrules (8)-(9): Rule With reference to the State Liability Act, 1957 - consider the citation of political heads of organs of state as nominal respondents as envisaged</p> <p>Rule 8(9): Must define "functionary" to clarify whether a cabinet Minister is for instance included.</p>	<p>the powers of the court.</p> <p>Considered possible introduction of nominal respondent but expedient enforcement of relevant right necessitates subrule (8) and (9).</p> <p>To be understood in context of the Constitution</p>	
Rule 9	Mr P Bracher	Why not keep to the already existing rules relating to methods of service and time limits	Act envisages speedy, affordable and simple process, hence mandate of Rules Board to make rules	
Rule 10	Mr P Bacher	Subrule (2): Should keep to existing law regarding taking an oath or doing a declaration to avoid confusion. Why the phrase "under pain of	Noted. Reference to perjury in rule to caution person who makes affidavit. Perjury will be committed even if the declaration is not under	

		perjury"? Is it perjury if the declaration is not made under oath.?	oath.	
Form C	Prof G Quinot (University of Stellenbosch)	Statements in Form C that persons rights must be materially and adversely affected before judicial review proceedings can be brought under the rules are in conflict with section 38 of the Constitution and section 6 of the Act	Noted	Form C to be amended